

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 2007-CP-23-3206

North American Rescue Products, Inc., ...

Respondent/Petitioner

v.

P.J. Richardson, ...

Petitioner/Respondent

APPENDIX - VOLUME II

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1 Believe me, I'm not going to beat this one to death. Did
2 you ever understand how the Dobson deal was supposed to
3 work?

4 A Well, initially, I thought I did because it seemed
5 pretty simple. That we would donate -- we would put the
6 stock in, but the operative word was donate. And that was
7 the first time that I felt there was a problem with me. I
8 had to ask somebody about it. Because I couldn't figure
9 out how do you donate stock on one side, donate cash on
10 the other side, then you get something back. Now, the
11 idea of putting stock in and contributing, you know, this
12 money, I thought I understood how this would work. But it
13 seems to me I was getting something back. There would be
14 no -- I was not looking for any sort of tax advantage.
15 That wasn't something that was important to us. We simply
16 wanted to pay the money to Bob Castellani and get our
17 stock. This whole notion of getting into a charitable
18 trust, I didn't see why we needed to even be involved in
19 it. Why couldn't we just pay for our ownership and get
20 our stock. Then if they wanted to take the \$415,000 and
21 donate to a charity, that's great.

22 Q Just do that on their own?

23 A Do that on their own. I don't need to know about it,
24 just like he doesn't need where I donate my money. It's a
25 very private thing.

1 Q You talked about -- it sounded like you talked about
2 two donations in terms of the Dobson deal. Bob was
3 putting the stock in on this side?

4 A Yes.

5 Q When I say this side in the middle, let's just
6 pretend like this is Bobby Dobson Faith Ministries?

7 A Yes.

8 Q How did it work on the other side?

9 A At the Dobson end?

10 Q On your side?

11 A That I was going to donate my money from the proceeds
12 of Reeves.

13 Q Okay.

14 A I wasn't comfortable with that.

15 Q Was there supposed to be tax deductions on both
16 sides?

17 A Well, I was told there would be, but I didn't -- I
18 got ahold of Kidner and I got ahold of Eric Orlinsky and I
19 said, Guys, you need to drill down on this for me because
20 I don't understand it, but I don't like it. It just
21 isn't -- Bob and I want to get this done. I'm having a
22 real hard time with this.

23 Q Okay.

24 A Because there shouldn't have been any. I didn't
25 think I was entitled to any tax deduction.

1 Q Right. Did you talk to -- you talk to Orlinsky,
2 Kidner, did you talk to Kohr and Harper about the whole
3 Dobson scheme, too?

4 A Yes, I did.

5 Q Did anybody ever sign off on it?

6 A No one did.

7 Q And, ultimately -- I mean other than yourself, among
8 your advisers, did anybody say huh-uh, not going to do
9 that.

10 A Well, Eric was emphatic about it.

11 Q What did he tell you about that?

12 A Well, I mean, he said, you know, he didn't want me
13 being involved in any kind of fraud. That's a scary word.

14 Q Well, we'll talk to Eric later because we've got more
15 of this designation, we'll just leave that for Eric, okay?

16 A Okay.

17 Q Let's put up Exhibit 38 briefly. This is Bob's email
18 to you in May. You got it, P. J.?

19 A Yes, I do.

20 Q This was in May, and at the top there it's from Bob
21 to you and it copies Curt and James, right?

22 A Yes.

23 Q James, do you know who James is?

24 A James Harris is a junior associate attorney who works
25 for Eric.

1 Q Okay. And so he had worked on the DHS sale for you?

2 A Yeah.

3 Q This email, this primarily -- this concerns an
4 interest in NARP, right, primarily?

5 A Yes.

6 Q Okay. How did it come that Eric and this guy, James,
7 who worked for him, were working on that side of the deal
8 now? This used to be Rod's side?

9 A It was Rod's side. And Rod, at that point, was very
10 involved in -- actually, he was involved with the Samsung
11 people and I couldn't get him. He was just not going to
12 be available to help us. We had to be committed to get
13 this transaction done. Since Saul Ewing and the firm that
14 he worked for was solely involved in everything we were
15 doing with DHS, just made sense to bring them into the
16 picture and let them wrap this thing up for us.

17 Q Yeah. Now, this piece right here about the original
18 handshake agreement worked so well because it was simple.
19 Did you know what Bob was talking about when he said that?

20 A I assumed he was talking about our 2000 agreement.

21 Q Okay. And this perfect agreement part in here, what
22 did you take it that he was referring to there?

23 A The -- at first, I thought it was the 2000 agreement,
24 but then as I read it a couple of times, I assumed he was
25 talking about what we had agreed upon in Atlanta.

1 Q Okay. Now, this part -- at what you had agreed to do
2 in Atlanta, you mean the three-legged stool?

3 A Right.

4 Q Did you ever consider the Dobson agreement a perfect
5 agreement?

6 A No, I didn't, those are Bob's words.

7 Q Okay. This part right here, Since it's clear the
8 NARP stock is going to rise, which will nullify our
9 original proposal and I've liquidated stock to cover some
10 of the most time critical pledges I've, did that sound
11 like Bob talking to you?

12 A No, I didn't think it was Bob. I thought that Curt
13 Stodghill had written this, actually.

14 Q Okay. What about this part about -- actually, what
15 that sentence says, Since it's clear the stock price is
16 going to rise and there's some discussion in their
17 evaluation. Where did this evaluation discussion come
18 from? When did that come up?

19 A I was -- the first time I heard evaluation, it was
20 either Bob or, certainly, from Curt I heard that. But
21 that was something that Curt was always talking about once
22 we got into this that the evaluations had to be done and
23 the record shows there were two of them done.

24 Q The evaluations were connected to the Dobson deal?

25 A Well, I think to some extent they were. I don't

1 know. I mean, Bob and I were not, you know, involved in a
2 lot of what was going on. Once Curt came along, then I
3 had less involvement in what was going on. So I'm not
4 really sure why all the evaluations, but, certainly,
5 Dobson could have been part of that.

6 Q This last sentence here, last paragraph, Just so you
7 know, nothing is changed in my mind about getting this
8 done for you and Billie. Does that sound like Bob to you?

9 A Yeah, those are kind of his sincere words.

10 Q Okay. Now, during this time, during May, is that
11 when the dispute with DHS started sneaking up on you?

12 A Yes.

13 Q Okay. And there wasn't any lawsuit or anything at
14 that point, was there?

15 A No.

16 Q Okay. Let's get to Stax, okay. And I want to ask
17 you like how did the Stax meeting come about? You guys
18 were, I guess, here in Greenville, right?

19 A Yeah, by that point, we were already coming here on a
20 regular basis. We owned property here in Greenville,
21 still own property here in Greenville, live here. So we
22 would be down. And I don't believe there was ever a time
23 when would come here and call Bob and try to get together
24 and have, you know, breakfast or lunch or something.

25 Q Was Bob in Easley then or Greenville, where was he?

1 A I'm not sure. He may have already been up here, you
2 know, over in Simpsonville by that point.

3 Q How did Bob end up in Greenville, do you know?

4 A Yeah, I believe he came down here, his wife, Lisa,
5 graduated from medical school and was doing her internship
6 here in Greenville. I believe that's what brought him
7 down here.

8 Q Tell me who was at the meeting at Stax?

9 A Billie, Bob and I.

10 Q Lunch or dinner?

11 A We were there for late breakfast or -- might have
12 been breakfast or lunch, I'm not sure.

13 Q They have breakfast all day long, it's hard to tell.

14 MR. STILLWELL: Mandy, will you put up 39 for us?

15 BY MR. STILLWELL:

16 Q P. J., you see that document?

17 A Yes, I do.

18 Q Did Bob bring this document with him to that meeting?

19 A Yes, he did.

20 Q Okay. Before you saw that document, did y'all have
21 some discussions?

22 A Well, like, you know, generally what's going on in
23 our lives, just general kind of discussions.

24 Q Yeah.

25 A Just catching up. We did that a lot.

1 Q Did you talk about the context of that previous email
2 about what you were going to do with the interest in each
3 other's company, did you talk about some of that some?

4 A Yeah. I don't know that there was a lot of detail.
5 Bob was very much aware of the situation we were in at
6 that time. You know, keeping in mind, that all of our
7 hard work in building our little company when we sold it,
8 suddenly, we felt in a state to see each other. We didn't
9 know, at that time, the Carlisle Group is a 20 billion
10 dollar investment company and they would squash us.

11 Q Right.

12 A There would go our retirement. So we were very
13 nervous as to what might happen to our retirement nest
14 egg. So I know we talked about that and Bob knew what was
15 going on.

16 Q What did y'all decide to do with this whole thing
17 that was talking about money with the lawyers and whatnot,
18 talking about the interest in the company, what did you
19 decide to do with it?

20 A Well, I mean, you know, our thing was we wanted to
21 try to get this thing done. Resolve it. But it was
22 obvious that we had outside factors. So by the time we
23 finished that breakfast, Bob was very amenable. He said,
24 You know what, we're just going to table this. All your
25 issues are resolved. It will make it a lot easier for

0503

APP_0507A

1 everybody. We all thought that was a great idea and
2 that's the way we left it.

3 Q An easy agreement?

4 A Yes.

5 Q Okay. How about this part, did Bob give this to you
6 at Stax?

7 A Well, actually, I got up to go to the men's room and
8 while I was away from the table, Bob gave this to Billie.
9 And I don't know whether the intention was to get me to
10 sign it. When I came back to the table, Billie handed it
11 to me. And I don't know if Bob or Billie said you need to
12 review this and sign this thing. So that's how I came to
13 get it, basically, passed through Billie.

14 Q Did you refuse to sign it?

15 A Yes, I did. I read it, the documents, and I'm,
16 obviously, not an attorney, but when I looked at it, I
17 said, well, wait a minute, this the taking away that 7 1/2
18 percent option we agreed to.

19 Q Right.

20 A I mean, I didn't say I wouldn't sign it, but I said
21 I'm going to take this with me, I've got to show it to my
22 attorney.

23 Q You never did sign it, did you?

24 A No, I did not.

25 Q Okay. Now, I'm going to skip water to when DHS was

0504

APP_0507B

1 resolved.

2 MR. STILLWELL: Mandy, you can put that down.

3 BY MR. STILLWELL:

4 Q When the DHS thing was done, did you talk to your
5 lawyers about doing something, returning to this issue of
6 NARP interest?

7 A Yes, I did.

8 Q Okay. And how is it that your lawyer ended up
9 writing a letter to Bob's lawyer instead of you and Bob
10 just getting together for lunch again?

11 A Well, when it came to legal matters, Bob -- and maybe
12 because there were a lot of legal matters in this
13 business. I don't know. I wasn't involved and had been
14 retired, at that time, two years. He just said, you know,
15 I don't deal with those things myself. My attorneys deal
16 with it. So when I -- when Billie and I spoke to Eric,
17 you know, Bob said you don't need to deal with this stuff.
18 And so, I suggested that he just go ahead and start the
19 negotiations, open it back up with Curt Stodghill. That
20 is what in my mind, in Billie's mind, we thought the
21 initial letter that --

22 Q Eric?

23 A -- Eric sent was we were going to start the
24 negotiations.

25 Q Okay.

0505

APP_0507C

1 A Now, granted I guess the legal term was a demand. I
2 didn't see it that way, but I don't use those kinds of
3 words.

4 Q Right.

5 A But that's when we got sued.

6 Q Okay. Before the suit ever -- well, during that time
7 DHS is going on, did you talk to Bob still? I mean, I
8 know you might not have talked daily --

9 A Yes.

10 Q -- but you talked to him?

11 A Yes, I did.

12 Q Did you keep him up on what was going on?

13 A Yes, I did.

14 Q Did y'all talk about other matters?

15 A Yeah.

16 Q Family matters and all that stuff?

17 A We talked about the children, what was going on in
18 the family. We talked about business. I mean, Bob was
19 telling me business is going great. We're having a great
20 year. And you know, I mean, heck, you know, couple, year
21 or so ago, he was inviting us down to go to a luncheon or
22 a dinner in Charleston because they're an outstanding
23 company. And he said to me on the phone, I'd like you and
24 Billie to be there because you were such an important part
25 of the growth of my business.

0506

APP_0507D

1 Q So his business was booming?

2 A Yes, it was.

3 Q Now, Eric writes the letter up to Curt.

4 MR. STILLWELL: Mandy, can you put up No. 56?

5 BY MR. STILLWELL:

6 Q And let's start on the second page of it. Can you

7 give me the part, like P. J., didn't want to ignore you.

8 A Yeah.

9 Q Can you find it, the --

10 A The second page?

11 Q Yeah, second page.

12 A I go it.

13 Q It looks like April 23, 2007?

14 A Correct.

15 Q And so in this period, Bob says -- I mean, this is

16 P. J. writing -- Bob writing this, I'll get it right.

17 Didn't want to ignore you, but Curt asked me to limit my

18 contact with you until we work through the latest letter

19 from your lawyer. So that's the letter from Eric?

20 A Yes.

21 Q Okay. I was caught off guard and surprised today

22 when Curt forwarded me that letter. A heads up would have

23 been nice since I believed this issue was closed long ago.

24 That was closed long ago thing, did that surprise you

25 considering where y'all left it a Stax?

0507

APP_0507E

1 A Yeah. That was the first time I had ever heard those
2 words from Bob.

3 Q Let's flip over and see what you said back to him,
4 which was the same day. About an hour later based on
5 those time stamps on there. Bob -- why don't you read
6 that instead of me reading it?

7 A Bob, no problem. If that's the way you feel -- no
8 problem if that's the way you feel. We'll say we are
9 rather surprised that you thought this issue was closed
10 long ago. We remember discussing with you that the issue
11 would be tabled until after the DHS issue was resolved so
12 that you would not be drawn into our disagreement with
13 DHS. We apologize if you felt caught off guard. However,
14 you've often told me that you leave such matters to your
15 attorney, so we thought it best to allow our attorney to
16 deal directly with your guy and stay out of it.

17 Q Then that part, that tag line there, that love you,
18 brother, is that one of y'all's -- did you call each other
19 brother?

20 A Yeah.

21 Q Like brother, like Billie a brother?

22 A Yeah.

23 Q Brother like a faith brother to you?

24 A Yeah.

25 MR. STILLWELL: Let's look at that top part, Mandy.

0508

APP_0507F

1 BY MR. STILLWELL:

2 Q This is from Bob on the same -- on the next day --

3 MR. ELLIS: Your Honor, I'm sorry, I object to that.
4 He's showing something we redacted and proven. He's never
5 objected -- he's never asked us, I don't believe, to
6 produce this or anything. And I don't think it's fair to
7 discuss that with the jury.

8 MR. STILLWELL: I'm not going to ask him anything
9 about that. I'm --

10 THE COURT: Well, let's move along then.

11 BY MR. STILWELL:

12 Q Let's turn that over. I want to get to the -- oh,
13 well, let's get to the lawsuit. How did you found out
14 there was a lawsuit out there?

15 A Lawsuit from who? From Bob?

16 Q Yeah.

17 A Well, I guess, initially, I got a phone call from the
18 attorney. I guess it was the response in a letter that
19 Curt sent laying out I guess a lot of details and then
20 attached to the back of that was a lawsuit.

21 Q Okay.

22 MR. ELLIS: Your Honor, I'd like to object to the
23 relevance of the question of how he got served.

24 THE COURT: I find it to be relevant.

25 You may continue on.

0509

APP_0507G

1 BY MR. STILLWELL:

2 Q Did you, actually, get served with the suit
3 eventually?

4 A Yeah, eventually, on -- 8:00 o'clock on Father's Day
5 about a year ago with company in my home. Somebody
6 started banging on my door on Sunday morning wanting to
7 deliver a suit that I already knew, I mean, it was coming.
8 So I don't quite understand why it had to be done then,
9 but that didn't make my day.

10 Q Yeah. How did you feel generally about getting sued
11 by Bob?

12 A I was absolutely shocked. When we went back with our
13 initial letter, I thought this was going to finish the
14 negotiation and move on. I never could have imagined in a
15 million years that I'm sitting here.

16 Q Let get to the Trio meeting. I think this might be
17 the last restaurant meeting we got. That meeting in Trio,
18 that was after the suit had already gotten started?

19 A Yes, it was.

20 Q What did Bob say to you at that meeting?

21 A Well, I guess the biggest take-away that I had was
22 that things had just changed. Things have changed. Kept
23 repeating that over and over how much things had changed.
24 And couldn't undo what had been done. I don't know -- I'm
25 not sure I know what that really meant, but he just said

0510

APP_0507H

1 things have changed. It was clear to me that we weren't
2 going to reach any kind of agreement with Bob to resolve
3 this. As far as he was concerned, all the offers were off
4 the table.

5 Q Okay. Do you remember anything else he said?

6 A Well, I mean, it was some discussion between he and
7 Billie, some of which I sat there for. But there was a --
8 you know, Billie was supposed to, at one time, come down
9 and work here after we sold the business.

10 Q Right.

11 A Essentially, Bob fired her, so she took that very,
12 very hard. And she used that opportunity to tell him how
13 hard that affected her because -- one of the reasons we
14 retired here was because she thought she could put some
15 time in and work with him. We still felt there was a
16 connection there with Bob and it was evident to us that it
17 was just no longer there. He was off in a different lane
18 than we were.

19 Q Did you ask Bob why he sued you down here?

20 MR. ELLIS: Your Honor, I would offer relevance as
21 objection again as well.

22 MR. STILLWELL: Your Honor, I'm not going into the
23 part that Mr. Ellis objected to early.

24 THE COURT: Let's stick with that question and we'll
25 move along.

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APP_0507I

1 THE WITNESS: Yes, I did.

2 BY MR. STILLWELL:

3 Q What did he say?

4 A I think he basically said because he couldn't lose
5 down here.

6 Q Let's go back to that -- we'll talk to Billie about
7 that meeting some more, okay? I want to ask you about
8 NARP generally, okay. And you talked to me about --

9 MR. STILLWELL: I tell you what, can you put up that
10 Con Financial?

11 BY MR. STILLWELL:

12 Q I just want to talk to you generally about what
13 happened between now and then with NARP. This thing here,
14 this is from P. J. to Ed, right, Ed Kidner?

15 A Yes, it is.

16 MR. STILLWELL: Can you take me into the document?

17 BY MR. STILLWELL:

18 Q Let's just go to the first page there -- I mean, the
19 first one in behind that. Okay. You see down there at
20 the bottom --

21 MR. STILLWELL: Mandy, can you highlight that
22 financial thing?

23 BY MR. STILLWELL:

24 Q Is that how you pronounce that, P. J., Con Financial?

25 A You know, this is an evaluation, I thought it was

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APP_0507J

1 done down here.

2 Q Yeah.

3 A It came from down here. I don't know it's term.

4 Q Did this come to you in connection with the Dobson
5 deal?

6 A Yeah, it was one of the evaluations. There were,
7 actually, a couple of evaluations that were done, this
8 was, actually, one of them.

9 Q So it's got an April 20 day and a March, it's in the
10 spring of '05, right?

11 A That's correct.

12 Q I want to flip you to pages eight and ten. These are
13 the same ones we looked at with Bob yesterday. P. J., you
14 just read that. Got two discounts in there, one for lack
15 of control and one for lack of marketability?

16 A Yes, it does.

17 Q Do you agree with those?

18 A Yeah, those are generally accepted provisions that
19 they would have. They might vary depending on market
20 conditions and so forth, but for the small closely-held
21 company, that's pretty standard.

22 Q In your business career, had you looked at
23 evaluations of companies before and seen discounts?

24 A I've seen discounts.

25 Q Do you do some of that with the current work you do

0513

APP_0507K

1 with Evergreen still?

2 A Yep.

3 Q Let's flip to the next page.

4 MR. STILLWELL: Mandy, if you could just give us the
5 bottom two paragraphs.

6 BY MR. STILLWELL:

7 Q It was hard for us to read and I don't if you
8 remember that part Bob and I couldn't read because of
9 mushy copying, it says identify value to be approximately,
10 is that an eight or a six; do you know?

11 A I don't know. I don't know whether it was an eight
12 or a six. But looking at this evaluation and comparing it
13 to other, it really could be either.

14 Q Right. So the value back then at the bottom of the 7
15 1/2 percent ownership discount was 336, that's what they
16 were giving you?

17 A Yeah. You can probably calculate that.

18 Q Well, it says right there, March 31 -- I'm sorry. It
19 stays right there March 31st of '05?

20 A Right.

21 MR. STILLWELL: Mandy, can you slip out the 9/17
22 email from Curt for me?

23 BY MR. STILLWELL:

24 Q It's 40, P. J., No. 40. I finally searched and
25 found. No. 40?

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APP_0507L

1 A Thank you.

2 Q Okay. All right, P. J., this is a note from Curt to
3 Eric, that's your lawyer, Eric, in Maryland?

4 A That's correct.

5 Q Okay. And this is the one we talked about earlier
6 where it's October, but he references the July
7 conversation?

8 A Yes.

9 Q He says, Some additional information, we recently
10 received the evaluation of 5/31, so that's May 31st?

11 A Yes.

12 Q As of May -- that's actually the same date as the one
13 we just saw in that other evaluation, wasn't it? It just
14 occurred to me.

15 A I think you're right. I went back and checked
16 myself. Yes.

17 Q And the evaluation of 7 1/2 percent interest then as
18 of that other evaluation where Curt was saying it was
19 \$917,000?

20 A Yeah, almost tripled.

21 Q And that was used for key employee stock purposes, so
22 that's got the same discounts on it the other 7 1/2, the
23 Dobson deal, would have, right?

24 A Would could probably assume that.

25 Q Did you talk to Eric about -- not what he said, but

0515

APP_0507M

1 did you talk with Eric about do you know this information
2 was being passed from Curt during July and October of '05.

3 A Eric told me about this.

4 Q How did this trip evaluation thing impress you?

5 A Well, the evaluations -- new evaluation that seemed
6 to be coming in in increasing frequency were concerning.
7 They were upsetting because that wasn't what we had agreed
8 to, was that we were going to be chasing the value of this
9 company in order to get this option, the 7 1/2 percent
10 deal done. So yeah, it did bother me.

11 Q Now, regardless of whether the evaluation actually
12 tripled within the same day, was NARP growing rapidly
13 during this period?

14 A Yes, yes, there was a lot of activity. And they
15 probably -- that was after we sold, so I'm sure in '05
16 their sales were over 10 million.

17 Q This is the last piece we're going to do, okay.
18 Current evaluations. You heard when I was talking to Bob
19 and he was talking about the evaluations of the company
20 between 150 and 200 million dollars, did you have any
21 knowledge of that before the suit started?

22 A Of the value of NARP?

23 Q Yeah, anything in that range?

24 A No, nothing in that range.

25 Q Okay. You heard him talk about the evaluation was --

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APP_0507N

1 you may remember better than me, he said that as of
2 Saturday, it was, what, 85 million?

3 A There was a deal on the table and that's what it
4 dropped to, I believe.

5 Q Regardless of what number you start with or whatever,
6 if you wanted to value your 7 1/2, would you just had
7 those discounts just like the Con report did?

8 A You would have to discount those values, right.

9 Q You just change that number, that top number, the 6/8
10 million, just change it and do the same thing?

11 A Yes.

12 MR. STILLWELL: That's all the questions I've got for
13 Mr. Richardson, Your Honor.

14 Your Honor, just housekeeping, I'd like to move those
15 exhibits that we went through into evidence.

16 THE COURT: Any objection to them?

17 MR. ELLIS: No, Your Honor.

18 THE COURT: All right. All the exhibits that were
19 referenced in this particular testimony by Mr. Richardson
20 by the Defense are in evidence without objection.

21 (WHEREUPON, Defendant's Exhibit Nos. 17, 21 and
22 56 were admitted into evidence.)

23 (WHEREUPON, Defendant's Exhibit Nos. 20 and 26
24 were not exhibits.)
25

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1 (WHEREUPON, Defendant's Exhibit Nos. 44, 47, 52,
2 57, 58, 59 and 60 were marked for identification
3 only.)

4 (WHEREUPON, Defendant's Exhibit Nos. 5, 6, 7, 8,
5 9, 12, 15, 16, 18, 27, 28, 29, 30, 32, 33, 36,
6 37, 43, 45, 48, 49, 50, 53, 54, and 61 were
7 marked for identification and received into
8 evidence.)

9 All right, ladies and gentlemen, if you would go to
10 your jury room for little bit. Thank you.

11 Everyone else remain seated.

12 (WHEREUPON, the jury left open court at
13 approximately 4:00 p.m.)
14

15 THE COURT: Let's take a break for about five minutes
16 and then I want to see you, Mr. Ellis, and Mr. Stillwell
17 in my office.

18 (WHEREUPON, Defendant's Exhibit Nos. 17, 21, and
19 56 were marked for identification only.)
20

21 THE COURT: Mr. Ellis, is there a matter you wanted
22 to put on the record at this time?

23 MR. ELLIS: Yes, thank you, Your Honor, there is. I
24 appreciate the opportunity to do so. The question was
25 asked to Mr. Richardson in the last section of his direct

1 testimony which I objected to on the grounds of relevance.
2 It was, basically, a question about -- it was a question
3 about something that had happened in a meeting at Trio's.
4 And I objected on the grounds of relevance because it was
5 after the lawsuit started. And I don't think there's
6 anything in that that could possibly bear upon the
7 likelihood of whether the parties entered into a contract
8 in this case.

9 Mr. Richardson testified that Mr. Castellani had said
10 that he sued in South Carolina because he couldn't lose
11 here. Your Honor, I think that comment is unduly
12 prejudicial. I think it, basically, cast Mr. Castellani
13 in the light of throwing down a marker for the jury,
14 basically, daring the jury to rule against the position of
15 him and his company. I understand that it was not the
16 expectation of the question -- or I don't think it was,
17 that that was the answer that would be given. It was
18 certainly not my expectation of the answer, even though I
19 objected. I think it was unduly prejudicial, Your Honor,
20 and I would ask for a mistrial on that basis at this
21 point. Thank you.

22 THE COURT: All right. Mr. Stillwell, what's your
23 position?

24 MR. STILLWELL: Your Honor, I started at the top,
25 obviously, I don't think it's of any near the weight that

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1 could have to do with a mistrial. It didn't have anything
2 to do with settlement negotiations. There's no rule in
3 the United States that I'm aware of that communications
4 between the parties during the lawsuit is irrelevant and
5 is out of bounds automatically. There was a document put
6 in, which was a communication back and forth between our
7 clients after the lawsuit which was entered into evidence
8 without objection. I don't think there's any prejudice
9 there from that statement, Your Honor. And it's relevant
10 to the fact that this whole thing with the personality
11 behind how we got here and the unbending nature of the
12 other side. And, Your Honor, I don't think -- like I
13 said, Your Honor, I don't think it's prejudicial and I
14 think it goes to, as we discussed earlier, Your Honor, the
15 personality of these people and whether they had an
16 agreement and if they didn't, why they couldn't.

17 THE COURT: Okay.

18 MR. ELLIS: Your Honor, I just briefly respond that
19 the issue before the Court is whether or not there was a
20 meeting of the minds between the parties to form a
21 contract in 2004 and 2005. A conversation had between the
22 parties at Trio's in 2007 is not relevant to the case.
23 And I understand that lots of times things that aren't
24 necessarily relevant come in at trial. For example, what
25 a great company Reeves is, what a great company NARP is,

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1 that's not relevant to the issues in this case. Sometimes
2 evidence comes in that's so prejudicial, I think that it
3 sets up a jury -- it unfairly prejudices a jury. It's my
4 understanding that generally why mistrials are granted if
5 something happens in the case where there becomes a
6 concern that the jury can no longer make a fair and
7 impartial decision. I think that the admission of that
8 evidence will have that effect.

9 THE COURT: All right. Thank you. All right.

10 First, talking about matters that may have arisen
11 after the lawsuit started, certainly, the Plaintiff has
12 done so consistently throughout this trial. And the Trio
13 meeting has come up I don't know how many times, but a lot
14 of times before then with no objection. So those are
15 facts. I do find it to be relevant under 401. I do not
16 find that it should be excluded under 403. And,
17 therefore, I respectfully decline to grant your motion for
18 a mistrial. Comments do not in any way rise to the level
19 that a mistrial should be granted in this fashion. It's
20 further the duty and responsibility of the jury to judge
21 credibility, believability of witnesses. And I find that
22 the question and answer aids the jury in doing that,
23 judging both the credibility and believability of the
24 Plaintiff and Defendant in this case.

25 Thank you, very much.

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1 Ask the jury to come in.

2 (WHEREUPON, the jury came into open court at
3 approximately 4:30 p.m.)

4 THE COURT: All right, Mr. Ellis.

5 CROSS-EXAMINATION

6 BY MR. ELLIS:

7 Q All right, Mr. Richardson.

8 A Yes, sir.

9 Q Let me understand a little bit about exactly where we
10 are at this point in the lawsuit about this point about
11 what we can kind of tighten up what we agree about and
12 what we don't agree about. I thought we discussed
13 yesterday about the three-legged stool?

14 A Yes, we did.

15 Q Okay. And just put it this way so everybody can see
16 it and it is a tall one. When I talked to you yesterday,
17 I thought that it was clear -- and that's what I'm trying
18 to see if we can clear up. I thought that it was clear
19 that you and Bob had discussed an option and that you all
20 had talked about different terms, but that you all had not
21 actually finally agreed upon entering into an option
22 agreement. Did I misunderstand you?

23 A I'm not sure I understand what you just said to me.

24 Q Okay. Let me rephrase it, I'm sorry. I'm trying to
25 understand a little bit more about your testimony a little

1 bit ago. You and Bob discussed -- after the Atlanta
2 meeting, you all discussed an option possibility, right,
3 as part of this -- you're claiming that you got this
4 three-legged agreement and that you discussed having an
5 option is what you thought, right?

6 A What I testified to was we were discussing options
7 right up to the day before the Atlanta meeting.

8 Q Okay.

9 A We discussed options at the Atlanta meeting, that was
10 the track we were going to go down.

11 Q Okay. But Mr. Castellani did not -- you and
12 Mr. Castellani never finally came -- you and
13 Mr. Castellani didn't have a meeting of the minds on what
14 the terms of the option were going to be and you all
15 finally said okay, this is it, this is our option, did
16 you?

17 A We've been down this, I guess, a number of times. We
18 agreed to an option agreement. That's what the attorneys
19 were going to work out, 7 1/2 percent, a penny a share for
20 ten years.

21 Q Yes, sir, that's what the attorneys were working on
22 working out, right?

23 A That's correct.

24 Q But I believe --

25 A I felt when we left the Atlanta meeting that's what

1 we were going to do.

2 Q But I asked you yesterday if the attorneys ever got
3 everything worked out and if there was finally an
4 agreement that you all had had where you said okay, this
5 is the option agreement. We got it, we know what we're
6 going to do. I think you testified yesterday -- I just
7 want to see if I understand. I thought you testified
8 yesterday, no, we never got that far with it?

9 A I thought I testified that we never signed an option
10 agreement. We never got it completed.

11 Q Well, what do you understand it means that you didn't
12 get an option agreement completed?

13 A It wasn't signed by both parties and we didn't get it
14 done.

15 Q Well, I tell you what, let me go back because I want
16 to be sure I understand where we are. A contract or an
17 agreement is a meeting of the minds, right?

18 MR. STILLWELL: Your Honor, I object, this is going
19 to be a law school class.

20 THE COURT: Sustained.

21 BY MR. ELLIS:

22 Q What do you understand a contract to be?

23 A Agreement between some parties, could be a number of
24 people, two people, I don't know.

25 Q Okay. But you have to agree to it and North American

1 Rescue has to agree to it, right?

2 A Yes.

3 Q It's not just what you agree to, right?

4 A Yes.

5 Q It's you all have to be thinking the same thing about
6 the same thing; isn't that right?

7 A That's correct and that's what I -- that's where I
8 thought we were when we left Atlanta.

9 Q Okay.. Well, let me go back to you on this question
10 because yesterday, you remember I put up your original
11 answer and counterclaim in this case, right?

12 A I believe you did.

13 Q Okay. And your original answer and counterclaim
14 said, In the fall of 2004, The parties agreed to amend the
15 percentage each owned in the other party's companies for
16 25 percent to 7 1/2 percent of the common capital stock.
17 The parties reduced the 7 1/2 percent interest in writing
18 to the stock option agreement dated October 4th, 2004.
19 The option agreement is attached to Exhibit B and
20 incorporated herein by reference. Provided for in the
21 option agreement, Richardson will retain an option to
22 purchase 7 1/2 percent of the capital stock and so forth.
23 And what I believe you testified -- I believe that you
24 testified to yesterday is that you all came to
25 understand -- you came to understand that what you put in

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1 your original answer and counterclaim was not correct. Is
2 that right?

3 A Is this what you call a pleading?

4 Q Yes, sir, it is.

5 A Because I don't -- I'm not attorney, I don't know.
6 But I do know that during the course of this trial or in
7 the beginning stages, there was a lot of this activity
8 going on. Claims, counterclaims, you say something, we
9 say something, back and forth like a ping-pong match. So,
10 I mean, it is not easy for a layman to follow.

11 Q Well, yes, sir, but I can take you back also -- I
12 think we're pretty familiar with the April 17th, 2007,
13 letter from Eric Orlinsky to Curt Stodghill that said, Mr.
14 Richardson is hereby exercising his option to purchase the
15 company for a penny a share, purchase 7 1/2 percent of the
16 company for a penny a share. That was your original
17 letter. There was nothing in that letter, I don't recall,
18 about a three-legged agreement or a three-legged stool
19 that the parties were going to do?

20 A Nothing in that letter. Without seeing it, I don't
21 believe that there was anything in there, but my feeling
22 was that that letter was an opening up of the negotiations
23 that had been signed.

24 Q Yes, sir, I'm just pointing out in this initial
25 letter, there was nothing about a three-legged stool or a

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1 three-legged agreement, right?

2 A Certainly not in those words.

3 Q Are there words here in which you think it can be
4 discerned that there's a three-legged agreement?

5 A No, there are not those words.

6 Q I mean, he just says in here, Mr. Richardson has got
7 an option for a penny a share dated October 4th, 2004.
8 And we decided later that that was the October 4, 2004,
9 which is this, which I believe you had testified you never
10 understood this to be a binding option agreement between
11 you and NARP?

12 A Yeah, because I didn't know if Bob had signed the
13 other end of this. This was probably the one in my file.

14 Q Sir, in fact, you knew that Bob hadn't signed it,
15 didn't you?

16 A No, I think I testified I was uncertain, I didn't
17 know. I think I said there could have been one out there.

18 Q You remember -- let's go back to your deposition, on
19 page 180 of your deposition.

20 A Thank you.

21 Q Sure. I asked, Well, on Exhibit 37, and that's the
22 October 4th, 2004, agreement, what I'm trying to establish
23 --

24 A Is that line seven we're reading from?

25 Q Yes, sir, I sure am, I'm sorry about that.

1 A That's okay. Thank you.

2 Q Thank you. On Exhibit 37, what I'm trying to
3 establish is, You're aware that North American Products
4 never executed this document, right?

5 And you said, The only one I've ever seen is the one
6 I signed.

7 Then I said, And you don't profess to have any
8 knowledge that North American Rescue Products ever agreed
9 to this agreement?

10 And you said?

11 A I don't know.

12 Q And I said, Well, I'm asking you, you don't have any
13 knowledge?

14 A I said, I don't have any knowledge.

15 Q Okay. So you didn't have any knowledge during this
16 time, any basis to say we've entered into the agreement
17 that's set forth on October 4th, 2004, right?

18 A That's correct.

19 Q Okay. Thank you. What I want -- what I want to go
20 through a little bit, sir, is that we talked about in the
21 letter from Mr. Orlinsky to you -- I'm sorry, letter from
22 Mr. Orlinsky to Curt Stodghill. He simply made a claim
23 that you had an option to purchase for a penny a share.
24 There's no discussion of a three-legged stool. Then in
25 the answer and counterclaim, you also just said well, I've

1 got an option to purchase it for a penny a share. Again,
2 no mention of a three-legged stool in here anywhere, is
3 there?

4 MR. STILLWELL: Objection. Your Honor, this is
5 looking an awful lot like the first cross-examination of
6 Mr. Richardson.

7 THE COURT: Well, it wasn't cross-examination, it was
8 direct examination.

9 MR. STILLWELL: I'm sorry, Your Honor.

10 THE COURT: All right. Y'all come up here for a
11 second.

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury but out of the hearing of
14 the jury.)

15 BY MR. ELLIS:

16 Q Well, Mr. Richardson, we went through the fact that
17 in the second time you answered, this was from -- the
18 original was August of 2007, then in early July of 2007,
19 you told a different version in which you said the parties
20 reached a meeting -- the parties had an agreement in
21 Atlanta and they agreed upon the October 4th, 2004 option.
22 We talked about that. Then we talked about the fact that
23 the facts changed again on July 25th, 2008 --

24 MR. STILLWELL: Your Honor, there's no question.

25 MR. ELLIS: I -- I -- I'm sorry.

1 THE COURT: Mr. Ellis. And I appreciate that.

2 BY MR. ELLIS:

3 Q Sir, here's my question, here's my question. I think
4 if you're going to prove a meeting -- how can you prove a
5 meeting of the minds, how can you prove that you and Bob
6 Castellani were thinking the same thing and believed that
7 you had an agreement when you've told four different
8 versions of the facts in this case in various documents?
9 What I'm asking is this, isn't it true that you didn't
10 have a meeting with your own mind about the three-legged
11 stool until this case had been pending for a year?

12 A Is that a question?

13 Q Yes, sir, it is.

14 A I don't understand -- this is my first time I've ever
15 been this involved. But I do know one thing, that when we
16 started this, before I was successful in finding
17 attorneys, I don't even think I had enough information
18 gathered to fill one box. I would imagine that that's
19 what's in the back of that room now after, I don't know
20 how many meetings, probably 16, 20 boxes of material that
21 was gathered. So seems, in my mind, that over a process
22 of time as the facts could be gathered together, we were
23 able to put together exactly what happened.

24 Q Well, sir, what I'm trying to understand, though, is
25 that you're telling us and telling the jury that you and

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1 Bob Castellani had a mutual understanding and a mutual
2 commitment to do a particular thing and you're saying
3 it -- thought you said yesterday that you didn't. I
4 think -- I don't -- I want to be sure I'm clear today,
5 you're saying that there was a three-legged stool that Bob
6 Castellani agreed to. I'm asking you how can you testify
7 that you knew Bob Castellani had the same understanding at
8 the time you did when you all have told four different
9 versions of the facts here in various pleadings? First,
10 it was only that you had an option. Second, it was you
11 all had a meeting in Atlanta --

12 MR. STILLWELL: Your Honor, it has to be in question
13 and answer form.

14 MR. ELLIS: I'm sorry.

15 THE COURT: I appreciate that.

16 Just can you answer the question, sir?

17 THE WITNESS: Your Honor, I don't --

18 THE COURT: Just yes or no.

19 THE WITNESS: No, I cannot answer it.

20 THE COURT: Rephrase your question.

21 BY MR. ELLIS:

22 Q And you will not disagree with me if I point out to
23 you that it was only very recently that you put forth in a
24 pleading a segment that there was a three-legged stool
25 agreement, right?

1 A What I do know is the fact that when we left Atlanta,
2 that was what we set out to do.

3 Q Well, sir --

4 A That was the road we were going to go down to get
5 this particular deal completed.

6 Q Yes, sir. And that was the plan you had in mind was
7 to try to get that accomplished, right?

8 A That's correct.

9 Q And you never did finally agree upon all three of
10 those things?

11 A We never got the option agreement or the donation to
12 the Dobson Ministry completed.

13 Q So if you didn't get -- you have three parts of it,
14 and if you didn't do the Dobson Ministry and you didn't do
15 the option, then you didn't have the three-legged
16 agreement?

17 A We had the one piece completed.

18 Q Well, the one piece completed, though, is the
19 termination, right?

20 A Termination and settlement agreement.

21 Q And I understand that you don't think the termination
22 is supposed to apply if the other parts didn't apply?

23 A Well, that was way the original -- the plan was
24 originally designed by the attorneys.

25 Q So there was not a meeting of the minds finally that

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1 caused this agreement to come into place?

2 A Well, it wasn't completed. The meeting of the
3 minds -- there was a meeting of the minds. Our minds all
4 met and that's what we agreed to do in Atlanta.

5 Q Sir, you testified that you didn't agree to do the
6 Dobson charitable trust?

7 A After I was told what the Dobson -- may I finish?

8 Q I'm sorry.

9 A Thank you. After I was told what the Dobson trust
10 was, it raised some red flags and we had to look at it
11 further.

12 Q Yes, sir. And that's your privilege to make the
13 decision not to enter into that part of the agreement;
14 isn't it?

15 A That is correct.

16 Q And you exercised the privilege not to enter into
17 that part of the agreement, didn't you?

18 A We did not complete that part of the agreement as it
19 was written. But the intention was to figure out another
20 way to get it done because it was always our intention to
21 get this done. Billie and I felt a strong commitment to
22 get this money to Bob. That charitable trust was not a
23 vehicle that we were comfortable with.

24 Q Yes, sir. But here's why I'm going over this again.
25 I thought I had an understanding yesterday clearly of

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1 where we were. I guess I'm having a hard time being sure
2 I understand what the word completed means. And you made
3 the decision not to do the Dobson charitable trust or the
4 Dobson deal, that was your decision not to do that part of
5 the agreement that you're alleging?

6 A That was not an acceptable component.

7 Q Right. That was --

8 A I wasn't assuming that the deal was finished.

9 Q Well, yes, sir, but an agreement is something where
10 both parties agreed; isn't it?

11 A Yeah, but we had already agreed to get it done,
12 that's an agreement.

13 Q What you're --

14 A I don't know the word for it.

15 Q So --

16 A If two parties are negotiating and because one
17 doesn't accept a certain component, I didn't see that that
18 meant that this was finished. We were going to continue
19 on, come up with a suitable vehicle. One I had suggested
20 was why don't I just send a check to pay for this.

21 Q And that --

22 A That's suitable.

23 Q That's suitable to you, but Bob doesn't have to agree
24 to that, right?

25 A That's true.

1 Q So what you all had in Atlanta was an agreement to
2 negotiate. It was an agreement to continue negotiating,
3 right?

4 A We're parsing words here. We had come to a meeting
5 of the minds that this was the way we wanted to go to get
6 this done.

7 Q Then you decided not to do the Dobson deal, right?

8 A That is correct.

9 Q Thank you. And in order for you to have an option
10 under the three-legged stool that you're alleging, from
11 Bob's standpoint, you had to agree to do the Dobson deal,
12 right?

13 A Operative word is Bob's standpoint.

14 Q Well, yes, sir, that's what I'm trying to be sure I
15 understand. What you're here doing in this courtroom is
16 you're asking the Court to make Bob do what you want him
17 to do and say Bob really doesn't have a choice in the
18 matter. Isn't that right?

19 A I think I understand what you said and if I do, I
20 don't agree with that.

21 Q Okay. But what you -- you just talked about Bob's
22 standpoint -- and, by the way, I don't mean to be at all
23 disrespectful, you and I have gotten along well since May?

24 A That's fine. Just not communicating today.

25 Q Well, I'm going to try to move right along and we'll

1 just do the best we can. Sir, the fact of the matter is,
2 though, what you're trying to ask the Court to do is to
3 make Bob Castellani do an agreement the way you want it
4 done?

5 A I do not agree with that.

6 Q Okay. But if Bob doesn't agree to give you an option
7 unless you do the charitable trust component of it, then
8 there's not a three-legged agreement, right?

9 A If Bob would not negotiate further to change from
10 Dobson Ministry and allow us to pay cash, then we have an
11 impasse and I guess that's why we're here.

12 Q So are you here asking the Court and asking the jury
13 to force Bob to continue to negotiate with you?

14 A No. I'm here asking the Court to allow us to get our
15 7 1/2 percent investment in the company.

16 Q Well, yes, sir, but the only final agreement where
17 you and Bob had a meeting of the minds was back in 2000,
18 right?

19 A I don't know that I agree with that either. We had a
20 meeting of the minds in Charleston.

21 Q I apologize. I should have said with respect to the
22 2000 agreement. You're right, y'all did agree to amend it
23 there, right? Let me just show you from page 81 of your
24 deposition.

25 A Thank you.

1 Q Starting at line 15, I ask you, So this is the only
2 signed agreement between you and Bob? This is the only
3 agreement that you guys ever signed between each other as
4 far as any ownership of the company went, right? And you
5 said?

6 A Would you like me read that?

7 Q Yes, sir, line 20.

8 A Yeah, I mean, and other bits and things, but we never
9 got everything completed.

10 Q Going to page -- do you have page 123 there?

11 A Yes, I do.

12 Q Starting at line three, and I'll just read it, you
13 testified there, Bob and I had a separate agreement. We
14 owned 25 percent of each other's company. We then
15 modified it to 7 1/2 percent of each other's company, but
16 we never -- well, you said it to me or you asked me the
17 question, we never exchanged stock. And then you went on
18 to say -- you want to read it from there, line eight?

19 A The only memorialization we had of it was the oral
20 agreement, meaning the 2000 agreement, that just said when
21 or both of us told we would do this. We were then -- and
22 I am bound now to honor that agreement.

23 Q Yes, sir. The agreement that you had, the only
24 agreement that you ever had, when I took your deposition
25 in May, the agreement that you believed you had with Bob

1 Castellani was the 2000 agreement, right?

2 A Correct.

3 Q Okay. That was your position in May, was that what
4 you were enforcing was the 2000 agreement, right?

5 A Correct.

6 Q Okay.

7 A That's what I said. I think I've been very
8 consistent with what I said. This is confusing because I
9 think I'm sort of repeating the same thing that I have
10 been saying all along.

11 Q That you all did not actually come to an agreement
12 about the three-legged stool and what you're asking the
13 jury to do is to enforce the 2000 agreement, right?

14 A What I've said is that we came to an agreement in
15 Atlanta that the three-legged stool approach, whatever you
16 want to call it, there were three pieces that had to be
17 done. And that the only portion of it that was
18 completely -- that was executed was the separation and
19 termination agreement. And the other two pieces, we came
20 to an impasse. We were not able to get them done. Then,
21 eventually, the whole thing was tabled.

22 Q The fact of the matter is, eventually, y'all reached
23 an impasse in your negotiations to try to come to an
24 agreement about the three-part stool, right?

25 A That would be accurate.

1 Q Okay. I just want to point out -- I'll ask you to
2 read from page 134 of your deposition. That's not on it.

3 A Okay. Line?

4 Q Line three, I ask the question, So as of April 8th,
5 2005, there was still not an agreement between you and
6 NARP as to what to do? And you answered?

7 A As it would appear here.

8 Q Okay. So in your deposition, you also acknowledge
9 that as of April 8th, 2005, there was not an agreement
10 between you and NARP, right?

11 MR. STILLWELL: Your Honor, I believe that's his
12 consistent testimony.

13 THE COURT: Well I appreciate that. If you have some
14 redirect questions, you may do so.

15 MR. STILLWELL: Thank you, Your Honor.

16 BY MR. ELLIS:

17 Q I think you testified a little bit earlier about the
18 2000 agreement. I believe you were questioned and you
19 testified that you believed that you could just deliver
20 the proceeds of your -- if you sold Reeves, you would be
21 in compliance with the 2000 agreement if you just sent the
22 money to Bob, right?

23 A Yes.

24 Q But in order for that to be an agreement, Bob would
25 have to believe that, too, right?

1 A Bob would have to believe what?

2 Q Well, what I'm saying is, once again, in order to
3 change the agreement from the way it was written, Bob has
4 to agree to that? Sir, what I'm saying is you testified
5 you believed it would be okay for you to take the proceeds
6 from the sale of Reeves and give it to Bob?

7 A Well, we discussed this in Charleston and we knew it
8 was going to happen soon and that was just the assumption
9 that was made. I think for most of us -- we weren't
10 discussing any tax schemes or ministry donations. It was
11 assumed that we would write a check for whatever that
12 number was, yet to be determined, and we would pay it.

13 Q Well, but it's up to Bob, though, and to NARP to
14 testify -- I'm sorry, it's up to Bob and NARP to make the
15 decision as to what consideration they would accept if
16 it's not going to be the stock of Reeves, isn't it?
17 That's up to them, that's not up to you?

18 A Well, certainly, be something that, you know, a
19 request would be made and a business transaction and
20 everybody tries to accommodate each other. I guess,
21 normally, you would exchange funds. That was our deal, we
22 were going to buy stock for funds. It was somewhat
23 unusual in both my wife's mind and mind that we were going
24 to pay this to a charity.

25 Q But when you requested that Bob, actually, just

1 take -- that NARP just take cash instead of doing
2 something differently, Mr. Castellani said no, that's not
3 what I want to do, right?

4 A That is correct.

5 Q And as a person who has the privilege to enter into a
6 contract or not enter into a contract, that's a decision
7 he's free to make, right?

8 A Yes, he can make that request.

9 Q Even if that's something you don't agree with, right?

10 A Well, yeah, but, I mean, because the other party
11 makes a decision doesn't mean that it would be finalized
12 on our part. I would have to agree to that.

13 Q Well, yes, sir, if you wanted to do one thing and he
14 didn't want to do it, you all don't have an agreement,
15 right?

16 A That's correct.

17 Q Now, let me talk to you a little bit about the paying
18 of cash to -- about the paying of cash. First of all, you
19 talked about you still have the cash?

20 A Yes, sir.

21 Q How much do you have? I'm talking about when you
22 talked about the 7 1/2 percent. What number is that?

23 A The amount we had up here and whatever interest would
24 have accumulated. I don't know right off hand.

25 Q Have you maintained that in a separate account?

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1 A No, it's co-mingled with our funds.

2 Q You just took it and put it in a bank account? You
3 didn't separately set it aside for Bob?

4 A No, sir.

5 Q I think Mr. Stillwell asked you about your company
6 Extol? Is that right?

7 A Yes, he did.

8 Q And Extol, what assets does Extol have?

9 A My wife and I put the proceeds, the assets from the
10 Reeves transaction, the part that went for Reeves?

11 Q And so I think -- I believe Mr. Stillwell asked you
12 if you can give stock in Extol to Bob, right?

13 A Extol has stock options, yes.

14 Q Yes, sir. But the assets that are in Extol are only
15 the parts of the sale that were allocated to Reeves,
16 right?

17 A That's correct.

18 Q So out of the 9.1 million dollars that you sold the
19 entire enterprise for, right, only like three and a half
20 million of that went into Extol, right?

21 A That is correct.

22 Q So if you gave him Extol stock, he wouldn't be
23 getting anywhere close to what 7 1/2 percent of the stock
24 of Reeves would have been in any way, would he?

25 A Well, I think the issue was raised of whether or not

1 Extol had the ability to give stock.

2 Q Yes, sir.

3 A Well, it does have the ability to give stock. The
4 question was wasn't what the stock was worth, the question
5 was, I believe, would we give stock. The assumption that
6 you were making was that Extol didn't have any stock.
7 Well, it does have stock.

8 Q Well, I'm sorry --

9 A Bob is still entitled to his 7 1/2 percent of the
10 sale of Reeves. Not 7 1/2 percent of what's in the Extol
11 account. I don't understand your reasoning there. We've
12 never hesitated or changed our position of what Bob is
13 entitled to. He was entitled to 7 1/2 percent of what we
14 sold Reeves for, the 9.1 million dollars. I'm not sure
15 how you're trying to link the -- what was put into Extol
16 and what the sale of Reeves was.

17 Q Yes, sir, the reason I'm asking you is I'm trying to
18 understand how you and Mr. Stillwell were trying to link
19 that.

20 A I was responding --

21 Q I'm sorry, I mean, believe he brought it up about
22 that you have a company called Extol that has stock and
23 that you can issue stock to Mr. Castellani, just like -- I
24 think he's trying to make it seem like you could issue
25 stock to Mr. Castellani from Extol just like you could

1 have from Reeves.

2 MR. STILLWELL: Your Honor, again, that's not in
3 question and answer form. It's improper examination.

4 THE COURT: All right. Let's try and limit the
5 question so that they are more easily answered. I don't
6 mean that you can't ask those questions, let's just kind
7 of break them up a little bit.

8 MR. ELLIS: I will try to, Your Honor. Thank you.

9 BY MR. ELLIS:

10 Q What I'm saying is, even if you issued a hundred
11 percent of the stock of Extol -- no, that's not correct.
12 Extol stock -- I was getting to do another bad math there.

13 A I know where you're going.

14 Q Seven and a half percent of the stock of Extol,
15 though, is not the same thing as issuing 7 1/2 percent of
16 the stock of Reeves, is it?

17 A No, you're right. But I don't think that was the
18 point.

19 Q Okay. Well, what we talked about, I think, yesterday
20 was with respect to the 2000 agreement. If you're going
21 to follow the 2000 agreement, in order for you -- the 2000
22 agreement said in order for you to get 7 1/2 percent of
23 the stock of NARP, you had to give him 7 1/2 percent of
24 the stock of Reeves, right?

25 A Yes.

1 Q And it also assigned Reeves as an operating business
2 has to sell certain things, right?

3 A That's correct?

4 Q And Extol doesn't design, manufacture, sell certain
5 emergency medical and rescue products, right?

6 A That is also correct.

7 Q It doesn't do anything but park a portion of the
8 sales price of the Reeves transaction to DHS, that's all
9 it does, right?

10 A That's essentially correct.

11 Q Let me talk to you a little bit about this notion of
12 paying cash to Bob. And I don't want to beat the tax
13 structure of Martin's Ice Cream case to death, but that
14 was -- the reason that was a good decision for you is that
15 most of the proceeds from that transaction, you got to
16 personally pay capital gains tax on, right?

17 MR. STILLWELL: Your Honor, I don't think I asked
18 anything about that during my examination of him.

19 THE COURT: I believe it to be outside the scope of
20 the direct examination. It's going back into matters that
21 were raised yesterday with other witnesses.

22 MR. ELLIS: I'm sorry.

23 THE COURT: Go ahead.

24 BY MR. ELLIS:

25 Q Do you understand that if you were just to pay cash

1 to Bob, he would have to recognize ordinary income on
2 that, on that transaction if you just paid money to him?
3 That would be ordinary income to him, right?

4 A I believe it would be.

5 Q So the government would take a fair chunk of that
6 money, right?

7 A Yes. I'm not sure what the rate would be, but they
8 would take the proper rate and apply tax.

9 Q So if Bob wanted to give as much money to charity as
10 he possibly could, it would make more sense for him to not
11 want to be paid cash, wouldn't it, and just want to have
12 it go right to the charity, right?

13 A That's reasonable.

14 Q Okay. And my point is that when you had to
15 realize -- when you wanted to realize the benefits of the
16 Reeves transaction, you structured it so that you didn't
17 have to pay ordinary income tax on most of it, right?

18 A That's correct.

19 Q And you guys have used the expression all throughout
20 this thing of what's good for the goose is good for the
21 gander, right?

22 A Well, you're absolutely right about that. But it
23 would seem, though, that that tax strategy would --
24 indirectly would benefit Bob because the taxes that were
25 paid left a larger amount that we would -- the 7 1/2

1 percent would come out of.

2 Q Well, but my point is based upon your own actions.
3 It was pretty reasonable for Bob not to agree to just have
4 cash paid to him when he wanted the money to go to
5 charity, right?

6 A I didn't say it was unreasonable.

7 Q Okay. We've had some discussion about the fact that
8 Mr -- I think Mr. Stillwell asked you about that
9 Mr. Castellani brought the termination agreement to you
10 and asked you to sign something that would take out any
11 reference to an option, right?

12 A I'm sorry.

13 Q I'm sorry, the meeting you had at the restaurant, the
14 June 17th --

15 A Oh, okay, I'm sorry. You lost me there.

16 Q I'm kind of in agreement with my friend over here,
17 I've just kind of put documents up so many times, I think
18 everybody knows what I'm talking about.

19 A I'm familiar with the agreement -- you're talking
20 about the Stax meeting?

21 Q Yes, sir.

22 A Okay. I'm sorry.

23 Q My point is you didn't -- you didn't ask to fix the
24 termination agreement either, though, did you?

25 A I couldn't hear what you said.

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1 Q I apologize. You testified that you believed that
2 the termination agreement was part of three-legged stool,
3 right?

4 A Correct.

5 Q And your testimony that the termination agreement got
6 executed out of order, right?

7 A Correct.

8 Q Okay. When Bob came to you and asked you to fix the
9 termination agreement with this document we just put up,
10 you didn't say to him at that time, Bob, the termination
11 agreement doesn't have any meaning to it until we do these
12 other parts, did you?

13 A No, I did not say that.

14 Q I think we talked a little bit earlier about -- I
15 think we talked a little bit earlier about, and Mr.
16 Stillwell was asking you about, your advisers told you not
17 to do the Dobson deal, they didn't think it was a good
18 deal; is that right?

19 A That's correct.

20 Q But you heard the testimony here earlier from Ed
21 Kidner, though, didn't you?

22 A The parts that you read, some of it was redacted, it
23 was not there, so, I mean, I've not heard or read
24 Mr. Kidner's testimony.

25 Q But Ed did tell you it was okay to go ahead and do

1 the Dobson deal if you paid fair market value, right?

2 A That's what he said, that was in there this morning.

3 Yes, I did hear that. But he also said that he wasn't

4 completely comfortable. I don't believe that's direct

5 from his testimony, but his indication to me was it was

6 not a deal that he was strongly in favor of.

7 Q But he didn't have an objection to it as long as you
8 paid the fair market value, right?

9 A Said that would be the only way it could be done.

10 Q Mr. Richardson, when you and Bob entered into the
11 2000 agreement, the reason you all did that was to share
12 in the risk of each other's companies, right?

13 A Well, I know that's how Bob felt, it was sort of
14 hedging his bets. I guess I looked at it as far as an
15 investment.

16 Q But that's what -- an investment is an -- inherently
17 a risk-taking activity, isn't it?

18 A You know, as the sole owner of Reeves, I was --
19 pretty much had everything at risk, I mean, so -- so, yes,
20 I understand what that is.

21 Q Sure, I mean, you invested and put in time and work
22 and you and Mrs. Richardson and y'all built this business
23 that was very successful, right?

24 A Yes, we did.

25 Q And it, certainly, could have gone the other way,

1 right?

2 A Sure, yes, you're correct.

3 Q And when you and Bob entered into the 2000 agreement,
4 you all's agreement involved investing, taking a risk in
5 each other's companies, right?

6 A Yes.

7 Q There was not an agreement that if you make 50
8 million dollars, you'll give me a portion of it? That was
9 wasn't the agreement. The agreement was we're in this
10 together, right?

11 A That is correct at the time we struck that.

12 Q Then when you reduced it down to 7 1/2 percent, you
13 still had the same risks, right?

14 A Yes, we had risks.

15 Q And Bob offered you the opportunity to invest in NARP
16 at 7 1/2 percent -- I'm sorry, to get 7 1/2 percent
17 through Dobson for, actually, what was less than what you
18 described as 7 1/2 percent of the sales price of Reeves,
19 correct?

20 A That's correct.

21 Q And if you had bought the stock at \$336,000, that
22 stock would be worth a few million dollars today, right?

23 A Yes.

24 Q We talked about the fact, Bob's testified the range
25 in value for the company, I think he said 70 to 85 or 75

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1 to 85 million, so 7 1/2 percent of that, even with
2 minority discounts would be --

3 A Significant.

4 Q Several million dollars. Yeah, it would be several
5 million dollars. That would have been a whopping
6 investment. I mean, if you had invested 336 and turned it
7 into three or four, five million dollars, whatever that
8 number comes out to be, you would have done real, real
9 well, right?

10 A Yes.

11 Q But if you had also invested at the \$336,000 level,
12 you might have lost it all, right?

13 A Yes.

14 Q Well -- and you guys' relationship was always built
15 on taking a chance on each other?

16 A That's correct.

17 Q But what you're asking -- what you want a jury here
18 to do today or the Court here to do is to have completely
19 removed all that risk for you?

20 MR. STILLWELL: Your Honor, I think he's closing on
21 the witness.

22 THE COURT: I'm going to allow the question.

23 Go ahead, Mr. Ellis.

24 BY MR. ELLIS:

25 Q Aren't you asking the Court to have removed all that

1 risk from you now that you know how the story ends?

2 A No, that's incorrect. I'm not asking that.

3 Q Well, sir --

4 A I'm still obligated under what we agreed to, to pay
5 the 7 1/2 percent that Bob and I agreed to. When we left
6 the Charleston meeting, we knew there was going to be a
7 sale coming. And what muddled this up is we couldn't come
8 to a solution how Bob wanted the money. That didn't stop
9 or prevent -- stop me from still wanting to give him the
10 money.

11 Q Well --

12 A It didn't matter what the outcome of it was. We felt
13 obligated then to make our commitment and honor it, that
14 we had made a commitment and to honor it.

15 Q Well, sir, I think we saw the letter here today from
16 Mr. Stodghill to your lawyer saying what are you all
17 doing? Are you going to propose a plan? What we got back
18 was well, don't assume that we don't want to do anything.
19 We didn't come back and say we've got a contract. We're
20 getting this done. That was not said from the time you
21 sold Reeves in early 2005 all the way through April 2007,
22 was it?

23 A No, it was not.

24 Q And so, basically, what you're doing is Bob was in a
25 situation and you guys had this 2000 deal where he doesn't

1 know how the story's going to turn out. You're in a
2 situation, aren't you, where you got to keep your money
3 and you got to see if NARP stock went through the roof.
4 And now you're saying well, I intended to buy it all
5 along, aren't you?

6 A Well, Bob knew what I intended all along. We had
7 discussions -- we were, obviously, having discussions of
8 how we could conclude this and get the money to him. So I
9 don't know that -- I just find it preposterous that I was
10 trying to avoid paying him. Sorry, that was not our -- it
11 never entered our minds.

12 Q Well, sir, I don't believe I asked you if you were
13 trying to avoid paying him. I was, basically, asking you
14 the question of aren't you trying to make it so that you
15 held all the cards?

16 A No, sir.

17 Q Well, you told me that you took the 7 1/2 percent and
18 you co-mingled it with your other funds. You didn't put
19 it in a separate account, right?

20 A Yes.

21 Q And you might have lost all that for some reason,
22 right?

23 A It could be a risk of losing it, it's not impossible.

24 Q And that money was available to you to invest in
25 other ventures and do other things with, right?

1 A Yes, it was available.

2 Q And you've made other investments, I'll bet -- I'm
3 asking -- I shouldn't put it that way. You've made other
4 investments, haven't you, since you sold the sale of
5 Reeves -- since you sold Reeves, right?

6 A I have money invested, yes.

7 Q Okay. And in those types of investments, you've got
8 to put your money in and if you lose the money, you lose
9 it and if it goes up, it goes up, right?

10 A That's correct.

11 Q And back in 2004, when you had the chance to invest
12 in Bob, 2005, it turns out he's done real well, but back
13 then, that wasn't a guarantee, was it?

14 A No, but I -- Billie and I both felt we knew Bob well
15 enough that he was going to be successful. We never had
16 any reason to doubt that. I mean, we helped Bob build the
17 company.

18 Q I think we covered the fact that you understood you
19 weren't supposed to get an option agreement unless you
20 worked out the Dobson trust deal, right? We covered that?

21 A Well, I'm sorry, you have to repeat that.

22 Q I didn't ask the question very well at all. I
23 apologize. Let me rephrase it. One of the ongoing issues
24 between you and Bob about whether or not an option
25 agreement could ever get agreed to was the antidilution

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1 clause that was talked about, right?

2 A You're saying that was a problem?

3 Q No, I'm asking you.

4 A No, it wasn't a problem.

5 Q So you were -- your testimony now is that when you
6 all were talking about doing an option, you were perfectly
7 happy to have your stock diluted just like Bob if you were
8 able to get that done?

9 A Yes. People -- we're in business.

10 MR. STILLWELL: Your Honor, the dilution clause is
11 something that did not cross my lips during direct
12 examination.

13 THE COURT: All right. I appreciate it. I'm going
14 to allow him to ask this question.

15 BY MR. ELLIS:

16 Q I'm starting to wrap up, but, sir, the reason I'm
17 asking it is I'm trying to clarify what you understood
18 about the negotiations on the option. And maybe this is
19 the easiest way to do it. This is Exhibit 25 to your
20 deposition, and there's a reference down there on the
21 bottom to an antidilution clause. Do you see that?

22 A I do see it.

23 Q And the reference date here is April 11th, 2005,
24 right?

25 A I see the date, yes.

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1 Q I'm sorry, I'm moving that while you're looking at
2 it, I'm sorry.

3 A That's all right.

4 Q Wasn't a very nice thing to do. And do you recall in
5 your deposition when we discussed you all's discussions
6 about the antidilution clause?

7 A Did you ask if I remember in my deposition?

8 Q Yeah.

9 A What page of the 196 would that be on?

10 Q When I first asked you about that, that was 138.

11 A Okay. No, I don't.

12 Q Well, what I was going to ask you about is, isn't
13 your testimony -- if this was something that wasn't an
14 issue with you, why do we have a note on April 11th, 2005,
15 about an antidilution clause?

16 A Well, like most meetings I attend, I make notes of
17 things that may have been discussed, they could be
18 important, they may not be important. Sometimes you see
19 it wasn't an issue. It was a discussion point or it was a
20 talking point. In the case of North American Rescue, my
21 belief is that it's a company that's got a lot of
22 technology in it and Bob was clever enough to realize he
23 needed to keep bringing in new people with fresh ideas to
24 keep in the forefront of his industry. And I know he said
25 he thought at times that he would have to give stock to

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1 these guys to keep them and keeping them all marching
2 together. And, you know, I recognize that's good for the
3 business. But that doesn't mean that it wasn't discussed.
4 I mean, part of my note was probably, I don't know, maybe
5 attorneys involved, it could have been something Manning
6 brought up. I just don't know it.

7 Q Well, my point is, sir, isn't it fair to say that
8 note reflects that April 11th, 2005, that was still an
9 issue -- that was still an open issue about any sort of
10 option or any sort of contract or any sort of agreement
11 you might enter into?

12 A It might reflect that to you. To me, it looks like
13 it was a talking point from a meeting, a conference call.
14 I don't even know what that document was from. You know,
15 what we are doing, whether it was a called meeting or what
16 it was.

17 Q Okay. I think we've been over this once before and
18 I'll stop, but, once again, in your deposition, page 134,
19 I asked you, So as of April 8th, 2005 --

20 A I'm sorry, I don't have it here.

21 Q I'll give you page 134, I'm sorry.

22 A No, I thought it was in the stack here.

23 Q I apologize, I've got different stacks. Page 134.

24 A Got the line?

25 Q Yes, sir, line three.

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1 A Okay. We were here already.

2 Q We were. So as of April 8th, 2005, there was still
3 not an agreement between you and NARP as to what to do?

4 A Weren't we just talking about that dilution?

5 Q Yes, sir, I'm just trying to finish up --

6 A I want to make certain I'm on the same track here. I
7 thought we changed languages.

8 Q We didn't change -- well, we kind of changed the
9 language, I'm just finishing up. I'm just clarifying that
10 your testimony -- and I just -- I just want to be sure
11 we're on the same page. As of April 8th, 2005, your
12 testimony was there was still not an agreement between you
13 and NARP as to what to do?

14 A You want me to answer that?

15 Q Yes, sir.

16 A As it would appear here.

17 Q Thank you.

18 MR. ELLIS: Nothing further.

19 THE COURT: Any redirect?

20 MR. STILLWELL: I've got about ten questions, Your
21 Honor.

22 THE COURT: Very good.

23 REDIRECT EXAMINATION

24 BY MR. STILLWELL:

25 Q Hi, P. J.?

1 A Hi, Rivers.

2 Q I want to go to the 2000 agreement in Charleston that
3 y'all modified orally to go to 7 1/2. Was part of that --
4 did you think there that you were going to pay the
5 proceeds to NARP from the Reeves sale?

6 A That's what it was, write him a check.

7 Q Did you think y'all had a meeting of the minds about
8 that, did you think that Bob agreed to it, also?

9 A Yes, I did.

10 Q Okay. This stuff about tax ramifications and
11 whatnot, did that come up later?

12 A Yes, it did.

13 Q Okay. Just a second. Okay. The October 4 option
14 agreement received from Curt, you got that agreement, you
15 got that option agreement from Curt?

16 A Yes, I did.

17 Q Did that make you think that Bob and Curt had agreed
18 to it?

19 A Yes, I did.

20 Q Now, the three-legged stool, I think Mr. Ellis has
21 convinced us what we already agreed to that this was never
22 performed, correct?

23 A Yes.

24 MR. ELLIS: Objection, Your Honor, I think that
25 mischaracterizes my question.

1 THE COURT: I appreciate that. I'll allow him to --
2 Why don't you rephrase the question.

3 MR. STILLWELL: Yes, sir, Your Honor.

4 BY MR. STILLWELL:

5 Q Was the three-legged stool ever performed?

6 A By that, you mean all three pieces were signed, no.

7 Q Okay. And does that change your mind as to whether
8 there was a meeting of the minds agreeing to it or not?

9 A No, it doesn't change my mind.

10 Q The part about the money being in your's and Billie's
11 account, could you cut a check for that money to Bob today
12 if he would take it?

13 A Yes, I could.

14 Q Okay. Would you if he would give you a 7.5 percent
15 interest in NARP?

16 A Yes, absolutely.

17 Q The government money from taxes that Mr. Ellis talked
18 about, is that the same government that buys the military
19 gear from NARP?

20 A Yes.

21 Q When Mr. Ellis asked you about investing in NARP in
22 the spring of '05?

23 A Yes.

24 Q In connection with the Dobson deal, at that point,
25 did you -- do you believe that you already had the right

1 to own the stock based on the modification of the 2000
2 agreement in Charleston?

3 A Yes, I did.

4 Q And that's what we're talking about today, is that
5 right?

6 A Yes.

7 Q Okay. Then in the spring of 2005, were Bob and Curt
8 asking you, through the Dobson donation scheme, to buy
9 what you already owned?

10 A Basically, yes.

11 Q Okay. Last point. Dilution. Doesn't the 2000
12 agreement say it's going to be diluted?

13 A Yes, it does.

14 Q Is that how it always was?

15 A Yes, it never changed?

16 MR. STILLWELL: No more questions, Your Honor.

17 THE COURT: Anything on those particular questions,
18 Mr. Ellis?

19 MR. ELLIS: I do want to ask one more thing.

20 THE COURT: It has to be based on those questions
21 that were just asked.

22 RE CROSS-EXAMINATION

23 BY MR. ELLIS:

24 Q Mr. Stillwell, I think, characterized my questions as
25 three-legged stool never having been performed, right?

1 A Yes.

2 Q I believe you used the words that in trying to
3 discuss this, the parties had come to an impasse, is that
4 right?

5 A I did say we reached an impasse.

6 Q Thank you.

7 MR. ELLIS: Nothing further.

8 THE COURT: You may step down, sir.

9 All right. Next witness, Mr. Ellis -- I'm sorry,
10 Mr. Stillwell.

11 MR. STILLWELL: Your Honor, I think we'd like to read
12 Rod Manning's testimony. I think that wouldn't take too
13 long and we could knock it out.

14 THE COURT: Very good. We'll do that.

15 MR. ELLIS: Your Honor, may I approach?

16 THE COURT: Yes, sir.

17 (WHEREUPON, a bench conference was held in the
18 presence of the jury but out of the hearing of
19 the jury.)

20 MR. ELLIS: They'll go all the way through first and
21 then I'll follow up?

22 THE COURT: Yes, sir.

23 MR. ELLIS: Thank you.

24 (WHEREUPON, deposition designations of Mr. Rod
25 Manning were read into the record by Mr. Davis.)

1 (WHEREUPON, Court's Exhibit No. 7 was marked for
2 identification and received into evidence.)

3 MR. STILLWELL: That's all from us, Your Honor. I
4 just ask that he conform the exhibits that are in this
5 March 8th, 2008, deposition of Rod Manning.

6 THE COURT: Check the exhibits that are already in
7 evidence with those.

8 As I understand, there's no objection?

9 MR. ELLIS: No objection from the Plaintiff.

10 THE COURT: And you'll be allowed to introduce those
11 in evidence without objection.

12 All right, Mr. Ellis, whatever portion you need to
13 read of their deposition?

14 MR. ELLIS: I think they've covered all of ours, Your
15 Honor.

16 THE COURT: Very good.

17 Mr. Stillwell, there are other depositions that you
18 need to --

19 MR. STILLWELL: We probably could, Your Honor. Let
20 me take a second to look at this one to see which would be
21 the shortest one to do right now.

22 THE COURT: All right, sir.

23 MR. STILLWELL: If I can have a second to look
24 through these.

25 THE COURT: Yes, sir.

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1 MR. STILLWELL: Your Honor, we chopped out the part
2 of Kidner that Mr. Ellis did earlier today and it's still
3 45 minutes. I don't think I'm going to go down that road.
4 I could, but it's a video, at least.

5 THE COURT: All right. What else do you have left?

6 MR. STILLWELL: We're going to try for Kohr, Your
7 Honor?

8 THE COURT: All right. Very good.

9 MR. STILLWELL: If I could take a second to
10 cross-check the exhibit numbers.

11 THE COURT: Ladies and gentlemen of the jury, please
12 go to your jury room for a short break.

13 (WHEREUPON, the jury left open court at
14 approximately 6:00 p.m.)

15 THE COURT: How many depositions remain?

16 MR. STILLWELL: Your Honor, I've got these two, which
17 are Kidner on the video, which we estimate is like 5
18 minutes. Just reading them is like 30 minutes, so we can
19 do either one or both, depending on, Your Honor.

20 THE COURT: If we do both of those, Kidner, and, I'm
21 sorry, what was the other one?

22 MR. STILLWELL: It was Rick Kohr, Your Honor,
23 K-O-H-R.

24 THE COURT: You said that was about 30 minutes?

25 MR. STILLWELL: Yes, sir.

1 THE COURT: All right. Now, on Kidner, Mr. Ellis,
2 you had already put in what you wanted to earlier?

3 MR. ELLIS: Yes, sir.

4 THE COURT: All right. And Rick Kohr, is there going
5 to be amounts that you will have to add to Mr. Kohr's?

6 MR. ELLIS: Your Honor, I do have some counter
7 designations. I noticed that the last time -- I mean,
8 they actually covered enough to make me happy. So.

9 THE COURT: All right. So you're just going to
10 follow along and see if there's anything you need to add?

11 MR. ELLIS: Right.

12 THE COURT: Very good.

13 MR. STILLWELL: Your Honor, if it's okay, what I was
14 going to do was have one of my associates read so I could
15 sit here and try to knock out these other designations.

16 THE COURT: All right, sir. Well, we're going to
17 start with Mr. Kohr, we'll start with that one first and
18 then we can go to the Kidner.

19 All right. Ask the jury to come in, please.

20 (WHEREUPON, the jury came into open court at
21 approximately 6:10 p.m.)

22 THE COURT: All right. Counsel, next deposition.

23 MR. DAVIS: Your Honor, we're going to read the
24 deposition of Rick Kohr.

25 (WHEREUPON, deposition designations of Rick Kohr

1 were read into the record by Mr. Davis.)
2 (WHEREUPON, Court's Exhibit No. 8 was marked for
3 identification and received into evidence.)

4 THE COURT: Mr. Ellis?

5 (WHEREUPON, deposition designations of Rick Kohr
6 were continued to be read into the record.)

7 MR. ELLIS: Thank you.

8 THE COURT: Very good.

9 Mr. Ellis, Mr. Stillwell, come up here for a second.

10 (WHEREUPON, a bench conference was held in the
11 presence of the jury but out of the hearing of
12 the jury.)

13 THE COURT: All right. Mr. Stillwell.

14 MR. STILLWELL: C. James Harris, Esquire, having been
15 duly sworn and testified as follows. Examination by Mr.
16 Ellis.

17 (WHEREUPON, deposition designations of Mr. C.
18 James Harris were read into the record by Mr.
19 Davis.)

20 (WHEREUPON, Court's Exhibit No. 9 was marked for
21 identification and received into evidence.)

22 MR. ELLIS: Your Honor, could we approach real
23 quickly?

24 THE COURT: Yes, sir.
25

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1 (WHEREUPON, a bench conference was held in the
2 presence of the jury but out of the hearing of
3 the jury.)

4 MR. ELLIS: Your Honor, I'm going to make a
5 contemporaneous objection to this testimony for lack of
6 foundation because if he can testify --

7 THE COURT: All right. Have you got a copy of the
8 deposition that I can look at, please?

9 MR. STILLWELL: Your Honor, these are Mr. Ellis'
10 questions.

11 THE COURT: I appreciate that. All right.

12 I'm sorry, ladies and gentlemen, you need to go to
13 your jury room for just a minute. Thank you.

14 (WHEREUPON, the jury left open court at
15 approximately 6:48 p.m.)

16 THE COURT: All right. Mr. Ellis, let me hear you.

17 MR. ELLIS: Your Honor, I did ask those questions in
18 deposition, but, of course, it's a discovery deposition in
19 which you can --

20 THE COURT: I understand. What is your objection?

21 MR. ELLIS: Lack of foundation. He can testify that
22 P. J. Richardson told him that is one thing. Testifying I
23 don't know if it was Eric or P. J. means a lack of
24 foundation. If Eric told him that, it's hearsay.

25 THE COURT: All right. What page are we on, please?

1 MR. DAVIS: 19.

2 THE COURT: You said page 19?

3 MR. DAVIS: Yes, sir, at the very top.

4 THE COURT: All right. And again, you're objection
5 is what?

6 MR. ELLIS: Lack of foundation. If Eric Orlinsky
7 told him that, that's hearsay. If P. J. Richardson told
8 him, I understand that he's a party and that's different.
9 But he says either Eric or P. J. He's not laying a
10 foundation that he heard this from a competent witness to
11 give that.

12 MR. DAVIS: Your Honor, that goes to -- I mean, it
13 would go to notice. I mean, this is a guy who's working
14 on the transaction. Regardless of how he knows it, it's
15 testimony that he knew it at that time.

16 MR. ELLIS: Testimony he understood.

17 MR. STILLWELL: It's not offered for the truth of the
18 matter, Your Honor.

19 THE COURT: All right. Very good. I'm going allow
20 it. Looking at the pages prior to page 19, I'd say,
21 starting with 10 through 19, regarding that, I'm going to
22 allow it. Thank you, very much.

23 All right. Mr. Stillwell, after this deposition is
24 completed, what witnesses remain for the defense?

25 MR. STILLWELL: Your Honor, we do have -- I believe

1 we have some scrap of Mr. Orlinsky that was not read. We
2 have -- I'm 90 percent sure I'm going to throw out Barry
3 Harper. I can't exactly tell what was read today. We
4 have the Kidner tape, which is 45 minutes. I'm going to
5 polish on that to see if we can clip it down. We have
6 this young lady here, Billie Richardson.

7 Do you have of anybody else?

8 We have Mr. Stodghill.

9 THE COURT: All right. Very good. So the Orlinsky
10 part would be just like a couple of pages?

11 MR. STILLWELL: Yes, sir, Your Honor.

12 THE COURT: Very good.

13 MR. STILLWELL: The longer I have to work on it, the
14 shorter it gets.

15 THE COURT: Ask the jury to come back in.

16 What we'll finish up today is we're going to finish
17 this deposition and the Orlinsky matter today. Then we'll
18 talk about when we're going to come back.

19 MR. STILLWELL: So do the Orlinsky one tonight?

20 THE COURT: Yes, sir. Since you told me it was a
21 couple pages, let's get that done.

22 MR. STILLWELL: I've got to get to work back here.

23 THE COURT: Very good. Thank you.

24 (WHEREUPON, the jury came into open court at
25 approximately 6:53 p.m.)

1 THE COURT: All right. Continue on, Mr. Davis.

2 (WHEREUPON, deposition designations of James
3 Harris continued to be read into the record.)

4 THE COURT: Mr. Ellis?

5 MR. ELLIS: Your Honor, all I want to do is correct a
6 mistake he just made in the last question. I think it may
7 make a difference. The question that I read on page 51,
8 line 5.

9 THE COURT: Why don't you stay there for just a
10 second.

11 Read it again, just that one paragraph.

12 (WHEREUPON, the deposition designations of Mr.
13 James Harris continued to be read into the
14 record.)

15 THE COURT: All right.

16 Mr. Stillwell, you said you had a very short portion
17 of Mr. Orlinsky; is that correct?

18 MR. STILLWELL: Yes, sir, Your Honor. I think this
19 is short. We're just going to read the Ellis parts of it.
20 The gold has been red, we're just going to read the
21 yellow parts, okay?

22 THE COURT: All right, gentlemen, let's proceed with
23 the deposition.

24 (WHEREUPON, deposition designations of Eric
25 Orlinsky were read into the record.)

1 (WHEREUPON, Court's Exhibit No. 10 was marked
2 for identification and received into evidence.)

3 THE COURT: Mr. Ellis?

4 MR. ELLIS: Your Honor, just about four or five
5 sentences. Can I just read them myself to the jury?

6 THE COURT: Yes, sir.

7 MR. ELLIS: This is page 61 of Mr. Orlinsky's
8 deposition.

9 (WHEREUPON, deposition designations of Eric
10 Orlinsky were continued to be read into the
11 record.)

12 THE COURT: All right. Ladies and gentlemen, I
13 appreciate your patience in allowing us to continue on.
14 I'm going to send you home for the evening. I, obviously,
15 did this to make sure that we would conclude this case
16 this week. And that is why we have pressed on today to
17 make sure that this would happen. I'm confident that it
18 now will. We will, obviously, come back tomorrow morning.
19 I would like for you to be back in your jury room by 9:00.
20 We will resume the trial at that time. And again, please,
21 remember, don't talk about the case, don't allow anybody
22 to talk to you about. I'll see you back tomorrow morning
23 at 9:00 a.m. Thank you, very much.

24 (WHEREUPON, the jury came into open court at
25 approximately 7:23 p.m.)

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1 THE COURT: At 9:00, we will resume and finish up the
2 testimony. At this point, from what you've heard so far,
3 Mr. Ellis, do you anticipate reply testimony?

4 MR. ELLIS: I expect very brief reply testimony, yes,
5 sir.

6 THE COURT: All right. Very good. You understand
7 it's my intention to, certainly, get through all the
8 testimony tomorrow and, at the very at least, we get to
9 the position that you conclude your closing arguments to
10 the jury tomorrow. We may get further, we may not, but we
11 will, certainly, get through all that tomorrow.

12 MR. STILLWELL: Your Honor, the only last piece of
13 evidence is just to conform these deposition --

14 THE WITNESS: I understand that. I'll be glad for
15 you to do so. And if you want to get here earlier than
16 nine o'clock in the morning and meet with the -- meet
17 among yourselves and make sure those are done, I'll be
18 glad for you to do so. However you want to do that but
19 you're allowed to do so.

20 All right. Counsel, see you tomorrow morning. Thank
21 you.

22 (WHEREUPON, the proceedings were concluded for
23 the day to be reconvened on August 28, 2008.)
24
25

1 Thursday, August 28, 2008

2 THE COURT: Plaintiff ready to proceed?

3 MR. STILLWELL: Yes, Your Honor.

4 THE COURT: The Defense?

5 MR. STILLWELL: We are, Your Honor.

6 THE COURT: Very good.

7 Ask the jury to come in.

8 MR. ELLIS: Your Honor, before the jury comes in, I
9 want to be sure I have protected my record. I apologize.

10 THE COURT: All right. We'll need to stop them then,
11 they're going to be walking in the door.

12 Just tell them to hold outside the door for a second,
13 please.

14 All right. Yes, sir, Mr. Ellis?

15 MR. ELLIS: Your Honor, just to put something on the
16 record to protect the record as we go forward, I just want
17 to put on the record that the Plaintiff is not going to
18 consent to any testimony that comes in as begin an attempt
19 to amend the pleadings by consent at trial based on
20 evidence introduced at trial. We think that the pleadings
21 are set and that they can't even introduced at this point.
22 That's my position. Thank you.

23 THE COURT: Well, and I appreciate it's your
24 position, but there's been no motion to amend the
25 pleadings to conform to the proof presented at this point

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1 in time. So there's no issue for the Court to decide.

2 MR. ELLIS: Thank you.

3 THE COURT: Ask the jury to come in.

4 (WHEREUPON, the jury came into open court at
5 approximately 9:25 a.m.)

6 THE COURT: All right. Mr. Stillwell, you may
7 proceed.

8 MR. STILLWELL: Your Honor, we're going to play the
9 videotaped deposition of Ed Kidner.

10 MR. ELLIS: All right.

11 (WHEREUPON, the deposition of Mr. Kidner was
12 played for the jury.)

13 (WHEREUPON, Court's Exhibit No. 11 was marked
14 for identification and received into evidence.)

15 MR. ELLIS: Your Honor?

16 THE COURT: Yes, sir.

17 MR. ELLIS: May we approach?

18 THE COURT: Absolutely.

19 Could you stop the deposition for a second, please?

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury but out of the hearing of
22 the jury.)

23 THE COURT: You may continue on.

24 (WHEREUPON, the deposition designations of Mr.
25 Kidner were continued to be played for the

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1 jury.)

2 MR. ELLIS: Your Honor, may we approach?

3 (WHEREUPON, a bench conference was held in the
4 presence of the jury but out of the hearing of
5 the jury.)

6 THE COURT: Ladies and gentlemen, of course, the
7 purpose of this case is not to look at persons other than
8 that parties involved. So disregard any of those
9 comments.

10 All right. Continue on.

11 (WHEREUPON, the videotaped deposition of Eric
12 Kidner was continued to be played for the jury.)

13 MR. ELLIS: Your Honor, again, I must --

14 THE COURT: All right. Let's skip over that.

15 MR. STILLWELL: I think that's all.

16 THE COURT: Just skip over that question and go to
17 the next one if there is one.

18 (WHEREUPON, the videotaped deposition of Ed
19 Kidner continued to be played for the jury.)

20 THE COURT: All right.

21 Mr. Ellis, anything of that deposition you needed to
22 publish at this point in time?

23 MR. ELLIS: Yes, Your Honor. I'd like to publish a
24 few more lines about the subject that was brought up.

25 THE COURT: All right, sir. Go ahead.

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1 MR. ELLIS: That wasn't --

2 MR. STILLWELL: You already read them.

3 THE COURT: All right, gentleman, I'm going to let
4 him put something in.

5 MR. ELLIS: Page 65, line 15 -- I'm sorry, page 65,
6 line 1.

7 (WHEREUPON, deposition designations of Mr. Ed
8 Kidner was read into the record.)

9 MR. ELLIS: Thank you, Your Honor.

10 THE COURT: Very good.

11 Mr. Stillwell, next witness.

12 MR. STILLWELL: We've got some little pieces of Barry
13 Harper, Your Honor.

14 THE COURT: All right, sir. Go ahead and publish
15 them.

16 MR. STILLWELL: All right. Your Honor, we're going
17 to skip the introductions and just go right in. This is
18 Barry Harper who Mr. Ellis read a couple days ago.

19 (WHEREUPON, deposition designations of Barry
20 Harper were read into the record.)

21 THE COURT: All right. Mr. Stillwell, Mr. Ellis,
22 just come up here for just one second, please.

23 (WHEREUPON, a bench conference was held in the
24 presence of the jury but out of the hearing of
25 the jury.)

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1 THE COURT: Ladies and gentlemen, I need for you all
2 to go to your jury room for a little bit. Thank you, very
3 much.

4 (WHEREUPON, the jury left open court at
5 approximately 10:20 a.m.)

6 THE COURT: Mr. Stillwell, you indicated that besides
7 Mrs. Billie Richardson, you had another witness that you
8 classified as a valuation expert; is that correct?

9 MR. STILLWELL: Yes, Your Honor.

10 THE COURT: What's the person's name?

11 MR. STILLWELL: Mr. Mike Melinger, Your Honor.

12 THE COURT: All right. The essence of his testimony
13 is going to be what?

14 MR. STILLWELL: Your Honor, it's going to be -- maybe
15 Mr. Davis should talk about this, Your Honor. He's
16 actually been doing some work with him.

17 THE COURT: All right. Mr. Davis, just real, very
18 quick synopsis.

19 MR. DAVIS: All he's going to do, Your Honor, is he's
20 going to say look, before -- on Friday of last week, NARP
21 said the valuation of the company was between 150 and 200
22 million. If you apply the discounts that would be
23 appropriate to that, here's what 7 1/2 percent would be
24 worth. If you take their most recent version of 75 to 85,
25 here's what those numbers will be. And then he says -- he

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1 does have an opinion that says that their discount of 35
2 percent -- there's two discounts that apply. One of the
3 discounts, he does say should be a little bit lower. And
4 he gives the same calculations with that lower discount.
5 And that's all he does and it will take 10 minutes.

6 THE COURT: All right. I appreciate how little time
7 it was going to be. You notified the opposing counsel
8 when of this particular witness?

9 MR. DAVIS: I notified opposing counsel within one
10 hour after they disclosed that their sworn testimony had
11 changed.

12 THE COURT: All right.

13 MR. DAVIS: On Saturday.

14 THE COURT: What had you intended to do before the
15 valuation of the company changed? For whatever reason.
16 What had you intended to do?

17 MR. DAVIS: Up until Friday, the day before, last
18 week's last Friday, we had been negotiating a stipulation
19 between the parties to treat the damage issue in the case
20 because NARP had some concerns about the confidentiality
21 of their financial documents. And we have respected that
22 all along and said we would. We were in the process of
23 negotiating that. We were up to about -- you know, it was
24 between 150 to 200 million and we were talking about the
25 discounts and we were just trying to understand what the

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1 numbers they were applying in discounts were and we were
2 in the process of getting to that bottom line number.

3 THE COURT: Okay.

4 MR. DAVIS: Friday evening, they sent that to us.
5 Saturday afternoon, they wrote us back and said oh, by the
6 way, it's not 200 million anymore, it's 85.

7 THE COURT: Okay.

8 MR. DAVIS: And that's when we disclosed, okay, we're
9 going to use our guy to put on the numbers that we can't
10 stipulate to anymore.

11 THE COURT: Mr. Ellis, what's your position, please,
12 sir?

13 MR. ELLIS: Your Honor, my recollection is the first
14 time I was asked we were talking about whether or not we
15 could stipulate to damages was Tuesday of last week. I
16 think that's when I was formally asked by Mr. Davis would
17 we stipulate to amount of damages. My answer to that
18 could have been nope, sure can't. Instead, we tried to be
19 fair about it. I talked with my people and I said, look,
20 the company has a value. We can't go in there and act
21 like it doesn't. At that time, there was an offer on the
22 table for 150. We said that's what we have to go with
23 because the best valuation is what a willing buyer is
24 willing to pay a willing seller. We can't be disingenuous
25 about this. What happened was on Saturday afternoon, I

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1 believe Mr. Castellani --

2 THE COURT: Well, I understand all that changed. I
3 guess I wasn't very clear in my question. What's your
4 position as to them putting up their expert witness at
5 this point in time?

6 MR. ELLIS: I think they shouldn't be allowed to
7 because I was first told on Saturday night. I had not
8 previously told them don't get an expert. I have never
9 said don't get an expert. I was a little bit surprised in
10 the later weeks they had not used an expert. I have been
11 right busy this week and simply not had the time to look
12 at this expert, to talk about it, think about it. And if
13 they have an expert, I may very well need to get a
14 rebuttal expert. I don't think it's fair for them to put
15 up an expert. I have simply not had a chance to look into
16 that.

17 MR. DAVIS: Your Honor, I don't know what he does
18 much more than he summarizes -- he does the calculations
19 for the jury based upon the evidence in the record. For
20 example, Bob Castellani clearly testified that at one
21 point, the company was worth 200 million or 150 million.
22 And then he testified that discounts applied would be 35
23 percent and 20 percent respectively. P. J. Richardson
24 asked in his capacity as having an ownership interest
25 testified to the same exact thing. So this guy comes up

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1 here and he's going to say okay, you know what happens
2 when you plug those numbers in, boom, boom, boom, here's
3 the numbers. Pick one. I'm not really sure what the
4 prejudice is.

5 THE COURT: All right.

6 Yes, sir, Mr. Ellis?

7 MR. ELLIS: Just one more point. Your Honor --

8 THE COURT: Assume I limit his testimony to applying
9 those values to 150 and then to the, what was it, the 85,
10 assume that's all he's going to testify to?

11 MR. ELLIS: I don't think it's fair to make us
12 respond to an expert witness who was named on Saturday
13 night, the night before we started trial.

14 THE COURT: Is there a scheduling order in this case?

15 MR. STILLWELL: No, sir, Your Honor, it's not. I'd
16 also like to point out he's a valuation expert that we
17 used. They knew it was out. I'm not a greedy man, Your
18 Honor. If you tell me something's worth 150 to 200
19 million dollars, I'm going to go get an expert to go
20 higher than that.

21 MR. ELLIS: The fact they decided to go with the
22 number that we had as a number is a decision they made.
23 That's fine.

24 THE COURT: All right. I appreciate that. I am
25 going to allow him to testify just as to the two

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1 positions. You got the value of the company at 150, then
2 got change down to, I believe, was 85. All right. Then
3 you apply those deductions to it and you get a bottom line
4 figure. And that's it. That's all he's going to testify
5 to.

6 MR. ELLIS: Your Honor, if necessary, I'd like to
7 reserve the right to call any rebuttable expert then.

8 THE COURT: I appreciate that.

9 MR. ELLIS: May I make one more brief point?

10 THE COURT: Yes, sir.

11 MR. ELLIS: I think they're claiming in this case, at
12 least, the evidence in this case whether or not Mr.
13 Richardson has an option to buy -- to obtain 7 1/2 percent
14 of the stock.

15 THE COURT: And let's just assume that would be a
16 question at some point in time in this verdict form that
17 the jury would answer. Do they not then have to give a
18 value of that?

19 MR. ELLIS: No, Your Honor, the stock --

20 THE COURT: Who's going to come up with it?

21 MR. ELLIS: I would assume there would be a judgment
22 to actually issue stock of NARP.

23 THE COURT: I disagree with you. I would suggest to
24 you that the verdict form will reflect that if they ever
25 get to that point in time and indicate that Mr. Richardson

1 should have the 7.5 percent of the common capital stock
2 that they will answer the question that's based upon the
3 facts of the case.

4 MR. ELLIS: Well, Your Honor, I think the problem is
5 that only goes if they show a breach of the contract
6 rather than a duty to distribute the stock. The point
7 is --

8 THE COURT: Well, I'm just saying -- I'm just telling
9 you at some point in time if the jury gets to that point
10 in time that they're going to have to answer the
11 question -- if they answer the question that he should get
12 the 7.5, then they're going to need a value.

13 MR. ELLIS: Thank you.

14 THE COURT: All right. We'll take a short break for
15 about five minutes. Thank you.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: Plaintiff ready to proceed?

18 MR. ELLIS: Yes, sir.

19 THE COURT: Defense?

20 MR. DAVIS: Yes, sir, Your Honor.

21 THE COURT: Ask the jury to come in, please.

22 (WHEREUPON, the jury came into open court at
23 approximately 10:40 a.m.)

24 MR. DAVIS: Your Honor, the Defense calls Mike
25 Melinger to the stand.

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1 THE COURT: Please come around and be sworn, sir.

2 THE CLERK: Place your left hand on the Bible and
3 raise your right hand.

4 MIKE MELINGER, after being duly sworn, testified
5 as follows:

6 THE CLERK: State your name, please.

7 THE WITNESS: Michael Melinger.

8 THE CLERK: Thank you, be seated.

9 DIRECT EXAMINATION

10 BY MR. DAVIS:

11 Q Good morning, Mr. Melinger. Mr. Melinger, where do
12 you live?

13 A I live at 116 Creek Shoals Drive, Simpsonville, South
14 Carolina.

15 Q And what do you do?

16 A I'm a CPA with specialized accounting practices that
17 performs forensic accounting, business evaluations.

18 Q And can you tell the jury what your educational
19 background is?

20 A Yes, sir. I graduated from the University of South
21 Carolina in Spartanburg, Cum Laude. And then upon
22 graduation, I took the CPA exam and passed the CPA exam on
23 first sitting in November of '95. Then I've also pursued
24 a certified financial planner designation, a certified
25 management accounting designation and I'm accredit in

1 business evaluation, which is a designation that includes
2 for business valuations by the NCPA.

3 Q Now, in your normal professional practice, do you
4 regularly conduct evaluations of businesses?

5 A Yes, sir, I do.

6 Q Does that include the evaluation of closely held
7 companies?

8 A Yes, sir.

9 Q Have you ever been qualified as an expert to testify
10 in a court of South Carolina?

11 A Yes, sir.,

12 Q Were your qualified as an expert in business
13 evaluations?

14 A Yes, sir.

15 MR. DAVIS: At this time, Your Honor, I'd like to
16 proffer Mr. Melinger as an expert in the field of business
17 evaluation.

18 THE COURT: Mr. Ellis, you wish to voir dire the
19 witness as to his qualifications?

20 MR. ELLIS: Your Honor, I don't wish to conduct voir
21 dire as to the witness' qualification for the simple
22 reason he --

23 THE COURT: Subject to your previous objection, is
24 that correct?

25 MR. ELLIS: Well, I tell you what, yes, sir, that is

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1 correct. Let me ask a couple questions.

2 THE COURT: Very good. Be glad for you to do so.

3 VOIR DIRE EXAMINATION

4 BY MR. ELLIS:

5 Q How many times have you testified as an expert
6 witness?

7 A Two times.

8 Q And when was that?

9 A 2000 and 2001, I believe.

10 Q How were you qualified as an expert, in other words,
11 what field?

12 A I was qualified in demonstrating accounting tax
13 evaluation.

14 Q Were you asked in those cases, in either of those
15 cases to offer an opinion as to the value of a business?

16 A No, sir.

17 Q Okay. So this is your very first time to be
18 testifying as to the value of a business?

19 A Yes, sir.

20 Q Have you prior to today every conducted a valuation
21 of a business that sales specialty military medical
22 equipment?

23 A No, sir.

24 Q When did you first get information concerning North
25 American Rescue Products business?

1 A Approximately 60 days ago.

2 Q Okay. So you've never conducted a valuation, then,
3 of a military medical business. Have you ever conducted
4 business -- have you ever conducted a valuation and
5 testified as an expert as to closely held companies,
6 valuation of closely held companies?

7 A I've performed numerous tax valuations for closely
8 held companies. I've never testified as an expert in a
9 case for closely held companies.

10 Q Okay. Would you tell me the nature of the businesses
11 that you've done calculations for?

12 A Yes, sir. I did calculations for retail operations,
13 some wholesale operations, sports club businesses. A lot
14 of the valuations we performed were on the buy side or the
15 acquisition side where the client was actually buying a
16 business. And we would perform the valuation of the
17 business and determine the purchase price, the allocation
18 of that price.

19 Q In any of those situations, were you asked to value
20 minority stock of the business taking into account lack of
21 marketability and lack of control?

22 A Yes, sir.

23 Q In what way?

24 A For numerous family limited partnership valuations
25 whereby an individual would give assets to a partnership

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1 and then would -- or they would transfer the assets to the
2 partnership and then they would give interest of those
3 partnerships, usually, to family members and then we would
4 value the interest in the family partnership, then we
5 would apply discounts or lack of marketability, lack of
6 control.

7 Q What size businesses were those?

8 A Those were -- none of them were as large as North
9 American Rescue Products.

10 Q Have you ever testified in -- well, I mean, to say
11 none of them was as large as NARP, I mean, like were they
12 a million, two million in size, something like that?

13 A They range from a million to 15 million in actual
14 value.

15 Q Have you ever done a valuation before of a specialty
16 business such as NARP or such as what Reeves was before it
17 sold, a speciality business within a particular area, like
18 emergency medical equipment or military medical equipment?

19 A No.

20 MR. ELLIS: Your Honor, may we approach?

21 THE COURT: Do you have an objection?

22 MR. ELLIS: Well, your Honor --

23 THE COURT: Your objection is the qualifications?

24 MR. ELLIS: Yes, sir, I don't think he's qualified to
25 testify.

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1 THE COURT: All right. Thank you. I will allow the
2 witness to testify over the objection of the Defense. You
3 may proceed. I'm sorry, over the objection of the
4 Plaintiff.

5 You made proceed.

6 BY MR. DAVIS:

7 Q Mr. Melinger, have you conducted any calculations in
8 relation to this case with respect to North American
9 Rescue Products?

10 A Yes, sir, I have.

11 Q And what were those calculations?

12 A Our calculations were we took the value of the
13 company offered by Mr. Castellani and then we calculated
14 what a 7 1/2 percent ownership in that company would be
15 worth. Then we applied the lack of control discount and
16 lack of marketability discount.

17 Q Okay. When you said you applied the number supplied
18 by Mr. Castellani, do you mean during his examination
19 here?

20 A Yes, sir.

21 Q Were you in the courtroom when he testified?

22 A Yes, sir, I was.

23 Q So you used Mr. Castellani's number?

24 A Right. I did not perform a business evaluation on
25 North American Rescue Products.

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1 Q What two numbers did you use with respect to your
2 calculations?

3 A I used 150 million dollars and 80 million dollars.

4 Q Were those the two numbers that you heard
5 Mr. Castellani testify about?

6 A Yes, sir.

7 MR. ELLIS: Your Honor, I've know we've done a lot of
8 leading in this case, but I would ask that counsel --

9 THE COURT: All right. Let's try and not lead him.

10 MR. DAVIS: Yes, sir.

11 BY MR. DAVIS:

12 Q You mentioned discounts, what discounts did you
13 apply?

14 A I applied a lack of control discount and a lack of
15 marketability discount.

16 Q You're going to need to tell us what that means.

17 A Yes, sir. In layman terms, a lack of control
18 discount is a discount that you apply to a stock because
19 the ownership in the company is unable to apply control.
20 So, for example, in the State of South Carolina, if you
21 own over 2/3rd's of stock, you have relatively complete
22 control of your company. 7 1/2 percent ownership interest
23 would not be able to make decision or really anything in
24 the company. And in a lot of respects as the majority
25 shareholder. So you apply a discount to the value of the

1 stock for that.

2 Q Okay. What percentage discount applied for that
3 particular discount?

4 A I applied a 35 percent discount that was supplied to
5 us.

6 Q And tell us about the other discount.

7 A The other discount is a lack of marketability
8 discount. And again, the best way to describe that, NARP
9 is not a publically traded company where you can sell the
10 stock the same day. If you needed cash or you wanted to
11 sell it, just call your broker to get it. It's a closely
12 held company and 7 1/2 percent interest in it is not
13 liquid, so you take a discount for how long it would take
14 to convert that to cash and what you would have to offer
15 someone to buy it to take that in liquid condition from
16 you.

17 Q Now, when you applied those discounts to the 150 and
18 the -- what was the second number, 80 million?

19 A Eighty million.

20 Q Eight million respectively, what numbers did you get?

21 A At 150 million dollars, the 7 1/2 percent interest
22 would be worth \$5,750,000. At 80 million dollars, 7 1/2
23 percent interest would be worth \$3,000,120.

24 Q Let me ask you a question, do those discounts apply
25 uniformly in your field?

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1 A No.

2 Q Okay. Would it matter how you applied the discounts,
3 for example, if NARP were a niche business versus a
4 non-niche business or whatever that means?

5 A No, no, it would not.

6 Q So the nature of the business doesn't effect the
7 discounts you apply, right?

8 MR. ELLIS: Your Honor, again, it's leading,
9 objection.

10 THE COURT: Sustained.

11 THE WITNESS: The nature of the business could
12 reflect in the discount. However, when you apply the
13 discounts, they're applied the same way. For example, you
14 always apply the control discounts first, then you get a
15 value and then you apply the marketability discount
16 second. The discounts that we used were not calculated by
17 me. They were given to us by -- actually, in previous
18 discussions by the other side. And they came from
19 evaluations --

20 THE COURT: All right, gentleman, we're going beyond
21 what the Court indicated. Any other questions?

22 MR. DAVIS: No, Your Honor. We appreciate it.

23 THE COURT: Very good.

24 Cross-examination?

25 MR. ELLIS: Thank you, Your Honor.

CROSS-EXAMINATION

1
2 BY MR. ELLIS:

3 Q I think you've testified that you did not undertake
4 any independent review of the value of North American
5 Rescue, right?

6 A I testified that I did not complete a valuation for
7 North American Rescue Products.

8 Q Okay. And so you're simply taking -- what you're
9 doing is you're taking discount numbers and applying it to
10 the numbers that Mr. Castellani testified to; is that
11 right?

12 A Yes, sir.

13 Q And you're accepting the 35 percent and 20 percent
14 discounts as accurate?

15 A I'm calculating -- I calculated -- I applied those
16 discounts to the stock, yes, sir.

17 Q Okay. In looking at those types of discounts, are
18 you familiar with or looked at any contractual
19 restrictions between NARP that might be applicable to
20 someone's ability to sell?

21 A No.

22 Q Okay. So you're not aware if there may be
23 restrictions on a minority stockholder's ability to go
24 into the market and sell then, are you?

25 A Usually the discounts count for that.

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1 Q Even if -- what if there's a restriction that says
2 the stock owner can't sell for three years or so?

3 A Well, to give you an idea of what I did to determine
4 if that discounts was appropriate is I pulled the business
5 evaluation merger stats control premiums study and looked
6 at similar companies, not each company, but similar
7 companies with similar SIP codes. And we actually
8 determined that a control discount would be -- in that
9 industry would be in the 20 percent range, not 35 percent
10 range. So I set it at the 35 percent being conservative.

11 Q Well, when you say in the industry, I mean, you would
12 agree with me, wouldn't you, that NARP is a pretty unique
13 business, isn't it?

14 A It's a unique business. But unique businesses --
15 evaluations of unique businesses is very similar to
16 evaluations of plain businesses. They do operate in an
17 SIP code and do sell stuff similar to other companies and
18 so you can determine the reasonableness of the discount.

19 Q Are you aware of exhibits that have been show in this
20 case which indicated that Mr. Richardson's lawyer had
21 proposed an option that would not be exercised -- would
22 not be exercisable unless there was an approved sale of
23 the company, are you aware of that?

24 A I'm not.

25 Q Okay. Do you have -- have you looked to see what the

1 value of an option would be if it could be exercised
2 unless there was a sale of the company within a certain
3 year period? Do you have any way to value that?

4 A Yes, you do.

5 Q Do you know what the value of that would be?

6 A The value would be very similar to the value of the
7 stock because when you value an option, there's two things
8 that create value in an option. One is the intrinsic
9 value or the underlying value of the company. And two is
10 the time that the option has. So, generally, the more
11 time that's on an option, the higher the option is worth.
12 But, generally, it goes to the underlying value of the
13 company.

14 Q But your testimony is you don't -- I mean, wouldn't
15 it seem reasonable that an option that could only be
16 exercised if the company were sold and had an expiration
17 date on it, wouldn't that be less valuable than actually
18 owning the stock itself?

19 A There would be some discount.

20 Q Well, would be a fairly good size discount?

21 A The discounts taken in some way -- in the some ways,
22 the option value would actually be worth more than holding
23 the closely valued stock because you have none of the
24 responsibilities or risks of ownership. I believe the
25 option price was at one cents. So at one cent for a share

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1 or, really, you're staying within the company. And yet,
2 you don't have the risk of being diluted and different
3 things, so.

4 Q Well, what if there's also, though, and option -- you
5 say it doesn't have the risk of being diluted, suppose the
6 option agreement -- suppose that there's an option
7 agreement that does allow for dilution? I mean, suppose
8 the amount of stock that you can buy under an option is
9 the amount of stock that constitutes a percentage of the
10 company on the date of the option. But that option --
11 that stock number might change down the road? That would
12 effect the value of the option, wouldn't it?

13 A Yes.

14 Q Okay. Negatively, it would take it down, wouldn't
15 it?

16 A If you could liquidate it.

17 Q Okay. And also, what if the option agreement
18 provided restrictions on the optionee's ability to
19 transfer that option? In other words, he couldn't sell
20 it, he had to exercise it?

21 A Those discounts will be taking into account in lack
22 of control and lack of marketability --

23 Q Well, I'm sorry, to interrupt you, but lack of
24 control, lack of marketability, doesn't that imply that
25 it'd be really pretty hard to find a buyer for that

1 because it's not publically traded stock? Whereas on the
2 other hand, what I'm talking about is if it is
3 contractual restriction in a hypothetical option
4 agreement that says this is yours, you can't sell it.
5 That would make that option agreement worth a lot less
6 than just somebody who owned the stock, but they might
7 have a hard time finding a buyer for it, right?

8 A Well, what I'm saying is that the discount that you
9 talked about is all in the calculation of lack of control
10 discount. So -- because, again, your contractual
11 restriction, whether it's on an option or on stock, is
12 going to create a discount in the fair market value.

13 Q Well, I'm going to be finished here and I don't want
14 to beat this point to death, but when you're talking about
15 lack of marketability, just somebody who owns stock in a
16 closely held company, that number is taking into account
17 the fact that it's hard to find somebody to buy that
18 stock, doesn't it?

19 A It takes some of that into account and it takes the
20 fact that how long you think you'll have to hold the stock
21 to get cash.

22 Q Okay. My question is, though, if somebody has an
23 option and he can't sell -- just hypothetically, if
24 there's a restriction on it that he can't go out in the
25 market and sell that option, say I've got an option here,

1 the stock could be worth a whole lot of money, I'm going
2 to sell it to you, you take the chance you'll never be
3 able to exercise it. I'm just trying to establish from a
4 common sense standpoint, that's worth less than stock
5 that's just hard to sell?

6 A Those restrictions are very similar to the
7 restrictions that you find on closely held stock.
8 Usually, you can't go out and find it, you have a right of
9 first refusal and everything. So it's very close -- the
10 discount that you're talking about would be very similar
11 on a closely held lack of control discount.

12 Q Okay.

13 MR. ELLIS: Nothing further, Your Honor. Thank you.

14 THE COURT: Any redirect?

15 MR. DAVIS: No, sir.

16 THE COURT: All right. You may have step down, sir.

17 All right. Next witness, Mr. Stillwell.

18 MR. STILLWELL: Your Honor, we call Billie
19 Richardson.

20 THE COURT: All right. Please come around and be
21 sworn, ma'am.

22 THE CLERK: Place your left hand on the Bible and
23 raise your right hand.

24 BILLIE RICHARDSON, after being duly sworn,
25 testified as follows:

1 THE CLERK: State your name, please.

2 THE WITNESS: Billie Richardson.

3 THE CLERK: Thank you, be seated.

4 DIRECT EXAMINATION

5 BY MR. STILLWELL:

6 Q You want to get some water before we start?

7 A No, I'm okay. I'm afraid I'll spill it all over
8 myself.

9 Q Just a little chilly in here, warm up, okay? Billie,
10 I just want to let you introduce yourself to the jury. I
11 know you talked to them a little bit, but tell them where
12 you're from.

13 A My name is Billie Richardson. I was born in Buffalo,
14 New York. And my mother and family moved from Buffalo to
15 Chicago because my mother didn't like Buffalo weather, so
16 she moved to Chicago. She was originally from Michigan.
17 I grew up in Chicago and I went to grammar school and high
18 school in a suburb of Chicago in Illinois. I also went to
19 college in Chicago about -- went to college for about a
20 year and a half. And I met my husband in 1968 and we were
21 married in 1970.

22 Q Now, y'all had a couple boys eventually, right?

23 A Yes, we did. We have two boys.

24 Q And was that like right away or did y'all work for a
25 while?

1 A No, I worked for about three years. We were married
2 in 1970. My first son was born in 1973. We had a couple
3 moves. We moved from -- we were married in Chicago. We
4 moved to Rochester, New York with P. J.'s job. And from
5 Rochester, we moved to New Jersey and both of my boys were
6 born in New Jersey. One was in 1973 and the other one in
7 1976.

8 Q Now, these moves were associated with P. J.'s Regal
9 and Johnson & Johnson business moves?

10 A They were -- those moves were with Johnson & Johnson.
11 And we moved then to Georgia for Johnson & Johnson. Then
12 he left Johnson & Johnson to go to another company in
13 Massachusetts, so we moved to Massachusetts. And then
14 when he joined Regal. We moved to Maryland and we spent
15 most of our years in Maryland.

16 Q So y'all have been around?

17 A Yes, a little bit.

18 Q Tell me about -- I want to get you up to where y'all
19 bought Reeves and tell me how that worked. Just briefly,
20 just tell me that.

21 A In 1992, my husband acquired a company out of
22 Philadelphia by the name of A. Smith & Son. And he went
23 up to Philadelphia for about three months before he moved
24 the company down to Maryland. My sons -- we couldn't
25 afford to send our sons to college because we had put

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1 everything that we had in the business. So my older son
2 joined my husband in Philadelphia for three months and
3 during those three months, we moved the business from
4 Philadelphia down to Maryland.

5 Q Now, we kind of know the end of the story, we know
6 y'all are down here in Greenville now, right?

7 A Uh-huh.

8 Q Obviously, we learned that you sold your business and
9 y'all have retired. If we can put a time frame of when
10 you got into Reeves, just, for instance, what were the
11 ages of you and P. J. and the boys?

12 A Well, as I said, we acquired A. Smith & Son in
13 December of 1992. And between December of 1992 and March
14 of 1993, three-month period, we proceeded to move the
15 company A. Smith, which became Reeves Manufacturing, down
16 to Frederick. And --

17 Q The boys were in school, high school then?

18 A By that time, Terry, had joined his dad -- my oldest
19 son, Terry, had joined his dad up in Philadelphia to help
20 him with the move. Terry would load up a truck on
21 Thursday and drive it down to Frederick on Friday and we
22 would unload and he would go back up, then he would bring
23 another truck down here. So I was kind of bringing
24 together the opening of the factory down in Frederick.
25 And I would do whatever I was told to do and needed to do

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1 to make the factory ready so we could open it. We had
2 hired sellers. We had gotten all together and the plant
3 manager came down to Frederick to look at the facility and
4 lay out plans to set it up. And he said, Gee, that floors
5 needs to be painted, so I painted the floor.

6 Q Tell me about -- I guess there's no mistaken them,
7 those are the boys in the back of the room?

8 A Yep.

9 Q The first years between painting the floor and
10 meeting Bob, is that three or four years in there?

11 A Let's see, we came down to Frederick in 1993 and I
12 guess it was maybe I met Bob in 1998, 1999, something like
13 that.

14 Q Okay. We talked about Bob and P. J., how they met a
15 little bit, how did you and Bob meet? Tell me about
16 y'all's early time together?

17 A Bob came to a facility in Frederick with his puppy,
18 Remington, to -- I believe, at that time, to discuss with
19 P. J. of us doing some selling for him.

20 Q And at that time -- and this is a couple years before
21 the 2000 agreement?

22 A I'm going to put a time frame of about 1998 or 1999,
23 somewhere in that time frame.

24 Q What did y'all do in that time frame between '98 and
25 2000, before the 2000 agreement, were you working together

1 even without an agreement?

2 A Oh, yeah. We -- Bob and P. J. agreed on us doing
3 some selling for him. That's how the relationship started
4 out. And the relationship evolved. I mean, Bob, although
5 he was a one-man band, he was starting to grow and he
6 needed help. He needed some infrastructure, what I call
7 infrastructure. He needed someone to help him with the
8 checkbook, paying bills, doing the bank deposits, all that
9 kind of stuff. So it kind of was a -- as the friendship
10 grew so did the independence on what we did.

11 Q That part you just said about the payroll and the
12 bank stuff and all that, that was before the 2000
13 agreement was even done?

14 A Yeah, we started doing things -- services for Bob,
15 taking customer service calls and, primarily, more like
16 invoicing and accounts payable and that kind of stuff.

17 Q Okay. We talked a little bit with P. J. about the
18 size of the companies then. Let me go up to the -- he
19 talked about revenue numbers. Let's go up to the time of
20 the 2000 agreement. Can you tell me something about the
21 size of the two companies?

22 A You know, I just --

23 Q I don't want you to talk about revenue, just tell me
24 about how many employees did y'all have?

25 A Well, about in 2000, oh, maybe we had about 35 or 30

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1 employees by 2000. I mean, I can give you the number when
2 we left, but, you know, I don't know.

3 Q Okay.

4 A And at 2000, Bob was the only employee of NARP.

5 Q Okay. The 2000 agreement, I don't mean to focus on
6 any piece of it or whatever, but what was your
7 understanding of the 2000 agreement?

8 MR. ELLIS: Your Honor, I'd just make an objection
9 that the document as modified speaks for itself and Ms.
10 Richardson is not a party to that agreement.

11 THE COURT: I appreciate that. I'm going to allow
12 her to answer.

13 You may proceed, sir.

14 THE WITNESS: Well, my understanding of the agreement
15 was we agreed that we would have 25 percent ownership in
16 NARP and he would have 25 percent ownership in Reeves,
17 something like that.

18 BY MR. STILLWELL:

19 Q Mr. Ellis raises a good question, you were not a
20 party to the 2000 agreement, right?

21 A No, no.

22 Q Why not?

23 A That was between Bob and that was between P. J. They
24 were -- they were the owners of the company and that was
25 between them.

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1 Q Did you ever own any stock in Reeves?

2 A No.

3 Q P. J. did?

4 A Yes. I had a lot of wait quality.

5 Q Tell me about the period there after the 2000
6 agreement and up to 9/11, were things -- were they tough
7 in those times, how did that go?

8 A The company started to grow and things started to
9 improve, but things were still tight. I mean, there's no
10 question about that, they were still tight. I can
11 remember the first time that we came down to Greenville to
12 see Bob, I'd never been to Greenville before. And Bob
13 owned some lake property and we went up to the lake
14 property and walked down on the dock. And Bob knew I was
15 upset because money was tight and it was some discussion
16 on issues and he said, If it will make it easier for you,
17 I'll lend you \$10,000. I mean, he was just that -- I
18 mean, we were friends. We were in this together.

19 Q Did he actually loan you alone 10,000?

20 A No, no. I said -- I thanked him, but I said we'll
21 get through it and we got through it.

22 Q That part about -- I think you talked about what you
23 were doing for Bob, were you doing the same similar things
24 for P. J.?

25 A For P. J.?

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1 Q Yeah, for Reeves.

2 A Oh, yeah. I was -- I was the -- a back room person.
3 As P. J. said, Project little landing details handled
4 here. And, you know, I was doing -- I mean, early on, I
5 guess two weeks after we bought the company, the payroll
6 system blew up, so I was doing payroll by hand. I mean, I
7 did anything and everything that I had to do to make these
8 companies successful.

9 Q So you were working for both companies at the same
10 time?

11 A I was working for both companies at the same time.

12 Q I'd asked Mr. Castellani some questions about whether
13 you were the first NARP employee and I'm sure exactly what
14 he said.

15 A Yes, I was the first NARP employee.

16 Q When did you become the first NARP employee, do you
17 know?

18 A Well, I actually went on the NARP payroll in 2003.
19 Up until that point, Mr. Castellani, Bob, had been paying
20 Reeves for services. So, of course, I was paid by Reeves.
21 But as my responsibilities grew, because Bob was growing,
22 he put me on the payroll.

23 Q And just so we're clear, you're not saying that Bob
24 didn't pay you for what you did, are you?

25 A Well, as I said, prior to putting me on his payroll,

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1 I was paid because Reeves paid me and Bob paid Reeves.
2 But then as Bob grew and I assumed more responsibilities,
3 he put me on the payroll.

4 Q Okay. We're going to go up to 9/11, just talk about
5 the businesses, how they did -- the effect of 9/11. P. J.
6 talked about ground zero and going overseas and stuff.
7 Tell me about what it was like during that period for
8 Billie.

9 A Oh, wow. I mean, just to say 9/11 changed us all, it
10 changed us all. We were sitting -- I can still see it so
11 clearly. I was sitting at my desk, I had a little office
12 outside P. J.'s office. And Terry was in California. And
13 he called and he said, You've got to turn on the TV.
14 You're not going to believe what's going on here. And we
15 all, as everyone did, watched in horror as that plane hit
16 those towers. And, I mean, it was like waiting by the
17 door from that moment on. The phones were ringing.
18 Within probably six hours, my younger son, Mike, and P. J.
19 went away to Shanksville, Pennsylvania where United 93
20 went down to decon the FBI agents as they came out of that
21 pit. And they were recovering bodies.

22 My older son had done a lot of work with New York
23 City, so he was on his way to New York City. And it
24 was -- and our phone rang continually from morning till
25 night from that day forward. And, I mean, you know, I'm

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1 there, P. J. and Mike were in Shanksville, Terry in New
2 York City. They'd leave and go back down to New York City
3 and I'm sitting there with a lot of calls.

4 Q They were all on the road. Did they have family
5 themselves then?

6 A That was 2001. Terry was married and my
7 granddaughter was born in 1999, so there was -- Terry had
8 a little one. Mike was not married yet, no.

9 Q Okay. And so, tell me about -- obviously, that
10 was -- 9/11 was terrible and all that, but the effect on
11 y'all's businesses -- I mean, y'all basically had more
12 business than you could handle?

13 A Unfortunately, because of circumstances, but, you
14 know, I mean, yeah, we did. We were extremely, extremely
15 busy. It was not unusual for me to be in that office
16 until 9:00, 10:00, 11:00, 2:00 in the morning sometimes.
17 That wasn't unusual.

18 Q And during this time, were Bob and P. J., were
19 they -- I know P. J. was overseas and stuff, but were they
20 doing trade shows or what were -- what other kind of stuff
21 were they doing?

22 A I mean, we, obviously, still had our -- had, you
23 know, our relationship with Bob. I talked to Bob four or
24 five times a day. I mean, because we still continued to
25 provide all Bob's services for him as well as everything

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1 that we were doing at Reeves. And I know that P. J. and
2 Bob were in constant communication.

3 Q And by that time, was Bob -- he was down here?

4 A Bob was in South Carolina then.

5 Q And you were doing all this work for him up there,
6 right?

7 A Yes. We were in Maryland and we were providing the
8 services in Maryland for him down here.

9 Q I don't know if I've ever asked you this question,
10 how did you actually do that physically? I mean, how did
11 you do books and stuff for him when he was down here?

12 A I mean, I had -- I had staff that helped, of course.
13 But, I mean, we -- you know, we communicated on the phone.
14 We communicated -- I mean, by that time, we were doing
15 Bob's order entries, we were doing billing, we were doing
16 his banking. I mean, I had complete signing authority on
17 Bob's checkbook. I had complete authority on his line of
18 credit. I mean, that's -- that's how much Bob placed his
19 trust in me. And so, I mean, we were providing -- Bob was
20 busy growing his company. Bob was the -- was the idea
21 guy. Bob was the guy to go in and find that new product
22 and -- he was doing the building and we were just
23 providing the bricks.

24 Q I want to get you up to Charleston, to get there, I
25 just want to ask one question, did y'all ever talk about

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1 modifying the 25 percent interest before Charleston?

2 A In the first quarter of '04. It was sometimes in the
3 first quarter.

4 MR. ELLIS: Your Honor, I just want to note the
5 objection. Once again, Mrs. Richardson is not a party to
6 that contract.

7 THE COURT: All right. Thank you.

8 MR. STILLWELL: I'm not going to ask her anything
9 about it, Your Honor.

10 THE COURT: All right.

11 THE WITNESS: Would you like me to answer?

12 THE COURT: Why don't you rephrase your question.

13 MR. STILLWELL: I'll do that.

14 BY MR. STILLWELL:

15 Q Oh, yeah, whatever I ask you about, did you have a
16 conversation with Bob about the 25 percent interest?

17 A Yes, I did. We were -- Bob had come up to Maryland,
18 which he frequently did, he had other -- I, actually, was
19 near some of the places that he had to go to. But then he
20 would come up to visit me, see what was going on. And we
21 were sitting in the conference room at Reeves. And he
22 brought up the subject of decreasing 25 percent ownership.
23 And I said, Well, you know, Bob, that isn't my decision.
24 You have to -- you have to discuss that with P. J. And he
25 talked a little bit, you know, talked a little bit more.

1 And I said, what I can tell you, if you're talking
2 about zero, you're crazy.

3 Q Why would Bob talk to you about that instead of
4 P. J.?

5 A Well, I think sometimes it was if Bob wanted to talk
6 to P. J. about something, you know, it sort of was like go
7 through mom, you know, you want to kind of lay the
8 groundwork. And I think sometimes Bob laid the groundwork
9 with me.

10 Q Let's take that -- so you were the go between?

11 A Sometimes, yes.

12 Q Okay. Let's go to the meeting in Curt's office in
13 Greenville, were you at that meeting?

14 A Yes, I was.

15 Q Okay. And was that your second trip to Greenville
16 or --

17 A Yes, that was my second trip to Greenville.

18 Q What do you recall of that meeting?

19 A I recall it was April and it was really cold but we
20 went to Curt's office. And, you know, there was a lot of
21 lawyer speak going on because there was, obviously, Curt
22 there and Rod Manning and P. J. and I. And I -- you
23 know, I can't really recall a whole lot of what was
24 discussed, but I guess it sticks out in my mind because I
25 do expect -- you know, I expected that the ownership

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1 issue, the 25 percent interest was going to be something
2 to come up. All of a sudden, at the meeting, Bob stood up
3 and said, We're leaving it at 25 percent and the meeting
4 was adjourned.

5 Q At that meeting, was the topic whether or not y'all
6 were going to sell Reeves or not, was that the topic of
7 discussion?

8 A Well, I don't recall it coming up because we had made
9 that decision to sell Reeves at that point.

10 Q Well, listening to Barry Harper's testimony about him
11 being the point man during that process, was he working
12 for you at that point when you met at Curt's, do you know?

13 A Barry might have been there.

14 Q I won't you stomp you anymore and we'll go to
15 something easier. How about after that meeting, how did
16 it come about that y'all ended up going to Charleston
17 together?

18 A Bob had invited us down, you know, to Charleston.
19 And, you know, as described, we talked about a lot of
20 things at that meeting. And the ownership percent came up
21 again and we just all agreed to go to 7 1/2.

22 Q Okay. And that was a mutual decision?

23 A Yes, that was mutual. It was mutual.

24 Q At that point, were y'all talking about the sale of
25 Reeves --

1 MR. ELLIS: Your Honor, I'm sorry, let me note an
2 objection. I would object to the admission of any
3 evidence that goes beyond the claims as forth in his
4 pleadings. I understand that some of the background
5 information is necessary to understand the case, but I
6 don't consent to it coming in.

7 THE COURT: All right, sir.

8 MR. STILLWELL: Thank you.

9 THE COURT: You may proceed, Mr. Stillwell.

10 BY MR. STILLWELL:

11 Q When y'all agreed to go to 7 1/2, was the context of
12 selling Reeves something that was in the works?

13 A By that time, P. J. had had initial discussions with
14 DHS and the -- it was much more on the forefront that,
15 yes, we wanted to sell Reeves.

16 Q Okay. Considering y'all had not issued stock, did
17 you talk about what you were going to do with the 2000
18 agreement in that setting of the sale of Reeves coming up?

19 MR. ELLIS: Your Honor, same objection. I don't want
20 to keep drumming up that objection. Ongoing is fine.

21 THE COURT: If you have an objection to a particular
22 question, I'm going to have to ask that you do so. You
23 need to object to every single question. You have to
24 stand up and object to every single question.

25 MR. ELLIS: Thank you, Your Honor.

1 THE COURT: You may proceed, Mr. Stillwell.

2 MR. ELLIS: I do object.

3 THE COURT: Overruled.

4 You may proceed.

5 THE WITNESS: Would you repeat the question?

6 BY MR. STILLWELL:

7 Q Y'all had not issued stocks to each other at that
8 point in time, right?

9 A No, we had not.

10 Q With the sale of -- to whomever, I don't know if it
11 was DHS yet, but to the sale of whomever, did y'all talk
12 about what to do with the 2000 agreement since you had not
13 yet issued stock?

14 MR. ELLIS: Same objection, Your Honor.

15 THE COURT: Overruled.

16 You may proceed.

17 THE WITNESS: No. I mean, I don't remember anything
18 like that. I mean, to me, it was a very simple deal, 7
19 1/2 to 7 1/2. I had so many other things that I was
20 doing, that I didn't pay attention to it. Because I
21 trusted my husband, I trusted Bob. Two people that I
22 trusted most in the world. I'm not a lawyer, I'm not an
23 accountant, I'm just someone doing a job. And it was 7
24 1/2 to 7 1/2 and that's what I knew.

25 BY MR. STILWELL:

1 Q Okay. And were any promises made at that meeting?

2 MR. ELLIS: Objection, relevance, goes beyond the
3 pleadings.

4 THE COURT: Overruled.

5 You may proceed.

6 THE WITNESS: As I said, you know, 7 -- our 7 1/2 for
7 his 7 1/2. You'll always have your 7 1/2.

8 BY MR. STILWELL:

9 Q What does that mean, you'll always have your 7 1/2?

10 MR. ELLIS: Same objection, Your Honor.

11 THE COURT: Overruled.

12 You may proceed.

13 THE WITNESS: In -- after the sale of Reeves, there
14 was some pretty, pretty dark moments for me. Bob was very
15 reassuring, very comforting. And he said to me, You'll
16 always have your 7 1/2. Simple as that.

17 BY MR. STILWELL:

18 Q That was skipping ahead a little bit. I want to go
19 back to Charleston, just to the Charleston meeting. Were
20 any promises made between P. J. and Bob that you saw?

21 MR. ELLIS: Objection, relevance.

22 THE COURT: I'm going to overrule that objection.

23 You may proceed, Mr. Stillwell.

24 THE WITNESS: Just that, you know, you have 7 1/2
25 percent ownership of my company and I have 7 1/2 percent

1 ownership in your company. I don't know how -- I mean, it
2 was just that basic to me. That, you know, I promise you
3 this and you promise me that.

4 BY MR. STILLWELL:

5 Q And this and that, that's what I was trying to do,
6 how was that going to work if y'all were going to sell the
7 company?

8 MR. ELLIS: Objection, relevance, Your Honor.

9 THE COURT: I'm going to allow it.

10 You may proceed.

11 THE WITNESS: Again, I -- you know, I -- there were
12 greater minds than mine to work out all the details of how
13 this was going to work and that was going to work. You
14 know, I left that to the lawyers and the accountant.

15 BY MR. STILLWELL:

16 Q Okay. Did y'all have any idea what you were going to
17 sell Reeves for at that time, did y'all have any prices on
18 the table?

19 A I know that, you know, Rick Kohr had come back with a
20 evaluation of what he thought the business would be worth.
21 And I know that there was several -- there were several
22 offers, at least, two that I can remember. And we decided
23 on -- well, my husband decided, I meant. He certainly
24 kept me in the loop about it, but it was his decision, but
25 he decided to go with DHS.

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APP_0601

1 Q Did you have some of those numbers in hand when you
2 were in Charleston?

3 A I'm not sure.

4 MR. ELLIS: Same objection, Your Honor.

5 THE COURT: I'll allow it.

6 BY MR. STILLWELL:

7 Q Do you know if y'all had any of the ballpark numbers
8 when you were in Charleston?

9 A I believe that the evaluation had been done by then.

10 Q Did you talk to Bob during that meeting about what
11 his cut of the Reeves sale would be?

12 MR. ELLIS: Objection, relevance, Your Honor. Beyond
13 the pleadings.

14 THE COURT: I'm going to allow.

15 You may proceed.

16 THE WITNESS: I don't recall that we actually sat
17 down and talked numbers. It was -- you know, I mean,
18 actual numbers. It was 7 1/2 to 7 1/2.

19 BY MR. STILWELL:

20 Q Now were the mechanics going to work?

21 MR. ELLIS: Objection, relevance, Your Honor.

22 THE COURT: Overruled.

23 You may proceed.

24 THE WITNESS: How were the mechanics -- oh, I don't
25 know.

1 BY MR. STILWELL:

2 Q I don't mean the details of the options and stuff
3 like that, but I mean --

4 MR. ELLIS: Objection, Your Honor. I do object to
5 that, that's leading.

6 THE COURT: All right. Don't lead your witness.

7 MR. STILLWELL: Fair enough, Your Honor.

8 THE COURT: Thank you.

9 BY MR. STILLWELL:

10 Q Was Bob going to issue you shares in NARP, did you
11 know?

12 MR. ELLIS: Objection, relevance, Your Honor.

13 THE COURT: I'm going to allow it.

14 THE WITNESS: I don't know.

15 BY MR. STILWELL:

16 Q Okay. Were y'all going to issue him shares in Reeves
17 before you sold Reeves?

18 MR. ELLIS: Objection, relevance.

19 THE COURT: I'm going to allow it.

20 THE WITNESS: I don't know. I mean, that would have
21 been a discussion for P. J. and Bob.

22 BY MR. STILWELL:

23 Q Okay. And --

24 A I mean, I don't.

25 Q Okay. That's fine.

1 A Okay. I mean.

2 Q That's fine. Let's go from Charleston now -- in
3 between Charleston -- I've got to look at my board for a
4 second. You, obviously, weren't at the Atlanta meeting,
5 were you?

6 A No, I was not.

7 Q Okay. And I don't want to ask you any particular
8 questions about the termination agreement, but did you
9 even know the termination agreement was out there?

10 A I knew it was. I knew it was. As I said yesterday,
11 because Bob had called me and talked to me about it.

12 Q Okay. What did he talk to you about?

13 A He called me to tell me that Curt was very upset that
14 he signed it. That Curt threw it on his desk and said,
15 What the blank you need me for if you sign something like
16 that. Bob laughed about it. He said, you know, he was
17 cool with it. He knew that P. J. had the best of all of
18 us at heart.

19 Q And did he confront you about it?

20 A No, no, it wasn't -- it was in no way
21 confrontational.

22 Q Okay. Now, we had looked at this document from
23 Mr. Kidner talking about a NARP bonus, some of that
24 Castellani stuff. Did you know any of that stuff was
25 going on?

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1 A I was in -- I was in some of the meetings with Ed
2 Kidner where -- and Rick Kohr where that was discussed.
3 You know, Bob's share of the proceeds from the sale of
4 Reeves, yes. I've -- some of it, not all of it.

5 Q Did you have discussions with Bob regarding his share
6 of the proceeds of Reeves?

7 MR. ELLIS: Your Honor, I'm objecting to the
8 relevance unless he's talking in terms of after the
9 termination.

10 THE COURT: I'm going to allow it.

11 You may proceed.

12 THE WITNESS: I don't know that Bob and I sat down
13 and actually, you know, what are you going to do with your
14 share of Reeves or something like that. But, I mean, Bob
15 was aware. He was kept apprized of every step of the way
16 of the sale, what we were doing and where we were going
17 with it and how much the offer was for. I mean, like I
18 said, Bob and I talked four, five, six times a day. P. J.
19 talked to Bob, at least, once or twice a day. So there
20 was nothing that we kept from him.

21 BY MR. STILLWELL:

22 Q Okay. And did these discussions about -- do you know
23 about the time that -- that part about his throwing the
24 paper down on the desk, do you remember it being in
25 November after looking at all these documents?

1 A Oh.

2 Q It's been a long week.

3 A It was probably sometime at the end of 2000, yeah.

4 Q These discussions about Bob's shares in the proceeds
5 of the sale of Reeves, did they occur after that?

6 A You know, it's probably all about the same time,
7 after the sale. It was kind of all running together.

8 Q So you're not exactly sure?

9 A Uh-huh.

10 Q Let me go back to the meeting -- well, we're going to
11 get to Stax?

12 A Stax.

13 Q Yeah. I knew there was another restaurant in there.
14 Tell me about the Stax meeting, how did that come about?
15 Another trip to Greenville, I guess?

16 A Yeah. By that time in 2005, I was no longer with
17 Reeves, I was no longer with NARP, I was unneeded. And my
18 younger son, Mike, had decided that he wanted to open his
19 own business. And he wanted to move south. So he came
20 down to Greenville to look at some property and things.
21 And so we came down to Greenville with him. And it was a
22 good opportunity to call Bob and see if we could get
23 together.

24 Q And tell me about the meeting, what do you remember
25 about that meeting?

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APP_0606

1 A Well, we met at Stax. And it was, said hello,
2 hugged, kissed. Sat down at the table and P. J. went to
3 the men's room. And Bob handed me an envelope. And I
4 took -- and he said he had something for P. J. to sign. I
5 took the document out of the envelope, I looked at it.

6 I said, Well, that's for P. J., not me.

7 P. J. came back and I handed him the envelope.

8 Q Do you remember any discussion about the paper that
9 was in there?

10 A I think I -- P. J. looked at it. And you know,
11 just -- I don't know if there was any discussion between
12 he and Bob or not or not about it, I don't really recall,
13 other than P. J. just said I have to have my lawyer look
14 at this. I mean, by that time, we didn't sign a Christmas
15 card with a lawyer looking at it.

16 Q Tell me about you said you no longer were working up
17 at Reeves (sic), was there a period after Reeves that you
18 worked at NARP?

19 A Well, we closed on the Reeves sale in early January
20 of 2005. And at that point when we closed, DHS had a --
21 part of the condition of the sale was that my husband
22 would stay on as president and CEO. That my sons would
23 stay on. At that point, my oldest son, Terry, was vice
24 president of sales. And my other son was the director of
25 engineering. And they would stay on, they had employment

1 contracts. And that I would stay on as human resource
2 director.

3 Q Okay. Were you still working both jobs during that
4 period.

5 A At that point, I still was. Bob had, by that time --
6 somewhere in that time frame had decided that he was going
7 to relocate out of Frederick, Maryland, and he was going
8 to put in his own infrastructure, his own people down here
9 in Greenville. So at that point, I was still -- I was
10 still doing both, for both companies, yes.

11 Q Did you work down here for Bob for a while?

12 A Well, when we left -- well, as I said, DHS came in
13 and soon after, they took over the company. They
14 terminated my husband and they assured us that my boys
15 would have their jobs and that I would have my job. And
16 that their issues with my husband would no way effect our
17 employment. And at that time, you know, I mean, that
18 certainly was upsetting, but I wanted to continue to work
19 and, of course, by boys had to continue to work. Terry
20 had a mortgage and baby and Michael was getting married,
21 so we -- you know, we were going to do that. And at that
22 time, I was still -- I was still working for Bob, also.
23 And one day, DHS came in and said you're all gone. They
24 terminated all three of us.

25 Q Tell me about then your work for Bob of that?

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APP_0608

1 A Well, DHS had wanted -- they wanted us out of there.
2 They wanted us out of there immediately. And I had
3 commented to Bob that I would facilitate his move to
4 Greenville. I mean, there were a lot of things to do. We
5 had to transfer -- we had inventory to transfer. We had
6 paperwork to transfer. We had all these things that I
7 performed for Bob to transfer. And there was -- by then,
8 Bob had grown considerably and there was a lot of that to
9 do. I mean, you know, I was working seven days a week to
10 keep all those things going. So I mean, I was going on
11 Sundays and run Bob's table and sit home on the couch on
12 Sunday night and sign them and get them ready to mail. So
13 there was a lot of stuff to get done.

14 And I had made a commitment to Bob that I was going
15 to get it done. And so when you're terminated with
16 something like that, you have to sign a separation
17 agreement. And the separation agreement, you know, they
18 wanted me gone. And I said, I'm not going to sign this
19 separation agreement unless you allow me to stay --
20 because that time, it was just one month. Unless you
21 allow me to stay and facilitate this move for Bob. I will
22 fight you on this. I won't sign it unless I can stay and
23 do this.

24 Q So you worked up there one month for Bob?

25 A I worked up there for, I believe, the month of April

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APP_0609

1 in the same facility. I was no longer an employee of
2 Reeves, but I stayed and got the job done. And we got Bob
3 moved down to Greenville.

4 Q Did you work down here for Bob, too?

5 A Bob asked me to come down for a week. The move was
6 completed by April 30th and he asked me to come down for
7 the first week in May to kind of oversee things and look
8 at things and that type of thing. Because, I mean, prior
9 to this when Bob and I had discussed the move, he always
10 said to me, you know, I'm going to have you continue to
11 work for me. I'm going to have you come down once a month
12 and look at things and, you know, just oversee some things
13 for me. And that kind of went to I'm going to have you do
14 some foreign sales for me. And so I came down that first
15 week in May and Bob terminated me.

16 Q What do you mean terminated you?

17 A Well, I guess I had outlived my usefulness. I came
18 down and he said, I'm going to pay you for the month of
19 May. He said, you know, you'll work for me this week and
20 then you'll have three weeks vacation. And no other
21 mention was made of any other things that we had talked
22 about.

23 Q Did you ever do any direct work for NARP after that?

24 A No. No.

25 Q Did you keep during that period, after the Stax

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1 meeting and after -- well, this actually predated the Stax
2 meeting?

3 A Oh, this predated -- that was in May of '05. The
4 Stax meeting was sometime in June.

5 Q So even after that, did you keep talking to Bob on a
6 periodic basis?

7 A On a periodic basis, I would send him an email, how
8 are you doing or if P. J. and I were coming down here with
9 Mike, you know, we'd give him a call and get together.

10 Q Okay. So you -- there was some discussion about at
11 Stax an agreement of putting things on hold, do you recall
12 that discussion?

13 A Yeah. Because by -- I do recall that. Because by
14 that time, things were ugly with DHS. And, I mean, I felt
15 that -- I felt that not only DHS and their partner,
16 Carlisle, who was a massive, massive, massive company, I
17 thought -- I mean, I mean, I called -- I thought that
18 these people were just out to take everything that we had
19 built and worked for. And so, I mean, I was like a wreck.
20 I was a train wreck.

21 Q But you still talked to Bob periodically?

22 A Yeah, we still kept in touch, yes.

23 Q Did y'all just talk about what was going on
24 generally?

25 A We talked about kids and how the kids were doing.

1 And I mean, we talked a little bit about Bob's business
2 and he would tell us about his new products or whatever.

3 Q Okay. Now, let's go up to the point -- let's skip
4 over to the point where the lawyers are writing letters
5 back and forth to each other and whatnot. I want to get
6 to like your first awareness of the lawsuit. How did you
7 become aware that there was a lawsuit between NARP and
8 P. J.?

9 A Well, after --

10 MR. ELLIS: Your Honor, I'll object on relevance
11 grounds.

12 THE COURT: I'll allow it.

13 You may proceed.

14 THE WITNESS: After things had settled down and we
15 had sold everything with DHS, P. J. spoke to our attorney
16 because, you know, we had this unfinished piece of
17 business with Bob. And so P. J --

18 Q I don't want to get into anything they said to each
19 other, just --

20 A Well, the letter -- it was time to reopen the
21 discussions with Bob.

22 Q Okay.

23 A And that was the purpose of the letter.

24 Q You're -- about Eric's letter?

25 A Yeah, Eric's later..

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1 Q When the suit came back, did that surprise you?

2 A It was absolutely incredulous. I mean, I -- if
3 someone had told me back in 2004 that I'd be sitting in
4 this witness box in a courtroom with Bob Castellani at the
5 plaintiff's table and my husband at the defense table, I
6 would have said you are out of your mind. The Greeks have
7 a term that says, You're gob smacked. I was gob smacked.
8 I mean, I couldn't believe in a 100,000 years that Bob
9 would do this to us. It's just -- I'm sitting around and
10 looking at all these lawyers and all this paper and I say
11 to myself this started out as a deal among friends, among
12 two friends, three friends that started out that didn't
13 have a pot to pee in or a window to throw it out of. And
14 now we've got lawyers and we've got boxes and we've got
15 all this stuff around here. It was never meant to be like
16 this. It was simple, it was 7 1/2 for 7 1/2 straight up.
17 Not all the fancy smancy stuff.

18 Q Okay. We're going to finish, okay. We're going to
19 Trio, okay? How did the Trio meeting happen? This is
20 after the lawsuit, right?

21 A It was after the lawsuit and I, in my probably naive
22 way, thought if I -- if I can talk to Bob, if I can sit
23 across the table from Bob, we can talk and we can
24 straighten this mess out, that we can get this all cleared
25 up. And so we were down here -- because by that time, my

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1 son, my older son had moved down to Greenville with my
2 grandchildren. I had a granddaughter in 2003. And so we
3 were spending a lot more time down here. And I said,
4 P. J., you know, if we can just connect with Bob without
5 lawyers and stuff all around, we can -- we can work this
6 out. This doesn't have to be this way. So Bob sent a --
7 P. J. sent Bob an email and asked if we could meet and Bob
8 agreed that we could meet.

9 Q This one we looked at the other day?

10 A Pardon me?

11 Q Those emails back and forth we looked at yesterday
12 with P. J., I think they kind of all run together?

13 A Yeah, it was an email, I know. And Bob agreed to
14 meet and so we met at Trio's. And we sat at one of the
15 outdoor tables. And Bob sat here and I sat there and
16 P. J. sat on the other side. And we talked for a long
17 time. We talked about the kids and the business and this
18 and that. Finally, I said, Are we going to talk about
19 this issue?

20 Q What issue are you talking about?

21 A The lawsuit.

22 Q Okay.

23 A And I put my hand on Bob's hand and I said, It
24 doesn't have to be this way. We can talk about this. We
25 can work it out. And Bob's answer to me was, Things have

1 changed.

2 Q And how did that meeting conclude?

3 A It just -- you know, I mean, it was obvious that we
4 weren't going -- that we weren't going to get anywhere.
5 Bob repeated several times, Things have changed, things
6 have changed. So, you know what, in the end, I realized
7 that things had changed, I realized that Bob had changed.
8 That was it and here we sit.

9 Q Billie, do you feel like you worked hard to help NARP
10 get where it is?

11 A I worked my --

12 MR. ELLIS: Your Honor, I just, respectfully, object
13 to relevance.

14 THE COURT: I'm going to allow it.

15 You may proceed.

16 THE WITNESS: I worked my butt off. I did. I helped
17 them, I have to say that. And I think Bob would
18 acknowledge that. I mean, you know, he -- we had one
19 phone call one day where he said to me, I have a dream
20 that I'm going to make several people millionaires and
21 you're one of them. We had another conversation that I
22 remember clearly, this was later on, he was organizing a
23 meeting down in Florida. And I had done all the
24 organization for him. He called me back and asked me
25 something and I said, Don't worry about it, I'll take care

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1 of it. And a few minutes later, the phone rang and he
2 said, I don't know what I'd do without out. I mean, you
3 know, I did, I worked my butt off. I was on the payroll.
4 I was employed, but I had a personal issue. I had a
5 personal stake in this. I had a personal relationship
6 with this man. And yeah, I did, I worked extremely hard.
7 And I was extremely proud of what I did and I was
8 extremely proud of what Bob did.

9 BY MR. STILLWELL:

10 Q Do you think it's fair that P. J. should have a 7 1/2
11 percent interest in NARP?

12 MR. ELLIS: Your Honor, objection.

13 THE COURT: Sustained.

14 MR. STILLWELL: That's my last question, Your Honor.

15 All right, Billie, Bernie's going to ask you some
16 questions.

17 CROSS-EXAMINATION

18 BY MR. ELLIS:

19 Q Hi, Billie.

20 A Hi, Bernie.

21 Q Sorry, I had to keep interrupting you.

22 THE COURT: Just proceed on, Mr. Ellis.

23 BY MR. ELLIS:

24 Q Billie, do you understand how that letter, as a first
25 communication about a subject in two years might have been

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APP_0616

1 perceived as a threat and not as an invitation for old
2 friends to get together?

3 A Truthfully?

4 Q Yes, ma'am.

5 A I don't know -- you know, this is a letter from a
6 lawyer. Now, I might write it differently, but it's
7 lawyer speak. I mean, I don't know that it would have
8 been taken as a demand because I don't know what -- what
9 do you mean by demand?

10 Q Well, ma'am --

11 A I mean, obviously, you know, Bob -- we talked about
12 Bob taking offense to the lawyer and -- you know, I don't
13 think I'm qualified to make that judgment.

14 Q Well, the reason I'm asking you, ma'am, is I believe
15 Mr. Stillwell was asking you questions about how you felt
16 when you got -- when a lawsuit was served at your home?

17 A Right.

18 Q And my question to you is, just to be completely fair
19 about it -- let me ask this as a background question.

20 A Okay.

21 Q You and Bob were pretty close?

22 A We were very close. In my mind, we were very close.

23 Q Well, you all had a real warm relationship?

24 A Yes, we did.

25 Q And after your testimony of how you felt gob smacked,

1 is that the word?

2 A Gob smacked.

3 Q I like that. When you got the lawsuit, do you
4 understand how North American Rescue, which is not just
5 Bob, it was a lot of people who work there, do you
6 understand how they might have felt gob smacked when they
7 got a letter from a lawyer in Baltimore, Maryland, which
8 they didn't say we'd like to get back together and start
9 talking again about some old matters. It said, Mr.
10 Richardson now desires to exercise his option to purchase
11 7 1/2 percent of the common stock of NARP for a penny a
12 share?

13 A Well, I guess in my opinion -- two opinions on this.
14 One, this was going from Eric Orlinsky, who was P. J.'s
15 attorney, to Mr. Stodghill, who was NARP's attorney. I
16 think attorneys have pretty thick skins. And I didn't --
17 I mean, I would think -- I looked at this as lawyer speak.
18 Now, if someone -- if Bob was offended by it or someone in
19 Bob's company was offended by it, I guess I'm sorry about
20 that, but it wasn't meant to be offensive. It was, to me,
21 a business letter.

22 Q Well, ma'am, my question is, though, don't you think
23 it's fair that people involved in that perceived that as a
24 little bit than an invitation to start talking again?

25 A I guess, Bernie, I guess my answer is no. It's a

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1 lawyer -- it's lawyer speak. You know, it's -- no, I
2 guess I can't really see it. I guess if I have to be
3 perfectly honest with you, I can't see it.

4 Q Well, do you think you might have gotten an entirely
5 different reaction if you just picked up the phone and
6 called Bob and said, Bob, we'd like to talk?

7 A Well, Bob had made it abundantly clear in other
8 conversations that we had with him that -- Curt handled
9 that. I don't think Bob handled that, Curt handled that.
10 So when P. J. talked -- and P. J. and I, actually, had
11 some conversation about that. And P. J.'s feeling was,
12 you know, Bob goes through Curt on these things. So when
13 he spoke with Eric, I guess he decided to go that way.
14 Because I think there was an email up there the other day
15 when -- or yesterday or -- when, you know, Bob said, Curt
16 has advised me that we shouldn't communicate or
17 whatever -- no I'm getting the e-mails confused but there
18 was one where Bob said, you know, I was surprised you sent
19 this thing and why didn't you call me.

20 And I think P. J. apologized and said, Well, I'm
21 sorry, but you had indicated that Curt handled these
22 matters for you. So that's why it went to a lawyer.
23 That's why P. J. didn't pick up the phone.

24 Q Yes, ma'am. Thank you. And I want to ask you a
25 little bit about the papers that you received originally

1 in this case.

2 A I'm sorry, Bernie, the what?

3 Q Any papers that were originally sent North American
4 lawyer, which would be me in this case. I mean, this
5 letter doesn't say anything insulting or bad about you or
6 call you any names, does it?

7 A I never said you did.

8 Q I mean, it simply just said that someone's claiming
9 to own a fairly large percentage of the company and we
10 feel like the Court needs to -- we feel like we need the
11 intervention of the Court to resolve that issue, doesn't
12 it? I mean, that's a fair summary of all that says.

13 A That was -- I guess that was y'all's decision. I
14 mean, you know, I have no control over that. We wrote a
15 letter and you filed a lawsuit. I mean, I don't have any
16 control over how you answer a letter. I mean, that was
17 it. You were certainly entitled to handle it however you
18 wanted to handle it. You could have picked up the phone.

19 Q Well, just for --

20 THE COURT: Let's just continue on with the questions
21 and answers, please.

22 THE WITNESS: It goes both ways.

23 BY MR. ELLIS:

24 Q Well, let me just ask the question, isn't it true
25 that I can only talk to your lawyer?

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1 THE COURT: Gentlemen, can we get back to the case
2 here, please. Thank you.

3 BY MR. ELLIS:

4 Q Bob asked you about -- when the termination
5 agreement, what we've been calling the termination
6 agreement, Bob talked to you about that. And didn't Bob
7 express to you at some point his irritation or anger that
8 that termination agreement didn't address any future
9 rights for him, but it only addressed possible future
10 rights for P. J.?

11 A At the time, at the time in 2004 when Bob signed that
12 termination agreement, he expressed no, no anger about
13 that termination agreement. As I said, he laughed about
14 it. I told you. He laughed about it. The only anger
15 that I saw Bob express about the termination agreement was
16 suddenly in 2008, he was angry about it.

17 Q Didn't Bob ask -- didn't Bob talk to you about asking
18 you and P. J. if P. J. was the person who was responsible
19 for inserting that language in the termination agreement?

20 A He never asked me about it.

21 Q Bob didn't ask you if P. J. had that inserted?

22 A No.

23 Q Okay. At the Stax meeting that you had, I think it
24 was in June of '05?

25 A June of '05.

1 Q And I think that was the meeting -- you all discussed
2 the termination agreement in the June '05 meeting, right?
3 The Stax meeting?

4 A I don't remember. I just know that Bob handed me the
5 paper and I handed it to P. J. I'm not sure, no. I
6 couldn't sit here and tell you what was discussed about
7 it.

8 Q I'm sorry, what I meant was, that piece of paper that
9 he handed you concerned the termination agreement, right?

10 A Yes, it concerned the termination agreement. And I
11 handed it to P. J.

12 Q In those conversations, did -- with P. J., do you
13 recall P. J. expressing in any way to Bob, well, Bob, that
14 termination agreement doesn't mean anything because there
15 was supposed to be other parts of an agreement that were
16 worked along with that? Do you remember that?

17 A Well, personally, all I remember is Bob handing me
18 that termination agreement and me handing it to P. J. I
19 don't recall that they got into any conversation about
20 other things that supposed to be signed or anything. No,
21 I don't recall that.

22 Q After you stopped working for NARP?

23 A Uh-huh.

24 Q I believe you described that as having been -- you
25 described that as having been terminated from NARP. When

1 was the first time -- well, let me ask you this question,
2 isn't it true that you didn't tell Bob that your feelings
3 were hurt or that you were upset about it until two years
4 later?

5 A I told Bob --

6 Q In '07?

7 A You have to understand. I was devastated. I was
8 devastated. And I'm not a particularly confrontational
9 person. And I had talked to P. J. about it, about my
10 feelings, because when we would come down here, P. J.
11 would say, you know, let's call Bob and get together. And
12 I resisted it, frankly, because it was very difficult for
13 me. P. J. said to me several times, You've got to get
14 this out in the open. You've got to talk to Bob about
15 this.

16 And I said, You know, I will when I'm ready to do it.
17 It wasn't an easy thing to do. It wasn't an easy thing
18 for me to talk about. And I even talked to a girl that
19 worked in Reeves that knew Bob. And, you know, she would
20 say to me, You seen Bob?

21 And I would say, Occasionally.

22 And she said, You got to clear the air. You've got
23 to talk to him.

24 And I think I knew -- I knew that and that after the
25 lawsuit was served and, obviously, in that meeting at

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1 Trio's, Bob was very cold and angry. And I thought, you
2 know, this is going to be my only show to tell him. This
3 is going to be my only time because we probably won't see
4 other again on a basis for me to tell him that. So I said
5 you know what, I'm going to tell him. And I told him. I
6 told him how devastated I was that, you know, after --
7 after all the conversations we had about me continuing on
8 to be a part of NARP, that I said in my definition he
9 kicked my to the curb.

10 Q Well, ma'am, you and Bob had had a very warm
11 relationship all the way along, right?

12 A Yes, we did.

13 Q Y'all had very warm feelings for each other?

14 A Yes. And I still have warm feelings for Bob.

15 Q Isn't it, at least, fair to think that if you had
16 told him right after that happened at some point that he
17 had hurt your feelings, he might have responded.

18 A Do what?

19 Q He might have responded differently?

20 A Mr. Ellis, in 2005 when this happened, I felt like I
21 was -- I was being hit by Armageddon. I was -- my husband
22 had lost his job, I had lost my job, my children had lost
23 their jobs. They're not children, but they will always be
24 my babies. My children had lost their job. My dog died.
25 And, you know, it was just one more incoming mortar. And

1 I -- as I said, I'm not a confrontational person. And it
2 was just -- I was sitting in a chair and Bob said, I'm
3 paying you for the week, you got three weeks vacation.
4 And I was like whoa. And if I had been I guess a
5 different sort, I would have spoken up then and would have
6 been hey, we talked about me doing this and talked about
7 me doing that. But I couldn't. And I'll give you that.
8 You know, maybe I should have been more forceful, maybe I
9 should have said something before, maybe I should have,
10 could have, would have. I didn't. I said it -- I said it
11 to Bob when I could bring myself to say it to Bob.

12 Q Mrs. Richardson, to be fair to NARP, NARP actually
13 paid Reeves a pretty good chunk of money during the time
14 that you all were working together in 2003, 2005 time
15 frame, right?

16 A NARP paid Reeves a good chunk of money for all that
17 we did for Bob. We did his customer service, we answered
18 his phone, we did his accounts payable, we did his
19 accounts receivable, we processed his orders, we did his
20 banking; we did his shipping. Yes, he paid us for those
21 services, but we performed all the services that Bob's
22 people perform now for him, yes.

23 Q But he paid you about \$20,000 a month to do that,
24 didn't he?

25 A I'm not disputing the fact that he paid for those

1 services, Mr. Ellis. Were we supposed to do them for
2 free?

3 Q Oh, certainly, not. I just wanted to be sure the
4 record is clear.

5 A Absolutely. No one ever disputed the fact that Bob
6 paid us for those services. It was -- we had a service
7 agreement. Yes, absolutely.

8 Q And I understand, too, your testimony that you worked
9 very, very hard for NARP. I think Mr. Stillwell asked you
10 about that?

11 A Yes, I did.

12 Q But like, for example, in -- if I've got my
13 information correct, 2004, weren't you paid an additional
14 \$170,000?

15 A I don't dispute the fact that Bob was generous. I
16 don't -- I thank Bob profusely for his generosity,
17 absolutely. I was an employee. I was paid to do a job
18 and I did a job and I did it very well. And I was not a 9
19 to 5 employee. I would do anything I needed to do for the
20 benefit of North American Rescue and Bob Castellani.

21 Q All right. And in addition to what he paid to you,
22 P. J. was also paid a \$50,000 fee to serve on the Board of
23 Directors, right?

24 A Hey, Bob called me one day and said cut a check for
25 P. J. for \$50,000. Yes. I'm not disputing that.

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1 MR. ELLIS: Well, I thank you, very much.

2 THE COURT: Redirect?

3 MR. STILLWELL: None, Your Honor.

4 THE COURT: You may step down, ma'am.

5 Further witnesses on behalf of the Defense?

6 MR. STILLWELL: We don't have any, Your Honor, we're
7 done.

8 THE COURT: Defense rest, all right.

9 Will there be some reply testimony from the
10 Plaintiff?

11 MR. ELLIS: Yes, Your Honor. We have planned to have
12 some reply testimony.

13 THE COURT: All right. Ladies and gentlemen, go to
14 your jury room for about five minutes, please. Thank you.

15 Everyone else remain seated until the jury exits,
16 please.

17 (WHEREUPON, the jury left open court at
18 approximately 12:05 p.m.)

19 THE COURT: We'll take a break for five minutes and
20 we'll come back. Thank you, very much.

21 (WHEREUPON, a short break was taken.)

22 THE COURT: Ask the jury to come in, please.

23 (WHEREUPON, the jury came into open court at
24 approximately 12:20 p.m.)

25 THE COURT: Mr. Ellis, you have reply testimony?

1 MR. ELLIS: Yes, Your Honor, I'd like to call
2 Mr. P. J. Richardson.

3 THE COURT: All right. Mr. Richardson, please come
4 around. All right. Mr. Richardson, you've been sworn
5 twice in this case, you remain under oath. Thank you,
6 very much.

7 FURTHER REDIRECT EXAMINATION

8
9 BY MR. ELLIS:

10 Q Mr. Richardson, just briefly, I think we heard
11 yesterday from Mr. Manning and I think we -- about what --
12 strike that, let me start over. I apologize. You have
13 testified before about this possible three-leg agreement
14 at length. You understand what I'm talking about, right?

15 A Yes, I do.

16 Q Was it your expectation that if the parties entered
17 into an agreement that everything would be put in writing,
18 you all would sign it and there would a closing?

19 A Well, it's typically how a business agreement would
20 be put together.

21 Q Yes, sir, but I'm just staying in this case, was that
22 your expectation?

23 A Yeah, that's what I normally would have thought would
24 happen, that's what I believed was going to be done.

25 Q Well, can you explain -- it's true, though, isn't it,

1 that other than the Dobson Ministries proposals that were
2 sent back and forth, were there other -- there weren't
3 other documents going around at that time reflecting that
4 people were still discussing this three-legged agreement,
5 were there?

6 A I think there were drafts of options going around.

7 Q Okay. But, once again, your expectation with respect
8 to the proposed option, with respect to the proposed
9 Dobson deal or whatever was that when this was finally all
10 agreed to, everything would be put in writing, everybody
11 would sign it and everybody would know what was on the
12 paper, right?

13 A Yeah. I mean, other than the 2000 agreement, which,
14 you know, had been written, was assuming that at some
15 point once everything was finalized, it would have signed
16 everything off and it would have been done.

17 Q As you say typically as a businessman, you wouldn't
18 do a deal the size of the proposal agreement of the size
19 you're talking about unless it was in writing and signed
20 by all the parties, right?

21 A That's typically the way I would do it.

22 MR. ELLIS: Thank you, sir.

23 THE WITNESS: Thank you.

24 THE COURT: Redirect or, I'm sorry, cross, whatever
25 it is.

1 MR. STILLWELL: It is confusing, Your Honor.

2 FURTHER RECROSS-EXAMINATION

3 BY MR. STILLWELL:

4 Q P. J., I'm going to ask you about three questions.
5 Mr. Ellis -- maybe two. Mr. Ellis asked you about typical
6 normal business transactions, did you hear that?

7 A Yes, I did.

8 Q Okay. Did you hear Bob on -- when he was up on the
9 stand say that he did not consider himself a normal
10 businessman?

11 MR. ELLIS: Your Honor, I'm --

12 THE WITNESS: Yes, I did.

13 MR. ELLIS: That's going beyond the scope of my
14 direct.

15 THE WITNESS: Yes, I did.

16 THE COURT: All right. Let's -- it's been asked and
17 answer before, let's move on.

18 MR. STILLWELL: I'm on my last question, Your Honor.

19 THE COURT: All right.

20 BY MR. STILLWELL:

21 Q Post Atlanta, this discussion about the Dobson deal,
22 three-legged stool and whatnot, would you describe this
23 contemplated transaction as a normal business transaction?

24 MR. ELLIS: Your Honor, again, object to the
25 question. I think it's beyond the scope of direct.

1 THE COURT: I'm going to allow that question.

2 THE WITNESS: You talking about the Dobson deal?

3 BY MR. STILLWELL:

4 Q Everything after Atlanta, would you describe that as
5 a normal business transaction?

6 A Well, I mean, it certainly wasn't as smooth as I've
7 seen transactions go. I mean, it was -- I think I would
8 say it was probably a little bit unusual. I had some
9 problems, obviously, with it, but.

10 Q So it's fair to say it was an unusual transaction?

11 A Yes, I'm sorry, it was an unusual transaction.

12 MR. STILLWELL: Thank you, P. J.

13 THE COURT: Yes, sir, Mr. Ellis?

14 MR. ELLIS: Yes, sir.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. ELLIS:

17 Q I'm trying to be sure I have a specific answer to my
18 question because I don't want to be wondering off with
19 well, that is what I would normally do and so forth and
20 was this really normal. My question to you is, you heard
21 Mr. Manning's testimony that he had an expectation that if
22 the parties got all this together, he thought there was
23 going to be a closing with written documents with
24 everything signed. Did you understand that to be his
25 testimony?

1 A Yes, I did.

2 Q Okay. Mr. Manning was your lawyer, right?

3 A Yes, he was.

4 Q Okay. It was also your expectation, wasn't it, in
5 this case -- I'm not asking for general expression of what
6 you would normally do, it is true, sir, isn't it, in this
7 case, that you were expecting that if -- that if a final
8 agreement was all settled on, there was going to be a
9 closing with written documents that everybody signed so
10 that everybody would know what the agreement was and so
11 forth?

12 A Yes.

13 MR. ELLIS: Thank you.

14 THE WITNESS: You're welcome.

15 THE COURT: You may step down, sir.

16 THE WITNESS: Thank you.

17 THE COURT: Your next witness, Mr. Ellis?

18 MR. ELLIS: Bob Castellani.

19 THE COURT: Please come around.

20 FURTHER REDIRECT EXAMINATION

21 BY MR. ELLIS:

22 Q Bob?

23 A Hey, Bernie.

24 Q You just heard Billie's testimony, how do you feel
25 about Billie?

1 A I think you can take pretty much everything Billie
2 said and I would echo it.

3 Q I'm sorry, you would what?

4 A I would echo it. Billie and I had a very close
5 relationship. She filled most roles in my life. And I
6 would put counselor as one of those things, too. She was
7 definitely an important part of the business and somebody
8 who I could bounce ideas off of.

9 Q You mean -- tell me a little more, how would you,
10 generally describe y'all's relationship?

11 A It was warm. I mean, we had a real good
12 relationship. She's right, she worked very late at night.
13 I worked very late at night. In the business world, like
14 in any other business in the rest of the world, I could
15 talk to Billie and I could put my guard down. If I did
16 have a problem with P. J., I could talk to Billie. I
17 don't know where I heard it, maybe in this room, maybe it
18 was subsequent conversation, but Billie is probably the
19 smartest one out of P. J. and I. I mean, she was much
20 more balanced. And I mean.

21 Q We've heard a lot in this case, her testimony in the
22 case about what P. J. and Billie did for you. What did
23 you do for them?

24 A Well, we got together, I forgot, I can't see the date
25 board now, but when we got together, it was a mutual

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1 agreement. Specifically, I mean, we did trade shows
2 together. I helped motivate products in the military,
3 then they got a military division so I could give some
4 advice there. Our company was more flush with cash. We
5 didn't have -- I didn't have all the overhead. I didn't
6 have any debt. I didn't have to borrow any money to stock
7 my company. I had put some money away in the service. So
8 the virtual company was part out of necessity and part out
9 of watching business shows. So nobody was going to lend
10 me any money. So I was able to give money to the
11 organizations. That's why I think I could be more
12 generous. I gave them exclusiveness to my products, so
13 they were the only ones that could really get it. Which,
14 again, was exclusive in a certain market thing, which was
15 EMS and that stuff. It kind of funneled business for them
16 and then when they sold it, they said hey, you know, look
17 at this stuff, not exclusively. There was some times that
18 didn't happen exactly, but in general.

19 Q Tell me about when Billie stopped working for NARP?

20 A I remember it a little differently. What you have to
21 do, again, it's hard at trial, to put things in context.
22 I depended on Billie tremendously. When they told Reeves,
23 DHS made it perfectly clear they didn't want me there.
24 That was their right. And I kind of felt like throwing a
25 little bird out of the nest. I had to start my own

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1 company now And we had come to an arrangement where DHS
2 was going to honor and do that for six months. I think it
3 was contractual, I'm not a hundred percent sure. Shortly
4 after the company got sold, P. J. was fired. So then --
5 and now at this time we knew all this was coming. This
6 wasn't like it was a surprise. It was probably a surprise
7 to Billie, but there had been lots of discussions between
8 P. J. and I, storm on the horizon. So now he's gone.
9 Shortly after that, as I remember it, both the sons are
10 gone. Then Billie gets fired. And if you can imagine,
11 it's worst than she describes.

12 Q Let me interrupt you there. When you say she got
13 fired, where did you mean from?

14 A From Reeves. And again, I don't argue that it was
15 with both boys or whatever, but as I remember, it was
16 worst than she explained because they were a family-run
17 business. And the employees there were to say less than
18 kind to her was fair. I mean, it was like, if you can
19 imagine, you know, the king died and now they're going to
20 go after Billie. And she's correct, she stayed on and I
21 never saw it, but I imagine it was somewhat seclusion
22 doing what she had told me she would do, which was
23 transfer my stuff down. And I had my CFO, my chief
24 operating officers all running back and forth trying to
25 pull my stuff out of the company because everyday it was

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1 getting worse and worse. We did it, we got it a month
2 early.

3 So she just had all the firings, again, her dog died.
4 This big storm was brewing. She comes down for a week.
5 She lives in Maryland. By the way, I did say this, I did
6 say, Billie, when you're gone from there, you're going to
7 come down, you're going to be part of the company. I did
8 say that. The problem is, so we've got all this firing
9 going on. The transitioning, I've got two guys now that
10 want to run the company that I'm hiring. Both of them are
11 making over a hundred thousand dollars year. I got all
12 the lawsuits. Billie comes in, she helps me do all this
13 stuff and I simply say Billie, go on vacation. My
14 context, I don't know what she heard, right, but this is
15 what I meant. You're in all these lawsuits. You just got
16 9 million dollars. You live in Maryland, right, and,
17 honestly, I can't really bring her onto the company
18 because she's got this massive lawsuit that they don't
19 want to drag me in.

20 They send me an email saying they don't want to drag
21 me in. I think if I got drug in, I would give different
22 testimony than P. J. Again, maybe that testimony is not
23 so much different, but we had different views. It wasn't
24 going to be helpful to him to put me in the equation, so
25 the reason, if you look at all this stuff, me not hiring

1 her, even if I had hired her, she wouldn't have been able
2 to come work there. She lived in Maryland at the time.
3 She couldn't commute from Maryland. And she had the
4 lawsuit. She couldn't work there during the lawsuit. So
5 it's not that it was evil. I think what she heard, right,
6 is in the context that she said it was Armageddon that
7 here's this guy she loves and I love her and all of a
8 sudden, I said go take a vacation. I'm not -- I mean, I
9 would assume then that I would have no feelings for her
10 and she said that I had feelings for her. You know,
11 apparently, it's an ungodly mess. And then, of course,
12 what's going back and forth is all this ugliness between
13 P. J. and I. So I didn't mean go take a vacation, here's
14 your walking papers, thanks for all the work that you did
15 for me, hit the door.

16 Q Tell me about the Trio's meeting when you and P. J.
17 and Billie talked, what's your recollection of that?

18 A So I get the letter --

19 Q And the letter, you mean, is the --

20 A The demand letter that says give me my stock, my
21 words is demand letter which triggers a response which is
22 a legal response. That's what it did. So we go and meet.
23 We have a wonderful lunch and she's right, we talked about
24 all the small talk and all the stuff, but we all knew
25 there was a 2000 pound gorilla sitting in that room. At

1 the end of the conversation, it was all starting to break
2 up, Billie does say what about this stuff. So we start
3 talking about it. It starts off pleasant and migrates to
4 aggressive. And I'm telling P. J. you don't have a
5 right -- you heard all the testimony, right. He said what
6 he thought and I said what I thought.

7 At the end of it, Billie spoke up and she starts
8 telling me how I hurt her. Again, if you can imagine, if
9 you assume that I had affection for this woman, I'm
10 completely having all the air sucked out of me because I
11 can normally take another business buy or another real
12 estate guy or something pounding me in my face. I'm used
13 to it. I'm not used to having somebody that I love start
14 telling me how I've hurt them, you threw me out. I'm
15 going, I'm sorry -- I can't remember if I said I'm sorry
16 you feel that. I'm trying to think what I did. And all
17 this is going on, I'm trying to, yeah, she caught me off
18 guard. I don't think she meant to do it.

19 And then P. J. says to me, Listen, for five million
20 dollars this can go away. I don't know my exact words,
21 P. J. said something, but I will tell you my eyes turned
22 red, I got incredibly furious and I said stuff. And if it
23 was sue you Greenville -- sue you in Greenville County,
24 South Carolina, if that's all I said, that was probably
25 the -- our version -- would be our version of it. So

1 there's context to all this stuff. I'm not just -- it's
2 not like I just said well, here's what I'm going to do.
3 I'm sticking you in a legal case. I'm going to get all
4 these lawyers. I'm going to use all this trickery and
5 take your stock or your stock option or your right to a
6 stock or.

7 Q So the -- it's fair to say words were exchanged in
8 anger on both sides?

9 A Well, here's what's fair to say, I was -- at the
10 point when I get that mad, I kind of start -- I didn't --
11 once P. J. said give me 5 million dollars and this can go
12 away or this can be settled, I hit a point where I think
13 it's fair to say that I don't remember.

14 Q P. J. and Billie, in their testimony, have talked
15 about, I think, about the comparative size of Reeves
16 compared to the size of NARP back when you all were
17 working together. Was Reeves actually bigger than NARP at
18 the time?

19 A I think I explained this at my deposition. Reeves
20 was -- again, I don't want to parse words, but this might
21 help, Reeves was bigger when you look at the number of
22 employees. It was bigger because it had a building. It
23 had bigger gross sales. It wasn't bigger if you look at
24 how much money we made. We were incredibly efficient at
25 the time. As I grew the company, I outsourced all my

1 labor. It's called the virtual company. As I grew, I
2 started taking things like marketing, I couldn't outsource
3 marketing anymore. Nobody knew the imaginably, the words,
4 so I started filling in.

5 So you're asking if it was bigger from a structural
6 standpoint, bigger from more employees, they had sewing
7 machines, they had all that. But when you go all the way
8 through the numbers, I think we talked about the value
9 sheet, I was blowing off a tremendous amount of cash
10 because of the way I was working. I was working out of my
11 house, I didn't have an office. I could have got an
12 office. So I know that sounds maybe like crazy talk, but
13 it depends on what we're talking about. They were bigger,
14 I was more profitable substantially. So when we're
15 talking all these questions here, it depends the angle
16 that you're asking the question, so.

17 Q Well, did your profitability give you the ability to
18 do things that you might not otherwise have been able to
19 do?

20 A That's the growth. I had -- I was at leverage. I
21 didn't have a ton of debt. So what I was able to do was
22 take all the profit, travel, market, design new things.
23 To do all that when you got all that debt, if you make
24 \$10, you have \$10 -- you got to pay the bank six bucks and
25 you've only got four bucks to work with. The neat part of

1 the virtual company and the kind of newer way people look
2 at it is is you don't leverage yourself with all that
3 debt. It's the difference between renting a place and
4 buying it, the mortgage would be more. Yeah, you'd own
5 it, but you continue to grow your company.

6 Q Did it effect your ability to help and work with the
7 Richardson's and Reeves?

8 A It did. What it allowed me to do was, obviously, I
9 had to pay for services. And when I say this, every penny
10 I paid Billie, she earned. But I was able to split
11 software packages, so they wanted to get a software
12 package for Billie. A good example there is the Evergreen
13 evaluation. I didn't need an evaluation. I wasn't
14 selling my company. Just for the record, I never talked
15 to those people. I never told them what I did for a
16 living. I never told them who I competed with. That was
17 all done -- I paid for half of it, but I wasn't part of
18 the process. So I was able to do those thing. If they
19 needed computers or whatever, I would put in a portion of
20 that money to that so it allowed me to do those types of
21 things.

22 Q That Evergreen evaluation that you talked about, why
23 was that done to your knowledge?

24 A P. J. was selling his company and I believe it was in
25 the portion -- again, I know what those evaluations do

1 now, so I'm going trying to go back in time. At the time,
2 I thought it was an audit. I didn't necessarily know what
3 an audit was. But then it turned into a business
4 evaluation. At the time, I didn't know exactly what that
5 meant. I didn't need it. It was going -- I think it cost
6 me \$10,000 to do the thing. It was a \$20,000 project, I
7 paid for half of it. So what it was was basically to shop
8 the company. That's what it was. It would give you
9 competitors and give you what market you're in.

10 If you look at my company, you can say that I'm in
11 the medical business. I make medical equipment. When we
12 were just shopping our company, they put us in aerospace
13 defense business. Again, it depends how you look at it --
14 and I don't want to get into business stuff and I'm trying
15 to talk real quickly. But no, I didn't want that thing
16 done and it was to shop his company. Another thing -- one
17 other thing that I just remembered. When you looked at
18 our companies, Reeves had this structure and I'm sitting
19 here. You could look at the value depending on how the
20 evaluator was given the information, he could say well,
21 this is more of a value for NARP or more of a value for
22 Reeves.

23 Q Let me ask you this, there's been some testimony here
24 about Father's Day, about the service of the papers on
25 Father's Day?

1 A Uh-huh. It was made to sound like I went and served
2 P. J. on Father's Day. What happened was he was being
3 served. He had a home down here in Greenville and he had
4 a home up in Maryland. And I think it was a week time
5 period when he was going to get served. What they did was
6 they couldn't serve him, so he waited for Father's Day
7 because he assumed the guy was going to be home on
8 Father's Day. I didn't tell him. I had no communication
9 with him to go find this guy on Father's Day to make sure
10 his family's there and embarrass him. It was just simply,
11 I guess, on holidays, those guys are going to serve
12 people, the guy's going to be home on Thanksgiving or on
13 Christmas, he's going to be home on Father's Day. So I
14 had no hand in that.

15 Q You heard testimony early about the value of the
16 company. And I think at one point there was a number
17 thrown up of 150 million dollars?

18 A It was.

19 Q Is there any basis at this time on which North
20 American Rescue could be valued as having a worth of 150
21 million dollars?

22 A There's no reasonable way after -- not only we had
23 the offer, but then we got the reevaluation, which wasn't
24 an additional evaluation, but these guys aren't -- like
25 Evergreen, this is a big New York City Wall Street banking

1 company.

2 Q Can you tell the jury just -- we may have been over
3 it, but I just want to tell the jury, what was it that had
4 changed?

5 A The discussion with my company is yes, we innovate
6 products. We've got a pipeline full of new items and
7 stuff like that. There was always a question how much of
8 our growth was because of the war. And there's two
9 components, there's a modernization that goes along with
10 the military and it's been accelerated because of the war.
11 So as the war goes on, they find out whew, there's new
12 products needed and there's funds. The other part is
13 called the consumption rate. How much of my kit -- I
14 usually call it kit. How much of my kit is being used in
15 theater? How much of my kit is being used in let's say
16 (inaudible) military.

17 So if the war was to go away tomorrow and we went to,
18 let's say, whatever peace time is, how much of my overall
19 sales on a percent would drop? So I haven't done the math
20 yet. But if you take -- they're looking at it as 50
21 percent. I don't know how they came up with 50 percent,
22 but that's what they came up with. So you can do it off
23 of -- there's different ways to evaluate it. So all I'm
24 saying is what they told me. I don't know. I haven't
25 done an evaluation. I haven't looked at it. It was

1 Saturday and all of you know we've been busy since
2 Saturday.

3 Q But you know based on other -- and you're an owner of
4 the company?

5 A I am.

6 Q You're a majority shareholder?

7 A I am.

8 Q And you know based upon other discussions and offers
9 that have been received sort of what the -- what really is
10 now the value of the company?

11 A Yeah, we've got a couple offers at 150, 120, a couple
12 at a 100. And we've got a bunch at 75. So I'm assuming
13 that if the defense company dropped me -- these are all
14 the same, aerospace and all those other guys drop me, the
15 bankers, I trust, had no reason to hedge their bet, that's
16 just what they told me, so I think it's a fair number.

17 Q What's a fair number?

18 A Seventy-five to 80. It could be higher and it could
19 be lower. All he did was said Bob, that's the kind of the
20 range your in now.

21 Q Bob, there's been discussion about after the
22 termination agreement was signed -- just to go over again,
23 quickly, are there things that you would have done
24 differently if you had thought you hadn't terminated your
25 rights?

1 A Yeah. I mean, this is almost getting confusing for
2 me. If I hadn't terminated my rights with that agreement,
3 I would have kept the stock. I would have got capital
4 gains on the stock.

5 Q You said you would have kept the stock, didn't you?

6 A We would have swapped the stock. The property is --
7 we've heard P. J., P. J., it's what he thinks I think.
8 What I thought was going to happen was we were going to
9 not swap the stock and that he was going to do the Dobson
10 deal. I didn't need the cash. I didn't want the cash.
11 The only reason I could use the cash is for the missionary
12 thing.

13 Q Just being the kind of active person you are, though,
14 if you thought you still had some sort of stake in Reeves
15 without this agreement -- without the sale of DHS going
16 on, would you have done anything differently?

17 A I would have taken -- again, we're backing up now
18 instead of going forward. I would have taken my 7.5
19 percent, I would have executed the option. I needed both
20 to execute. He didn't want to execute the option for a
21 number of reasons.

22 Q When you say the option, are you talking about the
23 2000 --

24 A The 2000 modified agreement. I don't know where we
25 are, calling it an option statement, calling it an

1 agreement. I would have taken the stock swap. He didn't
2 want to do it. He was selling his company. I was happy
3 where we were. I kept reacting to what P. J. wanted to
4 do. P. J.'s understanding the agreement. I'm chasing the
5 tail around everywhere. If you asked me today, I would
6 say 7.5 and he would have gotten the 7.5. That wasn't on
7 the table. It went strictly from the 7.5 and then we
8 tried to work something else out. And I'm being held
9 obligated and (inaudible) floors, all that stuff. We
10 can't go back now and do that. So I'm -- I couldn't go
11 back after we started passing certain time zones. We
12 talked about the evaluation. It is what it is. Kidner's
13 saying oh, you've got to get a fair evaluation. But you
14 can't go back.

15 Q Bob, talk a little bit about when there were
16 discussions after the termination agreement and there were
17 discussions about what you -- the Dobson deal and all
18 that. Why wasn't a proposal for you just to take the
19 cash -- why didn't you want to do that?

20 A Cash is ordinary income. I had a deal that dealt
21 with capital gains. I understood why P. J. needed to do
22 the Martin's Ice Cream. I didn't know it was called
23 Martin's Ice Cream, by the way. But I know -- this is
24 what I knew, there's a C corporation, this is doubled
25 taxed. An S corporation is single taxed.

1 MR. STILLWELL: Your Honor, I believe Martin's Ice
2 Cream is part of something -- Your Honor, Martin's Ice
3 Cream is not part of this case.

4 MR. ELLIS: I'm trying to get on --

5 THE COURT: Can we please move along and end this?

6 MR. ELLIS: Yes, sir, I just want to ask the question
7 about the discussion about taking cash.

8 THE COURT: All right.

9 THE WITNESS: I had no plans ever to take cash
10 because it's ordinary income. In lieu of cash, I said, as
11 we were discussing this with many different things coming
12 back, I considered if we could do it where I didn't pay
13 taxes, where it went to the charity. That was the whole
14 purpose of it. The problem is is when he closed Reeves, I
15 couldn't go back to my original -- our originally agreed
16 to thing. And it marked its way all the way along. So I
17 have never -- it makes no sense sitting here today, it
18 didn't make sense sitting there when I did it. Why would
19 I want to take -- go from -- take taxable income from 15
20 percent and accept 45 percent? It makes none.

21 Q Was there ever a plan to put any of the money in your
22 own pocket anyway?

23 A It was never my intention to put -- pocket the money
24 or -- now I'm starting to talk in circles. It was never
25 my intention to take the money and put it in my pocket. I

1 had always thought it would be wonderful to give it away.

2 MR. ELLIS: Thank you. No further questions.

3 THE COURT: Any questions, Mr. Stillwell?

4 MR. STILLWELL: Mandy, could you put up Exhibit 48.

5 I'm not going to show anything but the cover of it,

6 Your Honor.

7 FURTHER RECROSS-EXAMINATION

8 BY MR. STILLWELL:

9 Q Mr. Castellani, you were talking about one of the
10 Rick Kohr evaluations. Is this the one you were talking
11 about?

12 A That's the evaluation.

13 Q And you don't agree with this evaluation?

14 A I remember getting the evaluation and sending it to
15 Curt. What I didn't do is talk to, I guess his name is
16 Mr. Kohr, and give him any information. If you open it
17 up, you'll see it's never how I described it or anything.
18 It was part of what P. J. was doing.

19 Q Okay. Is part of what you don't agree in there is
20 about who's a competitor and who's not a competitor of
21 each other?

22 A That's the only part of this document I saw. I
23 remember giving it to Curt. It didn't really matter to me
24 at the time.

25 Q You paid for it?

1 A I did, I split the cost.

2 Q And that's your NARP symbol right there on the front
3 of it, right?

4 A It is.

5 MR. STILLWELL: Let's go to the deposition testimony,
6 Mandy.

7 BY MR. STILLWELL:

8 Q We went over this before. You said it's -- this is
9 when we took your deposition in June, remember? 150 to 200
10 million of the company then, right?

11 A Yes.

12 Q Okay. You say 75 to 80 now, right?

13 A Yes.

14 Q This evaluation stuff is difficult?

15 A To get the true evaluation, it's -- you can get some
16 ranges.

17 Q Okay. And can you explain to us how in those
18 evaluations we looked at yesterday, the value of NARP
19 could have tripled in one day?

20 A I don't remember that, can you show me? I don't
21 remember --

22 Q We'll leave it because I don't want to go back
23 through it.

24 A You said it tripled, I don't remember any one value
25 tripling in a day.

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1 Q So you don't recall that?

2 A I'd like to answer the question, can you show me?

3 THE COURT: Gentlemen, are you going to pursue the
4 question, Mr. Stillwell?

5 MR. STILLWELL: No, sir, Your Honor.

6 THE COURT: Move along then.

7 BY MR. STILLWELL:

8 Q Did you tell Billie that she was going to be a part
9 of your company?

10 A I did.

11 Q She's not a part of your company, is she?

12 MR. ELLIS: Your Honor, I would object to the
13 relevance. She's not a part of the contract.

14 THE COURT: Move along, Mr. Stillwell.

15 MR. STILLWELL: Yes, sir, Your Honor.

16 BY MR. STILLWELL:

17 Q The discussion at Trio, what is that you said to
18 P. J. about the suit down here? I'm serious, I didn't
19 hear it because I just missed it.

20 A You missed my answer?

21 Q Yeah.

22 A What I said was is that once I heard him say for
23 5 million dollars this can be gone or for five million
24 dollars it can be settled, I got incredibly angry and I
25 said a bunch of stuff. I don't really remember what I

1 said. But P. J.'s recollection, all I want to do is put
2 it in context. So whatever he said I'm not disagreeing
3 with.

4 Q Did you tell them that you had never lost a suit and
5 never settled a suit?

6 A That would have been something I might have said.

7 MR. STILLWELL: That's all the questions, Your Honor.

8 THE COURT: You may step down.

9 Any other reply testimony, Mr. Ellis?

10 MR. ELLIS: Your Honor, not at this time.

11 THE COURT: Not at this time, I mean, do you have any
12 more reply testimony?

13 MR. ELLIS: I was considering calling an additional
14 one, but if I have to make a decision now, I would say no.

15 THE COURT: Well, I'll tell you, it's my intention
16 before we take a break that we will conclude all the
17 testimony in this case.

18 MR. ELLIS: All right, then, Your Honor, I'm not
19 planning on calling anybody else.

20 THE COURT: All right. Very good.

21 All right, ladies and gentlemen, we have concluded
22 the evidentiary portion of this particular case. There
23 are a number of things that I have to resolve with the
24 lawyers before they can start their closing arguments with
25 you. It's 1:00. I'm going to have you come back at 3:00.

1 I want you to be back in your jury room at 3:00 and we
2 will, hopefully, at that point in time be at a position to
3 go forward with the closing arguments in this particular
4 case. As you can imagine, because of the length of this,
5 those closing arguments will not exactly be ten minutes.
6 So, it may very well be that we conclude today after the
7 closing arguments are over and you come back tomorrow
8 morning for the charge on the law and then the case will
9 be submitted to you for your deliberations and your
10 unanimous decision. But that will be one of the things I
11 will talk to the lawyers about in this interim.

12 So see you back in your jury room at 3:00. Thank
13 you, very much.

14 (WHEREUPON, the jury left open court at
15 approximately 1:00 p.m.)

16 THE COURT: Gentlemen, if you want, we can take about
17 45 minutes and then come back and then we will talk about
18 the charge and you can give me your ideas about the
19 verdict form.

20 MR. ELLIS: Your Honor, can we also renew our motion
21 for a directed verdict?

22 THE COURT: Why don't we do that now and so that
23 we'll have that matter concluded. All right, be glad to
24 hear from you, Mr. Ellis.

25 MR. ELLIS: Your Honor, thank you. At this time the

1 plaintiff moves for a directed verdict as to the
2 counterclaim in this case. I'm going to renew for the
3 record our motion for a directed verdict with respect to
4 the parole evidence rule, with respect that the agreement
5 of termination settlement release, the agreement that we
6 talked about, is a clear and unambiguous document that
7 terminated all rights of the parties and did not -- had
8 not established rights to an option. I do renew that
9 motion for the record but and submit that to the Court.
10 But I'd like to talk about specifically some allegations
11 in the counterclaim that I don't think have been proved---

12 THE COURT: Well why don't we do things one at a
13 time.

14 MR. ELLIS: Okay.

15 THE COURT: All right, so you've made your motion for
16 a directed verdict.

17 With respect to that issue, any response to that,
18 Mr. Stillwell?

19 MR. STILLWELL: Your Honor, we incorporate our
20 previous argument that has been written and even spoken by
21 myself better than I can speak to them right now. Your
22 Honor, the second thing before is -- and this might be the
23 appropriate time to instead of talking about what our
24 previous statements were to make a rule 15(b) motion to
25 conform our pleadings to the evidence presented. And I

1 confess, Your Honor, I've not actually had to do that, I
2 don't know if you have the right pleadings on how we do
3 that but I understand that that can be made after a
4 judgment even. And so perhaps this isn't even the right
5 time to entertain that motion and back and forth. I don't
6 know how that's going to proceed exactly, Your Honor.

7 THE COURT: Well I'll be glad to hear your motion. I
8 tell you what, first as to your directed verdict motion,
9 Mr. Ellis, as you have pronounced it, I'm going to
10 respectfully decline to grant your motion. Now---

11 MR. ELLIS: Your Honor, I'm sorry, just for the
12 record, I have a directed verdict motion on what's not
13 been proved however in the pleadings.

14 THE COURT: Well I appreciate that. And we haven't
15 gotten into that. You haven't made that argument yet.

16 Now, Mr. Stillwell, as to a motion to amend the
17 pleadings to conform to the proof, what exactly are you
18 asking to do? I mean, that's a generalized motion. What
19 do you want to have happen?

20 MR. STILLWELL: Well the contract claims, Your Honor.
21 It's even hard for me to track where the contract claims
22 are going with the three that were going up there. But
23 the claim that we would like to pursue is that the 2000
24 agreement was modified orally in Charleston. And it
25 changed the amount of the respected shares from 25 percent

1 to 75 -- I mean to 7.5. And further that this was done in
2 the context of the pending sale in Reeves. When the
3 parties had not issued shares and they did not anticipate
4 issuing shares to each other ever. And in that context,
5 therefore, Mr. Castellani promised to give seven and a
6 half percent of shares in his -- of the shares of his
7 company, however that would be styled, in return for 7.5
8 percent of the proceeds of the sale of Reeves.

9 THE COURT: All right, sir. Are you asking to amend
10 your pleadings in any other fashion?

11 MR. STILLWELL: No sir, Your Honor, that would be an
12 addition, we would be reserving our other claims of
13 promissory estoppel. And also we have alternative claims
14 for specific performances of damages that would apply to
15 this claim as well, Your Honor.

16 THE COURT: All right, thank you.

17 All right, Mr. Ellis.

18 MR. ELLIS: Your Honor, I'm opposed to that motion.
19 And it's related to my alternative motion for a directed
20 verdict and here's why. I realize we'll get to that
21 motion in just a minute. I don't know what the Court has
22 available to it, a copy of the revised amended answer and
23 counterclaim. But I'll be happy to hand that up if it
24 will be helpful to you.

25 THE COURT: If you want to hand me one, I'll be happy

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1 for you to do so. If you want to hand it to me -- right
2 there will be fine.

3 MR. ELLIS: Your Honor, the claim that Mr. Richardson
4 brought in this case, against North American Rescue
5 Products, was a claim that after the parties had a meeting
6 in Atlanta, that they reached a new agreement. A new
7 agreement was going to happen. In which Mr. Richardson
8 get an option for a penny a share in which Bob Castellani
9 agreed to release his interest in Reeves and except cash
10 for the sale of Reeves. I'm reading from paragraph 54
11 from the revised, amended counterclaim. That was the
12 claim in this case. The claim as we initially brought it
13 was to have it be determined that Mr. Richardson did not
14 have an option to buy the shares. There was an
15 understanding I think of all the parties when this
16 started, that the 2000 agreement had been terminated. And
17 he had believed that he had negotiated an option. That
18 was his initial position. He amended his answer after we
19 took depositions. He amended his answer in July, I think
20 it was July 14th, and said, The parties reached a new
21 agreement in Atlanta and that there was this option
22 agreement that was dated October 4th.

23 As you can probably tell we have a friendly
24 relationship with each other and I picked up the phone and
25 I called them. And I said, You guys cannot put that in

1 the pleadings. It's not true. It's completely
2 inconsistent with what the parties -- with what your
3 client and what the witnesses have testified to. So they
4 amended their pleadings on July 25th to say what that say
5 today. The allegation in the pleadings is that out of the
6 Atlanta meeting, the three-legged agreement that we've
7 heard about was agreed to and entered into. And that
8 there was going to be an option, there was going to be a
9 payment over to Bob and there was going to be termination
10 done.

11 Your Honor, the claim for relief, the prayer for
12 relief for breach of contract in this case is not a breach
13 of contract for the 2000 agreement. That's not what it
14 asks for. And I will tell the Court, when I walked in
15 here on Monday, I thought what I was trying, was supposed
16 to be trying, was this claim that he had an option under
17 the three-legged stool. Because that's what they pled on
18 July 25th. And I don't want to veer over too much into
19 directed verdict motion right now but Mr. Richardson
20 clearly and plainly testified that he understood that he
21 was not supposed to get an option unless he decided to do
22 the Dobson deal. He decided not to do the Dobson deal,
23 therefore, he wasn't supposed to get an option. I'm real,
24 real sure that he clearly testified that this new
25 three-legged stool didn't ever finally come about in very

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1 large part because he didn't want to do the Dobson deal.
2 And the Dobson deal is actually even the substitution of
3 what's in here.

4 Your Honor, what they ask for is, Paragraph 67 --
5 paragraph 68 is, if the option agreement and the remaining
6 documents fail to constitute enforceable agreements, if
7 true Richardson would revert to his prior ownership of 7
8 1/2 percent of NARP. Does he alternatively have a
9 specific performance of his prior agreement with NARP
10 where he possessed 7 1/2 percent ownership interest in
11 NARP stock. That's what they asked the Court to do with
12 respect to the 2000 agreement. That's what we came in
13 here Monday to deal with. That's what I prepared for
14 trial for. Because it's in the pleadings. And I'll say
15 once again, on July 25th when I got this, I picked up the
16 phone. I said, Guys this stuff in here is not true.
17 Mr. Richardson testified at his deposition that he never
18 wanted to do the Dobson deal. He didn't believe that.

19 And they said, We're pressing forward.

20 And I will tell you, I know I probably stumbled
21 around a little bit when I had Mr. Richardson on the stand
22 the first time or maybe every time I had him on stand.
23 But the reason was my -- it was hard to get my breathe
24 after this is in the pleadings and he's testifying over
25 and over again that this is not what happened. Well it's

1 the breach of that alleged agreement is what they're here
2 to pursue. And I think it is monumentally unfair to NARP
3 to say, Got ya, switch. Bait and switch. I think that's
4 unfair. I think that's highly prejudicial. I think that
5 any issues that came in with respect to that, I thought I
6 made it very clear yesterday on the record, it's NARP's
7 position that if the 2000 agreement is still in effect, he
8 needs to tender performance under that agreement and let
9 us react to it. Because performance under that agreement
10 is an entirely different kettle of fish than his having an
11 option.

12 We have rights under the 2000 agreement as amended to
13 do certain things which we've never been asked to do under
14 the 2000 agreement. His claim is that if this
15 three-legged agreement I get doesn't work out, then I get
16 to go back to that.

17 Promissory estoppel, once again, By and through
18 Castellani, the plaintiff, made a further unambiguous
19 promise to Richardson that he would be able to purchase 7
20 1/2 percent of NARP's stock for one cent per share. All
21 of the discussions about anything about one cent per share
22 were in terms of this alleged three-legged stool. It is
23 not in their pleadings that they alleged a breach of the
24 2000 agreement. The facts that came in with respect to
25 that are directly relevant to the question of whether

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1 Mr. Richardson understood that he was terminating his
2 rights as well by actions that he took.

3 Your Honor, I think in order to amend them under
4 15(b), new issues that are not relevant to issues that are
5 already in the pleadings, have to be tried by express or
6 implied consent. Whether Mr. Richardson maintained the
7 ability to perform under the old agreement, is directly
8 relevant to his intent with respect to the new agreement.
9 Did he enter into this new agreement for the purpose of
10 doing something new and ending the old? That's directly
11 relevant to that. These are not new issues and new facts
12 that weren't on the table before.

13 And, Your Honor, I'll wait just a moment and renew
14 the directed verdict motion but I think it's horribly
15 unfair to allow an amendment to 15(b). Thank you.

16 THE COURT: Mr. Stillwell.

17 MR. STILLWELL: Your Honor, I'll just state here,
18 that's the first time I've ever been accused of baiting
19 and switch in the open courtroom. My good friend, Mr.
20 Ellis, I understand is frustrated. However, his
21 difficulty understanding this case is not my issue, Your
22 Honor. If he is only looking at the pleadings instead of
23 all the multiple depositions we have done, this theory of
24 our case is not that we have not been espousing it. There
25 is abundant evidence before us that they have never been

1 released. Your Honor, in the pre-trial brief, I looked at
2 the paragraph that cited in the -- Mr. Ellis flipped me
3 to, it was in the one that was in the middle. I don't
4 know if he's ever read the paragraph about promissory
5 estoppel where it talks about an unambiguous promise to
6 convey a 7.5 percent interest.

7 Perhaps at this point in the trial, Your Honor, well
8 she's got my board back there, at the bottom of the
9 triangle it does not say the Dobson deal. It says 415.
10 Those cash proceeds are the Castellani computation those
11 are the things they talked about in Charleston. So, Your
12 Honor, let me just come back to my rule book because
13 that's a safe place. I looked through there for the
14 language Mr. Ellis just mentioned, I don't see it
15 anywhere. I see in the first paragraph B, 15(b)
16 Amendment. Amendment to conform to the evidence. Which
17 of course happened in the context of trial. When issues
18 not raised by the pleadings are tried by express or
19 implied consent. He makes a great objection today.
20 However, Mr. Castellani and Mr. Richardson already
21 testified upon hour, upon hour about what they did in
22 Charleston in the context of the pending sale of Reeves.
23 That's implied consent. By express or implied consent of
24 the parties, they shall be treated in all respects as if
25 they had been raised in the pleadings. They should be

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1 treated that way. They should be argued to the jury that
2 way. The jury should make the decision. And I think the
3 way we just even amended them like, as I said it, just
4 right out of my mouth, I think it's sufficient. Thank
5 you.

6 THE COURT: All right. Thank you.

7 All right. In looking at the revised amended answer
8 and counterclaim, I'm not sure it's even necessary to
9 grant the motion, it might very well be encompassed in
10 that but I am granting the motion to amend the pleadings
11 to conform to the proof. Thank you, very much.

12 All right, Mr. Ellis.

13 MR. ELLIS: Your Honor, I'll go back on my directed
14 verdict motion. What is alleged in the pleadings in
15 paragraph 54 is out of this meeting the parties reached a
16 new agreement. Under the new arrangement, Castellani
17 agreed to release his interest in Reeves, which is
18 imminently to occur. Richardson likewise agreed to
19 release his interest in NARP for an option to purchase 7
20 1/2 percent of the stock in NARP. That's what's alleged
21 as the breach of contract.

22 I understand that the Court has granted a motion to
23 add to this a -- an allegation that the 2000 agreement is
24 involved in this as a substantive claim as well. I'm not
25 trying to go back over that, I'm just pointing out that

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1 the relief that was sought in this pleading, is to be
2 restored to this old position under the 2000 agreement if
3 the Court does not find a breach of the option agreement.
4 That's what's alleged here. That's what this says. This
5 whole talking about this is the option agreement. The
6 option agreement is capitalized. The option agreement is
7 one penny per share arising out of the Atlanta meeting.

8 It seemed abundantly clear to me that there was
9 absolutely, the testimony was absolutely clear and, sir, I
10 asked Mr. Richardson what the three-legged stool was. I
11 talked to him about it over and over again, the Dobson
12 deal, were you going to do the Dobson deal? I asked him
13 over and over. And he said, We didn't do that. Your
14 Honor, if he's going to be allowed to present the 2000
15 agreement as what he's here on, I certainly think I'm
16 entitled to a directed verdict as to the claim of there
17 being an agreement arising out of the Atlanta meeting that
18 was breached.

19 I certainly think I'm entitled to a directed verdict
20 as to any claim arising out of promissory estoppel.
21 Because, Your Honor, it says, paragraph 72, Plaintiff made
22 a further unambiguous promise to Richardson that he would
23 be able to purchase 7 1/2 percent of NARP's stock for a
24 penny a share. Now, I think it's difficult to read this
25 complaint and understand -- understand it to be anything

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1 other than talking about what happened after the Atlanta
2 meeting. This whole -- this whole complaint is talking
3 about after the Atlanta meeting we entered into a new
4 agreement and there's a breach of contract or there's
5 promissory estoppel.

6 I realize that the Court has ruled and is adding --
7 allowing them to add a claim with respect to the 2000
8 agreement. I would ask for clarification a bit later
9 about what the claim is they're begin allowed to add. Are
10 they being allowed to add that the 2000 agreement was
11 breached? But I think I'm certainly entitled to a
12 directed verdict at this time that out of the Atlanta
13 meeting, any -- out of the Atlanta meeting, any agreement
14 that was alleged, they -- there is not a genuine issue of
15 material fact for the jury to find that out the Atlanta
16 meeting an option agreement arose that was breached. I
17 think there's no evidence in the record as to that.

18 Your Honor, if you'd like for me to address other
19 matters right now I will but.

20 THE COURT: Let's just deal with them one at a time.

21 Mr. Stillwell.

22 MR. STILLWELL: Your Honor, I'm surprised Mr. Ellis
23 can seriously argue that there is any lack of genuine
24 issue of material fact as to what happened at Atlanta or
25 after Atlanta. We have alternative claims that I've been

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1 reviewing while we've been sitting here and I frankly
2 think they've been fairly well done. Even after hearing
3 all that evidence. Mr. Ellis is reading the way that
4 Mr. Davis and I wrote our pleadings as if those are the
5 facts in this case. The facts in the case were just put
6 on by four days of live testimony.

7 Your Honor, he's not entitled to pick our lane. The
8 whole issues on this side of the courtroom as to which
9 lane anything will be done in or what brings us here. We
10 have alternative claims that we either agreed to do a
11 three-legged stool of which the termination agreement was
12 a reflection. And if we did not agree to that, then we're
13 back where we were. Their case is -- there is no back
14 where we were. It's this or nothing.

15 Your Honor, I'd like to just read the promissory
16 estoppel, paragraph 71. By and through Castellani,
17 plaintiff, made an unambiguous promise that Richardson
18 possessed 7.5 ownership interest in NARP. I can't provide
19 any better notice to that to opposing counsel.

20 THE COURT: Mr. Ellis.

21 MR. ELLIS: Your Honor, maybe I'm not grasping this
22 thing well enough. I think I'm entitled to know which
23 alleged contract I'm defending against. And I'm not -- I
24 think I'm entitled to know that it doesn't switch back and
25 forth. Between an allegation of a contract that happened

1 after Atlanta or an allegation of a contract that's in
2 place since 2000. And I feel like what I'm begin told is
3 here is, Well we're going to kind of jumble it all
4 together and we can make it this or make it that. What I
5 think I am entitled factually to is a directed verdict.
6 At the very least. That there was no option agreement
7 breached after the Atlanta meeting. What's in paragraph
8 54 of their complaint.

9 And I thought that's what the pleadings were for. I
10 thought the pleadings were to give notice to the other
11 side as to what we're suing for. I understand we've had
12 lots of depositions and lots of testimony. But paragraph
13 54, that's a new paragraph from July 25th. That's new.
14 This isn't something new. That was around a long time and
15 has died out over time.

16 THE COURT: Please sit down, Mr. Stillwell.

17 MR. ELLIS: I mean, I feel like I am at the very
18 least entitled to a directed verdict for the jury is not
19 instructed that they can find that there was a breach of
20 an option agreement post Atlanta. What's going to be
21 before them is the 2000 agreement. And again, I object to
22 that because I think that they haven't tendered
23 performance yet. But didn't -- didn't Mr. Richardson
24 testified that -- no, he testified that we were still
25 negotiating. I said, Did all three parts of the

1 three-legged stool get done?

2 And he said, No, sir, only the termination. We we're
3 still negotiating the others.

4 THE COURT: And I appreciate that, Mr. Ellis. But
5 the problem in this case is there's a lot of stories.
6 That support the different causes of action that had been
7 pled on both sides. And unfortunately, in this context of
8 this particular case, the jury's going to have to sort it
9 out. I am not allowed to pick which set of facts that
10 have been presented that I like. And that's what you're
11 asking me to do. And I can't do that. That's the jury's
12 job. And they're going to do it to the best of their
13 ability. Your motion's denied.

14 Further motions?

15 MR. ELLIS: Yes, Your Honor, just a few more kind of
16 administrative motions I want to take care of. Your
17 Honor, we have alleged and I think presented evidence to
18 the Court that an option agreement -- in order to have an
19 option agreement under Delaware law, the option has to be
20 in writing. I think that works in Delaware just like the
21 statute to fraud does here. Here's a Delaware Supreme
22 Court case. And I understand they're other cases in
23 Delaware, I understand they're other cases in Delaware
24 having to do with sell of stock, case in South Carolina as
25 well, a sell of stock being too ambiguous.

1 Your Honor, I think Delaware law, I think, is crystal
2 clear. It is completely clear, couldn't be clearer that a
3 stock option agreement granted by a corporation, has to be
4 in writing, it has to be approved by board action. The
5 terms have to be set forth. The -- it has to be in a
6 resolution or in a certificate of incorporation. That --
7 it has to be all of those things or it's not a valid stock
8 option. It's just not a valid stock option. And again, I
9 would equate it to just like statute of fraud sale of
10 land. Got an oral contract, you can have 1000 people
11 testify to the oral agreement that was alleged, the oral
12 agreement that occurred between the parties. You can have
13 all these people. It's not right, it's not enforceable.

14 Your Honor, I think that the Delaware law, with
15 respect to Delaware law, with respect to the issuance of
16 an option, it has to conform to that specific statute.
17 Again, that's Grimes vs. Audrey, Your Honor. Delaware
18 Supreme Court case. Reached that conclusively.
19 Therefore, Your Honor, I am asking also for a directed
20 verdict on any issue with respect to their being an
21 enforceable option agreement. I understand that's just
22 one narrow focus of the case.

23 Your Honor, furthermore, I think it's also very much
24 in abundance that any option agreement that were exchanged
25 back and forth had different terms in them. Once again,

1 in their pleadings which we have discussed, they had an
2 allegation that based upon exchanged drafts between the
3 lawyers, draft exchanged between the lawyers, that the
4 Court could look -- the jury can look where those are
5 similar and say, Well that constitutes an option because
6 it's a penny a share.

7 Your Honor, it's absolutely black letter South
8 Carolina law that negotiations never lead to meeting of
9 the minds. There's not any evidence that the parties ever
10 settled upon the terms of an option because the only
11 discussions they had about them had different terms. Your
12 Honor, I think Mr. Richardson testified real, real clearly
13 that he understood terms going back and forth were
14 different. Say well they're not material. No they're
15 real material because they all dealt with price, time of
16 execution and the amount. So they're very, very
17 different. So I think, Your Honor, for two reasons, there
18 is a -- two reasons I'm entitled to -- not me, NARP is
19 entitled to a directed verdict on the issue of there not
20 being a valid option.

21 THE COURT: All right, Mr. Stillwell.

22 MR. STILLWELL: Your Honor, again, my young Delaware
23 lawyer back here said it better than I could and I'd just
24 like to hand up what I just provided Mr. Ellis. I changed
25 the caption and it's our reply regarding plaintiffs, as

1 Mr. Davis and I counted, third motion for directed verdict
2 regarding Delaware law. And incorporate that into our
3 previous pleadings.

4 THE COURT: I'm going to deny your motion for
5 directed verdict. I do think some of the issues that you
6 are raising, Mr. Ellis, we will -- we will see how the
7 verdict form goes to the jury. But as to the issues that
8 you have particularly raised in this directed verdict as
9 to the option agreement, I'm going to respectfully decline
10 to grant your motion. All right, sir.

11 MR. ELLIS: Just a couple more things, Your Honor. I
12 move for a directed verdict on the idea that
13 Mr. Richardson is estopped, deny the validity of the
14 termination agreement to have terminated all rights. I
15 would note for, Your Honor, there is ample evidence in the
16 record, I don't think it's contradictory evidence that
17 Mr. Richardson and people on his side were aware of the
18 fact that Mr. Castellani and Mr. Stodghill thought they
19 had terminated their rights and did not say anything about
20 it because they were getting benefit from Mr. Castellani.
21 For having done that.

22 Your Honor, just -- I can enumerate these.

23 THE COURT: Well I appreciate that. I want to deal
24 with them one at a time. The testimony in that particular
25 aspect is conflicting. And I would respectfully decline

1 to grant your motion for a directed verdict. That
2 certainly is a possible conclusion that the jury can come
3 to. But there is more than one. And I respectfully
4 decline to grant your motion in that regard. Thank you.

5 MR. ELLIS: Your Honor, I would further note that
6 breach of contract as an affirmative defense.
7 Mr. Richardson testified that he understood that in order
8 for him to get an option, he was supposed to do the Dobson
9 deal.. Said he didn't do the Dobson deal. It's also very
10 clear that once he got his money from the sale of Reeves,
11 he never sent it over to Bob. In order to -- or to NARP.
12 In order to enforce the contract you have to perform to
13 the contract or tender performance, Your Honor. I think
14 the record is clear he didn't tender performance, he
15 didn't do anything that he testified that was necessary to
16 do in order for him to be able to enforce the contract.

17 THE COURT: All right. Again, I respectfully decline
18 to grant your motion for a directed verdict. Again, that
19 is certainly a possible interpretation that the jury can
20 come to regarding the facts of this case. It is not the
21 only one so I again, respectfully decline to grant your
22 motion.

23 MR. ELLIS: If I may, Your Honor? A couple other
24 things. I think that under the document of abandonment,
25 that Mr. Richardson, and I think the evidence is clear and

1 the jury would not be able to find otherwise, a reasonable
2 jury would not be able to find otherwise, that
3 Mr. Richardson abandoned the 2000 contract by taking
4 positive and unequivocal acts which reflected in his lack
5 of ability to perform under the 2000 agreement. He can't
6 do the 2000 agreement anymore. And therefore, he
7 abandoned that contract.

8 And, Your Honor, I might add and to save a little
9 time, basically the same idea, it's impossible for him to
10 perform the 2000 contract. I'll point that out, also.
11 Also, Your Honor, because he entered into a non-compete
12 agreement with DHS, which his lawyer advised him not to
13 fulfill, he disabled himself from performing the 2000
14 agreement. So, Your Honor, I would note that under
15 abandonment, possibility of performance and also the
16 document disablement, he disabled himself from performing
17 the 2000 agreement, he abandoned the 2000 agreement. And
18 it's impossible for him to perform the 2000-agreement.

19 THE COURT: Again, Mr. Ellis, it's the Court's
20 position that those are all reasonable conclusions that
21 the jury can come to based upon one interpretation of the
22 facts that have been presented in this case. But it is
23 not the sole and only conclusion that they can come to
24 from the facts in evidence. There are a number of other
25 conclusions they could come to. So that being the case,

1 I'm going to respectfully decline to grant your motion on
2 those four issues of estoppel, abandonment, possibility
3 and disablement.

4 Any further motions?

5 MR. ELLIS: Just a few more, Your Honor. I'm almost
6 done. Under the doctrine of merger, closely related to
7 parole evidence rule motion, that the doctrine of merger
8 bars any consideration of the three-legged agreement with
9 respect to the termination agreement. That the
10 termination agreement contains a merger clause. It says,
11 There are no further agreements other than what's in the
12 termination clause. I think that that bars consideration
13 of there being an allegation of there being other
14 agreements at the time of the termination agreement was
15 executed. And that the reference of a future date,
16 December 15th, 2004 is not inconsistent with that point as
17 well.

18 So, Your Honor, I would also move for a directed
19 verdict on the grounds of the doctrine of merger.

20 THE COURT: Mr. Stillwell.

21 MR. STILLWELL: Your Honor, I would re-incorporate
22 our previous arguments regarding the parole evidence rule.

23 THE COURT: I respectfully decline to grant your
24 motion, Mr. Ellis. Again, whatever this Court may believe
25 or not believe about the facts of this particular case,

1 that's not my job. And certainly not a valid rational to
2 grant a directed verdict motion nor standing for a
3 directed motion. And therefore, the facts in this case,
4 though they might support the argument that you are
5 making; again there is any number of variety of
6 conclusions and arguments that could be supported by the
7 evidence. That argument you just made is one of them. It
8 is not the sole and exclusive argument that can be made
9 based upon the facts in this case. And therefore, I
10 respectfully decline to grant your motion.

11 MR. ELLIS: Thank you, Your Honor. Your Honor, just
12 a couple more. We also believe that the claims to in the
13 termination settlement and release are invalid under the
14 doctrine of severability. That the provision in the
15 contract had been introduced to establish that -- argue
16 that it's ambiguous. I think this Court knows which
17 provision it is. The provision that refers to the
18 December 15th option agreement in the agreement of
19 termination settlement release, that that is severable as
20 a matter of law. From the agreement of termination
21 settlement release. It is severable as a matter of law
22 because really the wording of the agreement. And it is
23 severable as a matter of law because the agreement does
24 not fail on its own if that particular provision is not
25 complied with.

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1 Also, based upon the facts of the case with respect
2 to severability, that both of the parties knew that as of
3 December 15th, 2004, I'm sorry, as of the date they
4 entered into it, they knew there was an option agreement.
5 Therefore, as a matter of law, that provision is
6 severable. As I pointed out before, and I'll just
7 incorporate, that the -- that provision -- an option
8 agreement may have been invalid for other reasons. I
9 think as a matter of law, an option agreement as referred
10 to never comes into being or for some reason it's invalid
11 for some other reason, then, the rest of the agreement
12 doesn't fail. So, Your Honor, I think as a matter of law
13 it's severable. Thank you.

14 THE COURT: All right, thank you.

15 All right, Mr. Stillwell.

16 MR. STILLWELL: Your Honor, we would re-incorporate
17 our previous arguments.

18 THE COURT: All right, Mr. Ellis, I disagree that the
19 doctrine of severability as a matter of law applies to the
20 agreement that you have referenced as I do not see that is
21 applicable. And therefore, I would respectfully decline
22 to grant your motion.

23 Any further motions?

24 MR. ELLIS: Your Honor, I would just raise a motion
25 that I think the claims of the -- put in the statute of

1 limitations in general is an affirmative defense. I think
2 that if the plaintiff -- sorry, if the defendant is going
3 to be allowed to pursue the 2000 agreement, I think we do
4 have a statute of limitations issue. I think -- I think
5 that they are barred from pursuing the claim.

6 Your Honor, I think linked in with that also is
7 Latches as well. I think that they are barred by Latches
8 from seeking to go back and enforce the 2000 agreement.
9 Waiting an unreasonably long time, meaning well up into
10 this year, before making an allegation that the 2000
11 agreement was still in effect. And therefore, allowing
12 Mr. Castellani and North American Rescue Products to
13 believe that was a closed issue. I think Latches, statute
14 of limitations, we also pled waiver as well. As a matter
15 of law. I think that their actions unduly and unfairly
16 prejudiced NARP as a matter of law. Such that they should
17 not be allowed to pursue those claims.

18 THE COURT: All right. How about statute of
19 limitations, Mr. Stillwell? Or Mr. Davis.

20 MR. STILLWELL: Mr. Davis has got a cold, Your Honor.

21 THE COURT: All right.

22 MR. DAVIS: Your Honor, as you know, you heard the
23 testimony throughout the trial about a July 29th 2004
24 meeting in Charleston underneath the 2000 agreement where
25 the parties modified that agreement. You probably also

1 know that NARP initialed this lawsuit and did so in May of
2 2007. And under Rule 15(c), Your Honor, amendments to
3 pleadings relating back to the original date of filing.
4 And if that's true, Your Honor, there is no statute of
5 limitations.

6 THE COURT: All right, I'm going to respectfully
7 decline to grant your motion on the issue of statute of
8 limitations. As to the issue of Latches, I will give some
9 definition to the jury so that you can make that argument
10 to them. But I'm not as a matter of law will grant your
11 motion as on the theory of Latches.

12 MR. ELLIS: Your Honor, I would also just conclude
13 with ratification. I think that the testimony clearly
14 made it -- I think it's abundantly clear, I don't think
15 that's a reasonable issue that the termination of the 2000
16 was ratified by Mr. Richardson, by his actions. He
17 treated the old agreement as terminated, NARP treated the
18 2000 agreement as terminated. And his actions, therefore,
19 had the effect of ratifying that agreement.

20 Your Honor, while I'm at it, I'll just have to -- I
21 thought of something else I want to say. I'll stop after
22 that one. I do have one more.

23 THE COURT: All right, very good. All right, as to
24 ratification, again, that is certainly a theory that can
25 be argued to the jury and they will be given a definition

1 of ratification. But to call upon them to sit through
2 various factual scenarios that have been presented in this
3 particular case, and again, it is a potential avenue that
4 the jury could believe based on the facts. But it is also
5 one that they could disbelieve based upon the facts of
6 this case. So, therefore, I respectfully decline to grant
7 your motion on the theory of ratification.

8 What other issue just came to your mind, Mr. Ellis?

9 MR. ELLIS: Your Honor, we submitted a jury charge on
10 this as well. I think it's quite applicable to the case.
11 What I questioned Mr. Richardson about in reply. South
12 Carolina law if the parties clearly intended for an
13 agreement to be reduced to writing before it would become
14 effective, then it's not effective until it's reduced to
15 writing. Mr. Richardson testified clearly that he thought
16 there was going to be a closing where everything would be
17 written and everything would be signed. And that that
18 would be done. I think it's certainly the expectation of
19 our side as to enter into any kind of agreement like that
20 it would have to be in writing. And signed by the
21 parties. It's not the statute of frauds issue, it's a
22 ruling as a matter of law on contract construction where
23 the parties took steps to put something in writing, the
24 parties intended for it to be in writing before they would
25 ever sign and have a final, binding agreement. I think

1 the facts in this case are abundantly clear that that's
2 what the parties had intended to do. They were going to
3 come up with the agreement. Therefore, Your Honor, I ask
4 for a directed verdict on that basis as well, Your Honor.

5 THE COURT: Thank you.

6 All right, Mr. Stillwell.

7 MR. STILLWELL: Your Honor, I think the facts in this
8 case are abundant, however, I think they're far from
9 clear. This issue about needing a writing or the Delaware
10 law issue is the question of whether you actually need a
11 signed writing, it's the signature part that I think is
12 incorrect. I think under Delaware law, I'm not sure, Your
13 Honor, but I think that's a correct statement of the law.

14 MR. ELLIS: That's actually South Carolina law.
15 That's not -- that maybe Delaware law as well but that's
16 South Carolina contract rule.

17 THE COURT: All right. Very good. Again, as a
18 matter of law, I would respectfully decline to grant your
19 motion in that regard. Again, maybe very well something
20 that we will discuss with the jury. Hold on a second.

21 All right, why don't y'all come back at 3:00.

22 MR. STILLWELL: Your Honor, I got one motion just for
23 the record.

24 THE COURT: I'm sorry, yes, sir.

25 MR. STILLWELL: I have a motion regarding breach of

1 fiduciary duty claim, which since I've had a chance to sit
2 here and read it, it's actually pretty good. It's called
3 Matters of Fiduciary of Delaware. And they're three
4 paragraphs. One is the Delaware Business Judgment Rule
5 regarding the breach of fiduciary duty. The corporation
6 made the decision to ratify that thing. So that basically
7 saves grace over it, say that very artfully. The second
8 one is that the transaction that forms the basis for the
9 breach of fiduciary, in other words the termination
10 agreement, was fully disclosed to the director and
11 shareholder and they authorized it. Bob Miller, Rob
12 Miller, Bob Castellani.

13 So that also would wipe out any breach of fiduciary
14 duty. And the third one is actual a little bit of a
15 conundrum in that the proper remedy for the breach of
16 fiduciary duty could be rescission of the very agreement
17 which brings us here today, the termination agreement.
18 And therefore, that would mute the entire case. So in
19 other words, he could win and lose at the same time. If
20 he won and took out that termination agreement then he
21 would actually lose the fiduciary duty claim. And I'll
22 hand it up in writing, Your Honor.

23 THE COURT: All right. All right. Again, I'm going
24 to respectfully decline to grant the motions as set forth
25 for a directed verdict. I've never had a charge that has

1 gone on longer than arguments. This might be the very
2 first time. Because of all of the issues that are,
3 narrows the law that this jury has to be told about. But
4 again, the facts of this case support any number of
5 conclusions, any number of theories of law. And it is the
6 Court's determination that based upon matters as
7 presented, that I cannot under the directed verdict
8 standard, grant the motion for a directed verdict. Here
9 by the defendant nor the motions as presented by the
10 plaintiff as based upon the facts and evidence presented
11 in this particular case. Therefore, I would respectfully
12 decline to do so.

13 Gentlemen, regarding your request to charge and I
14 have now -- well, I'll put this part on my law clerk, I
15 have jumbled through them and, unfortunately, nobody gave
16 me your copy numbered, like request to charge number one
17 through 500 or whatever it was. So I have them in no
18 particular order. It's going to be very difficult for us
19 now to identify them and talk about them. So, what I need
20 for you to do in this wonderful half hour that you're
21 going to get before we come back is get somebody to get a
22 copy of your request to charge and number them one through
23 whatever they are. We'll mark those as a Court's Exhibit
24 and then we can intelligently talk about them. All right.
25 Thank you, very much.

1 See you in a half hour. Please look at the clock.
2 Thank you.

3 (WHEREUPON, a short break was taken.)

4 (WHEREUPON, Court's Exhibit Nos. 12 and 13 were
5 marked for identification and received into
6 evidence.)

7 THE COURT: Gentlemen, if you don't mind, before you
8 start argument, Mr. Ellis, I want y'all to come up with
9 some basic definition of -- as far as -- a very short
10 charge defining disablement and merger, okay, those two
11 things. So y'all can work on that at some point in time.

12 Mr. Ellis, you indicated you had a motion you wanted
13 to make.

14 MR. ELLIS: I do want to make one more. I do want to
15 make an administrative point if that's okay. I can't
16 remember if I numbered my jury charges and I wasn't --

17 THE COURT: You didn't do them and I didn't ask for
18 them. Let me have them, please.

19 MR. ELLIS: Your Honor, I thank you for the
20 opportunity to put one more motion on the record.

21 THE COURT: All right, sir.

22 MR. ELLIS: The Defendant pled promissory estoppel
23 that Mr. Richardson -- I'm sorry, Mr. Richardson relied on
24 an unambiguous promise of NARP and Bob Castellani to enter
25 into an option agreement or some other usually acceptable

1 agreement in order to enter into the termination
2 agreement. Rule 12(b)(6) says it can be raised at any
3 time -- I just want to bring to the Court's attention, I
4 don't think there's a legally sufficient claim. I don't
5 think that a promise to enter into an agreement that has
6 to be later negotiated is sufficient consideration or
7 supports a claim of promissory estoppel to enter into a
8 termination agreement.

9 Once again, I think there is an agreement to agree.
10 It's a -- agreement to agree is, obviously, not
11 enforceable under -- I know it's not under South Carolina
12 law, perhaps, not any law. I just think there is a
13 legally insufficient claim when the terms of that option
14 would have to be agreed to. How long the option would
15 last, how much it costs and so forth. Basically, creates
16 a situation for himself in this where he kind of argued
17 heads I win, tails you lose. He gets the termination
18 agreement then says, I can say it doesn't work later on
19 because I don't accept the other parties agreement that
20 were proposed. It has to be mutual. I think it's a
21 legally insufficient claim and I would just ask the Court
22 to grant judgment in favor of North American Rescue
23 Products on that issue.

24 THE COURT: Mr. Stillwell.

25 Mr. Davis, yes, sir.

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1 MR. DAVIS: Yes, sir, Your Honor. That would be an
2 interesting argument if that's what we had pled. But
3 since it's not, it's irrelevant. What we actually pled
4 was paragraph 71, By and through Castellani, Plaintiff,
5 made an unambiguous promise that Richardson had a 7.5
6 ownership in NARP. By and through Castellani, Plaintiff,
7 further made an unambiguous promise Mr. Richardson would
8 be able to purchase 7.5 percent of the NARP stock for one
9 cent per share. My understanding of 12(b)(6) is that it's
10 by the actual pleadings. And it sounded like to me that
11 Mr. Ellis' motion strayed into some sort of factual
12 recitation that we've heard from for the past four days.
13 I think, Your Honor, it's pretty clear that if we can
14 agree about anything is that we've disagreed about
15 everything. So, Your Honor, I think that's just a
16 non-appropriate 12(b)(6) motion to claim inappropriately
17 pled and, notably, Mr. Ellis for the second time today has
18 misstated our --

19 THE COURT: Let's not get into that.

20 MR. ELLIS: Your Honor, I'd just like to note if I
21 misstated it for purposes of this, I apologize. I meant
22 to refer to paragraph 59. And he's right, it's not under
23 promissory estoppel, it's under breach of contract. I did
24 misstate it. Paragraph 59 says, Richardson denies
25 executing termination agreement if NARP had not promised

1 to execute the option agreement pursuant (inaudible) NARP
2 in exchange for 7.5 percent of the proceeds of the Reeves
3 sale. And he did not believe the parties, otherwise,, had
4 a binding agreement, overall agreement. What I did say,
5 Mr. Davis is correct, it's not a promissory estoppel, it's
6 under breach of contract. I think that's legally
7 insufficient.

8 THE COURT: All right. Thank you.

9 Mr. Davis.

10 MR. DAVIS: Your Honor, as best I can tell, this is
11 the same argument that he made an hour ago. And to that
12 extent, we would be --

13 THE COURT: Well, but it's under Rule 12(b)(6) at
14 this point in time.

15 MR. DAVIS: Well, in that event, Your Honor, if you
16 go down to the actual revised counterclaim, I think our
17 pleading that we, in fact, sufficiently pled breach of
18 contract claim. We pled the existence of a valid existing
19 contract between the parties, a breach of that contract,
20 then Mr. Richardson sustained damages. I think you also
21 see that we pled that claim in the alternative. We pled
22 that this was under both the option side and it was also
23 under the prior agreement side. We said, Hey, listen, if
24 you take their agreement, where they said the termination
25 agreement is somehow invalid, if you accept that as true,

1 then you revert back to our original ownership position.
2 We pled all of that. We pled the damages as well.

3 THE COURT: Mr. Ellis, I'm going to respectfully
4 decline to grant your motion on the 12(b)(6) at this point
5 in time as to that breach of contract claim. All right.
6 Thank you, sir. All right.

7 Is the Plaintiff ready for the jury to come in for
8 the closing argument?

9 MR. ELLIS: Yes, Your Honor.

10 THE COURT: Is the Defense ready for the jury to come
11 in for closing arguments?

12 MR. STILLWELL: We are, Your Honor.

13 THE COURT: Very good. Ask the jury to come in,
14 please.

15 (WHEREUPON, the jury came into open court at
16 approximately 3:30 p.m.)

17 THE COURT: Ladies and gentlemen, as I indicated to
18 you, we have concluded the evidentiary portion of this
19 case. We are now going to go into the closing arguments
20 of the attorneys.

21 Now, I remind you, as I told you at the very
22 beginning, the arguments -- these closing arguments of the
23 attorneys are not evidence in this case. You've already
24 seen this, but in that regard, even though they are not
25 evidence and cannot be considered by you as evidence in

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1 this case that has already been received, they are
2 important. They are each side's summation to you of what
3 they believe the evidence has shown to you during the
4 course of the trial. Understanding, collectively,
5 obviously, as I indicated to you before, you are the
6 judges of the facts of this matter. It is the attorney's
7 job to give you their side of the story, what they believe
8 the case -- what the case was about and what they are
9 asking you to do as a result of your unanimous verdict in
10 this particular matter. It's my anticipation that when we
11 get done with the closing arguments of the attorneys, most
12 likely, we will conclude for the day and I will have you
13 come back tomorrow morning. And then we'll have the
14 charge on the law. I'll give you the law, and then I'm
15 going to give the case to you for your deliberations and
16 unanimous decision in this particular matter.

17 All right. Mr. Ellis, your closing argument.

18 MR. ELLIS: Thank you.

19 THE COURT: Very good.

20 CLOSING STATEMENT

21 MR. ELLIS: Good afternoon. I get a chance to talk
22 to you directly again. We've been going a few days now
23 and now it's time for us to all wrap it up and talk about
24 what we think all this means. I want to thank you on
25 behalf of my client and on behalf of my colleagues here

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1 for your service and for you being here. I want to tell
2 you that some things have been said -- you know, some sort
3 of angry meetings that happened along the way in this
4 process. And I want to tell you that we are here because
5 we need your help. We're here because we honor you.
6 We're here because we respect you. We're here because we
7 wanted the citizens of Greenville County to help us make a
8 decision about what happened here. And I want to let you
9 know that whatever happens here, whatever your decision
10 is, we will respect you. We won't say a bad word about
11 you. We've asked you to come here and sort this out for
12 us. And if you believe at the end of the day that North
13 American Rescue Products is supposed to give
14 Mr. Richardson stock, if that's your decision, we will
15 trust and we will know that it is based upon your fair
16 deliberations of the evidence.

17 Now, it's my job to help explain why I hope you don't
18 get there. Why I think that the evidence shows that it's
19 something different. I told you before this started; I
20 told you in opening statement -- let me put my watch down
21 so I don't keep looking at it. I told you before this
22 started that this case from North American's perspective
23 was about -- was about wanting to have your cake and eat
24 it, too. As I listened to all the evidence as it's gone
25 in, some of which has been a little bit surprising to me,

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APP_0689

1 I realized it's almost about wanting to have your cake and
2 get a better cake. You see, the way this relationship all
3 started out --

4 Hunter, would you hand me those boards back there.
5 Thank you.

6 You all might be vaguely familiar with these at this
7 point. This is where we started from. This is the
8 original agreement that the parties entered into in 2000,
9 where they agreed to do certain things together. They
10 agreed to cross sale. They agreed to share commissions.
11 They agreed to exchange stock in each other's companies.
12 This is two guys in their companies linking up together
13 and working together and taking risks together. If NARP
14 stock went way up, well, P. J.'s to get NARP stock will be
15 really, really valuable. If it went down, the stock goes
16 down. Well, it was an agreement between these two parties
17 to share in the risks of each other's companies, that's
18 what they agreed to do. P. J. had an opportunity, the
19 evidence will show you that P. J. had an opportunity to no
20 longer be on the risk side of this. He had an opportunity
21 instead of having his money -- instead of having his
22 stock, instead of having what he owned be subject to risk
23 situation, he had the chance to cash out. That's a real,
24 real good thing. We were all very, very happy for them.
25 That's good.

0705

APP_0690

1 But what he had a chance to do was convert that to
2 cash. And that's great. And we were happy for him. But
3 do understand, that it makes real, real good sense for
4 North American to understand and for Bob Castellani to
5 understand, if you're not going to do this anymore,
6 instead of doing that, you're going to get cash, that this
7 agreement is going to come to an end. And if you're going
8 to be involved in something else together, well, it's
9 going have to be something else. But this agreement can't
10 go on because this agreement was a risk sharing agreement.

11 Folks, what you've heard the testimony about in this
12 case is that P. J. got this opportunity to sell his
13 company. They had a meeting in Atlanta. And there's some
14 thought that we had this real, real big dispute about what
15 happened in Atlanta. That we say the agreement was
16 completely terminated and the parties agreed they would do
17 something else. And Mr. Richardson's side of story is
18 that -- no, we agreed to do something else. We agreed we
19 were going to do something else other than this agreement.
20 Well, here's the thing, if you're not going to do this
21 agreement and you're going to have to do a new agreement,
22 the stories of the parties really aren't all that
23 different. The stories of the parties really aren't all
24 that different. If you can't do this, then what you got
25 is an agreement not to do that agreement anymore and try

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APP_0691

1 to do something else.

2 And folks, that's -- ladies and gentlemen, that's
3 what we think the parties agreed to do. That's what our
4 understanding was of what happened when the parties got
5 together in Atlanta. And you heard the testimony of
6 Mr. Richardson that, you know, well, we agreed we were
7 going to have 7 1/2 percent, but we were leaving it up to
8 the lawyers to work out the details. We were leaving it
9 up to the lawyers to figure out what we were going to do
10 and we continued working on something new. Once again --
11 I'm covering up my exhibit here. If you're not going to
12 do this agreement and you're going to do something new,
13 that's where we are.

14 Testimony of Mr. Manning, Rod Manning, deposition
15 testimony, y'all heard from the lawyer down in Florida.
16 His testimony was that -- well, he thought we had come up
17 with a new three-legged agreement. He thought that this
18 was what we were going to do. We were going to have the
19 donation to the charitable trust. That we were going to
20 have an option agreement in favor of Mr. Richardson and
21 then we would terminate the old agreement. That's what he
22 said he thought was going to happen. Well, once again,
23 they're not going to do this agreement, we're going to
24 come up with something new.

25 It was the understanding -- it was the understanding

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APP_0692

1 of Bob and of Curt Stodghill, his lawyer, as we talked
2 about, he was real involved in this, that it made
3 perfectly good sense at the time for Mr. Richardson to
4 want to do that. And the reason was he had this wonderful
5 opportunity that came along to sell his company and go
6 ahead and get the money. He had been working for a long
7 time. And we were happy for him. We knew he was
8 interested in retiring, real, real happy for his success
9 that had come along. That was a great thing. But it
10 wasn't surprising to the parties on our side that he would
11 want to do that. And while we had an understanding that's
12 what he wanted to do because this is an agreement to
13 exchange stock in each other's companies. And he was
14 getting ready to sell his company, so he couldn't do this
15 agreement. If he was going to still have a relationship
16 with Bob, he was going to have to agree to do something
17 else.

18 And the reason it didn't surprise us, well, why would
19 he give up his interest in NARP? Why would he give up his
20 interest in NARP and not get anything back? Well, he did
21 get something back. He got back the right not to have to
22 give Bob 7 1/2 percent of his stock.. That's what he got
23 back. What Bob got back was the right not to have to give
24 7 1/2 percent of his stock to P. J. That was fine.
25 That's what we thought. There's been a lot of discussion

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APP_0693

1 about this document, Agreement of Termination, Settlement
2 and Release. Once again, a document you may be vaguely
3 familiar with at this point. Well, the question is this
4 document was presented to Bob by P. J. P. J.'s lawyers
5 drafted it. P. J. came to Bob and said, I need you to
6 sign this. I got the DHS closing coming up. I need you
7 to sign this so I can get on with the DHS closing. It
8 would be helpful to us.

9 Well, P. J. represented to Bob, this is what we
10 agreed to in Atlanta. Well, it does have a provision in
11 there that terminates the 2000 outline. I mean, it really
12 says it very, very clearly. The parties agree that the
13 2000 outline and any other agreements, understanding,
14 undertaking or arrangement that in any way arose or have
15 arisen out of or relate in any manner to the 2000 outline
16 are terminated. It would be kind of hard to be more
17 thorough than that about the facts that in this agreement,
18 the parties are making the decision the 2000 agreement is
19 over with. Once again, it's not a surprise to us because,
20 after all, P. J.'s getting ready to sell his company.
21 He'll get back -- he won't have to give stock to Bob.
22 North American Rescue Products won't have to give stock to
23 P. J.

24 Now, as we all know, we can all see this, if it
25 weren't for this little clause right here, none of us

1 would have gotten anywhere. Says we specifically agree
2 and understood by the parties of the foregoing agreement
3 not intended to be and shall not release any of the
4 parties from that certain option agreement dated
5 December 15th. If that weren't there, everything would
6 have been over there, wouldn't have been any question
7 about it. Now, what opposing counsel has accused me of
8 doing is wanting to do this. He just wants to write it
9 right out of there, make it like it's not there. No,
10 that's what I want to do at all, that's not what I want to
11 do at all. It's there. That language is there. That
12 language is there.

13 What I want you to do, what I'm asking you to do is
14 think about the evidence that you heard and what this
15 language meant in light of what the parties really did.
16 Okay. It's dated December 15th, 2004. It was handwritten
17 in there. Both of the parties knew that an option
18 agreement had not been entered into yet. And yet, P. J.
19 went ahead and asked Bob to go ahead and sign this because
20 he needed it for the DHS closing. Now, you heard
21 Mr. Richardson testify that no, he didn't -- that really
22 the DHS closing, that wasn't the main reason for it. The
23 main reason for it is he thought it was part of this
24 three-legged agreement that the parties reached in
25 Atlanta. That's what we were going to do.

1 Well, I am sure that I didn't beat this to death when
2 I went over it with them the other day. Because when I
3 took his deposition back in May before he was preparing
4 for trial, and I ask him an open-ended question, no
5 leading question -- I mean, we always talk about leading
6 questions all the time. That means isn't it true that you
7 did this because of that. The question I ask him in his
8 deposition was, Why was the document prepared? And he
9 could have told me anything. He could have told me, well,
10 we got the three-legged agreement. It's all part of the
11 three-legged agreement. But at the time, when I ask him,
12 I said, Okay, tell me what you recall about this
13 agreement, who prepared it?

14 His answer was, I don't know.

15 And I said, Why did you prepare it? Why did you ask
16 him to prepare it?

17 He said, I don't know. I might have. I don't the
18 exact words he used, but at that point, you know, we were
19 getting down to crunch time with DHS. Well, to make this
20 whole thing just go a lot easier -- ownership, it was just
21 going to be easier to just have Bob (inaudible). My
22 comment, as you remember earlier, was we did a lot more
23 paperwork in the last year of this relationship that was
24 done prior. This document, I believe, was done at the
25 very end just to make the sell more effective than

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APP_0696

1 anything else. I asked (inaudible) yeah, sure it wasn't a
2 problem.

3 Well, ladies and gentlemen, I ask you when you have
4 to think about what really happened here, look back at
5 what Mr. Richardson said when I asked him the question,
6 the open-ended question in May, and haven't prepared for
7 trial yet. Haven't put all the pieces together, what he
8 needed to say to try to make a case. It's his honest
9 answer at that time I asked Bob to sign this because I had
10 a sale coming up. I had a sale coming up with DHS.
11 There's been a fair amount of testimony in the case from
12 Mr. Richardson that he didn't really need these for DHS.
13 He was already the sole stockholder. Testimony from
14 Mr. Barry Harper that he didn't care about that at all
15 because there were just strictly the sole stockholder of
16 each other -- sole stockholders in each other's companies.
17 So this agreement really wasn't necessary.

18 Well, the problem is at the time P. J. thought it was
19 and P. J. asked Bob to sign it. And you saw the email,
20 November 13th, that said don't forget to sign the
21 termination and release and send it back to me. That's
22 what he said, don't forget to sign it and send it back to
23 me. He wanted it at the time because of the DHS sale.
24 Well, if it wasn't necessary for closing, why did he want
25 it? Well, because he knew Bob. Bob's a pretty active

1 guy. Bob likes to be involved in things. Bob likes to
2 know what's going on. And if you think for a second that
3 if Bob had not understood that he had terminated all his
4 rights in Reeves, if he hadn't thought that, Bob would
5 have asserted his rights under the 2000 agreement. Said,
6 P. J., I need my stock because I want to know what's going
7 on. If, basically, you're converting this into cash, I
8 want to talk to him. I want to know what the cash is. I
9 want to know what the terms of deal are. I want to know
10 what's going on.

11 Well, Bob didn't do that because Bob thought he
12 signed away his rights, which he was allowed to do because
13 that's what he thought the deal was, that's what he
14 thought the agreement was. But that's why Bob didn't take
15 any further action. You heard testimony about going
16 forward, a very, very long time went by. And would become
17 very obvious to the people on P. J.'s side that Bob and
18 his lawyer, Curt, thought that there was not an operating
19 agreement between them that they understood. They thought
20 there wasn't any sort of agreement between them because
21 they were trying to negotiate something new. So they --
22 Bob sends an email and says we've got a deal for you we'd
23 like to propose at this level. And we never got a
24 response back that says what are you talking about. We've
25 already got a contract. We have the right to give you 7

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APP_0698

1 1/2 percent of the proceeds from the sale of Reeves and
2 you're supposed to take it and send us 7 1/2 percent.

3 Why are you telling us the stock prices just went up
4 to \$912,000. They didn't do that. They didn't tell us
5 that at all. Well, why? Well, I mean, you heard it real,
6 real clearly yesterday in deposition testimony. Once it
7 was realized on P. J.'s side by his lawyer, the picture
8 you saw up there yesterday, once Eric realized that there
9 was obviously a dispute between the parties as to what the
10 status of their negotiations were, Eric said, we decided
11 not to tell Bob because he was helping us. We were afraid
12 it would make him mad. Folks, I got to tell you, that's
13 not right. That's not a right thing to do. If you know
14 that somebody that you're talking to has a different
15 understanding of a relationship than you do and you keep
16 your mouth shut about it, that's not fair. That's not
17 fair. That's not right. They knew this agreement had
18 been signed. They knew this agreement had been signed.
19 They knew that Bob and Curt, from their emails, thought
20 there was not a present obligation, but that they were
21 simply talking about something they were going to do in
22 the future.

23 It's not okay for Eric Orlinsky, P. J.'s lawyer, and
24 P. J. and James Harris and Ed Kidner and all those people
25 not to say whoa, whoa, whoa, whoa, let's have a meeting at

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APP_0699

1 Stax. Let's go to Stax and work this out. We've,
2 obviously, got a misunderstanding. You all seem to think
3 there's not an agreement, we think there is. No, they
4 didn't and they did it on purpose. They kept their mouths
5 shut on purpose because Bob Castellani was helping them
6 out. He was already doing something for them and they
7 were afraid that if they told him, no, we have a different
8 understanding of this. We think we have a deal that's
9 very favorable to us, Bob would not help them anymore, so
10 they kept their mouth shut.

11 As you understand, a couple of years went by. It was
12 April 17th, 2007. And all of a sudden, out of the blue,
13 we get this letter from Mr. Orlinsky. The man who decided
14 to play -- play quiet, be quiet and not say anything
15 because he needed what Bob could do for him. He wrote to
16 him out of the blue and said, Oh, guess what, we desire to
17 exercise our right to purchase 7 1/2 percent of the common
18 stock of NARP for a penny a share. We have an agreement
19 to do that. I think, as you heard, that was news to our
20 camp. I mean, that was news to our camp. We didn't know
21 that he thought that there was an option to purchase
22 shares. We didn't know that he thought that there was an
23 agreement out there for him to be allowed to purchase
24 shares. I wonder how come he thought that? I wonder how
25 come he thought there was not an option in place to

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APP_0700

1 purchase shares?

2 Well, the reason for that, as you've seen, is there
3 wasn't one. There wasn't one at all. You see, Curt
4 Stodghill had prepared a draft option that had terms in
5 it. But he didn't send it to P. J. to talk about his
6 right to buy for a penny a share as long as it was equal
7 to 7 1/2 percent of the common capital stock outstanding
8 on the date of the agreement. And it said in there that
9 was all he could get and it was going to be at a penny a
10 share. Well, P. J.'s lawyer sent back -- and again, this
11 is the black line of what he sent back. He sent back an
12 agreement with entirely different terms in it. It says,
13 Exercise price at one penny.

14 Now, the point is going to be made, most likely, that
15 the difference a penny for the whole thing and a penny for
16 share for however much 7 1/2 percent was is not an
17 enormous difference. It's not. It's not. But it's a
18 difference. The bigger difference of this was that Mr.
19 Richardson's lawyer had added the sentence, Subject to
20 adjustment as provided from herein. That was the big
21 difference. It's a difference of the amount of stock he
22 would be able to get under the option. Under the idea
23 that had been flooded by Mr. Stodghill on behalf of NARP,
24 the amount of stock that P. J. would have been able to buy
25 had they agreed to an option would have been 7 1/2 percent

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APP_0701

1 of the stock outstanding on the day the option agreement
2 was entered into.

3 The agreement proposed by Mr. Richardson's lawyer,
4 Mr. Manning, said no, it's got to be adjustable. It's got
5 to adjustable so that P. J. would always own 7 1/2 percent
6 of the stock. Well, that's fine if that's what P. J.
7 wants. We just didn't agree to it. We just didn't agree
8 to it. That's okay. He has an absolute right to go into
9 a negotiation and say this is what I want done. This is
10 how I want it. But I think what's being missed over here
11 by that side is we have the same right. We have the same
12 right to say we appreciate your suggestions. We honor you
13 and we think you're great. But that's just not what we
14 want to do, so let's keep working. So as I say, you can
15 kind of imagine the shock on April 17th when a letter
16 shows up that says, We got a right to buy for a penny a
17 share.

18 Like I said, folks, a great deal has been made in
19 this case about well, this lawsuit showed up. And it
20 showed up on Father's Day. I will tell you this, I am
21 very, very sorry it showed up on Father's Day. That's
22 something that you hire a process server, someone else to
23 do. You hire an independent party to do that. I'm sorry,
24 that that happened. But understand, as we talked about
25 with Mrs. Richardson this morning, this is not exactly an

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APP_0702

1 invitation to a clam bake, okay. This is something that
2 any corporation, any business would understand is a
3 threat. Any business would understand that if you see a
4 letter like that, it's telling you we have a right and
5 we're going to assert it. When somebody's asserting a
6 right against your company, right to own 7 1/2 percent of
7 your company, it's not that unusual for that company to
8 say I need to seek protection of the courts. I need to
9 ask the court to come in and help us figure out what we're
10 doing here. And it is that that brought us here all
11 together today.

12 I think you'll be informed at some point that the law
13 is that a contract is a meeting of the minds. It's when
14 the parties finally agreed on something that they're going
15 to do together. They finally agree that okay, we got
16 something we want to do and we not only agree to do it, we
17 agree upon how we're going to do it. Again, I have a
18 contract, I want to buy his house. Okay, I'm going to buy
19 your house. Do we have a contract? No. What if I want
20 to pay \$100,000 for his house and he wants \$150,000.
21 Easy, we go to court, right? And we force him to accept
22 my deal, right? No, of course not. He has to agree to
23 it. We both have to agree to the terms of it in order for
24 there to be a contract. This is not a situation in which
25 Mr. Richardson has the right to say this is how I wanted

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APP_0703

1 to do it and this is what we're going to do.

2 Now, we talked a lot about the meeting of the minds.
3 The fact that there has to be a meeting of the minds. I
4 think that I have presented this enough. I presented it
5 twice and I don't want to do overkill here. They've had a
6 very, very difficult time. And we have a friendly
7 relationship, by the way. I don't think you can tell, but
8 we really do. Have up to this point and I think we still
9 will. They had difficult time even in their own minds,
10 much less showing that they had a meeting of the minds
11 with Bob Castellani. And here's what I mean. This was
12 the initial claim. We have an option to purchase for a
13 penny a share. And the option -- we asked them what are
14 you relying on? They relied on that unsigned document.
15 That document was only signed by P. J. That's what they
16 said. That's what we have a right to do.

17 Well, as we got into the case and we took
18 depositions -- and if you weren't familiar with
19 depositions before, I'm sure you are now, but it's an
20 opportunity for lawyers to sit and question witnesses in
21 the case outside of court. Once we took depositions in
22 this thing, we found out that now P. J. knew that Bob
23 hadn't signed that, P. J. knew Bob hadn't agreed to it.
24 And, actually, there were a lot of people that didn't know
25 P. J. had signed that until this case was brought. Bob

1 didn't know it. Bob had never seen the signed version of
2 that document until this case was brought. So they okay,
3 okay, we need to change our story and that's what they
4 did. They filed an amended complaint and they changed
5 their story completely. And their story said ah, it was a
6 three-part agreement, a three-part agreement, that's what
7 it was. We had this meeting in Atlanta and Bob was going
8 to take cash. Now, I remember. Now, I remember. Bob was
9 going to take cash, 7 1/2 percent from the sale of Reeves.
10 P. J. gets an option for a penny a share and we're going
11 to terminate the agreement. Totally slipped our minds,
12 that's what this was all about.

13 Well, it was pointed out to them that the parties had
14 never agreed upon an option agreement. See, there's lots
15 of things in an option that has to be agreed to. What's
16 the price going to be? How long does it last? How much
17 stock do you get to get for it? What do you have to have
18 in order to do the option? There's lots of things. Well,
19 when we pointed out to them that what they said in that
20 second pleading -- I don't know if you need me to put all
21 this up or not. When we pointed out to them, he said,
22 Well, that wasn't true. During this meeting Richardson
23 agreed he reached a new agreement. Castellani agreed to
24 waive his interest in Reeves in exchange for 7 1/2 percent
25 of the proceeds of the sale of Reeves, which was

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APP_0705

1 imminently to occur.

2 And the parties memorialized the 7 1/2 percent
3 interest contemplated by this agreement in a document
4 entitled Stock Option Agreement dated October 4th, 2004.
5 What are y'all talking about? We were kind of past that
6 point already. Didn't we have an agreement that P. J. was
7 the only person who ever signed that? Bob didn't ever
8 agree to it. You're right. You're right. You're right.
9 Now, we remember. Now, we remember. Here's what
10 happened. Strike that. Here's what happened. We reached
11 the agreement after Atlanta that we were going to enter
12 into an option agreement and Bob was going to take 7 1/2
13 percent of the proceeds. And that's what they put in
14 their revised answer and counterclaim.

15 That was the next version of this. That was the next
16 version. Yeah, yeah, we reached the agreement after
17 Atlanta. I'm sorry. Bob was going to take 7 1/2 percent.
18 We were going to agree to an option and he promised he
19 would do the option for a penny a share. Guys, that's not
20 true either. Don't you remember we've taken depositions
21 and Rod Manning said, yeah, we were talking about doing an
22 agreement, but we never quite got it done. We didn't
23 quite agree on things. And also, Bob never agreed to
24 accept cash. Bob never agreed to accept the cash. You're
25 right. You're right. You're right. Sorry, sorry, sorry,

1 sorry, sorry. Here's what happened. Charitable trust.
2 There was going to be a charitable trust and that's what
3 we agreed to. We agreed to do the charitable trust.
4 P. J.'s going to get an option, okay. That's what
5 happened.

6 I am sure that I looked a little disorganized the
7 other day when I was taking Mr. Richardson's testimony.
8 The reason I did is I was blown out of the water listening
9 to him testify that well, they talked about that, but they
10 never finally agreed to that either. I knew that was the
11 case because I've been involved in this. I've been
12 involved in this case rather closely for about a year.
13 But after all this, all these pleadings, all these things
14 that went on, Mr. Richardson sits there and says
15 three-legged stool, yeah. Well, the only thing we got
16 done was the termination agreement. I didn't agree to do
17 the charitable trust and the only way Bob had ever
18 promised for me to get an option was to -- was if I did
19 the charitable trust or if I did the Dobson deal. I'll be
20 real honest with you, I had a difficult time gathering
21 myself after he said that. Because it's in the pleadings.
22 It was in what they filed with the court that that was the
23 agreement, that was what the parties agreed upon and NARP
24 breached that agreement. NARP didn't give them the option
25 agreement.

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APP_0707

1 And here Mr. Richardson is sitting here telling under
2 oath in open court, we actually never got that done. We
3 only agreed to the termination part. Folks, what I'm
4 telling you is they're trying to prove -- they have the
5 burden of proof. They're telling you that Bob has a --
6 Bob and his company has a contractual obligation to give
7 him 7 1/2 percent of the stock of their company, that
8 there was a meeting of the minds. Folks, I tell you, they
9 haven't had a meeting of their own minds. They really,
10 really haven't. They've just now gotten to the story that
11 they stuck with for more than a little while. Well, how
12 can it be that they -- it took them over a year to
13 articulate what the agreement was? Bob Castellani
14 understood and agreed with their version of the facts all
15 along. That's what they're telling you. That's what they
16 have to have you believe. That's what they have to have
17 you believe. Is that Bob Castellani agreed with their
18 version of this all along.

19 I think it's real, real clear in the record at this
20 point, that after the parties left Atlanta or in Atlanta,
21 what they were talking about doing was negotiating
22 something in the future. There was not an agreement that
23 all the parties came together to agree to after the
24 meeting in Atlanta about doing something new. Now, I'm
25 sorry, but there just wasn't. And I believe

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APP_0708

1 Mr. Richardson testified -- he might have testified as
2 much as four times about this. And I kept asking him and
3 Mr. Stillwell kept asking him and I kept asking him.
4 Because I was kind of surprised because I thought that was
5 their claim, that's what it said in his pleadings. We had
6 this agreement in Atlanta and Bob breached it. So no,
7 folks, there was not anything after Atlanta. There just
8 wasn't.

9 The Agreement of Termination, Settlement and Release,
10 and I'll talk about that a little bit further in the
11 future, but this three-legged agreement, there wasn't one
12 because Mr. Richardson didn't want to do it. He didn't
13 want to do this. It's been an awful lot of testimony
14 about the Dobson deal and how P. J. didn't want to do the
15 Dobson deal. Folks, the purpose of this case, why P. J.
16 didn't want to do it is irrelevant. He's free not to do
17 it. He didn't have to do it. We didn't bring an action
18 to court forcing him to do the Dobson deal. What you read
19 was an email from Bob -- you read an email from Bob where
20 he said I've already had to do other things to cover my
21 share of the settlement agreement. And putting in quotes,
22 my share. I asked Bob, Why did you put my share in
23 quotes? He said, we were still negotiating about doing
24 something and I had to tell P. J., P. J., this has gone on
25 too long. I can't -- I can't keep doing this. I'm going

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1 to have to do something else because you won't come to the
2 table. You won't come to the table and get this done. Of
3 course, we found out later why, a couple reasons why P. J.
4 wouldn't come to the table and get this done. One of
5 them, most importantly, was he's under a non-compete
6 agreement with DHS.

7 Now, after this is all over, I'm sure all you will go
8 out and get some Martin's Ice Cream, whatever that is, but
9 he did the structure, it's called Martin's Ice Cream
10 structure. And in order -- that's a perfectly legitimate
11 good thing to do. But the reason you do it is you can
12 have most of the gain or a lot of the gain allocated to
13 you personally and part of it to the company. And that
14 way, it lowers your taxes. That way, you don't have to
15 pay as much income taxes. That's fine. What Mr. Kidner-
16 testified to was that in order to do that, in order to do
17 that, you need to justify this to the IRS. And it's
18 legitimate to have a non-compete agreement. Because that
19 is evidence of the fact that you are -- you are valuable
20 personally and it's not just the stuff you own. But what
21 they're willing to pay for is your know how and your
22 goodwill and that's fine. But, folks, P. J. had signed a
23 non-compete agreement and his lawyer had said to him, I
24 think this non-compete agreement, you probably ought not
25 to undertake any steps to acquire NARP at this point

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APP_0710

1 because I'm concerned your competitor.

2 Now, you heard testimony from the other side. You've
3 heard a lot of evidence that said they're not competitors,
4 there's no proof their competitors. We respectfully
5 disagree, but that's not the point. That doesn't matter.
6 What matters is his lawyer thought they were competitors.
7 His lawyer said to him, basically, you're disabled from
8 performing any sort of agreement to acquire the stock of
9 NARP. You don't have the ability to do that right now.
10 We're going to have to put it on hold. Also, he was in a
11 lawsuit with DHS and had disputes with DHS. So he wasn't
12 in a position -- he wasn't able to try to do a contract
13 with Bob. Well, folks, that's fine, but if you can't do a
14 contract, you can't come sue us later and say, you were
15 supposed to do a contract with me. Well, we tried to, but
16 you couldn't do one. I can hear the wheels turning over
17 there. What you talking about, you sued us, we didn't sue
18 you. Technically, that's true, but what we did is we came
19 to court and said we need for the court to declare our
20 rights. That's all we did. We came to the court
21 initially and said we need for you to declare our rights.

22 I want to talk to you just a little bit about the
23 fact, why did I say what Mr. Richardson wanted was to not
24 just have his cake and eat it, too? He actually wanted to
25 have his cake, eat it, then get a better cake. Because,

1 folks, what he's asking you here to do today is to give
2 him stock that is worth a whole lot more than it was when
3 he was talking about making a swap with Bob. That's not
4 fair. That was never their deal. That was never their
5 deal. Their deal was you give me a percentage of your
6 company, I'll give you a percentage of my company and
7 we'll ride it out together. That was the original deal.
8 That was the original cake. Well, he ate his cake because
9 he sold his company and he got the money.

10 Once again, that's fine to do that. But he really
11 didn't offer any of the money to us. And you'll hear oh,
12 yeah, he offered it. Folks, he took the money and put it
13 in his own bank account. He didn't put it in a separate
14 fund. He didn't put in a separate trust account. It's
15 sitting in his own bank account. And, folks, what he's
16 asking you all to do for him today is to put him in a
17 situation that is completely unfair. Bob's company is
18 doing well. He's -- his company has done very, very well.
19 But it might not have. It didn't have to. He might have
20 lost money. He might still lose money. You heard
21 testimony that last week it was worth a whole lot more
22 than it is today. So Bob had a bad weekend. I'd like to
23 have such a bad weekend, but, you know, still, losing half
24 your value in basically an afternoon, that's kind of
25 tough. What P. J. is asking for you to do today is to let

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1 him have missed the ride. Give him the rewards of a risk
2 investment having never put the money in.

3 Let me talk to you a little bit quickly about
4 fiduciary duty. P. J. was a member of the Board of
5 Directors at the time he asked for Bob to sign the
6 Agreement of Termination, Settlement and Release. He was
7 a member of the Board of Directors. We were mad about it.
8 We were hot about it because there was a provision that
9 was in here that said -- that reserved for P. J. the
10 reference to an option to be entered into in the future
11 and nothing there for Bob. We didn't worry about it too
12 much because we saw this as a termination and agreement to
13 agree. We saw this as an agreement between the parties
14 that they agreed to terminate all their rights and they
15 were going to try to negotiate a new agreement in the
16 future. Just like P. J. said, Yeah, we were hot about it
17 at first, but when we stepped back and looked at it, it
18 was not that bad.

19 Why did we sue him for breach of fiduciary duty?
20 Well, he shows up two years later and says I have an
21 option to purchase 7 1/2 percent of the stock for a penny
22 a share, here it is. A document we've never seen.
23 Document we've never seen it. Yeah, we were kind of
24 shocked at first. It shocked everybody at first. What's
25 the meaning of this? What does this mean? We came to

1 court -- we even came to court to seek protection. What
2 we also found out is that during the course of this, P. J.
3 had known that Bob knew there wasn't an agreement. He
4 failed to disclose to Bob, he failed to disclose to Bob
5 the fact that he thought that there was an agreement. .
6 Now, had he had done that accidentally, misunderstanding,
7 that would be one thing. What you heard from Mr. Orlinsky
8 was that wasn't an accident. That wasn't an accident at
9 all. He did it on purpose. And that's one of the reasons
10 -- one of the things we're going to ask y'all to do is to
11 find that Bob detrimentally relied on the termination. He
12 believe it was there. He believed that he had terminated
13 his rights in Reeves. They had a different belief. They
14 knew that's what Bob believed and they didn't say
15 anything. And it's not fair for them to get to come back
16 two years later and go whoops, this isn't any good. By
17 the way, we own 7 1/2 percent of your company.

18 I'm going to sit down for a little while and let
19 Mr. Stillwell talk. I want you to bear something in mind,
20 though. This is a contract case. This is a case about
21 people having an agreement with each other. This is not a
22 case about somebody deserving something. Okay. This is
23 not a case about people deserving things. This is a
24 contract case. This is about whether or not two people
25 and their companies entered into an enforceable agreement

Closing Statement - Stillwell

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1 to do something or not to do something. It doesn't go
2 beyond that. We have to respect agreements. We also have
3 to not create agreements when there are not any. Like I
4 said; P. J. not only wants to have his cake and eat it
5 too, he kind of wants a better cake. He's coming to you
6 and telling you Bob wouldn't do what I wanted him to. You
7 make him do what I want him to do. You make him do it.
8 He didn't want to do it my way, you make him do it my way.
9 I will be back in just a little bit to close. Thank you
10 very, very much for your attention.

11 THE COURT: All right. Mr. Stillwell.

12 MR. STILLWELL: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 CLOSING STATEMENT

15 MR. STILLWELL: Remember I told you when we started
16 that it was the hard part of a case because I didn't get
17 to testify? This is my favorite part of a trial. This is
18 where I potentially get to testify. I mean, I'm arguing,
19 but I just -- you know, I talked before and I had all the
20 cards down there on the board. I said, I'm going to lay
21 all the cards out on the table and you're going to look at
22 some of them and say I don't know what to do with that, I
23 don't know what to do with that, this one doesn't matter,
24 I get that one, I get that one. If I put them together, I
25 can tell a story here. So we're going to tell the story a

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APP_0715

1 little bit just a recap because I know y'all have heard a
2 lot of evidence.

3 You know, all this stuff on this board, that didn't
4 come to us over night. We have been playing catch up in
5 this case from the minute they dropped this suit on us in
6 South Carolina. But you know what, the tables have turned
7 this week. We caught them and now this is the time that
8 you can do something about it. All those facts that
9 Mr. Stodghill had in his three-page, single-space letter,
10 it took us a while to figure those out. But you know what
11 we were doing that they weren't doing, we were listening.
12 We weren't just reading the stacks of pleadings. You see
13 this right here? This is the pleadings in this case. I
14 think you've seen enough of them for the rest of your
15 life, but those are my pleadings file. Okay. Those last
16 pleadings that Mr. Ellis keeps showing you, those were
17 filled after he put that fiduciary duty claim in there.
18 Again, because he needed to put some of our skin in the
19 game.

20 So Mr. Davis and I had to answer it. Mr. Ellis and I
21 were in Baltimore then talking to some of these fine
22 gentlemen that we're going to talk about. When I came
23 back, lawyers being lawyers, sometimes we like to edit
24 things that our partners do because we can't help
25 ourselves. There's plenty of pleadings to go around. But

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1 we're going to tell you the facts, talk about ones, let
2 you sort them out.

3 The Judge is going to tell you the law. It's going
4 to be confusing, it's going to be a lot of it. But y'all
5 are going to be the ones to figure out the story and we're
6 going to ask you to do something about it.

7 One of the reasons I love being in here, in
8 Greenville Court, in this courtroom, is this building
9 predates some of you. It used to be a lawyers' building.
10 Right where this hall runs like this, it used to be an old
11 building called the lawyer's building. And my dad's
12 office was like right here. I mean, if they hadn't
13 bulldozed it down, it may have been right here. There
14 weren't a whole bunch of lawyers here. It was before big
15 firms, so it was a couple of lawyers together, one or two.
16 My dad taught me one thing early, he said, you know, son,
17 the courthouse is not a place for which you come to seek
18 redemption. If you want redemption, you go across the
19 street over there to the church. The courthouse is also
20 not a place where you come to find vindication. It's not
21 a place where you come to prove that you're right. It's
22 not a place to come just to say I'm right and you're wrong
23 and they will tell me that. This place is about justice.
24 This is about doing what's right and doing what's fair.

25 Now, the Judge only gave me an hour, but I promise I

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APP_0717

1 will not go that long. Because if I do, it's too much.
2 You know, I told you my wife is y'all's best friend
3 because she made me throw out half the opening. Well, she
4 also taught me what this case is about and that is about
5 people. It's not about all this lawyer stuff as Billie
6 said. It's not about all these pleadings and about all
7 these documents that nobody's going to understand. It's
8 about the people and what got them here today. Okay.

9 Two most important things about a relationship. My
10 wife gave me this before I walked out the door Monday
11 morning. Trust and communication. There used to be
12 trust. There used to be communication. There is no
13 trust. There is no communication. Look at us. Sitting
14 behind these tables with all these boxes and all these
15 lawyers slamming around. It didn't have to be that way.
16 Didn't have to be that way.

17 Now, I got a little Powerpoint here put together to
18 go through some of the facts of how this works, okay. And
19 I'm going to scoot through it a little bit so we can come
20 back to this board and try to sum all this up. Okay.
21 Remember, we did not -- is that right is that part. I
22 don't know what just declare your rights mean, but it
23 obviously meant something more to P. J. and Billie when
24 they got sued by one of their oldest friends, okay. I
25 don't think anybody other than the lawyers can believe

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APP_0718

1 it's just a friendly lawsuit. Have your cake and eat it
2 too. You know, this case is not about money. It's really
3 not. There's plenty of cake over here. All these people
4 got lots of money. It's not about money. Some of it is
5 about vindication.

6 But you know what, like I said, it's like one of my
7 partners was in here the other day, he's a divorce lawyer,
8 and he said, What's this case about? And I said, well, we
9 say it's a shareholder dispute. They say it's not a
10 shareholder dispute. But it feels more like a family law
11 case to me. When you hear Bob and Billie up there talking
12 about how they felt about each other and how they worked
13 together and shared together, this is a people case. It's
14 not about the money. Unfortunately, in this system, the
15 money is the only thing you can do anything about. You
16 can't patch up the feelings from the jury box. So we're
17 going to talk about money later, but I don't think it's
18 actually about money on either side. It about what's
19 right. It's about doing what you promised to do. You're
20 going to have more contract law than you can ever handle.
21 It's about like for like. Doing what you promise to do.

22 Let's start right here. Who is the Reeves Group?
23 Mr. Reeves, Mrs. Reeves, and then Bob. They used to be a
24 group, now they're a group of lawyers. Used to be Bob
25 proudly had right underneath NARP, a member of the Reeves

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1 Group. Now, he doesn't want anything to do with it. He
2 says yeah, that doesn't really actually mean what it says.
3 Remember I talked about Billie's story about Frankie
4 Valley and the Four Seasons? This is right off their
5 internet. Those are them right there. This is Frankie
6 Valley. This guy is actually a song writer who's in
7 there. They have a handshake agreement. Like for like.
8 We'll share it all down the line. And it worked. That's
9 a relationship that sustained itself. That 37-year
10 marriage. This is a story of a handshake deal gone bad.
11 Let do to Castellani so flayers. I thought it might be
12 helpful for you to actually see them all up there. I know
13 Ed Kidner would be happy to see this picture looking like
14 that. There's Rod Manning, who wasn't here. He had
15 family matters. That's obviously something more
16 important. That's Eric from Maryland. Rick Kohr, who's
17 the investment guy. That's James Harris. That's my
18 associate and playing Barry Harper, that's Brad. We just
19 had a little fill-in there.

20 Let's just kind of look at what each of these guys
21 said. I mean, they weren't all here. It's confusing to
22 talk about the deposition testimony and it's hard to
23 digest. I'm just going to give you some high points.
24 Well, you can see Mandy made some edits and missed a few
25 right there. So all things are not perfect. Rod Manning,

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1 he's P. J.'s old friend from Regal. His lawyer for many,
2 many years. He worked on the Reeves Group with Bob,
3 worked on it with P.J. together. Eventually, Bob had to
4 get his own lawyer. And this is where they had the
5 meeting in Atlanta. He the one that talked to you about
6 simultaneous closing. Why do we only have some signatures
7 and not others? And where is Bob's share of the money
8 mentioned? He's the one who said simultaneous closing.
9 Here's Bob's piece of the leg, a check. You give me the
10 check and I'll give you the signature. Where is that last
11 signature on that option agreement? Check, signature.
12 Simultaneous closing, that's how it's going to work.

13 You know, this doesn't have to be that complicated.
14 You remember I told you, if you don't understand anything
15 down there, you're not the only one. Okay. One side
16 would be happy if this were simple. The other would be
17 happy if it never added up to anything. That's the
18 three-legged stool. That's actually the name we gave it.
19 He calls a tri-part type agreement, well, I think it's a
20 little easier to think about as a three-legged stool. He
21 talks about the three legs, the option, the termination
22 and the charitable donation. You know what's important,
23 down here, they keep saying that's got to be the Dobson
24 deal right there. Did anybody even know whether the
25 Dobson deal was on the table in Atlanta or not? Nobody

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1 even knows what it was then. It was just giving money to
2 charity. But P. J. clearly said, if you don't want to
3 take the money because you don't want to pay tax on it,
4 which is a fun matter, I'll give the money to charity,
5 fine, that's fine. But this whole transaction we'll try
6 to go through a little bit later about donation on one
7 side and donation on that side and purchase in between,
8 deductions on both sides. Huh-uh, that's nothing that Rod
9 Manning or P. J. ever talked about in Atlanta.

10 Next.

11 What's going on with that, Mandy? Did I lose my
12 battery?

13 Barry. Barry Harper. A younger and better Barry
14 Harper. Barry Harper is playing golf up in Gettysburg,
15 Pennsylvania everyday, so he's probably glad that Brad's
16 got a better picture. This was P. J.'s point man during
17 the DHS sale. And I think the parts that were important
18 in that deposition he actually read twice, he knew about
19 the 7 1/2 agreement, the modified 2000 agreement. He
20 never saw the paper, but he knew about it. He said it
21 didn't matter to DHS, to the deal. The way they were
22 doing. Now, you'll hear them saying you had to have it,
23 you had to have it. Did you? Is that a question that's
24 completely up in the air? I mean, that's the whole thing.
25 He said -- and he's the point man and he said it didn't

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APP_0722

1 matter. He said the only thing that mattered was if they
2 owned stock in each other. If they didn't own stock in
3 each other, it didn't matter. There's no question nobody
4 ever issues any stock.

5 Rick Kohr, this part about that Bob -- you can see
6 how Bob earlier today like when I put up that report and
7 it had the NARP sticker on it. He did not like that
8 report because it said that NARP and Reeves were not
9 direct or indirect competitors, okay. What is in P. J.'s
10 (inaudible)? Did we ever look at it? I don't know if we
11 did, but over here in the stack of exhibits you're going
12 to get, it says you can't compete with anybody that's one
13 of our direct or indirect competitors. That report right
14 there on NARP says they are not direct or indirect
15 competitors. So whatever Mr. Orlinsky thought is
16 something that he might have worried about DHS would throw
17 on these poor people, it didn't mean it's actually the
18 facts. It might not stop DHS from whacking them with it,
19 but it didn't make it true. He said Reeves could have
20 sold with Bob still at 7 1/2 percent of the company.
21 That's another thing they just want to tell you, this is
22 what it is. This is what it is. You can't do it this
23 way. You can't do it this way. That's not what any of
24 these people said.

25 Ed Kidner said the same thing as Rick Kohr on the tax

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APP_0723

1 structure and whether or not Bob had to be out to sell the
2 company. He said you could do it either way, not
3 essential. He said the Dobson deal made him nervous.
4 You can see how when the tape was rolling he said it made
5 him nervous. You can tell he was being conservative about
6 that. He said what made him nervous about it was I was
7 not sure what evaluation they were going to use on the
8 other side of the transaction. We looked at a couple of
9 evaluations, like the one that tripled in a single day.
10 Maybe Mr. Kidner's suspicions were well founded.

11 Eric Orlinsky. He's lawyer who replaced Rod. The
12 one that, eventually, up in Maryland that did the DHS deal
13 and then he was working with Mr. Stodghill. He said DHS
14 never saw that termination. Nothing we needed from DHS.
15 He knew Bob and P. J. had a mutual ownership issue. He
16 knew that they had an interest in each other. And that it
17 was decided on between the two of them. That's what he
18 said, he knew about it. He's the guy who closed the DHS
19 sale. It did not bother him. It did not matter. What
20 did he say about the Dobson deal? This is the final guy
21 that looked at Dobson and it probably impressed him
22 exactly as it impresses you. What? What? He said -- and
23 Bernie said well, you can reject it for whatever reason
24 you want. Yeah, if you're worried about committing tax
25 fraud being involved in that, that's a pretty good reason.

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1 Y'all, where's Curt Stodghill? I have tried a few
2 cases in my life. I have never seen one of the principle
3 witnesses in the whole case sit in the courtroom all week
4 long and sit back there along on the bench while all us
5 lawyers are up here working as hard as we can. Poor, Mr.
6 Ellis, he's beside himself, tired and I'm right there with
7 him. Got another lawyer back there who started this suit.
8 Do you remember how he sent that letter and he attached
9 that little thank you and please letter? I mean,
10 complaint on the back, put himself right up on the
11 pleading. Came and watched the show, never bothered to
12 tell you what's going on. One of the four men that sat
13 there at that table in Atlanta, Rod, P. J., Bob, Curt.
14 Why did they not put Curt up? What was he going to say?
15 Maybe we'll never know. But you know, Lane and I knew.
16 You might suspect, we took Curt's deposition. Maybe they
17 didn't put Curt up there because they knew what was in
18 that deposition. You think I got ready for Bob
19 Castellani, you should have seen how Lane got ready for
20 Curt Stodghill. He knew it was going to be entertaining.
21 It wasn't going to be pleasant but it was going to be
22 entertaining. But y'all will never know what's in there.
23 We're going to look a little bit on that theme of
24 that was then, this is now, okay. We went through
25 Mr. Castellani's stuff. He said the parties were not

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1 owners in the each other's company. Y'all, I've got no
2 idea why they won't admit they were owners in each other's
3 companies under that 2000 agreement. Why he changed his
4 testimony between August and July was like manna from
5 heaven for me because that's an easy point. They called
6 themselves owners. They always said that. He said that
7 in July. But he could not bring himself to say it. Why
8 not? Why is it important to him enough to change his
9 testimony inside a single month? Because if the parties
10 do not have an agreement in Atlanta, we go back to the
11 agreement we had when P. J. got off the plane that day.
12 And they start looking at their pleadings and going uh-oh,
13 we might kill this termination agreement or we might not
14 have just this termination agreement with nothing else in
15 it, we might kill this and we fall back to where we used
16 to be when we left the Charleston beach house, 7 1/2 for 7
17 1/2. This is their drop back plan. There was no
18 ownership interest.

19 Now, they got about six others because Mr. Ellis is a
20 good lawyer. They got oh, he couldn't do it, he's
21 disabled. He abandoned it. He did this. He did that.
22 Huh-uh. Huh-uh. They hate that if there is not an
23 agreement on that board, there's one right here. I should
24 have a little single line thing that says right there
25 October 29th, 7 a.m. or whatever, P. J. getting off the

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APP_0726

1 plane. Because that's the agreement that they can't deal
2 with. That's the one that's giving Mr. Ellis too many
3 problems trying to understand what's going on in the
4 facts. Not the pleadings, in the facts.

5 We took Rod Manning's deposition, the first man in
6 this case. That hit the table first. I don't know why he
7 didn't understand it. Maybe he just wasn't listening to
8 it. Here's another one, Curt Stodghill was not making the
9 decisions. I didn't say it, he did. Last month. No
10 interest in Reeves. That's another one we read. Before
11 Atlanta, you still thought you had an interest? Yeah.
12 There's been some confusing testimony here, but still
13 thought you had an interest? Yeah. That was pretty
14 clear. P. J. did not say the termination agreement
15 reflected the parties' Atlanta agreement. He was saying
16 no, when we were up in Stax, he never said that, that he
17 thought that termination agreement was correct with the
18 option in it. And then this is in the middle of a big
19 paragraph. And he didn't say that. He said it was what
20 reflected. It reflects what we talked about in Atlanta.
21 So this wasn't signed. That's hard to decipher, you know
22 what it means? That P. J. thought this thing was correct
23 as it was written with this in there. Do you remember
24 when Bob handed me that little doozie that Curt gave him?
25 Saying that wasn't supposed to be in there, this thing was

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1 made in error? P. J. wouldn't sign. P. J. doesn't see an
2 error in there. He meant that to be in there. There's
3 nothing clearer in this case that what P. J. said I would
4 not have signed that unless it did something to protect my
5 rights. He's sure that there was not -- I'm just going to
6 skip that. Too much confusion.

7 Let's look at some more documents. Here's another
8 document that doesn't mean what it says. The 2000
9 agreement does not mean ownership. I don't know. They
10 said it was ownership all the time. He said it was
11 ownership all the time, in his deposition, in his
12 documents. But now, he can't say they were owners in each
13 other's companies. His own email, we each own 25 percent
14 of the other guy's company. Wow. How can you say that
15 with a straight face? It doesn't mean what he says. Do
16 you remember, Mr. everything, say what you mean, mean what
17 you say? Can't say it straight anymore. That was then
18 this is now.

19 Okay. Right there, it says that they were made in
20 error. P. J. says there's no error in there. There's no
21 error in there. That's why his name is not on the bottom
22 of it. The termination agreement did not mean option.
23 You talk about beating a dead horse, y'all. We talked
24 about at the beginning that these are the paragraphs that
25 matter. Okay. Well, wait a minute. These might be

1 slightly out of order. We'll come back to that. I know
2 y'all can't wait to talk about the termination agreement
3 again. You probably haven't gotten enough of it. Here's
4 P. J. meeting minutes from Atlanta. Where are Bob's
5 notes? Where are Bob's notes? Where are Bob's emails?
6 Look through these documents when you get back there and
7 notice how everything from Bob has got that little note at
8 the bottom that says see Curt Stodghill's office. Okay.

9 MR. ELLIS: Your Honor, I'm going to note an
10 objection to that. That is not in evidence and there is
11 no testimony as to that and it's not true.

12 THE COURT: Is the document in evidence?

13 MR. ELLIS: Your Honor, the documents are in
14 evidence.

15 THE COURT: Mr. Stillwell, are those documents in
16 evidence?

17 MR. STILLWELL: Yes, sir, Your Honor, these are. We
18 talked about this with multiple witnesses. I won't touch
19 it again.

20 THE COURT: I appreciate it. I'm going to allow it.
21 Thank you.

22 MR. STILLWELL: This is a ratification agreement of
23 that termination agreement. Do you remember that? This
24 is after that Bob said he confronted Billie and that Curt
25 was upset about it and chewed him out about it. There's

1 the ratification agreement. And it says, We're good with
2 this termination and release. That's what that says in
3 corporate speak. Okay. It's dated 5th of November. Do
4 you know that's before Bob's signed it? Okay. There was
5 a good bit of testimony about how I signed it and I sent
6 it back on November 8th according to Bob. Then Curt read
7 it, then Curt ratified it. The date is 5 November. They,
8 apparently, with their control ability now can run time
9 back as well.

10 Curt Stodghill. We don't know what he can say about
11 his conversations with Bob or any of that. Let's just
12 talk about -- kind of reset again and start on our
13 timeline a little bit. We're just going to kind of recap
14 the boards in a different form, okay. Started out 25/25,
15 that's easy. It's gets a little more complicated later.
16 Then they amended it to 7 1/2 and 7 1/2 in Charleston.
17 You know, it's important in Charleston that the sale of
18 Reeves is right there on the table. I mean, it comes
19 right up. And the question is did they ever even -- did
20 anybody talk about whether I will issue any stock? Why
21 would you issue stock if you were about to sell one?
22 Nobody ever talked about issuing stock. They talked about
23 one company was going to sell and the other was still
24 going to be there and what we were going to do. And
25 that's what's in that paragraph seven of that 2000

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1 agreement. I think we'll get to that in a second.

2 Now, when they started, Reeves was an established
3 business. Do you see how much it bothered Bob when you
4 talked about Reeves being bigger than NARP? I don't know.
5 It's just a true fact, but it's somewhat of a competition
6 in this case that really bothered him but it was just a
7 fact. NARP is a virtual company. It's only Bob. P. J.
8 was a mentor to Bob. Bob is a hard charter. That may not
9 mean anything to y'all. Hard charter is -- that's a big
10 compliment. Means he is a hard worker. P. J. will say
11 that. I knew this guy was going to make it. Billie can
12 go from feelings between those two.

13 The 2000 agreement, Mr. Ellis liked to get in there
14 and talk about all the commissions and la, la, la, la. I
15 like to look at the people and say, what were they doing?
16 Mentoring, sharing, helping, paying each other, praying
17 together, building the company. That paragraph seven I
18 was talking about. This is another thing you may have the
19 opportunity to read. P. J. talked about, you know, we did
20 have an idea that one company would sell before the other.
21 Read that thing, which the testimony was that
22 Mr. Stodghill drafted, and see if you can make sense out
23 of it, okay. The general gist of it is what happens if
24 one sells before the other. And down in here, it talks
25 about right there, that they shall -- the terminated

1 stockholder shall be paid a portion of any consideration
2 received as if they still owned the stock. So you don't
3 own the stock, but you still get paid some of the proceeds
4 from the sale. Do they think we just made this up?
5 Apparently, they were reading the pleadings all the time
6 and not reading their own documents.

7 Here's another easy part of the case, they both
8 signed it, that makes this part easy and then they both
9 performed it for years. Bob and P. J., okay. This is a
10 handshake deal. It was a handshake and a deal and they
11 were working together and doing it before they ever had
12 the executed document. Okay. This part about a final
13 agreement, P. J. is no dummy. He knows that there is no
14 final on the dotted line option agreement signed between
15 the parties. He knows the final closing never happened.
16 Now, he goofed it up when he started the case when he
17 thought he had one signed by Bob somewhere. When he
18 looked down in his drawer and he sees all that stuff in
19 there and he finds a signed termination agreement and he
20 sees an option agreement that's got a blank on it. Okay.
21 But you look at all that paper we got back there and tell
22 me it's not confusing.

23 9/11 happens. Couldn't resist putting the jarhead in
24 there. I had to slip that in. A huge effect on both
25 companies. Okay. We go from being so risky that we need

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1 an insurance policy, struggling, trying to make the
2 payroll, to boom, blowing the doors off the business. So
3 now it becomes apparent there's going to be plenty of cake
4 to go around. We're both going to make it. That's
5 something maybe they did not actually anticipate when they
6 signed the 2000 agreement. Not only are we both going to
7 make it, we're both going to make it big. Then you know
8 what happens then, if you have in your mind maybe I want
9 make it back here, but once you do make it back there,
10 maybe that's what changed. Once you realize down at the
11 end I don't need an insurance policy. Folks, insurance
12 don't work that way. You don't get to decide after you've
13 been paying for it for a couple years, you know what, I
14 didn't need to make a claim. I'll just undo it. It does
15 not work that way. Okay. They're going like gangbusters.

16 And the corporate documents, they are not perfect in
17 that theory. So they get larger and they decide we've got
18 to hang some meat, so they needed Curt. The idea of going
19 to zero gets thrown out there. Gets thrown out there by
20 Bob. And they toss it around and then, finally, Bob ends
21 the meeting saying, Fine, just leave it at 25. He loses
22 his patience and leaves. Okay. That go to zero idea,
23 that was when he tried that out on Billie in the board
24 room -- as a sounding board. And she said this morning
25 you must be crazy. They know Bob. They know what's going

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1 on in the world. They know there's 9/11. They know
2 there's Iraq. They know there's Afghanistan. She's doing
3 his books. Who knows better? Is that a risky bet or is
4 that just a smart one? She knows what's going on with
5 that company better than anybody, maybe even better than
6 Bob.

7 Get you to the Charleston beach house, beach condo.
8 Bob's place, just the three of them. Sale of Reeves on
9 the table. They called it a meeting of the Board. 7 1/2
10 for 7 1/2. Like for like. Okay. They're still promising
11 to pay each other the 7 1/2. What happens after that?
12 There was some emails that I'll spare you. You know,
13 where they start talking about -- you remember them saying
14 start talking about maybe option is the best way to do
15 that. Now, they called it an option anyway because they
16 didn't issue stock. They didn't the stock in their
17 pocket. So sometimes they called it an option. Well,
18 now, they're actually doing formal legal documents. Okay.
19 There's the October 4 option agreement. They're talking
20 about a meeting of the minds. You know you saw that one
21 from Curt that says, Hey, here is the October 4 option
22 agreement. So if you get it from Curt, who is Bob's
23 lawyer, and then you look down and you see there's a
24 signed one in the file, maybe you can think they did agree
25 to that? Let's look at the specific terms and see if any

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1 of them is different from what Mr. Ellis talked about
2 actually matters. Because here's Bob and P. J. saying I
3 don't remember talking about anything ever except 7.5 or a
4 penny a share. Right there, Article 1. You can look at
5 any version of the option agreement you want, 7 1/2
6 percent, a penny a share.

7 The next one 2.1. Ten-year term. Okay. Then
8 there's that 2.2 that we talked about after the
9 termination agreement, P. J.'s talking to his estate
10 planning attorney about. There's the one signature. Now,
11 October 28th, that's when P. J. says Bob and I, not Curt
12 and I, see how he says that, Bob and I. Remember how he
13 talked about meeting in Atlanta and saying, Hey, why don't
14 your lawyers stay here and the principles will go over
15 there and get this fixed. These are the guys who made the
16 agreement, not Curt, not Rod. Bob and P. J. They're the
17 ones who are the bosses. Something happened in this case.
18 Somebody forgot who was the lawyer and who was the client.

19 Go into the airport, coming in, what have we got?
20 Getting off the airplane, we got the Charleston agreement
21 modified orally -- the 2000 agreement modified in
22 Charleston, okay. They exchange the draft option coming
23 into Atlanta. Okay. Then you got P. J.'s notes right
24 there and they say, What, 7 1/2 percent stock option.
25 You'd have to believe he just made this up. He's taking

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1 notes on what they said and what does it say, what makes
2 sense, you're working on an option for a month, you walk
3 into a meeting where you're committed to getting it done,
4 do you think you start talking about Dobson right there?
5 Do you think it just comes out of thin air like, let's
6 just scrap that and throw it away? Now, we're start
7 talking about all this other dilution stuff and start
8 talking evaluations and all that. Or do you think we're
9 going down one track? Is that what you see, we're going
10 down the same track and boom, that's what we're working
11 on.

12 Now, there's a little piece in here about
13 contribution to charitable trust. Okay. That's the 415
14 going into a charity. No problems with that.
15 Contributions to a charitable trust. Okay. That's not
16 doing this whole back and forth tax clause thing. That's
17 just a contribution. You don't want the money, that's
18 fine. And you know what, I applaud you for it. Just put
19 it wherever you want it and just donate it in. The only
20 thing about Dobson is that, apparently, somebody
21 remembered it was the Dobson Ministries they were going to
22 stick it in. That's just a donation. Termination
23 agreement. You know, this is the thing if Mr. Ellis had
24 his way, like I said, I don't know if I said this, we've
25 argued it so many times in front of different judges and

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1 stuff. Right there, he'd just say just read that word
2 termination. Don't look at anything else. Just look at
3 termination, that's all this is. It's just a termination.
4 That's what we agreed to do in Atlanta, terminate,
5 terminate, and nothing else.

6 Ladies and gentlemen, and nothing else. What is all
7 this other stuff? What is all this other stuff that we're
8 going to put on this board to show the three-legged stool?
9 Remember I told you that these are the ones they don't
10 like, the option agreements. Just ignore them. They
11 don't fit in their scheme of putting everything together
12 perfect. So just ignore them. You can't do that. Do you
13 think P. J. really would have signed this if he hadn't
14 carved out his interest? Do you think he really would
15 have done that? Because Bob's going to get a check. His
16 is going to be in his pocket. Do you think P. J. is just
17 going to float out of this world? P. J. is not a dumb
18 guy, okay.

19 Now, what's strange about this is they talk about
20 would have, could have, should have. Well, there's
21 nothing in here about Bob's interest, so you could have
22 jammed him later. You could have done this. You know
23 what, none of that matters if you trust each other. Do
24 you think when Bob offered to loan money to P. J. they
25 were going to put it on paper and have a lawyer notarize

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1 it? Or do you think they trusted each other enough to
2 know if they made a promise, they were going to keep it?

3 This release piece, this is the ratification with the
4 funny date on it, the November 5' date, which, apparently,
5 went through the time warp. This part right here, we can
6 focus on now a little more closely. It says, Release the
7 president, that's Bob, has hereby authorized and powered
8 and directed to negotiate and take any other action
9 desirable to consummate the release. What is this
10 referring to because this is after Curt read the document
11 and said, Bob said. This is after he's read it and he
12 looked in here and he found this provision and he hates
13 it. And he's mad at P. J. These are the release
14 provisions. That's where the options are listed in this
15 agreement. Agreement of Termination, Settlement and
16 Release. Look at this ratification and now they're going
17 no, we were only ratifying the pieces we wanted. They're
18 picking and choosing. We only liked the termination and
19 that's what we're ratifying. Actually, why they ever did
20 this, we'll never know because it's going to be in that
21 deposition and people will never know.

22 What happens after this termination agreement, that's
23 the question? What are the parties doing after this to
24 show whether they ever had an agreement like this or
25 whether P. J. thought they had an agreement like this when

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1 he signed this. Did P. J. think there was something more
2 to this termination agreement than just a termination?
3 That's what we're going to look at going forward, okay.

4 Ed Kidner, the accountant who was on the video, he's
5 toting up the money, Jethro Bodine doing his calculations,
6 okay. P. J. gives him the figures and he's figuring out
7 what the cut is going to be for Bob, okay. This is the
8 three scenarios. We're still in December trying to figure
9 out how are we going to do this. Sale of the assets, sale
10 of the property, what are we going to do. And he's got
11 his document. There is Bob's cut, 712,500. Now, that
12 doesn't look like the Castellani share later, but look,
13 they're playing with the numbers because nobody knows what
14 the sale price is going to be. Nobody knows what the cost
15 numbers are going to be. But that piece right there is
16 Bob's proceeds from the sale of Reeves. Why is P. J.
17 doing that if he thinks there's nothing in here but a
18 termination? Is he just doing it for fun? Because he
19 talked about how busy he was, he had other things to do.

20 January 26, there's a note from P. J. It says
21 subject, Castellani computation, and he gives Ed the
22 numbers. Hey, we just sold our company. This is what we
23 got. These are for Ed to do the Castellani computation.
24 There's Ed writing Curt, Hey, we've been trying to meet
25 with P. J. to wrap up the computations for Bob. He's

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1 working on them. And there they are. These are the
2 computations that Curt said he -- I mean, not Curt, he
3 didn't say that, Bob said that. He said he never saw
4 those. We don't have any disputing that number right
5 there, that 415. That's just how they added up. That's
6 the sale. And look at this, we were talking about y'all
7 got plenty of money. Look at the cuts people are taking
8 out of there, taxes, you know, it's still a lot of money.
9 It's still a lot of money. I'd take that. I wouldn't be
10 in here today. Okay. But there is the sharing rate,
11 sharing. Remember performing the 2000 agreement, we're
12 sharing 7 1/2 percent, 415,000. That's Bob's proceeds
13 right there. He is entitled to those. Okay. He is.

14 The Dobson deal. Folks, you probably not going to
15 figure this out because it might be not figurable. I
16 mean, it's just complicated. Bobby Dobson and Curt had
17 this plan. And it's going to work like this. Better than
18 charitable donation. I guess it's better because it's so
19 much more complicated. Apparently, simple just does not
20 work for these people. P. J. is going to buy the NARP
21 stock. Now, this is the NARP stock that he already has a
22 right to. It's already his. He's already got an
23 agreement. He's already got a promise he's going to get
24 it. He's going to buy that now and he's going to buy it
25 with Bob's money, okay. Here I am purchasing this stock

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1 from this charity, this ministry and Bob's going to stick
2 the stock in on the other side. It's going to be a
3 donation.

4 Now, why he needed a ministry on the side, it's like
5 here's your share, here's my stock. Simple. You don't
6 need lawyers to do that. Because you get lawyers involved
7 and things tend to get a little more complicated. They
8 tend to look like that stack of pleadings right there.
9 All right. They're telling P. J. he's going to get a tax
10 deduction for that, too. They're going to get tax
11 deductions on both sides? Does that make sense to you?
12 Y'all what's ironic about this? You remember I said this
13 is the tax tail wagging the dog. How ironic is that that
14 this whole thing is about trying to save money on taxes.
15 You remember I just butchered those calculations with Bob
16 when he was on the stand. That's what I was trying to
17 say. All the money he spent on this case, it's not even
18 that much taxes in the relative scheme of things. I think
19 it came up to like \$112,000. That's more than I made in
20 all my years in (inaudible). And all that tax money is
21 going to fund this phenomenal growth in these two
22 companies.

23 Dobson deal. It goes to a well deserved thing.
24 Every one of P. J.'s lawyers says no, no, no, no. Okay.
25 Orlinsky, the last no and the most emphatic no. Tax fraud

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1 is a pretty strong word. Talking about aiding and
2 abetting tax fraud. That ought to scare you a little bit
3 stiff about what's going on in this and this one day
4 evaluation. So what does P. J. do? He has a phone
5 conversation with Bob, take the money. Bob says no. He
6 won't take the money. Tax tail wagging the dog. Do not
7 put that in my pocket because then the government will get
8 a cut. Okay. Do it over there, give to him. Huh-uh,
9 that's changing. There's an important email in May. Bob
10 gets frustrated, too. It's so complicated. What happened
11 to the simple handshake deal? He's frustrated with the
12 money, the time, the distraction. It is a distraction
13 because it's so complicated. And he talks about my share
14 of Reeves. These aren't our words, their Bob's. Maybe
15 they don't mean what they say, but he's talking about my
16 share of Reeves. His share.

17 Now, what is Reeves now? It's already been sold for
18 January, February, March, April, May, it's been sold for
19 five months. It's nothing but a chunk of money sitting in
20 a bank account. Now, co-mingling the bank account, does
21 it matter? Should we not trust Billie who's running that
22 bank account. They said they got the money. If he would
23 actually pay the taxes on the money and take it, we
24 wouldn't be here today. Ready, willing and able, always
25 have been. Nothing has changed. Nothing has changed in

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1 my mind about getting this deal done with you and Billie.
2 That's May of 2005. By the time we get to that other end
3 of the board, everything has changed. No trust, no
4 communication.

5 During this time, NARP comes down here to South
6 Carolina. Bob goes from being a virtual company to a
7 company that's got a building. He's got a big old nice
8 building out there on the highway. He hires a CFO.
9 Billie, who's up there working at her old company and
10 working for Bob, still, double tracking. And she's up
11 there helping him get down here. And you can tell
12 there's -- even then -- I think even now between Bob and
13 Billie, there's a lot of affection and appreciation. She
14 was boxing for the man and always has. But when she gets
15 down here, you know what, things have changed. He's got a
16 new organization. He's got new employees. He doesn't
17 have just one employee, he's got a whole bunch of them. I
18 don't know what happened with their communication. Did he
19 fire her or not or whatever, but she didn't work there any
20 more and he never paid her any more. And I don't know
21 when it happened, but it definitely soured right there.

22 One last chance of reconciliation, the June meeting
23 at Stax, they get together. They were just talking to
24 each other. Bob walks in with that document and tries to
25 get P. J. to sign it. But how does it do it? He uses the

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1 go-between. P. J. goes to the bathroom and Bob gives it
2 to Billie, get P. J. to sign this. Well, P. J. is no
3 fool. P. J. will not sign that thing. Why? Because it
4 says made in error. To them, it maybe an error. There
5 are supposed to be in there. I meant for those to be in
6 there. But he doesn't sign. Okay. They know right there
7 that P. J. and they have a different meaning of what this
8 termination agreement means.

9 Now, folks, if there's a different meaning about what
10 this termination agreement means, you know what, it does
11 not mean termination. It does not mean termination and
12 nothing else. Okay. That's where if you don't have this
13 termination agreement, if it's not in place, you just fall
14 back to your safe place. Okay. The modified agreement
15 coming out of Charleston. It's not a question of what the
16 final agreement was because everybody knows there never
17 was a final agreement. What is the standing agreement?
18 And did anybody ever agree that I would wipe that out and
19 wipe out our interest and not replace them with anything
20 else? That's the nut of the case. And then they all
21 agree hey, with this DHS thing going on, everything's on
22 hold, nothing is going to happen. Now, they want to
23 pretend like they were just sitting back there thinking
24 that we had agreed that we were all on the same sheet of
25 music. Now, maybe they thought that and reiterated it to

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1 us over and over and over, but were they listening to us?
2 Were they looking at the activity of P. J. when they gave
3 him the document saying that doesn't mean what you think
4 it means? This is sandbagging. It's all on hold.

5 But what do we see happening? Curt's still in there
6 nagging at P. J.'s lawyer about let's work on it. You
7 know, is this like when you're trapped under a bus and the
8 guy that used to be your best friend like you're up
9 there -- like Lion King, you know, you put your hands to
10 your brother to pull you up and he just steps on his claws
11 and throws him off the cliff. That's what this deal was.
12 They knew he was trapped under a bus. They knew it was
13 all on hold by agreement between Bob and P. J., between
14 the principles. But Curt -- now, listen, I don't blame
15 Curt. He's a zealous advocate. I don't blame him. But
16 he's a zealous advocate for his client. Bob is ultimately
17 responsible for what Curt does. You can't just let your
18 guy go off doing this kind of stuff, you know. Turning
19 your back on him, treating one of your old best friends
20 like that. Wow, I would love to hear Curt's version of
21 that Atlanta meeting. Can you imagine when they got back
22 in the car, Bob and Curt were driving back home from
23 Atlanta, the kind of poison that Curt was putting in Bob's
24 ear about P. J. If you listen to that long enough, maybe
25 you start believing it even though you know better.

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1 Email from Curt. Letter from Curt. Finally, Eric,
2 Stop assuming what you want to assume. Did you here Eric
3 say that's like a set up letter. They're hoping you don't
4 respond. That's a dirty pool, okay. These are two
5 long -- three old time friends and now, it's nothing but
6 the lawyers now. 2007. The soup settles. Eric writes
7 Curt a letter, Let the lawyers handle it. Eric writes a
8 letter. They interpret it one way, we interpret it
9 another way. You can read it and see. Is that an over
10 the top letter or is that a professional letter between
11 lawyers? Curt writes back. Curt's version of the world.
12 Three pages, hand typed. Do you think somebody was
13 looking for vindication here? I am right. What I say is
14 the only way. Okay. This is how it was. Listen to me, I
15 will tell you. I will educate you. No listening coming
16 back. Okay. If there's any surprise about what we've
17 been saying, what all these witnesses, all these documents
18 have been saying, it was a failure of communication,
19 failure to listen.

20 And then comes a suit from NARP, a friendly lawsuit,
21 which is what brings us here today. But you remember
22 Billie, the go-between, if I can get Bob to get that
23 personal relationship back, wean out all the lawyers. You
24 get the feeling if you put those two in a room together
25 they could still work it out. It doesn't have to be this

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1 way, Bob. She puts her hand on him, It doesn't have to be
2 this way. P. J. says we'll settle this case. They don't
3 want this. But Bob says huh-uh, things have changed. And
4 he says some other things that I think you remember. Kind
5 of mean-spirited. They're not the kind of things that
6 bring people back together. They're the kind of things
7 that shove them apart and bring them to this point today
8 and put this dispute right there with you.

9 Let's talk about evaluations. That was then, this is
10 now. Okay. When Bob says his company is worth 150 to 200
11 million dollars, we fell out of our chair. Nobody had any
12 idea. We know business is great, but nobody had any idea.
13 Okay. That's a lot of money. Didn't find that out until
14 the middle of the lawsuit. This whole thing we'll gold
15 digging on them or whatever. Whatever he's making, he's
16 obviously doing well, but we don't know that until we get
17 in the middle of this. And we didn't come asking for his
18 value either. We just want the stock, the 7 1/2 for the 7
19 1/2, okay. The day -- Friday, when Lane and I were up
20 there working all the time. Bernie's up there working all
21 the time getting ready, the stock's still worth 150 to 200
22 million. Saturday, we get a phone call, we've got a new
23 development. The company is now worth 75 to 85 million
24 dollars. Amazing, two days before trial, the value is
25 like evaporating in space. Remember that triple

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1 evaluation in a single day? Would you trust that? Would
2 you trust that if they called you two days before trial
3 and said the value just went down to the floor like that?

4 Mr. Melinger came in here and tried to clean some of
5 that up, because, believe me, we were scrambling trying to
6 figure out now, what do we make of this? Do we just pick
7 some numbers to make it simple? 150 was the low end of
8 that previous 150 to 200 that was stuck up behind Mr.
9 Castellani's head all the time. And he ran it out, he did
10 it just like they had done it in their evaluations they
11 were trying to get to use for the Dobson deal. And he
12 sits down and says (inaudible) he gave the control and
13 minority marketability. But anyway, the 150 comes out to
14 five million eighty, that's the value of the 7 1/2 percent
15 share in a minority stockholder, 5,000,080. Again, that's
16 the low end of what Bob said, giving him the benefit of
17 the doubt, 5,000,080.

18 The value of the company, if it's what Bob says, 80
19 million, then it comes out pretty much the same way, but
20 three million one. Okay. Five million eight, three
21 million one. I don't know exactly what the verdict form
22 is going to look like, but I think it's going to have a
23 piece on it where you're going to be able to put a number
24 in there. And I'd ask you to remember these numbers,
25 5,000,080 and 3,000,001. Okay. There's a lot of numbers

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1 floating around. But if you're going to be moving some
2 money to these people for everything they did and
3 everything they've been put through, those are the
4 numbers. Five million eight, three million one. Okay.

5 Y'all, the question is from then to now. How did we
6 get all this separation between two guys who used to be
7 sitting in those hotel beds reading the Bible together?
8 Traveling the world, you know, doing their patriotic duty
9 and growing into something. This is the American dream.
10 This is the American dream. But, you know, we see enough
11 cases in my office all the time, these people were like
12 family. It's really like a family saga. And how many
13 times do I see, there's nothing that will ruin family
14 faster than money. And this one, it didn't even make it
15 to the second generation before they started eating each
16 other. Right here. This is like an -- this is like it's
17 only half grown and they're already at each other's
18 throat. Money may have been the ruination of all of them.
19 Do you think if NARP was still worth just about what
20 Reeves was worth that we would be in here separated like
21 this or would they all still be getting along? Folks,
22 that's a three-legged stool you're hearing about right
23 there, the story of people. Okay. Billie, the
24 go-between.

25 Let's go over here and look at this board, this big,

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1 long board. You'll figure out now why I needed it. I'm
2 going to take some of these cards that were largely down
3 here. Now, I'm going to sort them instead of in dates, in
4 linear fashion where they go on this three-legged stool.
5 Okay. We know this thing was never performed. Okay. We
6 know it was never performed because he's still got the
7 money and he's still got the interest, okay. The question
8 is when P. J. signed that termination agreement, is this
9 what he thought was going to happen? Would he have ever
10 signed this termination agreement if he didn't think this
11 was going to happen?

12 Now, you know, down here, they said yeah, we talked
13 about a bunch of things, the donation, you know. We
14 talked about the Dobson deal. Now, they've got to saying
15 like all you could do over here is the Dobson deal. It's
16 a control thing. This is what you will do. Dobson deal
17 or nothing. That's what got us here, that kind of
18 inflexibility is what got us here today.

19 Let's talk about where we see an option agreement
20 discussion. Did he pull this whole option out of thin air
21 or was there a bunch of option stuff before Atlanta and
22 after Atlanta? Okay. October 29 notes from Atlanta.
23 P. J.'s notes. 7.5 percent option agreement. Remember,
24 at this time, nobody ever said anything but 7 1/2 percent
25 for a penny a share. Nobody at this trial would have said

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1 the same thing otherwise either.

2 The November 13th email. He says, Hey, we got a
3 phone call this morning about the option agreement. I
4 talked to my estate planning attorneys about it. 2.2.
5 Look at 2.2 and all those versions we got back there.
6 They're all the same thing about if one party dies before
7 the other. Then what does Bob do? He signs it. He gets
8 that email, had to send the termination agreement back,
9 the option termination. He looked at the agreement,
10 option termination. Now, he said he didn't read it. Come
11 on. Maybe he didn't read it. Whose fault is that? Whose
12 fault is it you didn't send it to your lawyer if you had
13 for eight or nine days? That's not P. J.'s fault that Bob
14 never read it. What did P. J. think? Did he immediately
15 think, obviously, Bob didn't read it. Okay. There's the
16 signed one. There's the ratification right there.
17 There's the other one. I called that the eraser, that's
18 the thing that he wouldn't sign, okay, in the restaurant.
19 Nothing for something. That means they're saying P. J.
20 was just going to give up his interest and get nothing for
21 it.

22 Let's see where the 415 is. NARP bonus. The
23 Castellani share, those are in the emails. The
24 computations from Bob are in the email. This is all after
25 the termination agreement is signed. All this is showing

1 you is right there. The Castellani computations itself
2 with the 415 on it. Bob, my share of Reeves. Merely
3 retained at Curt's suggestion. Eric says do not assume.
4 Then they said they put it on hold. And at the bottom,
5 not in the termination agreement because it's bounded on
6 trust. Okay. P. J. will pay them that money, always
7 could, always would. Okay.

8 This is the part of the trial I hate because I've got
9 to sit down and Mr. Ellis gets to stand back up. Let me
10 tell you, y'all listened to a lot of evidence. I don't
11 know what he's got, but it better be good. It better be
12 different than everything that we saw in this courtroom
13 today, I mean, this week if you were looking at the same
14 thing I was, okay. It's a hard job for him and maybe he
15 can do it. But this is all I get to talk to you about and
16 we think you can make this right. Thank you.

17 THE COURT: All right, Mr. Ellis, final argument..

18 CLOSING STATEMENT

19 MR. ELLIS: Thank you, Your Honor.

20 Poor Curt, if I had their case, I guess I'd be taking
21 cheap shots at the witnesses who didn't testify and try to
22 blur all the facts, too. I want to tell you something,
23 Curt Stodghill is a great, great guy. I didn't put him on
24 the stand because I thought we had just schooled y'all
25 with so many facts that we didn't want to keep beating

1 this thing to death. He is actually a wonderful man who
2 cares deeply about his client. He's a member of the South
3 Carolina Bar and their repeated attempts to make cheap
4 shots at him is absolutely completely unfounded and
5 completely uncalled for. Yeah, we're the ones who sought
6 this venue. We're the ones who sought this forum because
7 we think we've been fair. We think we've done this right.
8 That's what we thought.

9 P. J. was always ready, willing and able to pay the
10 money. One of the reasons we've been reluctant to proceed
11 for two years, because of the non-compete. No, he
12 actually wasn't ready, willing and able. Let's talk about
13 the Castellani share number, this \$415,000. P. J.'s not
14 entitled to relief in this case, but you can multiply 9.1
15 million times 7.5, it's not \$415,000. It's a lot more
16 than that. And this was from three years ago. You see,
17 P. J. sold his business and he kept the money. He kept
18 the money. That was fine. We thought the agreement was
19 over with, that was fine. But I took P. J.'s deposition
20 too, as you're well aware, and I asked him, I said, Isn't
21 it true if you believe Bob Castellani owns 7.5 percent of
22 Reeves, when you sold it, you could have written him a
23 check for 7.5 percent. And his answer was I could have, I
24 don't know why we didn't. We could have.

25 Folks, he didn't because he didn't come up with this

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1 idea of what he was going to say the agreement was until
2 after we were along in this lawsuit. Playing catch up all
3 this time? Bologna. Their amendment didn't have anything
4 to do with fiduciary duty claim, had absolutely nothing do
5 with it. It had to do with figuring out the story they're
6 going to try to tell. And understand, folks, what
7 Mr. Stillwell did, what P. J.'s been doing in this case is
8 this, let me tell them so many facts, let me tell so many
9 facts that they can't really understand what the contracts
10 were. Maybe they'll forget about what the actual
11 agreements were and just say it's complicated, let's just
12 do this, the agreement calculation is 7 1/2 percent to 7
13 1/2 percent.

14 I tell you what, I've got about 12 minutes. I'm just
15 going to walk you right through so there will be something
16 for you to think about. First, I'm going to turn that
17 around. All right. I might get it back out, though, in a
18 minute to remind you you all were told we were going to
19 see proof of the three-legged stool. The proof we were
20 given is that the three-legged stool was never agreed to.
21 That's the proof you were given. The proof you were given
22 is that these things didn't get done. Let's walk through
23 this real quick and I'll keep looking at my watch because
24 I don't want to mess this up. First agreement between the
25 parties is the 2000 agreement. The parties agreed to

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1 amend it to go to 7 1/2 percent -- whoops, I picked the
2 wrong one. The parties agreed to amend it to 7 1/2
3 percent from 25 percent. Folks, you can read this, it's
4 not that complicated. This agreement does not say if one
5 of them sales first, the other one gets the money. I
6 don't blame Mr. Stillwell for wanting to distort this
7 document because it does not say what he says it says. If
8 you read what it says, they lose on the 2000 agreement.

9 Let's look and see exactly what it says about the
10 stock. Reeves gives stock to Bob, NARP gives stock to
11 P. J. Such stock will be subject to a right to buy it
12 back if the commission arrangement between Bob and NARP or
13 P. J. is terminated. What it says is don't issue stock to
14 each other. That if they end the commission agreement,
15 they can buy it back for a hundred dollars a share. If
16 the company buys the stock back and then within two years
17 sells all its assets, the person whose stock was bought
18 back is then treated as though he was still a stockholder.
19 That's a protection for a person who was a stockholder to
20 make sure that one of the people in there can't rip him
21 off by buying the stock back at a cheap price when selling
22 the company for a whole lot of money. I don't blame
23 Mr. Stillwell again -- well, I sort of do. I don't blame
24 him for telling you that what this says is that this is an
25 agreement that if one sold first, the other one would get

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1 the cash. That is not what it says. This is the
2 agreement between the parties that they had.

3 Mr. Richardson asked us to terminate this. He asked
4 us to terminate this agreement because he needed to sell
5 to DHS. Folks, it is a complete distortion of the facts
6 in this case to tell you and put up evidence of people
7 coming around and saying he didn't need that for DHS, he
8 didn't need it. Well, he asked us to sign it because he
9 said he needed it. Folks, he didn't want DHS to find out
10 about that relationship. That's why we read the
11 deposition of Barry Harper as well. Mr. Harper said, No,
12 I told DHS there were no shareholders. What it was,
13 folks, is Mr. Richardson had told DHS he didn't have any
14 shareholders. And being a careful businessman, he had to
15 make sure that was true. Because for a three-month
16 period, Bob could have demanded to become a shareholder.
17 That's why he asked for this to be signed. Okay.

18 So we've got the original 2000 agreement where the
19 parties had an agreement to do something. Folks, you
20 heard Bob testify, he never agreed to accept cash. Now,
21 I'm sorry, that's his right. He has the right to do that.
22 If that's how he wants to do that, he has the right to do
23 it. 2000 agreement, the parties agreed not to do that
24 agreement. They signed the agreement of termination and
25 release. At that point, they don't have a binding

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1 obligation to each other anymore. Because that's how
2 P. J. wanted it. That's how P. J. wanted it. We were
3 fine with that, but that's what P. J. wanted. Let's not
4 be contractually obligated to each other anymore. P. J.
5 asked for that, we gave it to him. This is what we get.
6 This is what we get. That's what he asked for and we gave
7 it to him.

8 Folks, then we're told about the three-legged stool.
9 Oh, the three-legged stool. Well, they didn't ultimately
10 agree to do that. If you end one agreement and you don't
11 enter into another agreement, where are you? Well, what
12 you do if you're P. J., is -- when you have a court
13 proceeding, you try to get -- blur all the facts together
14 and say 7 1/2 for 7 1/2. There's no other way to figure
15 it out. This really is not all that hard to figure out.
16 You had one agreement. You decided not to do that. And
17 you never finalized on another agreement.

18 We've heard talk about tax fraud. Tax fraud. You
19 know what the problem was with the Dobson deal? They
20 can't believe Bob Castellani would have given away 400 or
21 500,000 to a ministry. They can't believe it. Those
22 people, those lawyers and those accountants Mr. Richardson
23 worked with, there's got to be something wrong because who
24 in their right mind would give away that much money to a
25 charity? He must be laundering money. It must be tax

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1 fraud. It was not. Bob Castellani is a caring member of
2 his community. He is a devoted member of Brookwood Church
3 and he has been blessed, blessed, blessed and he feels
4 it's his duty to give that back. Tax fraud.

5 Do you remember when I read from the deposition of
6 Mr. Orlinsky, I said, do you have any knowledge this was
7 tax fraud? No. Oh, well, that's different. Yeah, that's
8 real, real different. You know, my share of Reeves -- he
9 put up this picture referring to my share of Reeves in
10 quotes. What Mr. Stillwell did, he put quotes around the
11 whole thing. He didn't do it the way Bob did it. Bob put
12 quotes just around my share, not the whole thing. Because
13 Bob didn't think they had an agreement.

14 Folks, here's where we are in this case. They had an
15 agreement, P. J. needed to get out of it because he wasn't
16 going to own stock anymore. He couldn't do this anymore
17 because he couldn't give Bob Reeves stock because he had
18 already told DHS he didn't have any shareholders, so he
19 couldn't do this anymore. Well, his response to that is,
20 You all tell Bob he's got to do what I told him to. Bob
21 doesn't have to do what he told him to. He just doesn't.
22 That agreement ends, they never settle on one agreement.

23 Folks, I want to tell you something, P. J. and Billie
24 could have picked up the phone and said Bob, let's keep
25 talking. He would have. He would have talked to them.

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1 But, folks, when somebody fires a bullet like this from a
2 lawyer and says I'm demanding to exercise my option for a
3 share of the sale of Reeves, that's not an indication to
4 keep talking. That is a lawyer telling you I am going to
5 go to battle against you. I'm a lawyer and that's how we
6 see it. That's how we see that. Somebody writes a letter
7 and says we'd like to discuss our ongoing interest in
8 Reeves, we'd talk to them. That's not what they did.

9 Folks, Mr. Stodghill -- I'm sorry, Mr. Stillwell says
10 money changes things, money changes things. Yeah, folks,
11 it sure does. When that interest was three million and
12 thirty-six thousand dollars, P. J. wasn't all that
13 interested in it. You know why? It was like for like.
14 It was wash for wash. He wasn't all that interested in it
15 back then. Boy, did he get interested in it when the
16 company become worth millions. Yeah, he's real interested
17 in it now. Mr. Stillwell's right, money does change
18 things. Money does change things. It makes a person in a
19 court proceeding be willing to say anything. It makes a
20 person be willing to change his story. It makes a person
21 be willing to say here's four different versions of what I
22 alleged the agreement is. Folks, these facts don't all
23 blur together. You had an original agreement and modified
24 it to 7 1/2 percent. They ended that agreement and they
25 never did settle on another agreement. And if they just

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1 picked up the phone and talked to us, we'd have been glad
2 to talk to them.

3 Talk about documents that don't mean what they say,
4 documents don't mean what that say. The agreement of
5 termination and release has a big old line in it that
6 says, This agreement sets forth the entire agreement and
7 there are no other agreements. All prior discussions
8 between the parties merged, oral and written. There's no
9 other agreement. That's what it says. Talk about wanted
10 to distort documents. What they're telling you is oh, no,
11 no, no, this was part of a bigger agreement. It says in
12 the document that P. J.'s lawyer drafted that there is not
13 another agreement. Okay. I understand there were other
14 discussions. I understand there were other discussions
15 going on. But, folks, he talked about P. J. wouldn't have
16 given up, P. J. would not have given up his interest, no
17 way, no how. Well, folks, the problem with this document
18 is that he wants it when it works for him. He wanted it
19 to be able to get Bob out of the sale to DHS. He wanted
20 it to make sure that Bob wouldn't exercise his rights.
21 Then when he didn't need it anymore, he doesn't want it
22 anymore, he comes in and says oh, this is part of the
23 bigger agreement.

24 Folks, that train left the station and P. J. was
25 driving the train. Okay. He wanted to have his cake and

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1 eat it, too. Folks, just remember, the deal that they
2 made was not so P. J. could wait around a little while and
3 trade 4 or 5 or \$600,000 if you start doing real
4 calculating at 7 1/2 whatever, trade that in for several
5 million dollars. There was never a deal that P. J. would
6 have gotten money. If P. J. had done the agreement on his
7 terms, he wouldn't have money. He would have had stock.
8 Actually, he wouldn't have had stock. He would have had a
9 stock option, which as you see, wouldn't be worth anything
10 unless and until NARP sold. That's what he would have
11 gotten. He would have gotten a stock option for NARP that
12 he couldn't have exercised unless NARP sold. And if it
13 didn't sell within the time period, it wouldn't have given
14 him anything. That was the deal they were talking about.
15 It was never, ever the anticipation of the parties that
16 what he would be able to get was money. It was only going
17 to be stock.

18 My time's about up. And I thank you, very much for
19 your attention. I want to remind you that we communicated
20 with them. We told them what we thought the whole time.
21 We always told them here's where we're coming from, here's
22 what we think. They didn't. They let us believe that we
23 were on the same page when they knew we weren't. Folks,
24 P. J. has a fiduciary obligation to this company and he
25 didn't keep it. I'm sorry, there was -- the parties never

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1 finally made a new agreement. He's not entitled to stock.
2 And he paid him to look out for the best interest of the
3 company. And I think he ought to get his money back.
4 Thank you, very much.

5 THE COURT: All right, ladies and gentlemen, I'm
6 going to send you home for the evening looking at the
7 time. And it's my decision. The reason for that is if I
8 give you the law in this particular case, then I will
9 submit it to you and it's going to be your case and you're
10 going to stay here until you reach a decision. So I
11 assume you'd rather start doing that in morning rather
12 that tonight. I made the decision I'm going to send you
13 home for the evening. But I want you back in the jury
14 room by 9:00 in morning. We'll come right out then and
15 I'll give you the law. And then I'm going to give it to
16 you for your deliberations and your unanimous decision in
17 this particular matter. Once again, don't talk about the
18 case, don't allow anybody to talk to you about it. I'll
19 see you back tomorrow morning at 9:00 a.m. Thank you,
20 very much.

21 (WHEREUPON, the jury left open court at
22 approximately 5:30 p.m.)

23 THE COURT: All right. We'll take a short break for
24 about five minutes. Thank you.

25 (WHEREUPON, a short break was taken.)

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1 THE COURT: All right. We'll start off with the
2 Plaintiff's requests to charge. We'll get a copy of that
3 marked. I'm just going by the numbers as y'all have
4 numbered them and they are marked as a Court's Exhibit.

5 No. 1, Plaintiff's No. 1, any objection to it by the
6 Defense?

7 MR. RUSTIN: No, Your Honor.

8 THE COURT: Now, I may very well combine some things
9 and have a charge, but we'll be saying the same thing.

10 No. 1, no problem. No. 2?

11 MR. RUSTIN: No, Your Honor.

12 THE COURT: Okay. No. 3?

13 MR. RUSTIN: Yes, Your Honor. I believe the Court's
14 already determined there is ambiguity in the contract to
15 be resolved. And also, this doesn't charge on ambiguous
16 contracts. Well, I think we submitted to the judge a
17 charge that includes both ambiguous and nonambiguous
18 contracts.

19 THE COURT: All right. I will probably read both of
20 them. Do you know what number yours is as far as what
21 you're referring to? Do you know that number right
22 offhand?

23 MR. RUSTIN: No. 11.

24 THE COURT: All right. Let's just say -- I
25 appreciate your objection, but as to the law that is

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1 expressed in number three, do you have an objection to
2 that?

3 MR. RUSTIN: No, Your Honor.

4 THE COURT: So a correct statement of the law.

5 No. 4?

6 MR. RUSTIN: No objection to No. 4, Your Honor.

7 THE COURT: Five?

8 MR. RUSTIN: Your Honor, I believe the law being
9 charged in the contracts were invalid, that Multon (ph) v.
10 Biggs case. And I don't know there's any basis to charge
11 contracts that are illegal.

12 THE COURT: All right. Well, the question I had and
13 you tell me, Mr. Ellis, it seems to me that with the
14 previous or the other charges, it's sort of getting
15 duplicative when we got to No. 5. Is that -- is No. 5 not
16 contained in a couple of your other language there, some
17 of your other charges?

18 MR. ELLIS: Well, I mean, I think it's an accurate
19 statement of the law. I think we are entitled to have it
20 said in this way that you have to look at the contract
21 itself. You can't have a person of understanding go off
22 and say, Well, we thought he meant something else.

23 THE COURT: All right. I'll look at it in that
24 regard.

25 No. 6?

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1 MR. RUSTIN: No, Your Honor. I believe it was
2 already covered in some other request, but no objection to
3 those.

4 THE COURT: No. 7?

5 MR. RUSTIN: No objection to that one either, Your
6 Honor, though, I think that is already covered in Anderson
7 general charge contract.

8 THE COURT: All right. All right. Now, No. 7,
9 Plaintiff's request, is there any question about that?
10 Says about meeting of the minds?

11 MR. RUSTIN: That is correct, Your Honor.

12 THE COURT: All right. No. 8?

13 MR. RUSTIN: No, Your Honor. Again, that's probably
14 covered in the general Anderson contract charge, but no
15 objection.

16 THE COURT: All right. No. 9?

17 MR. RUSTIN: Your Honor, I believe this actually
18 charges the old mirror image rule. Quattle v. Chandler,
19 which is a 1989 Supreme Court case, says that a counter
20 offer or a return terms that are counter proposed by a
21 party must only consent to the material terms of the
22 contract. Not as here say matter and/or object to any one
23 term constitutes rejection of the entire offer. I don't
24 believe that is a correct statement of law. I pull that
25 AM.JUR. contract section and that is correctly citing

1 AM.JUR. but I don't believe that's the law of South
2 Carolina.

3 THE COURT: Mr. Ellis?

4 MR. ELLIS: Your Honor, I do think that's the law in
5 South Carolina. I think there's ambiguity on this and
6 maybe they can correct me. I'll have to check that to be
7 sure. Because I think that modification and mirror image
8 rule is with respect to sale of goods and --

9 THE COURT: All right. Thank you.

10 No. 10?

11 MR. RUSTIN: Your Honor, once again, the holding that
12 they're citing there that dealt with a contract that
13 particularly contained the terms shall agree for the
14 amount for the support. And so the kind of general
15 statement that they put in the charge isn't actually
16 charging the law of that case. The case itself deals with
17 contracts that explicitly says parties shall agree.

18 THE COURT: Thank you.

19 Mr. Ellis?

20 MR. ELLIS: Your Honor, that's a correct statement of
21 law. I think it's Hawkins vs. Greenwood Development that
22 says, A contract---

23 THE COURT: I believe -- I will allow you to submit
24 something, but as worded, I'm not going to because I
25 believe I'm making a comment on the facts as No. 10 is

1 worded, so I will not charge it as worded.

2 MR. ELLIS: Can I substitute something on that in the
3 morning, Your Honor?

4 THE COURT: You can. Yes, sir, I will certainly look
5 at something else.

6 MR. ELLIS: Okay.

7 THE COURT: As No. 10 is worded, I think it's a
8 comment by the Court on the facts and I'm not going to
9 charge it.

10 No. 11?

11 MR. RUSTIN: Your Honor, we have no objection to the
12 charge. We just would ask to insert the (inaudible)
13 charge that we have asserted in our charges. That way,
14 it's a complete statement of law --

15 THE COURT: You want to add yours to that or
16 substitute it for 11?

17 MR. RUSTIN: Add ours to that, Your Honor. It's
18 charge No. 13 in our charges.

19 THE COURT: All right. You have No. 13, Mr. Ellis?

20 MR. ELLIS: I have -- I'm sorry, Your Honor, you're
21 talking about their 13, right?

22 THE COURT: Right, right. Talking about Defendant's
23 13.

24 MR. ELLIS: Your Honor, I don't think that's -- I
25 don't think that's an accurate statement of law. I'm

1 sorry, I don't. I think the rule -- the rule of law in
2 South Carolina is that a contract is construed against the
3 parties who drafted it.

4 MR. RUSTIN: Your Honor, the cases that are cited in
5 our charge No. 13 are all statements of South Carolina law
6 that that rule is inapplicable when you have sophisticated
7 parties, particularly in the Myrtle Beach case where both
8 parties were represented by counsel and their agreements
9 being represented back and forth between counsel.

10 MR. ELLIS: Yes, sir, Your Honor, but those are
11 negotiated agreements. And also, the one that deals in
12 this case is that it was parties without counsel. And I
13 think that is a very clear statement of black letter law.
14 A contract is construed against the parties who drafted
15 it.

16 THE COURT: All right. What I'm going to do is I'm
17 going to -- I'm going -- I am going to use No. 13, the
18 first sentence and the third sentence. I'm not going to
19 charge the second sentence. Thank you.

20 All right. Plaintiff's 12?

21 MR. RUSTIN: No objection, Your Honor.

22 THE COURT: No. 13, Plaintiff's 13?

23 MR. RUSTIN: No objection to that, Your Honor.

24 THE COURT: Plaintiff's 14?

25 MR. RUSTIN: No objection to that either, Your Honor.

1 THE COURT: Plaintiff's 15?

2 MR. RUSTIN: No objection to that either, Your Honor.

3 THE COURT: All right. Do you have Plaintiff's --
4 Plaintiff's 16, let me just ask that, do you have an
5 objection to 16, Plaintiff's 16?

6 MR. RUSTIN: Your Honor, we just saw that, we're
7 trying to figure it out. 16 is the ratification issue, I
8 think. It's Delaware law that we've argued previously
9 because the ratification of a corporation of an officer's
10 act. This has to do with another piece of the
11 ratification.

12 MR. ELLIS: It does. That's why we're submitting it.
13 We believe, by his actions, Mr. Richardson ratified his
14 termination.

15 THE COURT: Okay.

16 MR. RUSTIN: Your Honor, given that, we have no
17 objection to that as a South Carolina charge.

18 THE COURT: Okay.

19 17?

20 MR. RUSTIN: No objection, Your Honor.

21 THE COURT: Eighteen?

22 MR. RUSTIN: No objection.

23 THE COURT: 19?

24 MR. RUSTIN: Your Honor, no objection. I guess it
25 might be real confusing for the jury to include all three

1 and four charges of that dealing with unilateral mistake.
2 I don't know that there's been any assertion that there
3 was a unilateral mistake in this particular instance.

4 THE COURT: What about that, Mr. Ellis, subsection
5 three and four?

6 MR. ELLIS: I'm trying -- I think we're entitled to
7 have the jury understand that they have to find that both
8 parties had a mutual mistake about the meaning of the
9 termination agreement in order for it to be rescinded.
10 And not just unilateral mistake. It can't just be one
11 party was wrong about it.

12 THE COURT: All right. But what -- hold on one
13 second. What you're saying in that in 17 -- I'm sorry,
14 19, the contract maybe rescinded, basically, for these
15 reasons. Where the mistake is mutual, where -- number
16 one. Number two, where the mistake is mutual and number
17 three, it can be rescinded if the mistake is unilateral.
18 You want me to charge that to the jury, that the contract
19 can be rescinded if the mistake is unilateral and it has
20 been induced by fraud and misrepresentation concealment?

21 MR. ELLIS: Well, I guess --

22 THE COURT: Number four, that it can be rescinded
23 where the mistake is unilateral and is accompanied by very
24 strong or extraordinary circumstances?

25 MR. ELLIS: Well, Your Honor, yes, sir, I think you

1 can read the whole thing.

2 THE COURT: All right. Fine. I'm going to charge 19
3 as set forth. Thank you.

4 All right. 20?

5 MR. RUSTIN: Your Honor, looks like they've actually
6 adopted our abandonment charge, the one I had originally
7 from --

8 THE COURT: Where y'all copied Judge Anderson?

9 MR. ELLIS: I would suspect that's right.

10 MR. RUSTIN: Yes, Your Honor, accident requirement,
11 then no objection to that one.

12 THE COURT: All right. Well, look through it and see
13 if you see that in there.

14 MR. RUSTIN: No objection, Your Honor.

15 THE COURT: All right. And while I'm thinking about
16 it, I really do appreciate y'all breaking in my law clerk.
17 This is his first real work -- first real week of work and
18 he sort of ask me, is it going to be like this all the
19 time? Probably won't see another one the whole year
20 you're with me.

21 All right. No. 20, we're okay with; is that correct?

22 MR. RUSTIN: Yes, Your Honor, we are.

23 THE COURT: Very good. 21?

24 MR. RUSTIN: No objection, Your Honor.

25 THE COURT: 22?

1 MR. RUSTIN: Your Honor, on No. 22, they've charged
2 the severability of the contract, but had not charged
3 non-severability of the contract or, as our charge puts
4 it, a contract that fights unlawful testimony intimate.

5 THE COURT: All right. So what charge are you
6 referring to regarding yours?

7 MR. RUSTIN: It's on page 62. Unfortunately, I got
8 some of my pages out of order and I'm trying to find the
9 charge number on that one. It's No. 49, Your Honor.

10 THE COURT: No. 49. Okay. Well, it's going to have
11 to be -- I'll have to change -- not change, but I'll have
12 to probably just take out the first paragraph. Several --

13 MR. RUSTIN: Your Honor, in essence, it takes that
14 same language and expands it to also deal with the
15 agreement, that it is an entire agreement that's not
16 severable.

17 THE COURT: All right. Looking at No. 49, Mr. Ellis,
18 taking out the first paragraph.

19 MR. ELLIS: I'm sorry, we were there and got lost.

20 THE COURT: That's all right, sir.

21 MR. ELLIS: I'm fine with that.

22 THE COURT: All right. So we'll use Defendant's 49
23 taking out the first paragraph.

24 Okay. All right. 23?

25 MR. RUSTIN: Your Honor, no true objection. I think

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1 both parties agree to (inaudible) and we just simply ask
2 to charge our No. 17. Which is just a one sentence
3 explanation that Delaware law applies as opposed to
4 quoting the entire internal affairs doctrine in South
5 Carolina.

6 MR. ELLIS: Let me see their No. 17 just to make
7 sure.

8 MR. RUSTIN: Page 23.

9 MR. ELLIS: Your Honor, I don't want to complicate
10 the internal affairs document if we're all in agreement.

11 THE COURT: No, I'm not going to charge No. 17 about
12 the application of Delaware law. I'm not going to say
13 South Carolina. I'm not going to say Delaware. I'm just
14 going to tell them this is the law. So I'm not going to
15 read 17. Because I -- it's already confusing enough. So
16 I'm not even going to say the state. I'm just going to
17 say this is what it is.

18 MR. RUSTIN: Your Honor, would it be appropriate then
19 just to get rid of number 23 and deal with the plaintiff's
20 charge instead of dealing with -- complicating the
21 internal affairs doctrine?

22 THE COURT: Well, let me hear from you, Mr. Ellis?

23 MR. ELLIS: I'm not opposed to that if we use the
24 Delaware charge on the stock options.

25 THE COURT: All right. Do you have that in your

1 request to charge?

2 MR. ELLIS: I do.

3 THE COURT: In the defense or the Plaintiff's?

4 MR. ELLIS: Number -- I have it as number 24 --

5 THE COURT: All right. Okay. I'm sorry, let me hear
6 you about 24. Once again, let's assume, I'm not going to
7 say South Carolina or Delaware, okay. We're just not
8 going to talk about that.

9 MR. RUSTIN: No. 23, Your Honor, I might have got off
10 from you. We're on 24 now?

11 THE COURT: Okay, all right --

12 MR. RUSTIN: Oh, there's no objection to internal
13 affairs, I just didn't know if, Your Honor, wanted to
14 charge the internal affairs doctrine in South Carolina.

15 THE COURT: Is there --

16 MR. RUSTIN: There's no objection.

17 THE COURT: Is there some distinction between the two
18 states?

19 MR. ELLIS: Well, Your Honor, I think there's a big
20 distinction between the two states that if the Court is
21 going to charge Delaware law with respect to the stock
22 option, the internal affairs doctrine doesn't matter if
23 the jury knows about it.

24 THE COURT: So you're saying you will not use 23 if
25 we're using 24, is that you're saying?

1 MR. ELLIS: Yes, sir.

2 THE COURT: Do you have an objection to that from the
3 Defense?

4 MR. RUSTIN: No, Your Honor.

5 THE COURT: All right. Very good. Okay. Once
6 again, understand that I took out whatever the first
7 couple words were under Delaware law, I'm just taking that
8 out, okay? I'm not saying South Carolina or Delaware.

9 25?

10 MR. RUSTIN: Your Honor, and this may be part of me
11 not having been here first day of trial, that doesn't
12 include the other portion of the Delaware code that
13 provides that stock --

14 THE COURT: What number are you talking about?

15 MR. RUSTIN: Charge No. 24 for the Plaintiff, Your
16 Honor.

17 THE COURT: No, no, I meant of yours.

18 MR. RUSTIN: Yeah, Your Honor. Your Honor, charge
19 No. 18 of the Defendant?

20 THE COURT: 18?

21 MR. RUSTIN: Yes, Your Honor.

22 THE COURT: If y'all could look at Defendant's 18.
23 Again, taking out under Delaware law.

24 MR. ELLIS: Your Honor, No. 18, we wholeheartedly
25 object to. The stock option issue by a corporation is not

1 a (inaudible).

2 MR. STILLWELL: Your Honor, it's, basically,
3 (inaudible). I don't know what the jury would do with it.
4 We've argued both of them before.

5 THE COURT: Hold on a second. All right. So the
6 last sentence of 18, does the Plaintiff dispute that that
7 is a correct statement of Delaware law?

8 MR. ELLIS: I dispute that the whole thing is an
9 incorrect statement of Delaware law with respect to the
10 stock options. It is absolutely -- I think it's a correct
11 statement of law with respect to a contract between
12 private parties to sale securities. It is not a correct
13 statement of law for a corporate stock option. I think
14 the law is actually the same in South Carolina.

15 THE COURT: What would you suggest that is?

16 MR. ELLIS: It can be a private sale security among
17 two people or --

18 THE COURT: No, what would you suggest the law in
19 South Carolina is?

20 MR. ELLIS: This is Delaware law, I'm sorry.

21 THE COURT: I understand that, but you said you
22 thought it was the same as South Carolina. So what does
23 South Carolina say about the contract for the sale of
24 purchased stock?

25 MR. ELLIS: In South Carolina -- I probably should

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1 have not made that comment. I was making the comment that
2 a private sale of stock among two private individuals, I
3 think it's correct, it doesn't have to be in writing. The
4 issuance of a stock option by a corporation, however, does
5 have to be in writing and approved by the Board resolution
6 under Delaware law.

7 THE COURT: All right. Thank you. As to 25 as it
8 was written by the Plaintiff, Plaintiff's 25, what
9 objection -- aside from adding to it, what objection does
10 the Defense have?

11 MR. RUSTIN: Your Honor, there, we would just ask
12 that, again, fiduciary duty be charged under Delaware law
13 as opposed to South Carolina law. Are we still on 24,
14 Your Honor?

15 THE COURT: No, we're on 25.

16 MR. RUSTIN: Good.

17 THE COURT: We're on 25. And where do you have
18 fiduciary duty defined in your charges?

19 MR. RUSTIN: Your Honor, that would be our charges
20 25, 26, 27 -- 25, 26, 27, Your Honor.

21 THE COURT: All right. Twenty-five, what I will
22 charge out of 25 is in the second paragraph, Records have
23 a fiduciary relationship with the corporation they serve.
24 Its fiduciary obligation has been characterized as a triad
25 of due care, good faith and work. That's what I'll

1 charge.

2 Plaintiff have an objection to that?

3 MR. ELLIS: You're just going to charge that same
4 paragraph?

5 THE COURT: I'm going to charge exactly what I said.
6 Directors have a fiduciary relationship with the
7 corporation they serve. Its fiduciary obligation has been
8 characterized as a triad of due care, good faith and work.

9 MR. ELLIS: I'm fine with that. Thank you.

10 THE COURT: Very good.

11 Twenty-six, what I would charge is it is presumed in
12 making a business decision directors of corporation acted
13 on informed basis and good faith and in an honest belief
14 that the action taken was in the best interest of the
15 company. Because the Board is presumed to have acted
16 properly, the burden is on the party challenging to see
17 the established facts were burden of presumption.

18 Any objection to that from the Plaintiff?

19 I completely eliminated the first sentence and then
20 started it is presumed and then jumped to in making a
21 business decision.

22 MR. ELLIS: My objection that comes from a direct
23 case (inaudible) comment of the facts, but I would object
24 on that basis.

25 THE COURT: All right. Let me look at it again.

1 MR. ELLIS: We're on their 26?

2 THE COURT: Yes, we're still on their 26. I'm trying
3 to do that in conjunction with your 25.

4 MR. ELLIS: Okay.

5 THE COURT: All right. Let me look at it again. I'm
6 going to -- as I indicated, I will charge 26.

7 Twenty-seven, Defendant's 27. What I would charge
8 would be, essentially, the duty that mandates the best
9 interest of the corporation that shareholders take
10 precedence over any interest possessed by a director and
11 not shared by the stockholder generally.

12 Objection by the Plaintiff?

13 MR. ELLIS: That will be fine.

14 MR. RUSTIN: No objection.

15 THE COURT: With that, I'm going to charge
16 Plaintiff's 25, also. I think it is the general statement
17 of law that is not confined to the State of South Carolina
18 and purports to the...

19 All right. Plaintiff's 26.

20 MR. RUSTIN: Your Honor, that would be the same issue
21 there we're charging common law fiduciary duty under South
22 Carolina law dealing with a common law duty of --

23 THE COURT: This is U. S. West vs. Time Warner, Inc.,
24 1996, Delaware Chancellor Court?

25 MR. RUSTIN: That's a new one, Your Honor, I need to

1 look at it for a second.

2 THE COURT: Very good.

3 MR. RUSTIN: Your Honor, I think that might have been
4 covered just now in our 26 and 27 that we just addressed.

5 THE COURT: Let me look at this. I'm going to not
6 charge Plaintiff's 26. I do find it is covered by 20 --
7 as I amended them, Defendant's 25, 26 and 27.

8 All right. Plaintiff's 27?

9 MR. RUSTIN: Your Honor, again, that deals with the
10 duty of disclosure under Delaware law and I believe our
11 25, 26 and 27 specifically reviewed will be charged covers
12 that duty under Delaware law.

13 THE COURT: All right. I have taken out the first
14 paragraph of 27. But now looking at it, it looks like
15 your -- the Plaintiff's 27 is the first paragraph of
16 Defendant's 27. Would that be -- or, essentially, the
17 same, not the same.

18 MR. RUSTIN: Your Honor --

19 THE COURT: Just a second. I was talking to Mr.
20 Ellis, I'm sorry.

21 MR. ELLIS: Again, Your Honor, I think their 27 is
22 just a little bit more restrictive and kind of confusing.
23 I think the one here -- you're right, the South Carolina
24 requested charge, I think, is generally an accurate
25 statement of law that the party with fiduciary... And I

1 think that's generally the correct principle.

2 MR. RUSTIN: Your Honor, I certainly object it's
3 arguing the wrong state's law because (inaudible).

4 THE COURT: All right. I'm going to charge
5 Defendant's 27. I'm going to add some of the first
6 paragraph back in. I'm not sure exactly how much of it,
7 but I'm going to add Defendant's 27 in.

8 All right. Plaintiff's 28?

9 MR. RUSTIN: Your Honor, same thing, we would request
10 it be changed to damages recovered under Delaware
11 fiduciary duty law and that's our charge No. 31.

12 THE COURT: 31. All right. Let's go to 31.

13 MR. RUSTIN: Your Honor, I realize we may have to
14 redact some out of that, but that's the Delaware law on
15 that issue.

16 THE COURT: All right. And the problem I've got is I
17 want a statement of the law, not how it might apply in
18 this particular case and saying that NARP did this or Mr.
19 Richardson did that. So I do not intend -- I want
20 something on fiduciary duty and charge on damages, but I
21 can't accept Defendant's 31. If y'all can give me a
22 straight statement of the law about fiduciary duty and
23 charge on damages under Delaware law, then I will do that.
24 But barring that, I'm not going to. All right. So you
25 understand my problem with your 31?

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1 MR. RUSTIN: Yes, Your Honor, we do.

2 THE COURT: Just a black and white statement of law,
3 that's all I want. All right. All right. With that --
4 we can review that in the morning, but if I get that black
5 and white statement on the law under Delaware, that's what
6 I'm going to charge.

7 All right. Plaintiff's 29.

8 MR. RUSTIN: Yes, Your Honor, we object to the first
9 paragraph there that charges -- that's actually a fraud
10 and misrepresentation charge. Additionally, it's a South
11 Carolina charge on the South Carolina law of fraud and
12 misrepresentation, not on Delaware fiduciary duty law.
13 The second paragraph, I think we've already covered, but
14 to the extent it matters, there's no objection to the
15 second paragraph.

16 THE COURT: All right, Mr. Ellis?

17 MR. ELLIS: We pled fraud as an affirmative defense.
18 But I would like to leave them both in there.

19 THE COURT: I appreciate that. What my intention was
20 to charge the second paragraph of your request to charge.

21 Plaintiff's 30?

22 MR. RUSTIN: Your Honor, no real objection. We would
23 suggest to use our charges 41 and 42, which is Anderson's
24 request to charge. Purportedly give the elements of
25 estoppel. It may be more easily comprehensible by the

1 jury.

2 THE COURT: Mr. Ellis, can you look at 41 and 42,
3 please? And just so that you know, regarding 41, my
4 intention was to take out the last sentence and the
5 sentence before, it says, Would be to sanction. That's so
6 blacked out that whatever that word was, I don't even know
7 what it is now, but that's how I would charge 41 and 42.
8 The first sentence, and the second line of it is, Party
9 and the party claiming it.

10 So with those changes, do you have a problem with 41
11 and 42, Mr. Ellis?

12 MR. ELLIS: Your Honor, I think 42 is actually an
13 overstatement of law. I don't think it's quite that -- in
14 Parker vs. Parker, I just don't think it's quite that
15 extensive. I think our 30 is more closer to the correct
16 law.

17 MR. RUSTIN: Your Honor, 42, I just took it straight
18 from Strickland and the elements it sets out.

19 THE COURT: All right.

20 MR. ELLIS: Your Honor, we don't have a problem with
21 their 42 if we get our 31.

22 THE COURT: Okay. What I'm trying to do is not to
23 read all of this. How is it different?

24 MR. ELLIS: Well, our 31 is estoppel by silence.

25 THE COURT: 30?

1 MR. ELLIS: Our 31.

2 THE COURT: Okay.

3 MR. ELLIS: We don't mind their 42 being our 31.

4 THE COURT: So 30 -- we were on 30?

5 MR. ELLIS: Yeah, I shouldn't have moved this, I'm
6 sorry.

7 THE COURT: Now, we've moved on to 31. Is there any
8 objection to 31, Plaintiff's 31?

9 MR. RUSTIN: Your Honor, there, once again, it's
10 common law fiduciary duty estoppel. I think that might be
11 subsumed in the prior estoppel by silence charge wrapped
12 up.

13 THE COURT: All right. Now, I'm going to -- I'm
14 going to charge Plaintiff's 31.

15 All right. Plaintiff's 32.

16 MR. RUSTIN: Your Honor, I think that's one of the
17 new Latches charges that was brought up during the break.

18 THE COURT: Now, I would not charge paragraph 2. I'm
19 not going to charge paragraph 2. Look at paragraph one,
20 is there an objection to Plaintiff's 32?

21 MR. RUSTIN: Your Honor, I don't think we have an
22 objection to the first portion of that paragraph, it's
23 just in quotations South Carolina law. The
24 interpretation, however, in the second line of that
25 paragraph, Your Honor, I have --

1 THE COURT: All right. Let me see.

2 All right. Mr. Ellis, is there anything you want to
3 say on Plaintiff's 32? I'm not charging the second
4 paragraph.

5 MR. ELLIS: I understand that. No, that's fine. I'm
6 good with it.

7 THE COURT: All right. Very good. No. 33, that's in
8 my charge.

9 MR. RUSTIN: No objection, Your Honor.

10 MR. ELLIS: 34 is actually a redo. It's already in
11 there, as a matter of fact. I think that's the one you
12 said we have to redo.

13 THE COURT: Right. All right. So -- all right.
14 Okay.

15 Now, going to -- I'm going to have to hide the charge
16 from jury. All right. Defendant's No. 1 is generally in
17 my charge. Defendant's No. 2 generally in my charge.
18 Defendant's 3 is generally in my charge. Defendant's 4
19 generally in my charge. Defendant's 5 generally in the
20 charge.

21 MR. ELLIS: I do have a question about that.

22 THE COURT: About what?

23 MR. ELLIS: No. 5.

24 THE COURT: All right. Where at?

25 MR. ELLIS: Well, my question is this, under

1 declaratory judgment action, I just want to make it clear
2 that Plaintiff, North American Rescue, normally would have
3 the burden of proof. The declaratory judgment action
4 seeking to declare there's not a contract under, I think
5 the case is Land Bank Trust Grant or something like that,
6 they said the parties seeking proof of a contract has the
7 burden of proof.

8 THE COURT: Mr. Stillwell or counsel?

9 MR. RUSTIN: Your Honor, I believe a party asserting
10 the invalidity of the contract as opposed to validity
11 bears the burden of proof. But I'll be honest, I have not
12 read Land Grant Trust or Holding.

13 MR. ELLIS: I can give it to you in the morning.

14 THE COURT: Y'all need to look at that. Otherwise,
15 I'm not going to change what I already intended to do.
16 Number seven, I've already talked to you about that. No.
17 8, I've already talked about that. No. 9, I'm not going
18 to do. No. 10 is my general charge. No. 11, Defendant's
19 11.

20 Mr. Ellis?

21 MR. ELLIS: That's fine, Judge. That's right out of
22 Judge Anderson's charge, so there's no problem with it.

23 THE COURT: All right, sir. No. 12?

24 MR. ELLIS: Your Honor, when you're interpreting a
25 contract -- I'm in the third paragraph.

1 THE COURT: I'm sorry?

2 MR. ELLIS: I apologize, I'm talking down to the
3 table. Third paragraph, No. 12, Defendant's 12, the
4 sentence in there, When you're interpreting a contract
5 (inaudible) the contract if you decide the (inaudible)
6 meaning would (inaudible) the parties true intentions.
7 It's the law of the case on parole evidence, I think
8 that's inconsistent with the way you interpret the
9 contract. I see several cases cited here as well as Judge
10 Anderson.

11 THE COURT: All right. Hold on.. Other than that one
12 sentence, do you have a problem with 12?

13 MR. ELLIS: Well, I have a problem with the last
14 sentence to. When you determine the general purpose of
15 the contract, you look at the language of the contract --
16 and I think it's a correct rule of law is that you read
17 the words used by the parties and apply their language.
18 So I do have a problem with that last sentence.

19 THE COURT: Okay. You're saying if they find it to
20 be ambiguous, this would not be a correct statement of the
21 law? If they find it to be ambiguous, then, yes, they can
22 consider other things. They can consider situation of the
23 parties and all that. Okay. Well, it starts off where
24 the language of the contract is ambiguous.

25 MR. ELLIS: That language looks to me awfully

1 disconnected from where the language --

2 THE COURT: All right. So we need to, in that third
3 paragraph, the very first thing where it had a contract,
4 you put ambiguous contract. And also in the next
5 sentence, when you're interpreting an ambiguous contract.

6 MR. ELLIS: Much better. All right.

7 THE COURT: With that change, is there a problem
8 then?

9 MR. ELLIS: Your Honor -- and I'm just trying to keep
10 up all with all this. We've got construe again the draft
11 charge, that's fine. Somewhere I think construed against
12 the draft charge.

13 THE COURT: All right. All right. So Defendant's
14 13, I know you had a problem with that, but what I was
15 doing was I took out part of it and, basically, what I was
16 charging was ambiguous language in a contract should be
17 construed most strongly in favor of the party who did not
18 write or prepare the contract and against the party who
19 prepared the contract. This ruling does not apply where
20 there is no evidence of adhesion or equal bargaining power
21 between the parties. I understand -- well, anyway, that's
22 what I'm going to charge. Defendant's 13 as amended in
23 that fashion.

24 Defendant's 14? Any problem with that, Mr. Ellis?

25 MR. ELLIS: I do. And I'll tell you why. I think

1 it's inconsistent with fiduciary duty. The general
2 contract law is in an arm's length transaction. But the
3 case in South Carolina, and I don't want to keep switching
4 back and forth from South Carolina and Delaware, is if in
5 fiduciary duty relationship, this rule does not apply. So
6 I think this is not correct in the facts of this case.

7 THE COURT: Gentlemen?

8 MR. RUSTIN: Your Honor, I'm not aware of any case
9 that says that. It's my understanding that it's almost
10 universal in South Carolina law that presumption does
11 apply to all contracts, including even those has
12 mortgagor/mortgagee and banker/investor.

13 MR. ELLIS: No, Burwell vs. South Carolina National
14 Bank, mortgagor/mortgagee, banker/investor -- in arm's
15 length transaction.

16 THE COURT: What does it say?

17 MR. ELLIS: Burwell vs. south Carolina National Bank,
18 it says except where there's a confidential or fiduciary
19 relationship, the parties have a duty to read and know,
20 they can't rely on what somebody else tells them. The
21 presumption from reading that would be if there is a
22 fiduciary duty relationship that duty does not apply. I
23 mean, I think it's a correct statement --

24 THE COURT: So you want it to say all that except for
25 the fiduciary duty relationship?

1 MR. ELLIS: Yes, that will be fine.

2 THE COURT: That's what you want it to say?

3 MR. ELLIS: Yes, sir. Burwell vs. South Carolina
4 Bank --

5 MR. RUSTIN: Your Honor, I think, fairly, we ought to
6 have some time to look at it.

7 THE COURT: I'll be glad for you to do so.

8 MR. RUSTIN: Yeah, my only concern, Your Honor, would
9 be that that deals with common law breach fiduciary
10 relationship under South Carolina law versus here, it says
11 fiduciary duty established under Delaware corporate law.
12 And so I don't know that those two are synonymous,
13 especially when you're getting into issues of contract
14 drafting.

15 THE COURT: All right. I'll look at that.

16 All right. 15?

17 Mr. Ellis, did you have a charge on parole evidence?

18 MR. ELLIS: Your Honor, I thought we had a few.

19 THE COURT: I'm sorry?

20 MR. ELLIS: I thought we had a few. I was beating
21 that drum pretty hard.

22 THE COURT: I mean, I know you did. But where are we
23 at? 12 and 13, correct?

24 MR. ELLIS: Yes, sir.

25 THE COURT: All right. What's the difference about

1 12 -- Plaintiff's 12 and 13 and Defendant's 15?

2 MR. STILLWELL: Your Honor, there is no difference.
3 The only thing that we did change, I went to Black's Law
4 dictionary hoping to explain what parole evidence was and
5 just using the Black's dictionary term. The parole or
6 unwritten evidence rule. That's a compromise. Otherwise,
7 they're coming from the exact same source, which is
8 Anderson's request to charge.

9 THE COURT: 16? Mr. Ellis?

10 MR. ELLIS: I think that's correct.

11 THE COURT: All right. And I told you 17, I was
12 going to do. 18, told you what I was going to do. Let's
13 see.

14 MR. ELLIS: I think that's the one where we had an
15 objection to whole thing.

16 THE COURT: Yes, sir, I understand that. I know you
17 did. I'm going to charge, basically, the last sentence,
18 So the contract for the sale and purchase of stock does
19 not have to be contained in the written agreement to be
20 enforced. I'm not going to charge 19.

21 20, any problem with 20, Mr. Ellis?

22 MR. ELLIS: I like our application better.

23 THE COURT: What number is that, please?

24 MR. ELLIS: Mine was 16.

25 THE COURT: 16?

1 MR. ELLIS: Yes, sir.

2 THE COURT: All right, sir.

3 MR. STILLWELL: Your Honor, I believe Mr. Ellis' 16
4 deals specifically with contract ratification. Whereas
5 what we were attempting to do here is, again, discuss
6 ratification by a Board or shareholders of Delaware
7 corporation. So I don't know the contract --

8 THE COURT: Well, I'm going to -- I'm going to charge
9 No. 20.

10 All right. 21, Mr. Ellis?

11 MR. ELLIS: Your Honor, I think that's not correct
12 and a little bit misleading. It does require Board
13 ratification. So I think the way that looks there is kind
14 of ratified by shareholders or the Board, I don't think
15 that's correct.

16 THE COURT: Ratified expressed or by implication --
17 what would you add to that, I'm sorry? What did you want
18 to add to that?

19 MR. ELLIS: Ratified by the Board of Directors.

20 MR. RUSTIN: Your Honor, under Delaware law a Board
21 of Directors by implication taking advantage of a
22 contract, may ratify an otherwise --

23 THE COURT: Well, is ratified expressly or by
24 implication by the Board of Directors.

25 MR. RUSTIN: Yes, sir.

1 THE COURT: Adding by the Board of Director to the
2 end of 21. Okay. With that addition, I'm going to charge
3 that.

4 All right. 22, Mr. Ellis?

5 MR. ELLIS: Your Honor, again, 22 is pretty broad.
6 And I think if you're going to charge 21, you don't need
7 it. 22, I think -- there's lots of kinds of ratifications
8 for lots of different types of things. I think
9 specifically Board ratification or Board action is what
10 you need.

11 THE COURT: I've got 20 and 21. Why do I need 22,
12 gentlemen?

13 MR. RUSTIN: Your Honor, it may solve all of this if
14 we go back to 21. The ratification relates back to the
15 date of the initial transaction. At the end of No. 21.
16 This simply deals with the timing of the ratification.
17 It's not a subsequent action. It's treats it from its
18 inception, it was a ratified act.

19 THE COURT: I'm sorry, was the last statement?

20 MR. RUSTIN: Your Honor, at the end of our request
21 No. 21, just a sentence the ratification relates back to
22 the date of the initial transaction.

23 THE COURT: 23, Mr. Ellis?

24 MR. ELLIS: I disagree with it. I think we're also
25 sort of over ratifying at this point. There's a lot of

1 ratification charges here. So.

2 THE COURT: This is going to be, unfortunately, an
3 exceptionally long charge, there's no question.

4 MR. ELLIS: I don't think it's necessary and I also,
5 don't think that in this case -- I don't think it's direct
6 here. I think an action is required to be a Board action
7 done by Delaware law by the Board.

8 MR. RUSTIN: Your Honor, this actually is a charge
9 for shareholder ratification here. Which would be a
10 different concept than Board ratification because we have
11 unanimous ratification by all shareholders of the
12 corporation. Or we'll assert that.

13 MR. STILLWELL: Your Honor, 23 and 24, we can combine
14 those down to one.

15 THE COURT: Being Board or shareholder. All right.
16 What I'm going to do is 23, Ratification of an action by
17 the shareholders of a corporation cures what otherwise
18 would be an unauthorized or unenforceable act of a
19 corporation's officer or its Board of Directors. And a
20 proper ratification by the shareholders of a corporation
21 has to retroactively give shareholder consent to corporate
22 transactions previously conducted.

23 25, we've talked about this before, but I've,
24 basically, taken out the whole first paragraph and chopped
25 out all the things about the Delaware, basically, talk

1 about that triad in 26. Starting with it is presumed and
2 then went to in making a business decision. 27, A
3 corporate director duty of disclosure is an application of
4 the general fiduciary duty of loyalty that applies in the
5 setting of a transaction or other corporate event that is
6 being presented to the stockholders for action.
7 Essentially, the duty of loyalty mandates that the best
8 interest of the corporation and its shareholders take
9 precedence over any interest possessed by the Director and
10 not shared by the stockholder in general.

11 Mr. Ellis, Defendant's 28, second paragraph?

12 MR. ELLIS: I don't know that that's a correct
13 statement of law that's applicable here. I think it would
14 be misleading.

15 THE COURT: Misleading as how?

16 MR. ELLIS: Well, I don't think that there's a
17 question that Bob and North American Rescue Products had
18 wanted to issue capital stock. Maybe -- I'm sorry, maybe
19 I'm getting lost here. The issue of inadequate
20 consideration goes to the issue of the stock option here.

21 THE COURT: All right. Okay. Well, I'm going to
22 charge the second paragraph.

23 All right. All right. 29, Mr. Ellis.

24 MR. ELLIS: I think that's fine. I think that's
25 fine. I guess you're going to take out the Delaware law--

1 THE COURT: Yes, sir. Other than that, do you have
2 an objection to it?

3 MR. ELLIS: No, Your Honor.

4 THE COURT: 30, Mr. Ellis.

5 MR. RUSTIN: Your Honor, we're asking you (inaudible)
6 dealing with ratification.

7 THE COURT: All right. Very good.

8 MR. STILLWELL: I'm asking that question every time,
9 Your Honor.

10 THE COURT: All right. Very good.

11 All right. Now, 31 was the one you were going to try
12 to work on to get me something that's just black and white
13 on fiduciary duty and damages. Okay? So I'm not going to
14 charge 31 as the Defendant has it. It's y'all's
15 responsibility to get me something that just states the
16 law.

17 32, I'm not going to charge. 33, I'm not going to,
18 34, I'm not going to.

19 35. Do you want to refer back to something you've
20 got, Mr. Ellis?

21 MR. ELLIS: Well, Your Honor, I can.

22 THE COURT: You've got breach of contract defined in
23 your request to charge No. 2.

24 MR. ELLIS: Yes, sir. It's just a little more
25 simple, better organized.

1 THE COURT: On behalf of the Defense?

2 MR. RUSTIN: Your Honor, given the fact that No. 2,
3 there will be no 35.

4 THE COURT: All right. Very good. Okay. Let's see,
5 going on to 36, intention of the parties.

6 MR. RUSTIN: Your Honor, I think that was what we
7 went over earlier, dealing with ambiguous contracts.

8 THE COURT: All right.

9 MR. RUSTIN: That will we modified.

10 THE COURT: All right. And point me to it, please.

11 MR. RUSTIN: The beginning of the third paragraph
12 should now read, Ambiguous contracts should be literally
13 construed.

14 THE COURT: Where is the one we had before that?

15 MR. ELLIS: Yeah.

16 THE COURT: Where is the one -- that's my question,
17 where is the one that I put the words ambiguous? What
18 number is that one? Let's look at that one again. No.
19 12. It's the same thing, right? 36 and 12 are the same
20 thing, right?

21 MR. RUSTIN: I'm going with that, Your Honor.

22 MR. ELLIS: It is.

23 THE COURT: All right. 36, we're going no, because
24 we changed 12. Okay.

25 All right. 37?

1 MR. ELLIS: I don't think that's in the case, is it?

2 THE COURT: I'm not going to charge 37. I'm just not
3 going to charge 37.

4 All right. 38, damages for the breach of contract.

5 Mr. Ellis, 38? And once again, I'm not going to say
6 North American Rescue Products, I put evidenced that a
7 party breached its contract with another party, you will
8 next have to determine what damages, if any, are
9 recoverable. I'm not putting people's name in here.

10 MR. ELLIS: I guess still need two of them.

11 THE COURT: Where's the other one?

12 MR. ELLIS: Our's is No. 17.

13 THE COURT: 17, Plaintiff's 17?

14 MR. ELLIS: Yes.

15 THE COURT: Okay. Let me look at that then.

16 MR. ELLIS: I'm okay with their 38.

17 THE COURT: All right. Very good. With the change
18 that I made, taking out the people's names.

19 All right. 39, taking out the first sentence,
20 changing the parties -- the actual names of people to a
21 party or the party.

22 Is there a problem with that, Mr. Ellis?

23 MR. ELLIS: No, sir, I think that's fine. But can we
24 also have -- can we add something to it, I'll have to
25 bring it in the morning, just about uncleaned hands?

1 THE COURT: You want to have a charge on uncleaned
2 hands?

3 MR. ELLIS: Yes, sir.

4 THE COURT: All right. You need to bring that to me.
5 And understand, I just want a brief statement of what the
6 law is defining it. Not --

7 MR. ELLIS: It will be short.

8 THE COURT: All right. Very good. 40, I'm not going
9 to. 41, taking out the last sentence. What about 41
10 taking out the last sentence? And then whatever -- I
11 think we talked about this before, it says it would be,
12 whatever that word is. I really blacked it out, the
13 sanction and taking out the last sentence. Any problem
14 with that, Mr. Ellis?

15 MR. ELLIS: Well, I would object to the charge just
16 generally, but as it's worded, I think it's a correct
17 statement of promissory estoppel.

18 THE COURT: All right. I'm going to charge that,
19 once again, as set forth taking out the last sentence and
20 blacking out whatever that word was.

21 42, I was going to charge, understanding the first
22 sentence at the end of the second line, it says, The
23 parties and the party claiming it. 43, I was going to say
24 unambiguous means susceptible of only one meaning. 44,
25 I'm going to say a party must show that he relied on an

1 alleged promise by the other party. Reliance means the
2 party was induced into a definite and substantial
3 detrimental latching or forbearance by the other party.
4 The party must then prove that his reliance was expected,
5 reasonable and foreseeable by the other party.

6 Objection to that, Mr. Ellis?

7 MR. ELLIS: That's a correct statement.

8 THE COURT: All right. No. 45, I'm not doing that.
9 Just eliminating the first paragraph on No. 46, Mr. Ellis?

10 MR. ELLIS: I think it's factually -- I object to the
11 charge because factually they haven't (inaudible) in play
12 here.

13 THE COURT: How about that, gentlemen?

14 MR. STILLWELL: Your Honor, I think that's what the
15 termination agreement with that option was intended to do.
16 Is that a condition or not to be agreeable and
17 enforceable.

18 MR. ELLIS: Well I it's a condition---

19 THE COURT: Where do we say -- hold on a second.

20 MR. RUSTIN: Your Honor, I tried to define both in
21 there so there wouldn't be any prejudice by --

22 THE COURT: Well, let me -- okay. I appreciate that.
23 Thank you. I'm just going to charge the second paragraph.
24 That's what I'm going to do.

25 No. 47, the way I changed it was issue of mutual

1 mistake been raised in order to show the contract was
2 entered into as a result of a mutual mistake. The parties
3 must show, then one, two and three and then take out the
4 last two sentences.

5 Mr. Ellis?

6 MR. ELLIS: Your Honor, my objection to that is I
7 don't think it's right. I think that the mutual mistake,
8 one of the parties could rescind it and in order to get
9 rescinded you have to show the ability to go back to
10 status quo -- I'm sorry, I'm getting my words jumbled and
11 thoughts messed up. I don't think a mutual mistake means
12 a contract automatically voids. I don't think that's
13 correct.

14 MR. STILLWELL: Your Honor, we could entertain that
15 in the morning.

16 THE COURT: All right. Well, I'll let y'all work on
17 it then. You can tell me if you want to change, give me
18 something different about mutual mistake. All right.

19 All right. What about 48, Mr. Ellis? Except,
20 basically, the first sentence.

21 MR. ELLIS: I'm sorry, I went to 49 already.

22 THE COURT: 48, waiver, taking out the first sentence
23 and the last paragraph.

24 MR. ELLIS: We're fine with that.

25 THE COURT: I indicated what I'd do is take out the

1 first sentence and the last paragraph. You're fine with
2 that?

3 MR. ELLIS: The first sentence in the last paragraph?

4 THE COURT: The first sentence and the last
5 paragraph.

6 MR. ELLIS: I got you. That's okay.

7 THE COURT: All right. Very good. All right. 49,
8 taking out the first paragraph. I'm going to do that.

9 MR. RUSTIN: Your Honor, I believe 50 may be cleared
10 up on the verdict form.

11 THE COURT: I'm not doing 50. I'm not doing 50. I'm
12 not going that. All right.

13 All right, taking out the first two sentences, Mr.
14 Ellis, do you have a problem with charge No. 51?

15 MR. ELLIS: I don't think so. The party -- the last
16 sentence, When the party -- I think its similar to ours,
17 but I --

18 THE COURT: Well, what number is yours then, please,
19 tell me. I don't know need to be telling it twice, it's
20 going to be long enough as it is.

21 MR. RUSTIN: I'm not sure they have one.

22 MR. ELLIS: I think 20, Your Honor.

23 THE COURT: Plaintiff's 20?

24 MR. ELLIS: Well, pretty close, they are.

25 THE COURT: Yeah, we're definitely going to pick one.

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APP_0802

1 I'm not doing it twice.

2 MR. RUSTIN: Your Honor, their No. 20 will be fine
3 with us and we'll be happy to give up our 51.

4 MR. ELLIS: Thank you.

5 THE COURT: All right. Very good.

6 And 52, taking out the first paragraph, Mr. Ellis?

7 MR. ELLIS: That's fine.

8 THE COURT: All right. And getting -- let's see, 53
9 is in my change.

10 All right. So with the things we've talked about,
11 y'all can work on those. Otherwise, we'll --

12 MR. STILLWELL: Your Honor, I wonder if we might
13 offer to the Court with these together maybe get some
14 young lawyers to help just so.

15 THE COURT: I'll take whatever assistance you can
16 give me. But, otherwise, I'm just going to be trying to
17 combine the pieces of paper together and just go from
18 there.

19 MR. ELLIS: I thought, Your Honor --

20 THE COURT: You know what I'm doing, if you can help,
21 that's great. If not, then I'll spend more time talking
22 to them than y'all did.

23 MR. ELLIS: We'll try to help you as much as we can.

24 THE COURT: I understand.

25 All right. I'll see y'all tomorrow morning.

0818

APP_0803

1 (WHEREUPON, the proceedings were concluded for
2 the day to be reconvened on August 29, 2008.)
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APP_0804

1 Friday, August 29, 2008

2 THE COURT: Gentlemen, couple things on the charge,
3 couple changes from yesterday. There was Defendant's 43
4 that I, basically, struck out, it was like one sentence
5 left that I said I was going to charge. I looked at it
6 and I decided I'm not going to do it. It was brought to
7 my attention by both parties something I had done,
8 Plaintiff's request to charge 17, I took out because it
9 was identical to Defendant's 38 and we weren't going to do
10 it twice. And No. 13, now have y'all agreed upon it, I
11 looked at and I took out that one part. Then there was
12 one other matter, gentlemen, y'all had?

13 MR. ELLIS: Yes, Your Honor.

14 THE COURT: And it's Plaintiff's 35, I'm going to add
15 it to the end of Plaintiff's -- Court Exhibit, whatever
16 that is, Plaintiff's request to charge, it's No. 35. I
17 understand the Plaintiff wants this contract provision
18 leaving (inaudible) future agreement (inaudible). I've
19 read that Ellis vs. Taylor case. I think what I have in
20 this charge is going to be much more than is sufficient
21 for the jury to understand the law in this particular
22 case. And I respectfully decline to add charge No. 35 to
23 it.

24 Anything else from the Plaintiff before we call the
25 jury in?

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APP_0805

1 MR. ELLIS: No, Your Honor.

2 THE COURT: Anything else from the Defendant before
3 we call the jury in?

4 MR. STILLWELL: No, sir, Your Honor.

5 THE COURT: All right. Ask the jury to come in,
6 please.

7 (WHEREUPON, the jury came into open court at
8 approximately 9:15 a.m.)

9 THE COURT: All right. Good morning, ladies and
10 gentlemen, as you understand, where we are in this case is
11 I'm going to give you the law that you're going to apply
12 to the facts as you so find them to be in this particular
13 case. Right before I get started, I will tell you that,
14 with the lawyers, I worked on this charge a lot after
15 y'all left yesterday. And again, after they left last
16 night I worked on it and this morning I worked on it. And
17 it's still a lot here. I tried to take out as much as I
18 could. But as you understand in this particular case,
19 there are a lot of issues, a lot of legal issues. I'm
20 going to have to cover a lot of territory with you. And
21 I've tried to make it as understandable as I can and using
22 the correct statements of law. But I'm just going to ask
23 you to bear with me, give the utmost attention that you
24 can, even though, unfortunately, I'm going to have to talk
25 to you for some period of time.

1 All right. Starting off, I told you that you are the
2 judges of the facts. I will not indicate to you in any
3 fashion what I believe the facts of this case are and I
4 believe I've stuck with that. Because that's not my job,
5 that's your job and your responsibility. Now, in that
6 same vein, it's my job to give you the law that you're
7 going to apply to the facts as you so find them to be.
8 And if you came into the courtroom with any preconceived
9 ideas of what the law is, what it ought to be, what it
10 should be, what you hope it would be, you're going to
11 disregard that. You will take the law as I give it to you
12 and apply it to the facts as you so find them to be in
13 this case. I indicated to you at the very beginning, one
14 of your jobs in this matter was to judge the credibility,
15 that is the believability of the witnesses that have
16 appeared before you in this case.

17 Now, in doing so and in judging credibility and
18 believability, you can believe a portion of what a witness
19 says and disregard the remainder of it. You can believe
20 one witness against several, several against one. You can
21 disregard in its entirety the testimony of a particular
22 witness if you've got a good and sound reason for doing
23 so. How do you do that? You look at whether the
24 witnesses exhibited to you any kind of interest, bias,
25 prejudice, motive they might have in giving you the

1 testimony they gave you from the witness stand. And,
2 obviously, you consider the opportunity for knowledge,
3 how they come about that information that they gave you
4 from the witness stand.

5 You're job here is to look at the facts and evidence
6 and to find that evidence which convinces you of its
7 truth. What we're asking you to do is use your good
8 common sense, your good judgment that you use in
9 conducting your own affairs. If you think about it, you
10 judge credibility and believability every single day of
11 your life. When somebody tells you something, you
12 automatically judge whether or not you believe them or you
13 don't believe them. And you're using your good common
14 sense and your good judgment in doing that and that's all
15 we're asking you to do here today. Apply your same good
16 common sense, your good judgment to the facts and evidence
17 in this case. Find that evidence which convinces you of
18 it's truth. You don't have any friends to reward, you
19 don't have any enemies to punish. Your verdict can't be
20 the result of any kind of passion, prejudice or sympathy.
21 You've got to analyze the evidence, find that evidence
22 which convinces you of its truth. You have to decide this
23 case on the evidence that was presented in this matter and
24 not on any other extraneous or external matter that's not
25 part of this case.

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APP_0808

1 In this particular matter, the Plaintiff is a
2 corporation under -- organized under one of the laws of
3 the United States of America. In court, a corporation is
4 entitled to the same treatment as an individual. No more
5 and no less. It's entitled to the same consideration and
6 same justice by the law. Therefore, under our laws, the
7 corporation is treated as if it was a person. It can sue
8 and be sued in court and a corporation is liable for any
9 acts or omissions of its officers, agents or employees
10 when their action within the course of their employment or
11 the scope of their authority.

12 During the trial, you've heard from several witnesses
13 by depositions. Those are ways that we can preserve
14 testimony to be used in court without the person actually
15 testifying before you. You will take that testimony as if
16 that person had been sitting in that chair and come before
17 you live. It's the same testimony as was given by all the
18 other witnesses and should be judged and viewed in the
19 same manner.

20 In this case, the standard of proof is called the
21 greater weight or the preponderance of the evidence. And
22 an example we always use and I've used before is if you
23 look at the scales of justice when you come into court and
24 everybody's equal. If you tip those scales ever so
25 slightly in your favor, then you tip the scales or prove

1 your case by the greater weight or the preponderance of
2 the evidence. So, when you looking at the competing
3 claims, you have to view that standard of proof, the
4 greater weight or the preponderance of the evidence.

5 Part of the issues in this case involve contract,
6 contract law. A contract is a matter which arises from
7 actual agreement of the parties that come about by words
8 or oral or written or by conduct. A contract exist when
9 there is an agreement between two or more persons with
10 consideration either to do or not to do some act. There
11 has to be an offer by one party and acceptance by the
12 other party accompanied by some kind of consideration.
13 For an agreement to be enforceable, the parties must agree
14 by way of an offer to enter into an agreement and
15 acceptance by the other party and under terms which are
16 understood by each party. This is referred to as the
17 meeting of the minds. The meeting of the minds required
18 to make a contract is not based on a secret purpose or
19 intention on the part of one party stored away in the
20 party's mind and not brought to the attention of the other
21 side. It has to be based on the intention which has been
22 made known or which from the circumstances should be known
23 by the other party. The parties must show their mutual
24 consent to all the essential terms of the contract in
25 order for there to be a contract. If one of the parties

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APP_0810

1 does not agree, then some part of the formation of the
2 contract is not there. It's lacking. To constitute a
3 valid and binding contract, it's essential that both
4 parties agree to the same thing in the same sense.

5 Consideration is an element of a contract. And no
6 contract is complete without consideration. The law says
7 consideration is that which the parties agree is
8 consideration. It can be money, it can be an agreement to
9 do a particular thing or it can consist of mutual
10 promises. Valuable consideration under the law can
11 consist as either some kind of right, or interest or
12 profit or benefit going to one party or somebody agreeing
13 not to do something. Consideration may consist in the
14 benefit of one doing something or the detriment to the
15 other party. Consideration can consist in doing or
16 agreeing to what one doesn't already have to do. You
17 agree to do something that you're not legally obligated to
18 do. So -- and it also, finally, has to be agreed upon.
19 Both parties have to agree to that consideration.

20 If you agree that -- or find that there's a contract,
21 you look at whether or not there was a breach of a
22 contract. And that's the failure without the legal excuse
23 to perform any promise which forms part of the contract.
24 When performance under a contract is due, any
25 nonperformance of the contract is a breach. A party

1 breaches a contract when he does not perform as he agreed
2 to do under the contract. The party alleging the breach
3 of the contract is entitled to recover only if you find
4 that they have proved by the greater weight or
5 preponderance of the evidence -- and you apply that
6 standard to everything. Somebody's trying to show you
7 something, they have to prove it to you by the greater
8 weight or preponderance of the evidence. They have to
9 prove that the other party, the breaching party, the party
10 that did wrong, did, in fact, breach the contract, do
11 wrong, between the two parties. Accordingly, to recover
12 for a breach of contract, the party alleging the breaching
13 of the contract must establish these things by the
14 preponderance of the evidence. If there was a binding
15 contract, that there was a breach or a failure to perform
16 the contract and three, that damages were suffered by the
17 party that didn't breach the contract.

18 Our law provides that a party may not insist upon the
19 performance of a contract by the other party when that
20 party has brought about the breach of the contract. A
21 party cannot prevail in an action if he alone is
22 responsible for the nonperformance or the breach. If a
23 possibility of performance arises directly or even
24 indirectly, it is a sufficient excuse for nonperformance
25 by the other party. A party who has materially breached a

1 contract by failing to perform an obligation that was
2 promised in exchange for the performance of the other
3 party's obligation may not insist that the party that
4 didn't breach the contract perform under the contract.
5 You have to look at the contracts and looking at whether
6 they are clear or ambiguous.

7 And we'll talk about, first, when a contract is
8 capable of clear meaning. You, and I mean that
9 collectively, you cannot exercise your discretion as to
10 wisdom of the contract. Hardship alone, provides no basis
11 for relieving somebody of their duties and obligations
12 under the contract. When interpreting a contract, looking
13 at a contract, the primary objective is to give effect to
14 the intention of the parties. Now, this intention has to
15 be derived from the language of the contract if that
16 contract is clear. The rights of the parties are measured
17 by the contract. Regardless of their wisdom,
18 reasonableness or failure of a party to guard its right.
19 You're not in the business of making a contract if the
20 language of the contract is plain and clear and capable of
21 only one reasonable meaning. The contract's language
22 determines what is to be done. The terms of the contract
23 should be understood in their plain, ordinary and popular
24 sense.

25 When interpreting a contract, common sense and good

1 faith are the leading matters that you look at. All
2 contracts should recede a sensible and reasonable
3 interpretation that would not lead to absurd consequences.
4 An interpretation which involves the more reasonable and
5 probable contract should be adopted. When the language in
6 the contract should be -- I'm sorry, the language in a
7 contract should be interpreted most strongly against the
8 party who selected the language, especially when the
9 drafting party uses that language to defeat the contract.
10 If the intent of a written contract must be gathered from
11 its context -- I'm sorry, the intent of a written contract
12 has to be found from the entire agreement and not from any
13 particular part of it. Every term contained in the
14 contract has to be considered and given effect if
15 possible. You cannot ignore portions of a contract to
16 avoid a finding of ambiguity or to declare ambiguity.
17 Instead, you have to read the contract so as to give
18 effect to every word and phrase as far as practical. You
19 are not at liberty either to disregard, use -- words used
20 by the party or insert words which have not been used.

21 Regarding the meeting of the minds. A man of
22 understanding, any person of understanding will not be
23 allowed to say they did not know and their mind did not
24 meet the mind of the other party in a writing which
25 clearly expresses a contract. When agreeing to it, he

1 had -- and especially he has -- when agreeing to it, he
2 has that writing before him and there is nothing done by
3 the other party to prevent his intelligent consideration
4 of it. There is no meeting of the minds between the
5 parties when they are merely negotiating terms of an
6 agreement to be entered into. When it is determined that
7 the parties intended not to be bound by a contract until
8 the written contract is excused, no valid obligation will
9 be held to exist.

10 Conditions in a contract can be expressed, written in
11 the contract or implied as evidenced by the intentions of
12 the parties. Generally speaking, a condition to a
13 contract is an event which must occur before a party's
14 performance under a contract becomes due. Where a
15 contract has mutual conditions and obligations and one
16 party disabled himself from performing or refusing to
17 perform his obligations under the contract and
18 communicates that refusal to the other party, the other
19 party is not only excused from performance on their part,
20 but may treat the contract as terminated or ended.

21 A contract is entire and not severable, broken up,
22 when its terms intend that each and all of its parts are
23 interdependent. The severability of a contract depends
24 upon the intent of the parties. A contract is complete
25 and not severable when its terms, nature and purpose

1 contemplate and intend that all of its parts are common to
2 each other and interdependent based upon each other. The
3 contract is entire if the parties intend that each party
4 is dependent on the other party -- on the other parts. A
5 severable contract, one that can be broken up into parts,
6 on the other hand, is one that in its purpose is
7 susceptible of division or breaking apart. Severable
8 contracts have two or more parts. In respect to matters
9 and things contemplated by the contract, the separate
10 parts are not necessarily dependent upon each other. If a
11 contract is severable, the party had to intend that each
12 part was not dependent on the other parts. In general, a
13 party who signs a written contract or document, has the
14 duty to exercise reasonable care to protect themselves and
15 such duty requires that they read the contract that they
16 sign. Thus, one who is capable of reading and
17 understanding, but fails to read a contract before signing
18 it is bound by its terms, except when there's a breach of
19 a corporate fiduciary duty.

20 Now, if a contract is ambiguous, that is, it has more
21 than one meaning, you are permitted to consider the
22 circumstances surrounding the making of the contract to
23 help you determine the intention of the parties. You may
24 not, however, use such circumstances to give the contract
25 a meaning that is not apparent in the contract -- or

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APP_0816

1 apparent on the face of the contract. The paramount rule
2 in interpreting contracts is to figure out the intention
3 of the parties and to put these intentions into effect.
4 To arrive at a correct conclusion as to the intention of
5 the parties, it is proper that the contract be considered
6 in light of surrounding circumstances, understanding we're
7 talking about an ambiguous contract, one that has more
8 than one meaning, the parties' intentions must be derived
9 from the language of the contract if it's plain.
10 Ambiguous contracts should be liberally construed or
11 liberally looked at to carry out the intentions of the
12 parties. It's the substance of the agreement, not the
13 form which must control the construction of the contract.
14 When you are interpreting an ambiguous contract, you are
15 not limited to the literal meaning of the terms of the
16 contract if you decide that meaning would defeat the
17 parties' true intentions. The contract is to be
18 considered by looking at its subject matter and purpose.

19 When you have determined the general purpose of a
20 contract, you should look at the language of the contract
21 in light of that purpose. If a contract is capable of a
22 construction which makes it valid, makes it legal, it will
23 be given that construction if that contract is ambiguous.
24 The way you read the contract, if it renders that contract
25 valid, that is preferred as to a reading that makes it

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APP_0817

1 invalid unless that construction is required by the
2 circumstances. Where the language of the contract has
3 more than one meaning, you may consider the surrounding
4 circumstances to help you determine the real intention of
5 the parties. And again, you may not use these
6 circumstances to give the contract a meaning which is not
7 apparent on its face. If the terms of the contract to be
8 given two meanings, the meaning that would make the
9 contract unusual or extraordinary is not fair. The one
10 that would make the contract reasonable and fair is fair.

11 When the existence of a contract is disputed or it's
12 ambiguous, evidence that a party complied with the
13 contract or acted as if the contract was enforced, is
14 relevant and permissible for you to look at on the issues
15 of the contract's existence, its meaning and whether or
16 not it was breached. A contract is ambiguous only when it
17 can be reasonably understood in more ways than one. The
18 language in a contract, including doubtful language,
19 should be interpreted most strongly against the party who
20 selected that language, especially where the drafting
21 party seeks to use the language to defeat the contract.
22 So ambiguous language in a contract should be looked at
23 most strongly in favor of the party who did not write or
24 prepare the contract and against the party who prepared
25 the contract. The rule does not apply when there is no

1 evidence of unequal bargaining power between the parties.

2 There's a term of law that we might have heard the
3 lawyers use in this case, among other things, called
4 parole evidence. Parole evidence states that when the
5 terms of a written document are unambiguous, clear -- and
6 clear, other evidence of statements made with or prior to
7 the contract's signing are not admissible to vary or
8 explain the contract. If a contract is ambiguous, this
9 parole evidence is admissible to show the true meaning of
10 the contract and the intent of the parties. Once again,
11 the ambiguous contract is one that can be understood in
12 more ways than one.

13 Printed provisions of a contract should be
14 harmonized, if possible, with handwritten ones. If there
15 is an inconsistency between written and -- I'm sorry, the
16 printed provisions of a contract and handwriting, the
17 handwriting provisions prevail. The modification of a
18 contract is a change which introduces new elements into
19 the contract or cancels a part of the contract but leaves
20 the general purpose of the contract the same or intact. A
21 written contract can be modified by subsequent agreement
22 of the parties provided the subsequent agreement contains
23 all the requisites of the valid contract that we've talked
24 about. The meeting of the minds, the agreement,
25 considerations, those things that are required of a

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1 contract.

2 You can ratify a contract in these ways. You can
3 ratify a contract by acceptance by the parties of the
4 benefits of the contract, full knowledge of the facts, and
5 circumstances or an election that indicates you intend to
6 adopt the arrangements. Ratification is the confirmation
7 and acceptance of the previous act making that act valid
8 from the moment it was done. If a corporate officer
9 performs an act or enters into a contract or other
10 transactions without being authorized to do so, but which
11 could have been authorized by the Board of Directors, such
12 contract or transaction may nevertheless be binding on the
13 company if ratified expressly or by implication by the
14 Board of Directors. The effect of a ratification is that
15 it relates back to the date of the initial transaction.
16 Ratification of an action by the shareholders of a
17 corporation cures what otherwise would be an unauthorized
18 or unenforceable act of a corporation's officer or its
19 Board of Directors. A proper ratification by the
20 shareholders of a corporation has to retroactively give
21 shareholder consent to corporate transactions previously
22 conducted.

23 You can rescind a contract. Even if one had been
24 entered into, a contract can be rescinded for mistake if
25 justice so requires in the following circumstances. When

1 the mistake is mutual and is referenced to facts upon
2 which the contract is based or when the mistake is mutual
3 and consist in the omission or the insertion of some
4 material element effecting the contract and it's
5 inconsistent with the true agreement of the parties or
6 where the mistake is unilateral, one person, and has been
7 caused by the fraud, deceit, misrepresentation by the
8 other party without the negligence on the party looking
9 for the mistake. Or, lastly, where the mistake is
10 unilateral and is accompanied by very strong and
11 extraordinary circumstances which would make it a great
12 wrong to enforce the agreement. In the absence of fraud,
13 which would justify shifting the loss to the party who
14 opposed the rescission, rescission is appropriate only if both
15 parties can be returned to the same position prior to the
16 contract.

17 There's a term of law that's called estoppel by
18 silence and may be applicable in this particular case.
19 Estoppel by silence arises when a person owing a duty to
20 speak refrains from doing so and leaves the other party to
21 believe in the existence of a wrong state of facts.
22 Circumstances must have been such that they had a duty to
23 speak. Silence, when it is intended or when it has the
24 effect of misleading another party, can operate as this
25 estoppel.

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1 Latches is another matter that has been argued in
2 this case. Latches is neglect for an unreasonable and
3 unexplained length of time under circumstances affording
4 the opportunity for diligence, to do what in the law
5 should have been done. Under Latches, if a party who
6 knows his rights does not timely assert them and by delay,
7 causes another party to incur expense or detrimentally
8 change their position, then equity steps in and refuses to
9 enforce the rights.

10 A contract can be abandoned. The abandonment of a
11 contract is a matter of intention to ascertain from the
12 facts and circumstances surrounding the transaction from
13 which the abandonment is claimed to have occurred. A
14 party to a contract abandons it by making a positive act
15 which is inconsistent with the existence of a contract.
16 To have abandonment of a contract, the actions must be
17 positive inconsistent with the existence of a contract.
18 The contract will be treated as abandoned when the acts of
19 one party inconsistent with the contract are accepted by
20 the party. An abandonment doesn't have to be expressed,
21 but it could be inferred from the conduct of the parties
22 and circumstances. Abandonment of a contract by one party
23 is a giving up of rights or benefits due.

24 Another theory that has been raised is mutual
25 mistake. In order to show that a contract was entered

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1 into as a result of mutual mistake, a party must show that
2 the agreement was induced by a mistake common to both
3 parties. Both parties made the mistake. In absence of a
4 mistake, the agreement would not have been made and the
5 mistake was in respect to the subject matter of the
6 contract.

7 Regarding the legal issue of waiver. Waiver means
8 even if there was a breach of the contract, the other
9 party, by his action, after that breach of the contract,
10 waived his right to argue about the breach of the contract
11 or to enforce the contract. Waiver involves the
12 intentional giving up of a known right. That is, the
13 abandonment or relinquishment of a right you have. It can
14 be implied from the circumstances surrounding or
15 indicating the intent to give up that right. An applied
16 waiver results from the acts and conduct of the party
17 against whom that waiver is argued. Acts that are
18 inconsistent with the assertion of a right can also give
19 rise to waiver. Waiver is an affirmative claim by a
20 party. And the burden of proof is on that party who
21 claims waiver.

22 Strict and full performance of a contract by one
23 party can be waived by the other party to the extent of
24 the waiver no right to damages for failure to perform
25 strictly or fully. Either party to a contract may waive

1 any provision made for the benefit. The right to
2 prosecute a breach of contract action may be waived if the
3 party which has the right to act in such a manner as to
4 lead the other side to believe the right had been
5 relinquished. In other words, once a breach occurs, the
6 nonmoving or the non-breaching party, the party that
7 breached the contract, has to enforce their right or lose
8 it.

9 Another legal term that has been brought up is
10 promissory estoppel. Promissory estoppel is a theory that
11 holds a person is estopped or estopped and it can arise
12 from the making of a promise, even without consideration.
13 If it was intended that the promise be relied upon, it was
14 relied upon and refusal to enforce would result in
15 justice. The elements of equitable estoppel are conduct
16 which amounts to a false representation or conduct which
17 is calculated to convey the impression that the facts are
18 otherwise. The intention that the conduct shall be acted
19 on by the other party. And three, actual or constructive
20 knowledge of the real facts. The party claiming estoppel
21 has to show lack of knowledge and a means to acquire that
22 knowledge of the truth. Reliance on the conduct of the
23 other party and a prejudicial change in their position
24 relying upon the conduct of the other party. A party has
25 to show that he relied on an alleged promise by the other

1 party. Reliance means a party was induced into an action
2 or forbearance by the other party. A party must then
3 prove that his reliance was expected and reasonable and
4 foreseeable by the other party.

5 Regarding a -- for a stock option to be valid, the
6 terms of an option and consideration for the option shall
7 be stated as set forth in the certificate of
8 incorporation. Or in a Board adopted resolution providing
9 for the creation and issues of the option and every case
10 shall be set forth and incorporated by reference in the
11 document. A contract for the sale or purchase of stock
12 does not have to be contained in a written agreement to be
13 enforceable.

14 The parties have talked about a fiduciary
15 relationship. A fiduciary relationship is founded on
16 trust and confidence by one person in the integrity of
17 another. A fiduciary relationship exists when one imposes
18 a special confidence in another so that that ^{person} in
19 good conscience is bound to act in good faith and with due
20 regard to the interest of the other. To constitute a
21 fiduciary relationship, the relationship has to be more
22 than just a casual one. Parties in a fiduciary
23 relationship must fully disclose to the other all known
24 information that is significant and material. And when
25 this duty to disclose is triggered, silence can constitute

1 fraud.

2 Directors have a fiduciary relationship with the
3 corporation they serve. This fiduciary obligation has
4 been characterized as the triad or trio of due care, good
5 faith and loyalty. It is presumed in making a business
6 decision, the Directors of the corporation acted on an
7 informed basis in good faith and in the honest belief that
8 the action taken was in the best interest of the company.
9 Because a Board is presumed to have acted properly, the
10 burden is on the other party challenging the decision to
11 establish facts against that presumption. If a breach of
12 fiduciary duty has been established, the law requires that
13 a fiduciary not profit personally from his conduct. If a
14 Director of a corporation in breach of his fiduciary duty
15 acquires a gain or advantage for himself, the law denies
16 that person the benefit and profit. A monetary recovery
17 can be based upon a theory of unjust enrichment to the
18 fiduciary. In such a case, the recovery consist of the
19 profit or benefit improperly obtained by the fiduciary.

20 We're getting here almost to the end. A corporate
21 director duty of disclosure is an application of the
22 general fiduciary duty of loyalty that applies in the
23 setting of a transaction or other corporate event that is
24 being present to the stockholders for action.
25 Essentially, the duty of loyalty mandates that the best

1 interest of the corporation and its shareholders take
2 precedence over any interest possessed by the Director and
3 not shared by the stockholder in general. Board of
4 Directors may authorize capital stock to be issued for
5 consideration consisting of cash, tangible or intangible
6 profit or a benefit to the corporation or any combination
7 thereof.

8 In the absence of actual fraud in the transaction,
9 the judgment of the Directors as to the value of the
10 consideration shall be conclusive. There is no absolute
11 prohibition on a Director of a corporation entering into a
12 contract with the corporation he serves. A corporation
13 can enter into a contract with one of his directors if
14 certain requirements are met. No contract or transaction
15 between a corporation and one of its directors shall be
16 void solely because it's a contract with the director. If
17 material facts as to the director's relationship as to the
18 contract are known to the Board of Directors and the Board
19 in good faith authorizes the contract or material facts as
20 to the director's relationship as to the contract are
21 disclosed or known to the shareholders and the contract is
22 approved by the shareholders. Or a contract is fair as to
23 the corporation at a time it is approved by the Board of
24 Directors or shareholders.

25 Regarding breach of contract, if you find by the

1 greater weight or the preponderance of the evidence that a
2 party breached its contract with another party, you have
3 to determine what damages, if any, are recoverable. The
4 damages for a breach of contract are those which follow a
5 natural consequence of the breach. For those damages
6 which could reasonably have been, supposed to have been,
7 within the meeting of the minds of the parties at the time
8 the contract was entered into. The party who seeks to
9 recover damages for a breach of contract must show that
10 the contract has been performed on his part. Or at least
11 he was at the appropriate time ready, willing and able to
12 perform it.

13 A party who has been injured by a breach of contract
14 is entitled to recover the amount of the loss. That is to
15 say, as far as this can be done with a monetary award.
16 They are to be placed in the same position they would have
17 occupied if the contract had been performed. Where two
18 parties had made a contract which one of them has broken,
19 the damages which the other party ought to receive in
20 respect to the breach of contract should be those that are
21 fairly and reasonably considered to have arisen from the
22 breach of the contract itself for damages which were in
23 the minds of the parties. The measure of damages should
24 be actual damages that the injured party reasonably
25 suffered. One injured by a breach of contract is entitled

1 to be placed in the same position, as far as this can be
2 done with money, that he would have occupied if the
3 contract had been performed. You put them in the same
4 position they would have enjoyed had the contract been
5 performed. In a normal case, damages will consist of two
6 distinct elements. Out of pocket costs or losses actually
7 incurred and lost revenue or lost profits for that which
8 would have been realized if the contract had been
9 performed.

10 Another area you'll have to look at is the area of
11 specific performance. Specific performance should be
12 granted only if there is no adequate remedy at law and
13 specific enforcement of the contract is equitable between
14 the parties. In order to have specific performance, you
15 have to find there was clear evidence of a valid
16 agreement. The agreement had to be partly carried into
17 and the party who comes to ask for specific performance
18 has performed on their part or has been and remains able
19 and willing to perform on their part of the contract. The
20 doctrine of uncleaned hands and equitable estoppel can be
21 used to preclude a party from recovering specific
22 performance. Uncleaned hands precludes a party from
23 recovering if they acted unfairly in a matter that is the
24 subject of the litigation prejudice to the other party.

25 All right, ladies and gentlemen, I told you the law

1 that you have to apply to the facts of this case. Now, I
2 have prepared a written verdict form. Though, it has a
3 couple of pages, we tried not to break up questions so it
4 probably could have fit on less than four pages. But we
5 tried to not have questions go from one page to another.
6 They are specific questions and you have to answer yes or
7 no to the questions. And I'll go through the questions
8 with you.

9 Number one, did North American Rescue Products, Inc.,
10 and P.J. Richardson give each other the right to acquire
11 7.5 percent of each other's stock? Yes or no.

12 Two, do you find that North American Rescue Products
13 agreed to let P.J. Richardson acquire 7.5 percent of the
14 capital stock of North American Rescue Products, Inc., in
15 exchange for money rather than the issuance of 7.5 percent
16 of capital stock? Yes or no. Did both parties permit
17 under the 2000 agreement as amended in Charleston? Yes or
18 no. Did the parties, North American Rescue Products,
19 Inc., and P.J. Richardson enter into a contract, that is
20 the November 2004 Termination, Settlement and Release
21 Agreement? If the next question is -- again, that's yes
22 or no.

23 The next question, if the Termination, Settlement and
24 Release Agreement is a contract, does it end both parties'
25 rights to acquire 7.5 percent of the capital stock of each

1 other? Yes or no. If you answer yes, then you have to
2 answer -- there's a subpart. Did P.J. Richardson
3 reasonably rely on North American Rescue Products? Yes or
4 no. Did North American Rescue Products seem to reasonably
5 rely on P. J. Richardson? Yes or no. Do you find that
6 P.J. Richardson was a director of North American Rescue
7 Products, Inc. when that Termination, Settlement and
8 Release Agreement was entered into? If you answer no, you
9 skip to -- you skip one of the questions. If you answer
10 yes, then you go to the next question. Did P.J.
11 Richardson then owe a fiduciary duty to North American
12 Rescue Products when the Termination, Settlement and
13 Release Agreement was entered into? Yes or no. If you
14 answer no, then you go on to the next question. If you
15 answer yes, you say, Did P.J. Richardson breach a
16 fiduciary duty owed to North American Rescue Products? If
17 you answer no, you go to the next question. If you answer
18 yes, should P.J. Richardson return all or a portion of the
19 \$50,000 paid to Mr. Richardson as a director of North
20 American Rescue Products, Inc.? Yes or no. And if yes,
21 how much?

22 There's two questions that remain. At the top of
23 this page it says, important instructions for the
24 remaining questions. You have to look at question eight
25 and question nine and then you have to decide if you're

1 going to answer question eight or you're going to answer
2 question nine. You don't answer both of them. You have
3 to skip to the one that you're going to answer, eight or
4 nine. I'm going to read both of them to you. Eight, is
5 P.J. Richardson entitled to receive 7.5 percent of the
6 outstanding capital stock of North American Rescue
7 Products, Inc.? Yes or no. If you answer yes, what
8 should P.J. Richardson pay to North American Rescue
9 Products for 7.5 percent of the common capital stock? And
10 there's a line for a figure.

11 Or the other is, and once again, you have to answer
12 one or the other. Now, did the parties enter into an
13 agreement arising from their meeting in Atlanta? Yes or
14 no. If you answer no, it says stop and notify the
15 bailiff. If you answer yes, did P.J. Richardson offer to
16 perform under the agreement? Yes or no? If no, stop and
17 notify the bailiff. If yes, did North American Rescue
18 Products breach the agreement? Yes or no. If you answer
19 yes, what damages, if any, should be paid to P. J.
20 Richardson by North American Rescue Products? And that is
21 the verdict form.

22 Now, all the answers, your verdict in this matter has
23 to be unanimous. So every time you answer a question, you
24 mark yes or no, you put -- you write something out,
25 everybody agrees to that answer. It's not 11 to 1, 10 to

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1 2, any combination thereof. It's 12 to 0. Every single
2 one of you agrees to that answer or you haven't come to
3 the ability to answer that question yet. Everybody has to
4 say yes, that's my answer. Whatever it is.

5 So Mr. Foreman, when you check those blocks or if you
6 happen to write in a word or a figure, whatever it is,
7 before you're doing that, everybody else is agreeing
8 that's their answer. That's what they say and that's what
9 they agree to. So when you check that block, then you are
10 indicating to the Court that this is the verdict of the
11 jury. Since we -- and I'll have to ask you to do one
12 thing. Since we basically used up all of the last page on
13 question eight and nine, we didn't really have a formal
14 block for your signature. What I'm going to need for you
15 to do, at the end of page four, when you get to that and
16 you've answered question eight or question nine, I want
17 you just to sign your name as foreman of the jury since we
18 didn't have room to put a formal block for that.

19 All right. Ladies and gentleman, what I'm going to
20 ask that you do is go back to your jury room. Don't start
21 your deliberations. I've got to talk to the lawyers again
22 before I send in the verdict form to you and send in all
23 these exhibits to you. So just go back to your jury room
24 and I'll be with you in just a little bit. Thank you,
25 very much.

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1 (WHEREUPON, the jury came into open court at
2 approximately 10:05 a.m.)

3 THE COURT: All right. Exceptions, deletions or
4 additions to the charge from the Plaintiff?

5 MR. ELLIS: Your Honor, one is I believe that the
6 jury should have been charged that P.J. Richardson has the
7 specific burden of proving the existence of a contract.

8 THE COURT: What request to charge was that?

9 MR. ELLIS: I just think in giving request to charge
10 about the burden of proof and the -- what the parties will
11 decide, I think that should have been instructed that
12 Mr. Richardson would have the burden of proving the
13 existence of a contract. I just don't think it was
14 charged at all.

15 THE COURT: Well, I disagree with you. Looking at
16 the charge as a whole, it is clear to the jury that is the
17 case.

18 MR. ELLIS: Okay. Thank you. Your Honor, I believe
19 that as far as the charge going to severability, I think
20 that there needed to be -- I think that the charge was
21 incomplete and needed to be a more thorough explanation
22 that when you find a contract to be severable that you can
23 disregard the parts that are severable and that the rest
24 of the contract remains valid.

25 THE COURT: Gentlemen, do you have a position on

1 that?

2 MR. RUSTIN: Your Honor, the severability charge
3 specifically addresses contracts that are entire or
4 severable. I don't know that there was anything submitted
5 by the Plaintiff to deal with the issue of actual
6 functions of severability.

7 THE COURT: All right. Looking at the request to
8 charge and the law as charged, I believe that the jury has
9 properly been instructed, further, and follow the wishes
10 of the Plaintiff and Defendant in looking at that issue.
11 Thank you.

12 MR. ELLIS: Your Honor, as far as the charge, the
13 Court's charge regarding contracts being interpreted
14 against the drafter, again, as we discussed previously, I
15 don't think that -- I think it's a correct statement of
16 law that it always charged against the drafter. I don't
17 think that the jury should have been instructed that that
18 rule does not apply where there is no evidence of
19 bargaining power.

20 THE COURT: All right. Taken as a whole, I think the
21 jury was properly instructed. Thank you, very much.

22 MR. ELLIS: Thank you, Your Honor. In terms of the
23 ratification of actions of the Board under Delaware law, I
24 disagree with the charge that ratification by the
25 shareholders would constitute ratification of an action of

1 the Board. And I just dispute the accuracy of the charge.

2 THE COURT: Very good. I overruled. Thank you.

3 MR. ELLIS: Your Honor, the charge of mutual mistake
4 was given. I don't think there's actually evidence in the
5 case for a charge of mutual mistake.

6 THE COURT: I took your charge that you gave me and
7 read it, so you're telling me that you deliberately gave
8 me a charge that was wrong?

9 MR. ELLIS: I did not. I'll withdraw that. If
10 that's what I did, then I'll withdraw that.

11 THE COURT: I mean, I didn't read it exactly as you
12 gave it to me, but every word was from your charge. I
13 might have deleted a couple of words, but it came directly
14 from your charge..

15 MR. ELLIS: Your Honor, then, I apologize.

16 THE COURT: All right. Thank you.

17 MR. ELLIS: Your Honor, as far as number eight, a
18 sale of a portion of stock does not have to be in writing,
19 I don't think that there's -- first of all, I disagree
20 with that in terms of the context of this case. A stock
21 option -- this case involved the issuance of stock option
22 and whether it should be in writing. I think that the
23 jury should not have been charged that a stock purchase
24 can apply without a writing. I think that's confusing the
25 jury under the facts of the case. I think they can be

1 confused -- I think they may be confused to believe that a
2 stock option is enforceable (inaudible) writing.

3 THE COURT: Defense?

4 MR. RUSTIN: Your Honor, I believe there was factual
5 evidence presented to the jury that, in fact, there was a
6 conflict of transfer by the documents, quote, the
7 outstanding shares of stock will be transferred, not a new
8 issuance of options. Therefore, there was evidence on
9 both of those. I believe, Your Honor, charged both of the
10 charges submitted by both of the parties so the jury can
11 then make a fair interpretation of what, in fact, was
12 contemplated hereby the law applicable to both of those
13 situations.

14 THE COURT: Taking the charge as a whole to the jury,
15 I find that they were properly charged. Thank you.

16 MR. ELLIS: Your Honor, I would just disagree with
17 your charge on damages. I don't think there was evidence
18 in the case supporting a claim of damages. I do think
19 there was evidence in the case supporting a claim for
20 specific performance, which should have been charged. But
21 I don't think the Defendant met its burden of proof and
22 that should not have been charged.

23 THE COURT: I respectfully decline to change the
24 charge.

25 MR. ELLIS: Thank you, Your Honor. I've got another

1 question about, obviously, the Court did not charge our
2 request to charge that a contract term exceeding the terms
3 for future negotiation is void on the grounds of
4 indefiniteness. I would request that that be charged.

5 THE COURT: All right, sir. Once again, taking the
6 charge as a whole, I believe the jury was properly
7 informed as to the law in this particular case. So I
8 respectfully decline to do that.

9 MR. ELLIS: Your Honor, my associate tells me that --
10 and this is maybe an administrative error on our part, we
11 submitted a charge, I believe, and I did not understand if
12 it had been objected to last night. But I understand the
13 objection can be raised at this time. When a contract
14 embodies a mutual or interdependent use and obligation
15 and -- I apologize. That's a mess up on our part.

16 THE COURT: That's all right, thank you.

17 MR. ELLIS: We also requested a charge, which I did
18 not hear, I might have overlooked it.

19 THE COURT: All right.

20 MR. ELLIS: Counter offer is an offer made by an
21 offeree to the offeror relating to the same matter as the
22 written offer (inaudible) different from that proposed by
23 the original offer. A rejection of one offer constitutes
24 a rejection of the entire offer.

25 THE COURT: All right. Again, we discussed that

1 yesterday and I indicated that I would not do so and I
2 respectfully decline to do so at this time.

3 MR. ELLIS: Your Honor, may Mr. Freeman address a
4 couple --

5 THE COURT: Sure, I'd be glad for you to.

6 MR. FREEMAN: May it please the Court, on Plaintiff's
7 charge No. 15 for modification of the contract, I don't
8 believe that the Court charged that the modification -- as
9 the second paragraph charges 59, I don't believe that was
10 read. It reads that a written contract may be modified by
11 the subsequent agreement of the parties provided the
12 subsequent agreement contains all the requisites of a
13 valid contract. South Carolina law requires (inaudible)
14 meeting of the minds. I just don't think there was
15 anything in there saying there has to be -- that all the
16 elements of the valid contract have to be apparent for the
17 modification. Also, the third paragraph, a party to the
18 contract receives an offer to change its terms is under no
19 obligation to respond to that offer.

20 THE COURT: Okay. No. 15?

21 MR. FREEMAN: No. 15.

22 THE COURT: Fifteen that y'all gave me to has two
23 paragraphs. You're talking about No. 15 contract
24 modification?

25 MR. FREEMAN: Yes.

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1 THE COURT: The one you gave me has two paragraphs.

2 MR. FREEMAN: Well then, I still don't believe the
3 second paragraph was charged.

4 THE COURT: All right. What I did was I charged the
5 first sentence of the second paragraph, but did not charge
6 the second sentence of the paragraph. And I respectfully
7 declined to add the second sentence. But I did charge the
8 first sentence.

9 MR. FREEMAN: It's the belief of the Plaintiff that,
10 actually, only the first clause in the first sentence was
11 charged.

12 THE COURT: I went all the way through -- what I read
13 was, the written contract may be modified by a subsequent
14 agreement of the parties provided the subsequent agreement
15 contains all the requisites of a valid contract. That's
16 what I read.

17 MR. ELLIS: That was charge --

18 THE COURT: I did not read the next one. I did not
19 read.

20 MR. FREEMAN: Okay. On the Defendant's charge for
21 promissory estoppel, I believe that there was a slight
22 misstatement.

23 THE COURT: Can you tell me what number that is?

24 MR. FREEMAN: Defendant's promissory estoppel would
25 be No. 42, I believe.

1 THE COURT: Defendant's 42?

2 MR. FREEMAN: Yes.

3 THE COURT: All right. Hold on a second. Okay. All
4 right. I'm sorry.

5 MR. DAVIS: Well, actually, I believe you read it
6 correctly, but I believe there's a typo in there. The
7 third paragraph says the party asserting it must show lack
8 of knowledge and the means of knowledge. I think it's the
9 lack of means of knowledge.

10 THE COURT: Honestly, what I believe that I did is --
11 I think what I -- what I recall doing was the claiming --
12 the party claiming the estoppel must show the lack of
13 knowledge to the truth as to the facts. What I had here
14 was I struck out in means of the knowledge.

15 MR. STILLWELL: That's correct, Your Honor.

16 THE COURT: I believe that's what I did. But be that
17 as it may, if I did not do it, I'm going to respectfully
18 decline to go back and recharge the jury. I think taking
19 it as a whole, it's a correct statement of law. And now
20 to go back and read that one little part would unduly
21 emphasize the issue and I'm not going to do that.

22 MR. FREEMAN: Thank you, Your Honor.

23 THE COURT: Anything further from the Plaintiff?

24 MR. ELLIS: No, Your Honor.

25 THE COURT: All right. Very good.

1 Defense?

2 MR. STILLWELL: No objection to the charge, Your
3 Honor.

4 THE COURT: All right. All right. What we're going
5 to do, did y'all, I hope, got with the court reporter and
6 made sure all the Plaintiff's exhibits were here and all
7 the Defendant's exhibits were here?

8 MR. STILLWELL: What I think we're going to do, Your
9 Honor, is right now -- I think Mr. Ellis and I talked
10 about this generally, there's a white book and there's a
11 black book and there's about 20 exhibits in each that he
12 objected to and it got struck. I think we'll just get the
13 Court those exhibits.

14 THE COURT: All right. Well, can y'all do that as
15 quickly as possible, please?

16 MR. STILLWELL: Yes, sir.

17 THE COURT: Thank you, very much.

18 Before y'all -- y'all just hold on one second before
19 everybody moves around. I want to tell all you gentlemen,
20 Mr. Ellis, Mr. Freeman, Mr. Stillwell, Mr. Davis, I know
21 at some points in time during this trial I fussed at you,
22 but I tell you, and I mean this, each of you did exactly
23 what the Court was expecting of you. You zealously
24 protect and put forth the interest of your clients in this
25 particular matter. And you have done so and I commend

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1 each of you for doing that. Thank you, very much.

2 MR. ELLIS: Thank you, Judge.

3 COURT REPORTER: What about the exhibits?

4 MR. ELLIS: What would you like to know about the
5 exhibits?

6 COURT REPORTER: All the exhibits are in for the
7 Plaintiff --

8 MR. ELLIS: All the exhibits are in for the Plaintiff
9 except for Exhibit No. 24, right? We've deleted --

10 MR. STILLWELL: We have.

11 All exhibits are in except for PJR 44, 47, 52, 57,
12 58, 59 and 60.

13 (WHEREUPON, deliberations began at 10:37 a.m.)

14 (WHEREUPON, court was in recess awaiting a
15 verdict.)

16 THE COURT: The jury has reached a verdict in this
17 matter. Is the Plaintiff ready to receive it?

18 MR. ELLIS: We are, Your Honor.

19 THE COURT: Defense?

20 MR. STILLWELL: Yes, sir, Your Honor.

21 THE COURT: Most likely I don't need to say this,
22 but, obviously, this has been a very complicated and
23 strenuous case on all sides. And by the length of time
24 the jury has been out, they have, obviously, worked hard
25 on this verdict and I expect and I know that you will

1 receive the jury verdict in silence and with respect.
2 Thank you, very much.

3 Ask the jury to come in.

4 (WHEREUPON, the jury came into open court at
5 approximately 3:05 p.m.)

6 THE COURT: Mr. Foreman, has our jury reached a
7 verdict in this particular matter?

8 MR. FOREMAN: We have, Your Honor.

9 THE COURT: Could you hand the verdict form to the
10 bailiff, please, sir?

11 MR. FOREMAN: Yes, sir.

12 THE COURT: Thank you.

13 All right. Madam Clerk, if you would publish the
14 jury verdict and where indicated read the answer below the
15 questions. Thank you, ma'am.

16 THE CLERK: Your Honor, this is case number
17 2007-CP-23-3206, North American Rescue Products, Inc.
18 versus J. P. Richardson. Did North American Rescue
19 Products, Inc. and P. J. Richardson give each other the
20 right to acquire 7.5 percent of each other's stock? Yes.

21 Do you find that North American Rescue Products
22 agreed to let P. J. Richardson acquire 7.5 percent of the
23 capital stock of North American Rescue Products, Inc. in
24 exchange for money rather than the issuance of 7.5 percent
25 of capital stock? Yes.

1 Can both parties perform under the 2000 agreement as
2 amended in Charleston? Yes.

3 Did the parties, North American Rescue Products, Inc.
4 and P. J. Richardson, enter into a contract that is the
5 November 2004 Termination, Settlement and Release
6 Agreement? Yes.

7 If the Termination, Settlement and Release Agreement
8 is a contract, does it end both parties' rights to acquire
9 7.5 percent of the capital stock of each other? No.

10 Do you find that P. J. Richardson was a director of
11 North American Rescue Products, Inc. when the Termination,
12 Settlement and Release Agreement was entered into? Yes.

13 Did P. J. Richardson owe a fiduciary duty to North
14 American Rescue Products, Inc. when the Termination,
15 Settlement and Release Agreement was entered into? Yes.

16 If you answer yes, did P. J. Richardson breach a
17 fiduciary duty owed to North American Rescue Products,
18 Inc.? No.

19 Is P. J. Richardson entitled to receive 7.5 percent
20 of the outstanding capital stock of North American Rescue
21 Products, Inc.? Yes.

22 If you answer yes, what should P. J. Richardson pay
23 to the North American Rescue Products for 7.5 percent of
24 the common capital stock?

25 \$2,936,300.

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1 Signed Charles Varner, August 27th, 2008, foreperson.

2 This is your verdict, so say you all. Please signify
3 by raising your right hand.

4 (WHEREUPON, all members of the jury raised their
5 right hand.)

6 THE CLERK: Thank you.

7 THE COURT: Thank you. The jury having indicated
8 that this is their unanimous verdict, does the Plaintiff
9 wish the jury polled in this matter?

10 MR. ELLIS: Yes, Your Honor.

11 THE COURT: All right. Very good.

12 Madam Clerk, if you will ask each and every member of
13 the jury if it was their verdict and is it still their
14 verdict, please.

15 THE CLERK: The verdict that was just published was
16 the verdict you reached in the jury room. I ask you was
17 it your verdict then and it is your verdict now? When I
18 call your name, please, answer yes or no.

19 Jonathan Poore?

20 JUROR POORE: Yes.

21 THE CLERK: Christopher Walker?

22 JUROR WALKER: Yes.

23 THE CLERK: Donna Reeves?

24 JUROR REEVES: Yes.

25 THE CLERK: Christina Johnson?

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1 JUROR JOHNSON: Yes.
2 THE CLERK: Jennifer Barnett?
3 JUROR BARNETT: Yes.
4 THE CLERK: Betsy Exton?
5 JUROR EXTON: Yes.
6 THE CLERK: Gloria Larkin?
7 JUROR LARKIN: Yes.
8 THE CLERK: James Stewart?
9 JUROR STEWART: Yes.
10 THE CLERK: Jill Lafoy?
11 JUROR LAFOY: Yes.
12 THE CLERK: Charles Varner?
13 JUROR VARNER: Yes.
14 THE CLERK: Gregory Prescott?
15 JUROR PRESCOTT: Yes.
16 THE CLERK: Robert Barney?
17 JUROR BARNEY: Yes.
18 THE CLERK: Thank you.
19 THE COURT: The jury having affirmed the verdict in
20 this matter after being polled, is there anything further
21 as to the jury from the Plaintiff?
22 MR. ELLIS: Your Honor, not anything from the jury
23 from the Plaintiff. Thank you.
24 THE COURT: All right. Is there anything as to the
25 jury from the Defendant?

1 MR. STILLWELL: No, sir, Your Honor.

2 THE COURT: Very good.

3 Ladies and gentlemen of the jury, I want to tell you
4 just personally how proud I am of you regarding your work
5 on this particular case. I have been on the bench for a
6 number of years and I will tell you, this is one of the
7 most complicated cases that I've ever presided over that
8 has been presented to a jury for their decision. You
9 worked very hard. You diligently paid attention when
10 times I know it was difficult to do so. And I appreciate
11 very much your hard work in this matter and coming to a
12 resolution in this matter. And by your verdict, you have
13 spoken the truth of this particular matter. I want to
14 thank you for your service. You are now excused. Thank
15 you, very much.

16 (WHEREUPON, the jury left open court at
17 approximately 3:10 p.m.)

18 THE COURT: Motions on behalf of the plaintiff?

19 MR. ELLIS: Your Honor, I would just as an
20 administrative matter, would it be acceptable to have a
21 ten day period---

22 THE COURT: No, sir. I'm going to hear the motions
23 right now. I appreciate it, though. And the reason for
24 that is I'm not trying to be difficult with y'all but the
25 next time I am in Greenville is in November and that's for

1 criminal court. So it just would be too complicated to do
2 otherwise.

3 MR. ELLIS: Your Honor, I would simply reincorporate
4 my arguments from the directed verdict motion the other
5 day. I believe that it is actually clear under the record
6 that there is no right to acquire stock. I believe, if I
7 may, may I just reincorporate those arguments as they are
8 on the record at this time.

9 THE COURT: Yes, sir?

10 MR. ELLIS: And, Your Honor, I'll certainly do that.
11 Your Honor, I would ask the Court, I would ask the---

12 THE COURT: How about let me address that first
13 before you go on to something else, okay?

14 MR. ELLIS: Yes, sir.

15 THE COURT: I would respectfully decline to grant a
16 motion for directed verdict or a new trial in this
17 particular matter. I do find that the issues were
18 properly presented to a jury. It was a jury case as
19 presented. I find that the verdict as rendered by the
20 jury in answering these specific questions is not
21 inconsistent in any manner. And therefore, I respectfully
22 decline to grant your directed verdict or a new trial in
23 this matter.

24 MR. ELLIS: Your Honor, I would -- thank you. I
25 would also just point for the Court, I believe that there

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1 was a lack of evidence in the case and would ask the Court
2 to amend the verdict. I don't believe that there was
3 sufficient evidence in the case to find that North
4 American Rescue Products agreed to accept money instead of
5 stock, just make that note.

6 THE COURT: So you're asking me to act as the 13th
7 juror?

8 MR. ELLIS: Yes, sir.

9 THE COURT: All right. I would respectfully decline
10 to do so. Once again, I do find that it was properly
11 submitted to the jury, it was a matter for them to decide
12 and therefore, I respectfully decline to exercise the
13 right as a 13th juror to change their verdict in this
14 matter.

15 MR. ELLIS: Your Honor, I would also ask for a JNOV.
16 I would also -- I'm sorry, I would also ask for the Court
17 to act as a 13th juror with respect to the breach of
18 fiduciary duty claim. I believe that the evidence was
19 strong that a failure to disclose existed and disclosure
20 was not properly made.

21 THE COURT: All right, sir, I would respectfully
22 decline to exercise the authority under the 13th juror
23 doctrine, in this particular matter. Through there
24 certainly was evidence that might support a breach of
25 fiduciary duty. I do find that there was evidence that

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1 would be sufficient for the jury and obviously was
2 sufficient in their mind to find that though
3 Mr. Richardson owed a fiduciary duty, he did not breach
4 any duty to North American Rescue Products, Inc. And
5 therefore, respectfully decline to grant your motion in
6 that regard.

7 MR. ELLIS: Thank you, Your Honor.

8 THE COURT: Thank you, very much.

9 From the defense, gentlemen, I'll be glad to hear any
10 motions on behalf of the defense at the time.

11 MR. STILLWELL: Your Honor, frankly, if I could, I
12 need five minutes to discuss it with my client. The
13 import of what the jury has told us in order for us to
14 digest.

15 THE COURT: Okay. And I appreciate that. And I tell
16 you what why don't you just do the best that you can do
17 right now. I'm not going to give y'all additional time
18 but if you would like to, while you're making motions and
19 you have your co-counsel, Mr. Davis, to communicate with
20 the clients, I'll be glad for him to do so.

21 MR. STILLWELL: Your Honor, I guess the only thing I
22 can think of looking at this is we'd ask for a JNOV based
23 on the 13th jury doctrine for the Court to reform the
24 verdict in that the basis for the number is something that
25 I can't see already in evidence.

1 THE COURT: In the amount?

2 MR. STILLWELL: Yes, sir, Your Honor.

3 THE COURT: All right, I would respectfully decline
4 to do so. I do find that there is sufficient evidence in
5 the record which would support the jury's verdicts in the
6 amount set forth based upon the evidence presented. The
7 different dates as far as the evaluation over a period of
8 years that the jury could have used in this particular
9 matter to arrive at that verdict. And I find it's well
10 within their discretion and the facts and evidence in this
11 case. And would respectfully decline to so grant your
12 motion.

13 And if you wanted to, Mr. Stillwell, I'll be glad for
14 you to, as Mr. Ellis did, to reaffirm all of the motions
15 that you made earlier in the case as a basis for a
16 directed verdict motion or judgment NOV if you wish to do
17 so.

18 MR. STILLWELL: I would like to reaffirm my directed
19 verdict motion, although the Court saw the one regarding
20 the fiduciary duty is now mute.

21 THE COURT: I understand that but as to ones
22 applicable to the verdict form and verdict as rendered by
23 the jury, I would respectfully decline to sub-grant those
24 motions, finding again, as I indicated to Mr. Ellis, that
25 there was certainly conflicting testimony in this case

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1 that could have supported a verdict different than that as
2 arrived at by the jury. But there was certainly more
3 sufficient evidence presented in this matter whereby the
4 jury could arrive at the verdict that they did render.
5 And Further, I again, reaffirm that I do not find that the
6 answers that they gave to any of the questions to be
7 inconsistent in any fashion. And therefore, respectfully
8 decline to grant your motion.

9 THE COURT: Yes, sir, Mr. Ellis?

10 MR. ELLIS: If it pleases the Court. Your Honor, one
11 question I have, I think we probably need some guidance
12 too is that the question would be, we would need to know,
13 I mean, obviously the right to do this, I don't think that
14 the jury indicated in any way that they would intend for
15 this to stay open for 50 years to have the right to do
16 this.

17 THE COURT: No, sir.

18 MR. ELLIS: I would think some reasonable -- we need
19 to talk about what some reasonable period of time would be
20 or if there is -- what sort of interest rate there would
21 be, how long it would available for them to do that.

22 MR. STILLWELL: We need a tax lawyer to work on that
23 one.

24 THE COURT: Well, it was not suggested to me prior to
25 imposing date on the verdict form. The jury having been

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1 discharged in this matter, I would respectfully decline to
2 set forth a date and time. Thank you.

3 MR. ELLIS: Thank you.

4 THE COURT: All right, anything else from the
5 plaintiff?

6 MR. ELLIS: Nothing, Your Honor.

7 THE COURT: Anything further from the defendants?

8 MR. STILLWELL: No, sir, Your Honor.

9 THE COURT: All right, very good. Gentlemen again, I
10 tell you, I appreciate all the hard work. There's much
11 more than obviously I would know in this particular matter
12 but obviously the hard work was evident to me. Thank you,
13 very much.

14 MR. ELLIS: Thank you, Your Honor.

15 MR. STILLWELL: Thank you, Your Honor.

16 (WHEREUPON, the proceedings were concluded.)
17
18
19
20
21
22
23
24
25



1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

3

CASE NO.: 2007-CP-23-3206

4

5 NORTH AMERICAN RESCUE PRODUCTS, INC.,

6 Plaintiff,

7 vs.

8 P.J. RICHARDSON,

9 Defendant.

COPY

10

11

Akerman Senterfitt

350 E. Las Olas Blvd., Suite 1600

12

Fort Lauderdale, Florida

April 8, 2008

13

10:55 o'clock a.m.

14

15

16

DEPOSITION OF L. ROD MANNING

17

18

Taken before Tambria Lee Dery, RPR,

19

Registered Professional Reporter and Notary Public in and

20

for the State of Florida at Large, pursuant to Notice of

21

Taking Deposition filed in the above cause.

22

23

24

25

1 THEREUPON:

2 L. ROD MANNING

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 DIRECT EXAMINATION

7 BY MR. ELLIS:

8 Q Would you state your name for the record,
9 please?

10 A Sure. Lawrence R. Manning.

11 Q [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 12

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] MR. ELLIS: Thank you very much. [REDACTED]
7 [REDACTED]
8 ([REDACTED] the record discussion was had)
9 [REDACTED] MR. ELLIS: Back on the [REDACTED]

10 [REDACTED] MR. ELLIS:

11 Q Mr. Manning, you're an attorney here at
12 Akerman Senterfitt, is that correct?

13 A Yes.

14 Q And how long have you been here?

15 A Probably five years, five-and-a-half
16 years.

17 Q And what is your title here?

18 A I'm of counsel.

19 Q What did you do before you worked here?

20 A I was in-house counsel.

21 Q Okay. In-house lawyer?

22 A Uh-huh.

23 Q Okay. For whom?

24 A Last was a group called Thales,

25 T-H-A-L-E-S. I was the president and general

1 counsel of their North American holding company.

2 Q Where is that located?

3 A It's in Alexandria, Virginia.

4 Q Okay. And how long were you there?

5 A I was with that -- Thales had acquired the
6 company I was with, so for a total of 23 years.

7 Q Okay. And what company were you with
8 before?

9 A It was the Racal Corporation, R-A-C-A-L.

10 Q And so between Racal and Thales, you were
11 there 23 years?

12 A 1978 to end of 2001, I think it was,
13 somewhere in there.

14 Q [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Q Where did you attend law school?

21 A University of Miami.

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 Q Okay. What type of work did you do at

Page 14

1 Racal?

2 A Started off in human resources and then
3 when I finished law school, I moved to the law
4 department.

5 Q And what did you do in the law department?

6 A I started off as counsel and moved my way
7 up to president of the holding company.

8 Q What type of work did you do there?

9 A I did mergers and acquisitions work. I
10 did contracts work. I did general corporate work.
11 I managed litigation. Those types of things.

12 Q Did you actually draft contracts?

13 A I did.

14 Q And review contracts?

15 A I did.

16 Q Did your work change at all from when you
17 were acquired by Thales? Did your work change at
18 all?

19 A Probably more supervisory work. I was the
20 president and general counsel, so I supervised the
21 tax department. I supervised intellectual property.
22 I had a law department under me. I had insurance.
23 I had security. I had a number of different
24 centralized functions.

25 Q What year did you leave Thales?

1 A I think it was the end of 2001. And I
2 came here in 2002, somewhere in that timeframe. I
3 don't remember exactly when.

4 Q Why did you leave Thales?

5 A I was desirous to come back to Florida. I
6 didn't want to stay in Virginia.

7 Q Did you grow up here?

8 A Yes, I grew up here. I was born in 1970, I think.

9 Q Okay. Did you have any siblings?

10 A Yes, I have two brothers. One is older, one is younger.

11 Q What is your brother's name?

12 A I think you mean the one who is in the military?

13 Q I am not sure. I am not sure if you are talking about the same person.

14 Q Okay. How long did that go on?

15 A Probably two years, a little more.

16 years, maybe.

17 Q What is your practice like here at
18 Akerman Senterfitt?

19 A Currently?

20 Q Yes.

21 A I do mostly corporate compliance type
22 work.

23 Q What has it been over the last few years?

24 A I am not sure.

25 A I think it has been pretty good. I think we would be doing

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1 [REDACTED] from that
2 [REDACTED] type practice.

3 Q And what does a general compliance type
4 practice mean?

5 A Well, I've done legal compliance programs
6 that encompass anything from antitrust to FCPA.
7 I've overseen product recalls. I've overseen
8 employee benefit plan audits. I've -- those types
9 of things.

10 Q But generally, [REDACTED] to
11 clients?

12 [REDACTED]

13 [REDACTED] and those types of things? Over the
14 course of your time here, have you represented a
15 number of clients in mergers and acquisitions?

16 A Initially, that was the focus of my
17 practice.

18 Q And that had been a good bit of your
19 experience at Racal?

20 A Correct. And when I was with the holding
21 company, both Thales and Racal, that was one of my
22 primary responsibilities was buying and selling
23 companies.

24 Q And I think that [REDACTED] today, I'd

25 [REDACTED]

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1 [REDACTED]
2 ahead of [REDACTED] questions, [REDACTED] [REDACTED]
3 [REDACTED] was, "Did you talk to anybody?"
4 [REDACTED] for the deposition. [REDACTED]
5 [REDACTED] that is
6 [REDACTED] YES.
7 [REDACTED]
8 [REDACTED] Did you talk to attorneys at [REDACTED]
9 [REDACTED] that
10 [REDACTED]
11 [REDACTED] Did you talk to [REDACTED] about
12 [REDACTED] [REDACTED] the same
13 [REDACTED] part of [REDACTED]
14 [REDACTED] the potential
15 [REDACTED] jumping ahead and
16 [REDACTED] answering your question
17 [REDACTED] Okay.
18 [REDACTED] [REDACTED] were anticipating
19 [REDACTED] S:

20 Q Mr. Manning, do you currently represent PJ
21 Richardson?

22 A No.

23 Q Okay. Do you currently represent Billie
24 Richardson?

25 A No.

1 MR. ELLIS: Okay. Back to the Mr. Davis.
2 I don't agree that the [redacted]
3 as for discussions in between Nelson Mullins
4 [redacted]
5 [redacted]
6 [redacted]
7 [redacted]
8 [redacted]
9 [redacted]

10 MR. DAVIS: Well, I'm going to go down this
11 curious how [redacted]
12 because [redacted]
13 Seegmiller, and [redacted]
14 [redacted]
15 [redacted]
16 [redacted]
17 [redacted]
18 [redacted]

19 MR. ELLIS: Well, the difference is Curt
20 currently represents North American Rescue
21 Products. He's still at this moment a lawyer
22 on the pleadings, so --

23 MR. DAVIS: Well, what you're asking me
24 [redacted]
25 [redacted]

Page 20

1 [REDACTED] and PJ Richardson that relate to this lawsuit
2 [REDACTED] of his representation
3 MR. ELLIS: Well, let me ask you, at this
4 [REDACTED] [REDACTED]
5 [REDACTED] to your objection. We can
6 [REDACTED] it later as we go through the
7 [REDACTED] [REDACTED] [REDACTED]
8 [REDACTED] would be [REDACTED]
9 [REDACTED] reason that he does not
10 [REDACTED] [REDACTED]
11 MR. ELLIS: Well, the privilege didn't
12 [REDACTED] [REDACTED]
13 Richardson. [REDACTED] I don't agree
14 [REDACTED] I guess we
15 [REDACTED]
16 MR. ELLIS: I understand [REDACTED]
17 [REDACTED] that was my suggestion
18 [REDACTED]:

19 Q When did you first meet PJ Richardson?
20 A I guess it was in the mid 80's.
21 Q Okay. Where did you meet him?
22 A He was the president of one of the Racial
23 subsidiaries. I met him up in Fredrick, Maryland.
24 Q [REDACTED] to you?
25 [REDACTED]

1 [REDACTED]

2 Q Okay. After you first met him, what was
3 your relationship with him after that?

4 A I was the in-house counsel for the Racal
5 Corporation, which was the holding company for the
6 entity he worked for.

7 [REDACTED]

8 [REDACTED] and we provided legal services to [REDACTED]

9 [REDACTED]

10 Q [REDACTED] when did [REDACTED]

11 [REDACTED] representing him directly [REDACTED]

12 [REDACTED] in '99, you [REDACTED]?

13 Q No, I'm asking the question of when did
14 you become the lawyer for PJ Richardson or any
15 company that PJ Richardson was involved with?

16 A And I'm saying do you mean when he was
17 with Racal or do you mean after I came into private
18 practice?

19 Q I mean after you came into private
20 practice.

21 A I'm going to guess it was 2003. I can't
22 tell you exactly when.

23 Q Do you recall how that relationship came
24 about?

25 A I do.

Page 22

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 Q Now, did you represent PJ individually or
14 did you represent The Reeves Group or how did that
15 relationship work?
16 A We represented Reeves Manufacturing, Inc.
17 Q Okay.
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED] follows. The 733-290 phone
2 [REDACTED] about that.
3 [REDACTED]
4 [REDACTED]
5 don't [REDACTED] what it referred to.

6 Q Do you recall generally an understanding
7 about ownership issues with respect to the company?

8 A I do.

9 Q Okay. What was it?

10 A My understanding of it comes from a
11 document that the two of -- Bob and PJ signed.

12 Q Okay.

13 [REDACTED]
14 [REDACTED] it. It's a two-page
15 document that they both signed. I don't recall
16 [REDACTED] of it. But that's where my understanding of
17 this ownership [REDACTED]

18 MR. ELLIS: I'm going to hand you a
19 document that we'll mark as Exhibit 6.

20 [REDACTED] Exhibit Number 6 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q Does this look like the document you were
24 referring to?

25 A It is.

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1 [REDACTED] This document actually had a title

2 [REDACTED] the top of it at one point, which was

3 [REDACTED] local business relationship

4 [REDACTED]

5 Q What was your understanding of this
6 document?

7 A That it laid out the relationship between
8 Reeves and NARP, their business relationship.

9 Q Now did you understand [REDACTED] did you

10 [REDACTED] relationship to be manifested. And for

11 [REDACTED] I'm sorry, I'm clearly the question. I'm

12 [REDACTED] the documents or whatever, did they

13 [REDACTED] had they actually exchanged it?

14 [REDACTED] This was the only document I saw when

15 [REDACTED] this document right?

16 Q Okay. So was there any other documents

17 [REDACTED]?

18 [REDACTED] This is the only one [REDACTED]

19 [REDACTED] Okay. With respect to this document, and

20 [REDACTED] have you been looking at it?

21 [REDACTED] that, you did it [REDACTED] book

22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED] document, then

24 [REDACTED]

25 Q Okay. Going back then to Exhibit 5, 7

1 [REDACTED] involving this agreement [REDACTED]
2 [REDACTED] rights and obligations [REDACTED]
3 [REDACTED]
4 [REDACTED] know when he returned [REDACTED]
5 [REDACTED] producing things, [REDACTED]
6 [REDACTED] an e-mail from his sister in this afternoon
7 [REDACTED] that has been introduced. [REDACTED]
8 [REDACTED] him on retained him. [REDACTED]
9 [REDACTED] with those rights and he needed [REDACTED]
10 [REDACTED] been retained between [REDACTED]
11 [REDACTED] two meetings, [REDACTED]
12 [REDACTED]
13 [REDACTED] In Exhibit 15, [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED] [REDACTED]
16 [REDACTED]
17 [REDACTED] [REDACTED]
18 [REDACTED] [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 MR. ELLIS: We'll mark that as Exhibit 16.
23 (Thereupon, Exhibit Number 16 was marked
24 for identification.)
25

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1 BY MR. ELLIS:

2 Q What is that document, Mr. Manning?

3 A This is an e-mail from me to Mr.

4 Stodghill, dated Saturday, January 31, 2004, which I

5 apologize for the delay in responding to his e-mail

6 in sending materials. I would -- should be able to

7 send him a term sheet which outlines the proposed

8 structure and a copy of a letter that Bob refers to

9 in his e-mail.

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

A. William Rob

00-743-DEPO

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APP_0871

1 [REDACTED]

2 [REDACTED]

3 Q Okay. In Exhibit 16, in the e-mail to you
4 dated January 23rd, '04, which is reflected at the
5 bottom of the first page of Exhibit 16, he states
6 he's trying to write the main points down. It says,
7 "1. We each," and I take it that's supposed to be
8 own or -- well, actually, "We each our 25% of they
9 other guys company. 2. We operate our companies
10 separate. 3. First right or refusal on the stock.
11 4. Finally, I want my 25% to mirror PJ's 75%. If
12 he moves his share to a holding company my should go
13 too. If he use his shares to merge with another
14 company I should have the same options, etc." At
15 this point, were you all talking about them trying
16 to structure the arrangements as between Reeves
17 Manufacturing and NARP?

18 A I believe this would have been an
19 arrangement with The Reeves Group, Reeves
20 Manufacturing and NARP.

21 Q Okay.

22 A Creating a holding company and then
23 allocating ownership.

24 [REDACTED]

25 [REDACTED]

Page 56

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] Reeves Group.
6 [REDACTED]
7 [REDACTED] So the structure would have required a
8 [REDACTED] ownership, some form of ownership from Reeves
9 [REDACTED] Manufacturing in The Reeves Group.
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] as opposed to Reeves Manufacturing, I

14 Q So if you all -- if the company -- if
15 Reeves was going to go in the direction of being
16 Reeves Group, the terms in Exhibit 6 would then have
17 needed to have changed, is that right?

18 A No, I'm not certain that that's correct.
19 There would have had to have been some ownership
20 relationship -- Reeves Manufacturing would have had
21 to have been acquired by The Reeves Group somehow.
22 And I believe this Exhibit 6 comes into play if
23 Reeves Manufacturing was going to do anything that
24 affected their corporate structure, they had this
25 arrangement with NARP that they had to deal with

1 before they started moving equity around because of
2 this. I believe that's how.

3 Q So the document, Exhibit 15 and the term
4 sheets are trying to deal with that issue, is that
5 right?

6 A They're trying to deal with how ownership
7 by The Reeves Group would be accomplished for
8 various entities..

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]. The
4 service agreement, my recollection is that Reeves
5 Manufacturing was providing administrative services
6 for NARP. And what we were going to do there is
7 reflect the nature and extent of services and the
8 prices that would be charged for those and who was
9 responsible for what.

10 [REDACTED]
11 [REDACTED] 033, 034, and 027, and
12 [REDACTED].

13 [REDACTED] We in turn gave to Exhibit 02
14 [REDACTED] going to great lengths
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] on that

18 [REDACTED]
19 [REDACTED] document.

20 [REDACTED]
21 [REDACTED]

22 [REDACTED]
23 [REDACTED] 02, 03, 05, and another

24 [REDACTED]
25 [REDACTED] 02 was marked

1 [REDACTED] had a limited number of shareholders
2 [REDACTED] and [REDACTED] [REDACTED] the [REDACTED] that [REDACTED]
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
5 I can't remember exactly what the issue was at this
6 point.

7 Q Do you recall [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED]

14 Q Now, you all actually -- you actually had
15 traveled to Greenville, South Carolina to discuss
16 these matters?

17 A We did.

18 Q What do you recall you discussed about
19 that meeting?

20 A I think that meeting was where we tried to
21 explain -- I think it was the first time I had met
22 Curt and what we tried to do was to explain the
23 concept of The Reeves Group and what PJ was trying
24 to accomplish by forming The Reeves Group.

25 Q Did you discuss dilution issues at that

Page 66

1 time?

2 A We may have. I don't recall.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 70

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] license agreements for them.

5 Q Were you involved at all with any
6 discussions at all with BHS about the possible
7 purchase of Reeves?

8 A No, I was not.

9 Q Okay. Were you involved in that
10 transaction at all?

11 A No.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] retained other counsel?

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] "on call"?

18 [REDACTED] asked to prepare

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] discussions

22 [REDACTED]

23 [REDACTED] what you did

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Q Are you aware that there was -- are you
25 aware of whether or not there was a sale of the

Page 72

1 assets of The Reeves Group to BHS or a subsidiary or
2 affiliate of BHS?

3 A I am aware that there was a sale of some
4 form to a company BHS.

5 Q Okay. Do you know -- do you know the form
6 of that sale -- do you know the form in which that
7 sale occurred?

8 A I believe -- I don't know for certain.
9 I've never seen an agreement, so I don't know for
10 certain.

11 Q So you don't have personal knowledge as to
12 whether or not it was a stock sale or an asset sale?

13 A I do not.

14 [REDACTED]
15 [REDACTED] 187 and 188. Do you recognize these documents?

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 76

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Q Okay. And then you had a meeting with Bob

and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] became involved

[REDACTED]

[REDACTED] had a meeting in [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] came up to a [REDACTED]

[REDACTED] in the summer of 1991. [REDACTED]

[REDACTED] of [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] have met with [REDACTED]

[REDACTED] [REDACTED] [REDACTED] That

[REDACTED]

Q There's a reference here to 7 1/2

ownership Reeves to NARP and NARP to Reeves. Did

you become aware at some point that Bob and PJ

1 decided to reduce ownership interests, their
2 respective interests in NARP and Reeves from 25% to
3 7 1/2 percent?

4 A It is reflected in a document that I saw,
5 and that's the extent of what I can recall about it.

6 Q Okay. Do you know what document it was
7 that you saw?

8 A It is in an opinion that I think it is an opinion
9 agreement. I saw a reference to it. I do not know
10 how that came about. I don't recall how they went
11 through that.

12 Q Okay. Did you see any other documents?
13 I am going back to 2004 to 2007, 2008.

14 A I think I saw that.

15 Q And I would like to ask you about
16 some of the conversations you had with Mr.
17 Reeves, is that right?

18 MR. STODGHILL: Mr. Richardson.

19 MR. STODGHILL: I think it is 17, 2008.

20 MR. STODGHILL:

21 Q Did Mr. Richardson discuss going from 25%
22 ownership to 7 1/2% ownership of the company?

23 MR. STODGHILL: Objection. I think that is

24 a privileged attorney-client ground.

25 I am going to ask you to answer the question.

Page 78

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 [REDACTED]:

8 Q Do you know that -- do you know whether or
9 not they agreed to go from 25% to 7 1/2% ownership?

10 A I do not.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 (Thereupon, Exhibit Number 27 was marked
5 for identification.)

6 [REDACTED]

7 Q Mr. Manning, it states, "Rod, I have
8 reviewed the draft of the Services Agreement you
9 prepared between NARP and Reeves. Since we have not
10 been able to discuss the document yet, I have taken
11 the liberty to make some suggested revisions, and
12 have attached the revised document for your review.
13 I look forward to your comments. Additionally, I am
14 trying to wrap up some of NARP's corporate matters.
15 At this point, since we are dealing with 7.5% equity
16 positions instead of 25%, perhaps options are the
17 least tax costly means to get Bob and PJ to where
18 they desire to be, provide they are properly
19 tailored. Your thoughts?"

20 First of all, let me just ask you to
21 look at Exhibit 27 starting on Page 001645. Does
22 this appear to be the Services Agreement that's
23 referenced in the e-mail?

24 A It does. And it is the one to which I
25 referred earlier.

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1 Q Okay. I want to focus on the language in
2 here that says, "I am trying to wrap up some of
3 NARP's corporate matters. At this point, since we
4 are dealing with 7.5% equity positions."

5 A Uh-huh.

6 Q "Instead of 25%." I take it it's fair to
7 say that as of August 27th, 2004, you were aware
8 that the parties were discussing 7 1/2 equity
9 positions rather than 25%?

10 A Yes.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 Q Okay. What were the concerns within
2 respect to formalizing that? Why did you think you
3 needed to make it more formal?

4 A Well, at this point in time -- some point
5 in time, PJ was getting ready to sell Reeves and we
6 thought it might be easier if this document was a
7 bit clearer.

8 Q And by, "this document," you mean
9 Exhibit 6?

10 A Exhibit 6, yes, I'm sorry. And that led
11 to the Services Agreement and all the other ones
12 we've talked about, to clarify the relationship
13 between the two entities.

14 [REDACTED]
15 [REDACTED] the fourth paragraph "I understand
16 [REDACTED] to have an "interest" in
17 [REDACTED] at the 7.5% level, 25%."
18 [REDACTED] was it your understanding,
19 [REDACTED] had that was the 25% [REDACTED]
20 [REDACTED]

21 [REDACTED] objection
22 [REDACTED] what [REDACTED] objection?
23 [REDACTED] well, you [REDACTED] him what
24 [REDACTED] understanding was [REDACTED] upon a [REDACTED]
25 [REDACTED]

Page 86

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 Q Okay. Was it your understanding that the
6 25% interest, whatever it was then, was reduced to
7 7.5%, at least as of September 8th, 2004?

8 A I wouldn't use reduced, I guess what I
9 would say is that we were going to document a
10 relationship in which they had an interest of 7.5%
11 in each other's company.

12 Q An interest of 7.5% rather than 25%?

13 A 7.5 would be the interest we documented.

14 Q Okay. Well, when you say 7.5% would be
15 the interest you documented, I take it that that
16 would be the final interest each party had, would
17 have wound up with once it was documented?

18 A Correct.

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 96

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 THE WITNESS: Let me -- I'm trying to
8 think of how it was to be structured at this
9 point in time in October, 2004. At some point,
10 there was to be an option -- there was going to
11 be a liquidation event of PJ, at which point
12 Bob's interests would be paid by PJ to some
13 charity.

14 [REDACTED]

15 THE WITNESS: And to reflect PJ's interest
16 in Bob's company, he would get an option to do
17 that, to take his percentage of that. So it
18 was -- I can't remember if it was at this time
19 or not or later than this, but somewhere around
20 there, the ownership rights, PJ's was going to
21 be a contribution to charity that Bob had
22 selected and, in turn, he would get this option
23 in NARP. And that was how they were balancing.
24 At least that's what I recall. I don't
25 remember timing wise, whether it was around

1 this or not, but I would suspect it is if there
2 is an option agreement for PJ to acquire part
3 of NARP.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 108

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 Q So in your understanding, was any right
12 that PJ Richardson would have to buy the stock of
13 NARP also related to making a contribution to
14 charity or to buy the stock from a charity?

15 A One of these exhibits referred to a
16 meeting in Atlanta.

17 Q Right.

18 A That would have been a meeting with Curt,
19 Bob, PJ and myself. And what I recall about that
20 meeting is what I've described to you, that PJ was,
21 I can't remember how close in time, but as he
22 liquidated his interests in Reeves, he would make a
23 contribution to charity. And that would be for
24 Bob's interest in PJ's company. PJ would get an
25 option to purchase that, whatever percentage it was,

1 of NARP. And at the same time, the -- this
2 agreement here, this Exhibit 6, would go away. So
3 there would be a closing at which those three events
4 would occur.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 110

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] I'm representing that to
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] understanding was that
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 Q Okay. How did the parties at the meeting
23 leave the ownership interest after the Atlanta
24 meeting? And I'm representing to you that was in
25 October of '04.

A. William Rob

00-743-DEPO

0006

APP_0892

1 A Okay. I'll restate what I said before.
2 My recollections of that meeting is when we left,
3 there was an agreement that -- for Bob's interest in
4 Reeves, PJ would make at a liquidation event, he
5 would make a contribution to a charity. I don't
6 recall which charity, but he would make a
7 contribution. He would, in turn, for his interest
8 in NARP, would get an Option Agreement.

9 Q Okay.

10 A And whatever went along with that. And
11 there would be another agreement that would do away
12 with this Exhibit 6. And I guess in my mind, what I
13 viewed is there would be a closing. So all of those
14 events would occur simultaneously. So that these
15 two interests would be -- his would be documented to
16 the charity, his interest here would be documented
17 by the Option Agreement. And you would have a
18 termination of that thing and they would go forward.

19 Q But before that occurred, the parties
20 still had some more issues to work out?

21 A I believe that's correct.

22 Q Okay.

23 ~~REDACTED~~

24 ~~REDACTED~~

25 ~~REDACTED~~

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1 BY MR. ELLIS:

2 Q To your knowledge, did those details,
3 those -- the things that had not been agreed to as
4 of the Atlanta meeting, do you know if those were
5 ever finally agreed to?

6 A I do not.

7 ~~Q Okay. I will show you this document.~~

8 ~~THIS IS BEE 00001 through 00004.~~

9 ~~MR. ROBBINS: Are you marking it?~~

10 ~~MR. ELLIS: Yes.~~

11 (Thereupon, Exhibit Number 37 was marked
12 for identification.)

13 ~~BY MR. ELLIS:~~

14 Q Are you familiar with this document?

15 A I am.

16 Q And we marked it as Exhibit 37.

17 A Uh-huh.

18 Q Okay. You prepared this document,
19 correct?

20 A I did.

21 Q And it's the Agreement of Termination
22 Settlement and Release?

23 A Yes.

24 Q Okay. Who asked you to prepare it?

25 A This would have been the piece of the

1 three pieces that I mentioned at the Atlanta meeting
2 that I did following that meeting. I said there was
3 PJ's contribution to the NARP charity, there was
4 going to be an Option Agreement for him and NARP,
5 and then this is the agreement that would do away
6 with the Exhibit 6.

7 Q Okay. If you will look on Page -- I'm
8 sorry, on the second page of this document.

9 A Uh-huh.

10 Q It's DEF-00060.

11 A Yes.

12 Q In the next to the last line of the
13 incomplete first paragraph, do you see where it
14 says, "It is specifically agreed and understood by
15 the parties that the foregoing release is not
16 intended to, and shall not, release any of the
17 parties from that certain, separate Option Agreement
18 dated _____, 2004."

19 A Right.

20 Q "Pursuant to which NARP and RAC have
21 granted PJR an option to purchase 7.5% of the
22 capital stock of NARP," correct?

23 A Uh-huh.

24 Q Okay. As of the date that you drafted
25 this Agreement of Termination, Settlement of

Page 114

1 Release, there was not an Option Agreement, was
2 there?

3 A Referring back to Exhibit 35.

4 Q Okay.

5 A That was -- I suspect that's what I was
6 referring to.

7 Q When was that Option Agreement 35 ever
8 executed?

9 A I don't know.

10 Q Or 34.

11 A I don't know that it was.

12 Q You don't know that it was executed?

13 A I don't know.

14 Q Okay. Why does this have a blank in it?

15 A When I prepared this?

16 Q Yes.

17 A Because I didn't know if it had been
18 executed or not.

19 Q Okay.

20 A Again, it would have been one-third of the
21 closing. This would have been signed at closing
22 evidencing PJ's interest in here. This would have
23 been signed at closing, terminating this old
24 agreement. And he would have made, Reeves, PJ would
25 have made a contribution to this charity. So this,

1 this, and that contribution would have happened at a
2 closing and we would have provided that all of those
3 things happen simultaneously so that when that
4 contribution is made, this is signed, that's signed,
5 and we go on.

6 Q But in your recollection, all three of
7 those things were part of the agreement, is that
8 right?

9 A All three were a part of --

10 Q Well, any agreement that would occur had
11 to require all of those things to happen, is that
12 your understanding?

13 A My understanding leaving Atlanta is that
14 was what we contemplated doing.

15 Q That's what you contemplated doing?

16 A That's correct. And I was doing this
17 agreement. Curt would have done the Option
18 Agreement for NARP. I did this and then I can't
19 remember, I think Curt was probably doing the
20 charitable contribution, but I don't recall.

21 ~~I am going to show you this document that~~

22 ~~will be the same document~~

23 ~~the same document~~

24 ~~the same document, Exhibit 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000~~

25 ~~the same document~~

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] S
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]:
8 [REDACTED] terms
9 [REDACTED]
10 [REDACTED]

11 Q Okay. Mr. Manning, when this was drafted,
12 I noticed that this document only refers to a
13 potential Option Agreement in favor of PJ
14 Richardson.

15 A Uh-huh.

16 Q It does not refer to any rights in favor
17 of NARP or Bob Castellani.

18 A Right.

19 Q And why is that?

20 A Because Bob's interest in Reeves would
21 have been satisfied by the contribution to the
22 charity.

23 Q Well, then this document does not
24 completely set forth entirely what the agreement
25 was, what you testified was the agreement was when

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1 you all left Atlanta?

2 A When we left Atlanta, my understanding was
3 there would be a closing. This would be one
4 document and the Option Agreement and you have the
5 contribution. The three of them would be executed
6 at a closing and will provide that all three happen
7 simultaneously.

8 Q But this document refers to the
9 extinguishment of the 25% interest or anything like
10 that.

11 A Yes.

12 Q It refers to the granting of an option of
13 some form.

14 A Yes.

15 Q To PJ Richardson.

16 A Uh-huh.

17 Q But it does not refer to any obligation on
18 the part of PJ Richardson to make any sort of
19 contribution as a part of the closing.

20 A That's correct.

21 Q Why does it not?

22 A I don't recall that. I would imagine that
23 it was because we would do this at a closing and all
24 three documents would be on the table and you
25 wouldn't sign any of them until you had them all

1 signed.

2 Q Okay. So you weren't -- when you drafted
3 this document, you weren't anticipating this being
4 signed at a private meeting between PJ and Bob?

5 A No, it was -- we would have had a closing,
6 Curt would have been there, I would have been there,
7 Bob and PJ. There would have been three documents:
8 This one, charitable stuff, and the Option Agreement
9 at a closing table.

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 THE WITNESS: I don't -- I don't know what
18 Bob was thinking. I do recognize the name of
19 the -- I believe that was the charity that we
20 talked about in Atlanta.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 Confirming our discussion, could you be expressing
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] already existing in para
8 [REDACTED]
9 [REDACTED] purposes. I'm not sure that [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]."

14 This document would reflect, would it
15 not, that as of Saturday, November 13th, there's not
16 a finalized agreement, is that correct?

17 [REDACTED]
18 [REDACTED] consistent with your
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] just for purposes of
22 clarification for the record, [REDACTED]
23 "I understand finalized agreement." No finalized
24 agreement, [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] documents, I'm not going to mark it. I am
5 [REDACTED] giving you an e-mail from [REDACTED] to [REDACTED]
6 [REDACTED] Kidner, on which [REDACTED] on April 8th, 2005.

7 [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED] [REDACTED] [REDACTED] New, who is [REDACTED]
11 [REDACTED]

12 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] And he was [REDACTED]
14 [REDACTED] [REDACTED] [REDACTED] [REDACTED] I believe.

15 Q Okay. And as of April 8th, 2005, there
16 was still not a finalized agreement, then, was
17 there, as to how any transfer of NARP stock might
18 work, was there?

19 A Not that I was aware of.

20 Q Okay. Are you aware that any such
21 agreement was ever finalized?

22 A I'm not aware.

23 [REDACTED]

24 [REDACTED]

25 (Thereupon, Exhibit Number 42 was marked

1 In this e-mail, I am writing to you
2 with regard to the fact that the projected
3 closing date for the 3/31/05 "Final" is
4 for the 3/31/05 "Final" is 3/31/05. I have been able
5 to find another closing date with the 3/31/05
6 date, but I am not being able to
7 get this done. It is becoming quite frustrating
8 with the interminable amount of time
9 discussions, we have been having about the
10 continuing efforts for the 3/31/05 (as of
11 March 31). The business is not going to
12 close in 2005, for many reasons, and the market
13 conditions in the valuation are becoming more
14 in my judgment, and I believe the 3/31/05
15 will require a new valuation, and an increase
16 purchase price for the 3/31/05 valuation.
17 I am sorry.

19 As of April 14th, 2005, there was not
20 an agreement as to what this 7.5%, if it were sold,
21 would be sold for, was there?

22 A I don't know. I was not a part of these
23 discussions. If you look at the fourth paragraph
24 down where Curt refers to PJ's other advisors --

25 Q Right.

Page 130

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Q But is this e-mail consistent with your
5 understanding that as of April 14th, 2005, there was
6 still not a finalized agreement?

7 A Based on this, I would say that they
8 probably had not signed the Option Agreement at this
9 point in time.

10 Q Okay.

11 A Because that's the -- again, I, my
12 recollection when Curt first set a closing date,
13 that's about when I talked in Atlanta and it was a
14 closing date to do those three things, and if they
15 hadn't had a closing date, then I would assume that
16 none of those three documents had been executed or
17 the two documents and the contribution had been
18 accomplished.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 142

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MR. DAVES: Object to form.

THE WITNESS: No. Well, "donate all the funds to support missionary work," that's what I referred to again in the Atlanta meeting, was the donation to the missionary work. So that part I was, yes.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]:

6 Q Was it your understanding, though, that he
7 was given the opportunity to buy the stock at a
8 price from NARP?

9 A I would have to go back to this e-mail
10 from Curt, Exhibit -- I don't know which one it was,
11 where he talked about blowing through the closing
12 dates.

13 Q Right.

14 A I believe it's Exhibit 43.

15 Q Okay.

16 A And I will restate again what I told you
17 before. I mean, the projected closing date, from my
18 perspective, was those three events occurred, so --
19 and he's got a valuation in here and I don't know
20 that I ever was a part of that process, either.

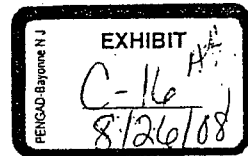
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Question Concerning 8

If we answer yes to question 8,

Will P.J. Richardson Be required
to purchase 7.5% OR HARD
COMMON STOCK AT CURRENT MARKET VALUE.

~~Question 8~~



You must assign some
value for the stock if you
answer yes.

Joseph J. John
President
Whitman & John Co.

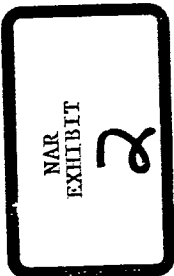
0922

APP_0908

**OUTLINE OF BUSINESS RELATIONSHIP BETWEEN
NORTH AMERICAN RESCUE PRODUCTS, INC. AND REEVES MANUFACTURING**

Parties: NARP - North American Rescue Products, Inc., an S-Corporation, organized in South Carolina.
RMI - Reeves Manufacturing, Inc., a C-Corporation, organized in Maryland.
RAC - Robert A. Castellani
PJR - P.J. Richardson

1. **RMI Business:** RMI is in the business of designing, manufacturing, and selling certain emergency medical and rescue products. (e.g. stretcher, patient immobilization items, decontamination systems, air shelter)
2. **NARP Business:** NARP is in the business of designing, manufacturing, and selling certain emergency medical and rescue products. (e.g. stretcher, patient examination lights, laryngoscopes)
3. **Cross Selling Activities:** NARP and RMI products are related in their use, but many of their customers are different. On some occasions NARP sells RMI products directly and RMI sells products to NARP directly. Additionally, on occasions NARP customers buy directly from RMI and RMI customers buy directly from NARP. The cross selling has become an important part of each company's business, and it would work a hardship on either if it ceased. It is in their best interest for the cross selling to continue.
4. **Commissions:** NARP will pay over to PJR and RMI will pay over to RAC commissions for selling their respective products. The commission amount shall be equal to 25% of the taxable income (taxable income shall have the meaning set forth in 63 of the Internal Revenue Code of 1986 (Code) calculation before the commission payment. The payment shall be made as payment to independent contractors and not wages. Payments shall be made quarterly on or before 30th day following the end of the each calendar quarter, with adjustment according to the company's federal income tax returns to be made in the succeeding year's payments. These payments shall begin for the 4th quarter 1999.
5. **Independence of Management:** RMI and NARP shall be independently managed and neither PJR nor RAC shall have the right to interfere with the business practices of the company paying the commission. RMI and NARP, however, shall engage in reasonable management practices of corporations, the stock of which is traded in the public markets in determining and paying over compensation of their respective employees, capitalization of expenditures, inventory, and expenses.
6. **Termination of Commission:** If either NARP or RMI determines that payment of the commission amounts is not in the best interest of the company then they shall notify RPJ or RAC, as the case may be, of their desire to terminate the commission arrangement. Within 30 days of notice the terminating company shall pay a terminated party an amount equal to 10% of the arithmetic median of such company's annual gross sales (median shall be calculated over the period of commission arrangement outlined above).
7. **Restricted Stock:** RMI shall issue RAC and NARP shall issue PJR capital stock to 25% (fully diluted) of its issued stock of all classes. Such stock shall be subject to a right by either company to purchase the issued if the commission arrangement between RMI and RAC or NARP and PJR is terminated. The right shall be exercised by notice to the holder of the stock. In the instance the terminating company shall pay \$100.00 to the person for such stock. If a company exercises its right to purchase the stock and it enters into an agreement to sell or consummate a transaction to sell a material portion of its property other than in the ordinary course of its business or PJR in the case of RMI and RAC in the case of NARP (directly or indirectly through related parties or a series of related transitions) enter into an agreement to sell or otherwise consummate a



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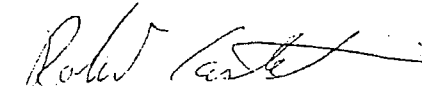
APP_0909

transaction selling the capital stock they hold in RMI and NA respectively, then the terminated stockholder shall be paid a portion of any consideration received as if they still owned the stock; this provision shall be for a period of the two years from the date of the stock purchased at the \$100.00 price.

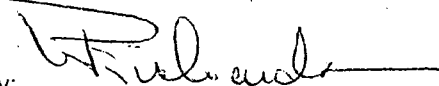
8. **General Stock Rights:** PJR in respect to NARP and RAC in respect to RMI shall not transfer their stock without first offering it for purchase at the same price and terms. If the stockholders of RMI or NARP sell or enter into an agreement to sell more than 50% of the issued of the company, their PJR in respect to NARP and RAC in respect to RMI shall receive a prorate amount of the consideration for such sales (e.g. a sale of 50% of a company's stock for \$1,000 would trigger a right to payment of \$250 to the stockholder holding restricted under the agreement). The holder of restricted stock shall take no action to adversely affect any tax election made by the company which stock he holds.
9. **Arbitration of Disputes:** Any dispute shall be mediated and if not resolved referred to arbitration before only one arbitrator (an experienced commercial lawyer) to the exclusion of the courts. Any arbitration shall proceed in accordance with the current CPR Non-Administered Arbitration Rules in effect on the date of this agreement. The place of arbitration shall be Pickens County, South Carolina. The prevailing parties in arbitration shall be entitled to receive from the other arbitration expenses, including reasonable attorney's fees. This provision shall also apply to the extent of any action taken in a court of law. Judgment upon an arbitrator's decision may be entered by any court having jurisdiction over the affected party.

Date: 1-1-00
Approved:
North American Rescue Products, Inc.

By: 
Robert A. Castellani, President

By: 
Robert A. Castellani

Date: 1-1-00
Approved:
Reeves Manufacturing, Inc.

By: 
P.J. Richardson, President

By: 
P.J. Richardson

SUBJECT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT OR THE FEDERAL
ARBITRATION ACT

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APP_0910

Agreement of Termination, Settlement and Release

This Agreement of Termination, Settlement and Release (the "Agreement") is made as of 5 November 2004 by and between Reeves Manufacturing, Inc. ("RMI"), a Delaware corporation, P. J. Richardson ("PJR"), North American Rescue Products, Inc. ("NARP"), a Delaware Corporation and Robert A. Castellani ("RAC").

Whereas:

- A. The parties hereto approved and executed an Outline of Business Relationship on January 1, 2000 (the "2000 Outline"), a copy of which is attached hereto as Exhibit "A", and;
- B. The parties desire to terminate any purported agreements, understandings or arrangements in any way arising out of or relating in any manner to the 2000 Outline; and
- C. The parties have concluded that it is desirable that all claims of NARP and RAC arising out of or in any manner relating to the 2000 Outline be settled and released; and

NOW, THEREFORE, in consideration of the promises, agreements and cash payments herein contained and described, and intending to be legally bound, the parties agree as follows:

1. Termination of the 2000 Outline. The parties agree that the 2000 Outline and any and all agreements, understandings, undertakings or arrangements that in any way arose or may have arisen out of or relate in any manner to the 2000 Outline, are terminated.

2. Settlement. All claims and potential claims of any nature whatsoever that have been, could have been, or in the future could be asserted by the parties arising out of or relating in any manner to the 2000 Outline are hereby settled, compromised and released for and in consideration of the payment by RMI/PJR of the sum of \$100.00 in lawful money of the United States of America to NARP and RAC.

3. RMI and PJR Release. NARP and RAC hereby remise, release and forever discharge each of RMI and PJR, along with their respective directors, officers, stockholders, controlling persons, employees, agents, predecessors, successors and assigns, and agents, of and from all, and all manner of, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, whether in law or equity, which NARP and/or RAC had, now have or which any personal representative, heir, predecessor, successor or assign of NARP and/or RAC can, shall or may have against RMI and PJR or

(FT247204;3)

NAR
EXHIBIT

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APP_0911

their respective directors, officers, stockholders, controlling persons, employees, agents, predecessors, successors and assigns, arising out of or relating to the 2000 Outline from the beginning of time to the date of this Settlement Agreement. It is specifically agreed and understood by the parties that the foregoing release is not intended to, and shall not, release any of the parties from that certain, separate Option Agreement dated 15 Dec, 2004 pursuant to which NARP and RAC have granted PJR an option to purchase 7.5% of the capital stock of NARP.

4. NARP and RAC Release. RMI and PJR hereby remise, release and forever discharge each of NARP and RAC, along with their respective directors, officers, stockholders, controlling persons, employees, agents, predecessors, successors and assigns, and agents, of and from all, and all manner of, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, whether in law or equity, which RMI and/or PJR had, now have or which any personal representative, heir, predecessor, successor or assign of RMI and/or PJR can, shall or may have against NARP and RAC or their respective directors, officers, stockholders, controlling persons, employees, agents, predecessors, successors and assigns, arising out of or relating to the 2000 Outline from the beginning of time to the date of this Settlement Agreement. It is specifically agreed and understood by the parties that the foregoing release is not intended to, and shall not, release any of the parties from that certain, separate Option Agreement dated 15 Dec, 2004 pursuant to which NARP and RAC have granted PJR an option to purchase 7.5% of the capital stock of NARP.

5. Successors. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer on any other person any rights remedies, obligations or liabilities under or by reason of this Agreement.

6. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter contained herein, and merges all prior discussions and agreements, both oral and written, between the parties.

7. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

8. Representations and Warranties. Each of the parties represents and warrants to the other parties that it has not assigned any of its purported rights or claims under the 2000 Outline to any other person or entity.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Termination, Settlement and Release of the day and year first written herein.

North American Rescue Products, Inc.

By:

Title: *President*

Date: *8 Nov 04*

Robert A. Castellani



~~Reeves Manufacturing, Inc.~~

By: *Richardson*

Title: *President & CEO*

Date: *5 November '04*

P. J. Richardson

South Carolina.

RMI - Reeves Manufacturing, Inc., a C-Corporation, organized in Maryland

RAC - Robert A. Castellani

PJR - P.J. Richardson

1. **RMI Business:** RMI is in the business of designing, manufacturing, and selling certain emergency medical and rescue products. (e.g. stretcher, patient immobilization items, decontamination systems, air shelter)
2. **NARP Business:** NARP is in the business of designing, manufacturing, and selling certain emergency medical and rescue products. (e.g. stretcher, patient examination lights, laryngoscopes)
3. **Cross Selling Activities:** NARP and RMI products are related in their use, but many of their customers are different. On some occasions NARP sells RMI products directly, and RMI sells products to NARP directly. Additionally, on occasions NARP customers buy directly from RMI and RMI customers buy directly from NARP. The cross selling has become an important part of each company's business, and it would work a hardship on either if it ceased. It is in their best interest for the cross selling to continue.
4. **Commissions:** NARP will pay over to PJR and RMI will pay over to RAC commissions for selling their respective products. The commission amount shall be equal to 25% of the taxable income (taxable income shall have the meaning set forth in 63 of the Internal Revenue Code of 1986 (Code) calculation before the commission payment. The payment shall be made as payment to independent contractors and not wages. Payments shall be made quarterly on or before 30th day following the end of the each calendar quarter, with adjustment according to the company's federal income tax returns to be made in the succeeding year's payments. These payments shall begin for the 4th quarter 1999.
5. **Independence of Management:** RMI and NARP shall be independently managed and neither PJR nor RAC shall have the right to interfere with the business practices of the company paying the commission. RMI and NARP, however, shall engage in reasonable management practices of corporations, the stock of which is traded in the public markets in determining and paying over compensation of their respective employees, capitalization of expenditures, inventory, and expenses.
6. **Termination of Commission:** If either NARP or RMI determines that payment of the commission amounts is not in the best interest of the company then they shall notify PJR or RAC, as the case may be, of their desire to terminate the commission arrangement. Within 30 days of notice the terminating company shall pay a termination party an amount equal to 10% of the arithmetic median of such company's annual gross sales (median shall be calculated over the period of commission arrangement outlined above).
7. **Restricted Stock:** RMI shall issue RAC and NARP shall issue PJR capital stock to 25% (fully diluted) of its issued stock of all classes. Such stock shall be subject to a right by either company to purchase the issued if the commission arrangement between RMI and RAC or NARP and PJR is terminated. The right shall be exercised by notice to the holder of the stock. In the instance the terminating company shall pay \$100.00 to the person for such stock. If a company exercises its right to purchase the stock and enters into an agreement to sell or consummate a transaction to sell a material portion of its property other than in the ordinary course of its business or PJR in the case of RMI and RAC in the case of NARP (directly or indirectly through related parties or a series of related transactions) enter into an agreement to sell or otherwise consummate a

SUBJECT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT OR THE FEDERAL ARBITRATION ACT

Page 1 of 1

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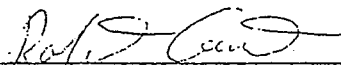
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APP_0914

transaction selling the capital stock they hold in RMI and NARP, respectively, then the terminated stockholder shall be paid a portion of any consideration received as if they still owned the stock; this provision shall be for a period of the two years from the date of the stock purchased at the \$100.00 price.

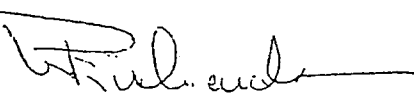
8. General Stock Rights: PJR in respect to NARP and RAC in respect to RMI shall not transfer their stock without first offering it for purchase at the same price and terms. If the stockholders of RMI or NARP sell or enter into an agreement to sell more than 50% of the issued of the company, their PJR in respect to NARP and RAC in respect to RMI shall receive a prorate amount of the consideration for such sales (e.g. a sale of 50% of a company's stock for \$1,000 would trigger a right to payment of \$250 to the stockholder holding restricted under the agreement): The holder of restricted stock shall take no action to adversely affect any tax election made by the company which stock he holds.
9. Arbitration of Disputes: Any dispute shall be mediated and if not resolved referred to arbitration before only one arbitrator (an experienced commercial lawyer) to the exclusion of the courts. Any arbitration shall proceed in accordance with the current CPR Non-Administered Arbitration Rules in effect on the date of this agreement. The place of arbitration shall be Pickens County, South Carolina. The prevailing parties in arbitration shall be entitled to receive from the other arbitration expenses, including reasonable attorney's fees. This provision shall also apply to the extent of any action taken in a court of law. Judgment upon an arbitrator's decision may be entered by any court having jurisdiction over the affected party.

Date: 1-1-00
Approved:
North American Rescue Products, Inc.

By: 
Robert A. Castellani, President

By: 
Robert A. Castellani

Date: 1-1-00
Approved:
Reeves Manufacturing, Inc.

By: 
P.J. Richardson, President

By: 
P.J. Richardson

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On November 5, 2004 we signed an Agreement of Termination, Settlement and Release. Paragraphs 3 and 4 refer to an option to purchase 7.5% of NARP capital stock and an Option Agreement dated December 15, 2004. There is no Option Agreement, and the persons signing below acknowledge and confirm that all references to the option or Option Agreement were made in error and should not be part of the Agreement of Termination, Settlement and Release.

Date: June 17, 2005

North American Rescue Products, Inc.

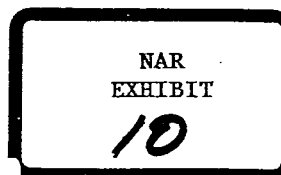
By: Robert A. Castellani
Robert A. Castellani, President

Robert A. Castellani

Reeves Manufacturing, Inc.

By: P.J. Richardson
P.J. Richardson, President

P.J. Richardson



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Rec'd from Curt
10/4/04

NORTH AMERICAN RESCUE PRODUCTS, INC.

Stock Option Agreement
October 4, 2004

This agreement is effective on the date above (the Date of Agreement) and is delivered by North American Rescue Products, Inc., a Delaware corporation (NARP) to the undersigned (Optionee).

RECITALS

A. Optionee has been elected as a member of the board of directors of NARP. Because of his experience and skills it is anticipated that he will make valuable contributions to the management of NARP in the best interests of NARP and its stockholders.

B. In an effort to conserve cash for future growth and other business opportunities, and to further align Optionee's interests with those of NARP and its stockholders, in lieu of directors fees to be paid in the foreseeable future NARP, its directors, and Stockholders wish to grant Optionee an option to purchase capital stock in NARP in accordance with this Stock Option Agreement. ✓

NARP and Optionee agree as follows:

1 ARTICLE - AGREEMENT OF OPTION. Subject to the terms and conditions hereinafter set forth, NARP with the approval and at the direction of the Committee, hereby grants to the Optionee, as of the Date of Agreement, an option to purchase the number of shares of common capital stock equivalent to seven and one-half percent (7½%) of the common capital stock outstanding on the date of this agreement at a price of \$.01 per share. Such option is hereinafter referred to as the Stock Option and the shares of stock purchasable upon exercise of the Stock Option are hereinafter sometimes referred to as the Option Shares. The Stock Option is not intended by the parties hereto to be, and shall not be treated as, an "incentive stock option" as defined in Internal Revenue Code § 422.

2 ARTICLE - TERMINATION OF OPTION.

.1 The Stock Option and all rights hereunder with respect thereto, to the extent such rights shall not have been exercised, shall terminate and become null and void after the expiration of ten (10) years from the Date of Agreement (the Option Term).

.2 If the Optionee dies, the Stock Option may be exercised by the Optionee's legal representative(s), but only to the extent that the Stock Option would otherwise have been exercisable by the Optionee.

.3 Notwithstanding any other provisions set forth herein if the Optionee shall (i) recklessly, intentionally, or with gross negligence commits a act of malfeasance or wrongdoing which materially and adversely affects NARP or its affiliates; or (ii) materially breaches any covenant not to compete, or employment contract, with NARP or its affiliate any unexercised portion of the Stock Option shall immediately terminate and be void. Affiliate means a person (legal or natural) that controls, is under common control with, or is controlled by another person, whether through one or more intermediaries; control means the possession of the

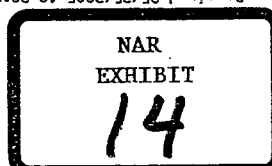
p2

Received 05/25/2005 10:20AM in 02:32 on line 151 for 3374 * Pg 2/5
301-865-9825
Excl Group Incorporated

May 25 05 10:20a

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TAB 6

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power to direct or cause the direction of management and policies of a person, whether by ownership, contract, or otherwise.

3ARTICLE - EXERCISE OF OPTIONS.

.1 The Optionee may exercise the Stock Option with respect to all or any part of the number of Option Shares then exercisable hereunder by giving the secretary of NARP written notice of intent to exercise. The notice of exercise shall specify the number of Option Shares as to which the Stock Option is to be exercised and the date of exercise thereof, which date shall be at least five days after the giving of such notice unless an earlier time shall have been mutually agreed upon.

.2 Full payment (in U.S. dollars) by the Optionee of the option price for the Option Shares purchased shall be made on or before the exercise date specified in the notice of exercise in cash.

.3 On the exercise date specified in the Optionee's notice or as soon thereafter as is practicable, NARP shall cause to be delivered to the Optionee, a certificate or certificates for the Option Shares then being purchased (out of theretofore unissued common stock or reacquired common stock, as NARP may elect) upon full payment for such Option Shares. The obligation of NARP to deliver Stock shall, however, be subject to the condition that if at any time the board of directors shall determine, in its discretion, that the listing, registration or qualification of the Stock Option or the Option Shares upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of, or in connection with, the Stock Option or the issuance or purchase of Stock thereunder, the Stock Option may not be exercised in whole or in part unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the board of directors.

.4 If the Optionee fails to pay for any of the Option Shares specified in such notice or fails to accept delivery thereof, the Optionee's right to purchase such Option Shares may be terminated by NARP. The date specified in the Optionee's notice as the date of exercise shall be deemed the date of exercise of the Stock Option, provided that payment in full for the Option Shares to be purchased upon such exercise shall have been received by such date.

4ARTICLE - ADJUSTMENT OF AND CHANGES IN NARP COMMON STOCK. If there is a reorganization, recapitalization, change of shares, stock split, spin-off, stock dividend, reclassification, subdivision or combination of shares, merger consolidation, rights offering, or any other change in the corporate structure or shares of capital stock of NARP, the board of directors shall make such adjustment as it deems appropriate in the number and kind of shares of common stock subject to the option or in the option price; provided, however, that no such adjustment shall give the Optionee any additional benefits under the Stock Option.

5ARTICLE - NO RIGHTS OF STOCKHOLDERS. Neither the Optionee nor any personal representative shall be, or shall have any of the rights and privileges of, a stockholder of NARP in

respect to any shares of common stock purchasable or issuable upon the exercise of the Stock Option, in whole or in part, prior to the date of exercise of the Stock Option.

6ARTICLE - NON-TRANSFERABILITY OF OPTION. During the Optionee's lifetime, the Stock Option hereunder shall be exercisable only by the Optionee or any guardian or legal representative of the Optionee, and the Stock Option shall not be transferable except, in case of the death of the Optionee, by will or the laws of descent and distribution, nor shall the Stock Option be subject to attachment, execution or other similar process. In no event of (a) any attempt by the Optionee to alienate, assign, pledge, hypothecate or otherwise dispose of the Stock Option, except as provided for herein, or (b) the levy of any attachment, execution or similar process upon the rights or interest hereby conferred, NARP may terminate the Stock Option by notice to the Optionee and it shall thereupon become void. All stock purchased according to this Agreement shall be subject to the terms of the North American Rescue Products, Inc. - Stockholder Agreement as set forth in Appendix A (Stockholder Agreement) attached hereto and made a part hereof. Optionee agrees to the terms set forth in Appendix A, and upon exercise will exercise a counterpart signature page to such agreement.

7ARTICLE - EMPLOYMENT NOT AFFECTED. The granting of the Stock Option nor its exercise shall not be construed as granting to the Optionee any right with respect to employment with NARP. Except as may otherwise be limited by a written agreement between NARP and the Optionee, the right of NARP to terminate at will the Optionee's employment with it at any time (whether by dismissal, discharge, retirement or otherwise) is specifically reserved by NARP, as NARP or on behalf of NARP (whichever the case may be), and acknowledged by the Optionee.

8ARTICLE - AMENDMENT OF OPTION. The Stock Option may be amended by the board of directors at any time (i) if the board of directors determines, in its sole discretion, that amendment is necessary or advisable in the light of any addition to or change in the Internal Revenue Code or in the regulations issued thereunder, or any federal or state securities law or other law or regulation, which change occurs after the Date of Agreement and by its terms applies to the Stock Option; or (ii) other than in the circumstances described in clause (i), with the consent of the Optionee.

9ARTICLE - NOTICE. Any notice to NARP provided for in this instrument shall be addressed to it in care of its President at its principal place of business and any notice to the Optionee shall be addressed to the Optionee at the address shown below. Any notice or other communication shall be conclusively deemed to have been given if by (a) personal delivery, on the day of actual delivery; (b) nationally recognized delivery service, delivery prepaid on the day of actual delivery, provided written confirmation of receipt is obtained by the delivery service; (c) certified US mail, on the second business day after deposit, postage prepaid, properly addressed, with the US Postal Service; and (d) electronic communication, on the day of transmittal, if given during the normal business hours of the recipient and on the next business day if given after normal business hours on any day, in either event upon confirmation of receipt by electronic means or acknowledgment of recipient.

10ARTICLE - INCORPORATION OF PLAN BY REFERENCE. The Stock Option is granted pursuant to the terms of this instrument. Any dispute with respect to this Stock Option shall be resolved according to the Dispute Resolution provisions of the Stockholder Agreement.

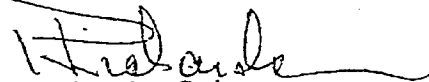
11 ARTICLE - GOVERNING LAW. The validity, construction, interpretation and effect of this instrument shall exclusively be governed by and determined in accordance with the law of Delaware, except to the extent preempted by federal law, which shall to the extent govern.

NARP has caused its duly authorized officers to execute an attest this Agreement of Stock Option, and to apply the corporate seal hereto, and the Optionee has placed his or her signature heron, effective as of the Date of Agreement.

North American Rescue Products, Inc.

By:
Robert A. Castellani, President/CEO

Accepted and Agreed to:


P. J. Richardson Optionee

Optionee Notice Address

Manning, Rod

From: Manning, Rod [RManning@Akerman.com]
Sent: Thursday, October 28, 2004 11:45 AM
To: cstodghill@teleplex.net
Cc: pjr@reevesdecon.com
Subject: Re:

Curt,

My apologies. I just realized that the e-mail message that I used to respond to you had attached to it the Option and Stockholder Agreement.

The changes that are referred to in my e-mail relate to the Services Agreement.

Rod

>>> Rod Manning 10/28/04 11:36AM >>>
Curt,

I was unable to show proposed changes to the agreement that you sent. So I have set them forth on this e-mail. I have discussed them with PJ but he has not had an opportunity to review the language so they remain subject to his comments. I have copied him on this e-mail. PJ, if I the language that I've set forth doesn't accurately reflect what you and I discussed please let me know.

Proposed Changes:

1) Section 5-- Revise the first sentence to read--"The price for the RMI Services to be performed hereunder as set forth on the Exhibits attached hereto and incorporated herein shall be (i) twenty thousand dollars per month (\$20,000) payable on the first day of each month plus (ii) one hundred and twenty five percent (125%) of actual freight charges for orders that are packaged and shipped directly by RMI."

2) Section 9--At the end of the section add a sentence "In no event shall RMI's liability under this Agreement exceed \$50,000".

>>> "Curtis Stodghill" <cstodghill@teleplex.net> 10/04/04 04:55PM >>>

Curtis Stodghill
Stodghill Law Firm Chartered
PO Box 2431
Greenville, SC 29602-2431
300 East McBee Avenue, Suite 300
Greenville, SC 29601-2899
Phone 864.271.0966
Fax 864.770.6167
Cell 864.419.9976
cstodghill@teleplex.net

NAR
EXHIBIT

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APP_0922

NORTH AMERICAN RESCUE PRODUCTS, INC.

Stock Option Agreement

October , 2004

This agreement is effective on the date above (the **Date of Agreement**) and is executed and delivered by North American Rescue Products, Inc., a Delaware corporation (**NARP**) to the undersigned (**Optionee**).

RECITALS

A. Optionee has been elected as a member of the board of directors of NARP (the "**Board**"). Because of his experience and skills it is anticipated that he will make valuable contributions to the management of NARP in the best interests of NARP and its stockholders.

B. In an effort to conserve cash for future growth and other business opportunities, and to further align Optionee's interests with those of NARP and its stockholders, in lieu of directors fees to be paid in the foreseeable future NARP, its directors, and Stockholders wish to grant Optionee an option to purchase capital stock in NARP in accordance with this Stock Option Agreement.

C. In conjunction with this Stock Option Agreement, the parties have entered into a Stockholder Agreement, of even date herewith, which is incorporated herein by reference.

NARP and Optionee agree as follows:

Article 1 - AGREEMENT OF OPTION.

1.1 Subject to the terms and conditions hereinafter set forth, NARP with the approval and at the direction of the Board, hereby grants to the Optionee, as of the Date of Agreement, an option to purchase the number of shares of common capital stock equivalent to seven and one-half percent (7½%) of the common capital stock outstanding on the date of this agreement, subject to adjustment as provided for herein, at an exercise price of \$.01 (the "**Exercise Price**"). Such option is hereinafter referred to as the **Stock Option** and the shares of stock purchasable upon exercise of the Stock Option are hereinafter sometimes referred to as the **Option Shares**. The Stock Option is not intended by the parties hereto to be, and shall not be treated as, an "incentive stock option" as defined in Internal Revenue Code § 422.

1.2 **Exercise Schedule.** This Stock Option shall be exercised in accordance with the following schedule. The Option Shares subject to the Stock Option shall be exercisable upon the closing of an Approved Sale (as defined in the Stockholder Agreement).

1.3 **YOU MUST EXERCISE THIS STOCK PURCHASE RIGHT BEFORE THE EXPIRATION DATE OR IT WILL TERMINATE AND YOU WILL HAVE NO FURTHER RIGHT TO PURCHASE THE SHARES.**

Article 2 - TERMINATION OF OPTION.

2.1 The Stock Option and all rights hereunder with respect thereto, to the extent such rights shall not have been exercised, shall terminate and become null and void after the expiration of ten (10) years from the Date of Agreement (the **Option Term**).

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2.2 Upon the death of Optionee, the Stock Option may be exercised by the Optionee's heirs, executors, legal representative(s) or trusts for the benefit of Optionee or Optionee's family, but only to the extent that the Stock Option would otherwise have been exercisable by the Optionee.

2.3 Notwithstanding any other provisions set forth herein if the Optionee shall (i) recklessly, intentionally, or with gross negligence commit an act of malfeasance or wrongdoing which materially and adversely affects NARP or its affiliates; or (ii) materially breaches any covenant not to compete, or employment contract, with NARP or its affiliate any unexercised portion of the Stock Option shall immediately terminate and be void. Affiliate means a person (legal or natural) that controls, is under common control with, or is controlled by another person, whether through one or more intermediaries; control means the possession of the power to direct or cause the direction of management and policies of a person, whether by ownership, contract, or otherwise.

Article 3 - EXERCISE OF OPTIONS.

3.1 The Optionee may exercise the Stock Option during its term in accordance with the Exercise Schedule set forth in Article 1.2 and the applicable provisions of this Option Agreement with respect to all of the number of Option Shares then exercisable hereunder by giving the Secretary of NARP written notice in the form attached as Exhibit A (the "Exercise Notice") of intent to exercise and such other representations and agreements as may be required by the Company. The notice of exercise shall specify the number of Option Shares as to which the Stock Option is to be exercised and the date of exercise thereof, which date shall be at least five days after the giving of such notice unless an earlier time shall have been mutually agreed upon.

3.2 The Exercise Notice shall be accompanied by full payment (in U.S. dollars) of the Exercise Price as to all Option Shares. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by such aggregate Exercise Price. No Shares shall be issued pursuant to the exercise of this Option unless such issuance and exercise complies with Applicable Laws. Assuming such compliance, for income tax purposes the Exercised Shares shall be considered transferred to the Optionee on the date the Option is exercised with respect to such Exercised Shares.

3.3 **Non-Transferability of Option.** This Option may not be transferred in any manner otherwise than to a trust or trusts for the benefit of Optionee or Optionees' family, by will or by the laws of descent or distribution and subject to the terms of this Agreement and the Stockholder Agreement. The terms of the Stockholder Agreement and this Option Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.

3.4 **Term of Option.** This Option may be exercised only within the term set out in the Notice of Grant, and may be exercised during such term only in accordance with the Stockholder Agreement and the terms of this Option Agreement.

(FT244283;3)

3.5 **Tax Consequences.** THE TAX LAWS AND REGULATIONS ARE SUBJECT TO CHANGE. THE OPTIONEE SHOULD CONSULT A TAX ADVISER BEFORE EXERCISING THIS OPTION OR DISPOSING OF THE SHARES.

3.6 On the exercise date specified in the Optionee's notice, NARP shall cause to be delivered to the Optionee, a certificate or certificates for the Option Shares then being purchased (out of theretofore unissued common stock or reacquired common stock, as NARP may elect) upon full payment for such Option Shares. The obligation of NARP to deliver Stock shall, however, be subject to the condition that if at any time the board of directors shall determine, in its discretion, that the listing, registration or qualification of the Stock Option or the Option Shares upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of, or in connection with, the Stock Option or the issuance or purchase of Stock thereunder, the Stock Option may not be exercised in whole or in part unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the board of directors.

3.7 If the Optionee fails to pay for any of the Option Shares specified in such Exercise Notice or fails to accept delivery thereof, the Optionee's right to purchase such Option Shares may be terminated by NARP. The date specified in the Exercise Notice as the date of exercise shall be deemed the date of exercise of the Stock Option, provided that payment in full for the Option Shares to be purchased upon such exercise shall have been received by such date.

Article 4 - ADJUSTMENT OF AND CHANGES IN NARP COMMON STOCK. If there is a reorganization, recapitalization, change of shares, stock split, spin-off, stock dividend, reclassification, subdivision or combination of shares, merger consolidation, rights offering, or any other change in the corporate structure or shares of capital stock of NARP, the board of directors shall make such adjustment in the number and kind of shares of common stock as is necessary and sufficient so that the number of shares of common capital stock purchasable by Optionee as option shares are equivalent to seven and one half percent (7½%) of the common capital stock outstanding on a Fully Diluted Basis. "Fully Diluted Basis" means, without duplication, (i) all shares of Common Stock outstanding at the time of determination plus (ii) all shares of Common Stock issuable directly or indirectly upon conversion of all outstanding convertible securities, including without limitation the Preferred Stock, or the exercise or exchange of all outstanding warrants or similar rights, whether or not such convertible security, warrant or similar right is then convertible, exercisable or exchangeable plus (iii) all shares reserved for issuance under the Company's Stock Option Plan subject to the option or in the option price; provided, however, that no such adjustment shall give the Optionee any additional benefits under the Stock Option.

Article 5 - NO RIGHTS OF STOCKHOLDERS. Neither the Optionee nor any personal representative shall be, or shall have any of the rights and privileges of, a stockholder of NARP in respect to any shares of common stock purchasable or issuable upon the exercise of the Stock Option, in whole or in part, prior to the date of exercise of the Stock Option.

Article 6 - NON-TRANSFERABILITY OF OPTION. During the Optionee's lifetime, the Stock Option hereunder shall be exercisable only by the Optionee or any guardian or legal

(FT244283;3)

representative of the Optionee or trusts for the benefit of Optionee or Optionee's family, and the Stock Option shall not be transferable except, in case of the death of the Optionee as provided for in Article 2.2, or by will or the laws of descent and distribution, nor shall the Stock Option be subject to attachment, execution or other similar process. In the event of (a) any attempt by the Optionee to alienate, assign, pledge, hypothecate or otherwise dispose of the Stock Option, except as provided for herein, or (b) the levy of any attachment, execution or similar process upon the rights or interest hereby conferred, NARP may terminate the Stock Option by notice to the Optionee and it shall thereupon become void. All stock purchased according to this Agreement shall be subject to the terms of the North American Rescue Products, Inc. - Stockholder Agreement as set forth in Appendix B (Stockholder Agreement) attached hereto and made a part hereof. Optionee agrees to the terms set forth in Appendix B, and upon exercise will exercise a counterpart signature page to such agreement.

Article 7 - EMPLOYMENT NOT AFFECTED. The granting of the Stock Option nor its exercise shall not be construed as granting to the Optionee any right with respect to employment with NARP.

Article 8 - NO GUARANTEE OF CONTINUED SERVICE. OPTIONEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF WAS EARNED BY A MEMBER OF THE BOARD AT THE WILL OF THE COMPANY. OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A MEMBER OF THE BOARD FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH OPTIONEE'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE OPTIONEE'S RELATIONSHIP AS A MEMBER OF THE BOARD AT ANY TIME, WITH OR WITHOUT CAUSE. Except as may otherwise be limited by a written agreement between NARP and the Optionee, the right of NARP to terminate at will the Optionee's employment with it at any time (whether by dismissal, discharge, retirement or otherwise) is specifically reserved by NARP, as NARP or on behalf of NARP (whichever the case may be), and acknowledged by the Optionee.

Article 9 - AMENDMENT OF OPTION. The Stock Option may be amended by the board of directors at any time (i) if the board of directors determines, in its sole discretion, that amendment is necessary or advisable in the light of any addition to or change in the Internal Revenue Code or in the regulations issued thereunder, or any federal or state securities law or other law or regulation, which change occurs after the Date of Agreement and by its terms applies to the Stock Option, provided that such amendment shall be strictly limited to changes necessary for the Option Agreement to conform to the aforementioned change in the Internal Revenue Code or federal or state securities law or regulations issued thereunder, provided further that this Option Agreement may not be modified adversely to Optionee's interest except by means of a writing signed by NARP and Optionee; or (ii) other than in the circumstances described in clause (i), with the written consent of the Optionee.

Article 10 - NOTICE. The Exercise Notice to NARP provided for in this instrument shall be in writing and shall be addressed to it in care of its President at its principal place of business as set forth below and any notice to the Optionee shall be addressed to the Optionee at the address shown below. Any notice or other communication shall be conclusively deemed to have been given if by

{FT244283;3}

(a) personal delivery, on the day of actual delivery; (b) nationally recognized delivery service, delivery prepaid on the day of actual delivery, provided written confirmation of receipt is obtained by the delivery service; (c) certified US mail, on the second business day after deposit, postage prepaid, properly addressed, with the US Postal Service; and (d) electronic communication, on the day of transmittal, if given during the normal business hours of the recipient and on the next business day if given after normal business hours on any day, in either event upon confirmation of receipt by electronic means or acknowledgment of recipient.

If to the Company:

NORTH AMERICAN RESCUE PRODUCTS, INC.

Attention: President

with a copy to:
(which shall not constitute notice to the Company)

If to the Optionee:

P.J. Richardson

with a copy to:
(which shall not constitute notice to the Optionee)

Article 11 - ENTIRE AGREEMENT; INCORPORATION OF PLAN BY REFERENCE.
The Stock Option is granted pursuant to the terms of this instrument. Any dispute with respect to this Stock Option shall be resolved according to the Dispute Resolution provisions of the Stockholder Agreement which is incorporated herein by reference. This Stock Option Agreement and the Stockholder Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supercede in their entirety all prior representations, warranties, undertakings, covenants and agreements of the Company and the Optionee with respect to the subject matter hereof and may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and Optionee.

Article 12 - GOVERNING LAW. The validity, construction, interpretation and effect of this instrument shall exclusively be governed by and determined in accordance with the law of Delaware, except to the extent preempted by federal law, which shall to the extent govern.

NARP has caused its duly authorized officers to execute and attest this Agreement of Stock Option, and to apply the corporate seal hereto, and the Optionee has placed his or her signature

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heron, effective as of the Date of Agreement. By your signature and the signature of the Company's representative below, you and the Company agree that this Option is granted under and governed by the terms and conditions of this Option Agreement and the Stockholder's Agreement. Optionee has reviewed the Stockholder's Agreement and this Option Agreement in their entirety, has had an opportunity to obtain the advise of counsel prior to executing this Option Agreement and fully understands all provisions of the and the Stockholders Agreement and Option Agreement. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

North American Rescue Products, Inc.

By: _____
Robert A. Castellani, President/CEO

Accepted and Agreed to:

P. J. Richardson Optionee

Optionee Notice Address

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EXHIBIT A

EXERCISE NOTICE

North American Rescue Products, Inc.
[ADDRESS]

Attention: Corporate Secretary

1. Exercise of Option. Effective as of today, _____, 2004, the undersigned ("Purchaser") hereby elects to purchase _____ shares (the "Shares") of the Common Stock of North American Rescue Products, Inc. (the "Company") under and pursuant to the Stock Option Agreement dated _____, 2004 (the "Option Agreement"). The purchase price for the Shares shall be \$0.01, as required by the Option Agreement.
2. Delivery of Payment. Purchaser herewith delivers to the Company the full purchase price for the Shares.
3. Representations of Purchaser. Purchaser acknowledges that Purchaser has received, read and understood the Stockholder Agreement and the Option Agreement and agrees to abide by and be bound by their terms and conditions.
4. Rights as Stockholder. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the Shares, no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Shares so acquired shall be issued to the Optionee as soon as practicable after exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date of issuance.
5. Tax Consultation. Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted with any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.
6. Entire Agreement; Governing Law. The Stockholder Agreement and Option Agreement are incorporated herein by reference. This Agreement, the Stockholder Agreement and the Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Purchaser with respect to the subject matter hereof, and may not be modified adversely to the Purchaser's interest except by means of a writing signed by the Company and Purchaser. This agreement is governed by the internal substantive laws, but not the choice of law rules, of the State of Delaware.

[Signature Page Follows]

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Submitted by:

Accepted by:

PURCHASER:

REEVES MANUFACTURING, INC.

Signature

By:

Signature

Print Name

Print Name

Title

Address:

Address:

Reeves Manufacturing, Inc.
[ADDRESS]

Telephone

Date Received

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EXHIBIT B

NORTH AMERICAN RESCUE PRODUCTS, INC. – STOCKHOLDER AGREEMENT

This agreement is made and entered into as of the _____ day of October, 2004, by and between the persons signing on the signature page(s) hereof as stockholders (individually Stockholder and collectively Stockholders when no distinction is required), and North American Rescue Products, Inc., a Delaware corporation (Company). **THIS AGREEMENT IS SUBJECT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT (TITLE 15 CHAPTER 48) OR THE FEDERAL ARBITRATION ACT (9 U.S.C. §§1-16).**

BACKGROUND. Stockholders own all the issued and outstanding capital stock of Company on the date hereof. Their respective ownership is reflected adjacent to their names on the signature page(s) below (including any counterpart signature pages). References to stock, capital stock, or shares shall be to capital stock of Company unless the context clearly indicates otherwise. Stockholders wish to provide a market for their shares of the stock in certain events. They wish to restrict ownership of the stock to the present Stockholders and to persons with whom they will easily work and communicate. Stockholders believe that they will be able to do that with each other and that it is in their best interests and in Company's best interests that all corporate activities be controlled by persons who work and communicate easily with each other. To accomplish these objectives, Stockholders and Company, wish to (i) restrict the sale, assignment, transfer, encumbrance or other disposition of Stockholders' shares of stock to persons other than the parties to this agreement; and (ii) provide for certain rights and obligations in respect thereto.

In consideration of the background above, which the parties acknowledge are accurate in all material respects, and the mutual covenants and agreements herein contained and the provisions below the parties agree as follows:

1. RESTRICTIONS ON TRANSFER OF STOCK

1.1 Applicability. Every share of capital stock of Company outstanding, and every share of Company stock issued after the effective date of this agreement and all shares of capital stock issuable directly or indirectly upon conversion of all outstanding convertible securities including without limitation Preferred Stock or the exercise or exchange of all outstanding warrants or similar rights, whether or not such convertible security, warrant or similar right is then exchangeable, convertible or exercisable, is, and shall be held, subject to the provisions of this agreement.

1.2 General Restriction; Notice. No Stockholder shall sell, transfer, assign, pledge or otherwise directly or indirectly dispose of (a "Transfer") any rights to or interest in his Company stock except pursuant to and in accordance with the provisions of this Agreement and without first notifying Company and the other Stockholders in writing of his intent to do so (the Notice). At least thirty (30) days prior to making any Transfer of any stock (the "Transferring Stockholder") shall deliver a written notice (the "Sale Notice") to the Company and the other Stockholders. The Sale Notice shall disclose in reasonable detail the proposed number or principal amount, as applicable, of each type or class of stock to be transferred, the proposed terms and conditions of the Transfer, including proposed price by class or type of each of such stock to be transferred, and the identity of the prospective transferee(s). The purchase price specified in any Sale Notice shall be payable solely in cash at the closing of the transaction. The Notice must state the identity of the proposed transferee, and the highest bona fide offer of a

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third party, if any, such prospective transferee has made for the stock involved. A Stockholder providing the Notice may be referred to as the **Transferring Stockholder**.

1.3 Option to Purchase and Procedure. Upon receipt of the Notice, Company shall have an option to purchase all but not less than all of the stock proposed to be transferred by the Transferring Stockholder's, as the case may be, at the price and on the terms and conditions specified in the Sale Notice by delivering written notice of such election to the Transferring Stockholder as soon as practicable but in any event within 30 days of the delivery of the Sale Notice. The stock subject to the option may be referred to as the **option shares**. The option shall be for a period of (i) thirty (30) days following receipt of notice per section 1.2 or (ii) ten (10) days following determination of option value by appraisers according to section 1.4, whichever is later. If the Company has not exercised this option, the other Stockholders (**Remaining Stockholders**) shall have the right to purchase the Transferring Stockholder's stock for an additional ten (10) days. The maximum number of shares any Remaining Stockholder shall have the right to purchase is equal to the number of shares owned by the Transferring Stockholder multiplied by a fraction, the numerator of which is the number of shares owned by the purchasing Stockholder, and the denominator of which is the total number outstanding shares of capital stock of Company less the number owned by the Transferring Stockholder. If any Stockholder elects not to exercise this right, the stock to which he would have been entitled to purchase shall be subject to the proportionate rights of the remaining Stockholders.

1.4 Price. The price to be paid for the Option Shares shall be the price and terms set forth in the Sale Notice.

(a) If the Transferring Stockholder proposes to sell the option shares to another person, then Company (and/or the Remaining Stockholders exercising their option) may elect, by written notice to the Transferring Stockholder within the period set forth in section 1.3, to purchase the option shares according to the price and terms of the sale to the other person set forth in the Notice.

(b) [Notwithstanding (a) above, the Company may elect by written notice not to use the price and terms of the sale to the other person, in which case the option value shall be determined according to the procedure set forth below.

(1) No more than ten (10) days after the trigger event the Transferring Stockholder and Company shall in good faith attempt to determine the option value. They may agree, in which case the agreed option value shall be final and binding on the parties.

(2) If the Transferring Stockholder and Company cannot agree on the option value, then within fifteen (15) days of the trigger event the Transferring Stockholder and Company shall, in good faith, attempt to agree upon and appoint an appraiser to determine the option value. For purposes of this agreement an (**appraiser**) is a person who by qualification and experience is qualified to determine the value of business enterprises and the securities evidencing ownership of such enterprises. If Company and Transferring Stockholder agree on an appraiser, then Company shall bear the expense of the appraiser. If the Transferring Stockholder and Company are unable to agree on an appraiser, then within thirty (30) days of the trigger event the Transferring Stockholder and Company shall each appoint an appraiser, and each party shall bear the expense of their respective appraiser.

(3) The appraiser or appraisers, as the case may be, shall provide a written report of the option value within thirty (30) days of their engagement (the total time for the appraiser's reports from the trigger event shall not exceed sixty (60) days). During the

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appraisal process the Company shall provide the appraisers with reasonable access to the Company's business records and facilities, subject only to the appraiser's agreeing none exists to reasonable non-disclosure non-exploitation obligations. If there are two appraisers, each is encouraged to communicate with the other about their respective determination of option value and the methodologies used to arrive at such value.

(4) If there is one appraiser his determination of option value shall be final and binding on the parties. If there are two appraisers and their determinations of option value differ by less than twenty percent (20%) (with the lowest as the base for computing the percentage of difference), then the option value shall be the arithmetic mean of the two. If there are two appraisers and their determinations differ by more than twenty percent (20%), then within five (5) days of the last of the two appraiser's determinations they shall appoint a third appraiser (the cost of which shall be shared equally by Company and the Transferring Stockholder) and within ten (10) days following such appointment, the third appraiser shall pick the most valid of the other two appraisers' determinations of option value, which in his opinion is in accordance with accepted practice by appraisers at the time of the determinations, and the third appraiser's selection shall be final and binding on the parties.]

1.5 Terms.

(a) If the price is determined in accordance with section 1.4(a), then the option value shall be paid in exchange for the option shares according to the terms of the bona fide third party offer.

(b) [If the option value is determined in accordance with section 1.4(b), then the option value for the option shares shall be paid to the Transferring Stockholder (i) twenty (20%) percent down at closing and (ii) the balance shall be paid in five (5) equal annual installments of principal and interest at three percentage points over the prime rate, as published by the Wall Street Journal on the date closest to the date of the trigger event.

(c) The closing of the purchase of the option shares shall take place at a location agreed upon by the parties to the sale no more than thirty (30) days after the later of (i) dispatch to the Transferring Stockholder of notice of intent to exercise the option granted hereunder by the purchasers, or (ii) delivery to the parties of appraiser(s) determination of option value.]

1.6 **Stockholder Rights Upon Refusal.** If a Stockholder gives the Notice, and neither Company nor Stockholders exercise their respective options to purchase the option shares, then upon request, the other Stockholders and Company, by its duly authorized officers, shall execute reasonable instruments providing notification to all other parties to this agreement of their waiver of rights under this agreement, so as to permit the sale of the option shares within thirty (30) days of (i) the closing date set forth in the terms contained in the Notice or (ii) the termination the Company's and Stockholders' option, which ever is later. However, execution and delivery of any waiver of rights under this agreement is expressly conditioned on the transferee becoming a party to this agreement. Anyone acquiring stock of Company shall hold such stock subject to all provisions of this agreement, and shall not transfer the same without complying with the provisions of this agreement.

1.7 **Rights Reserved.** Nothing herein contained shall be construed to prevent any Stockholder from:

(a) [Pledging his stock as security for any debt or obligation; provided, however, that before any transfer of said stock shall be effected by the pledgee/creditor or

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otherwise, Company and subsequently Stockholders shall have the option to purchase said stock or any part thereof at the price and terms provided herein, subject to all terms and conditions set forth herein for transfers. In such case, the required written notice required by section 1.2 shall be given by the pledgee of such stock. In the event that this option is exercised, payment of said price shall be made to the owner and pledgee of said stock as their interests may appear, and such payment shall constitute a complete satisfaction and release of any such pledge. In the event that the option granted herein is not exercised within the prescribed time periods, the person acquiring such stock by foreclosure or otherwise shall hold it subject to all terms and conditions of this agreement.]

(b) Assigning or transferring all or part of his stock by way of gift to such Stockholder's spouse, children, or lineal descendants, or to other Stockholders, whether directly or in trust for the benefit of a Stockholder and/or the Stockholder's family; a guardian or conservator of a Shareholder and/or the Shareholder's Family Group; a Transfer of stock by any Shareholder pursuant to the laws of descent and distribution or among such Shareholder's Family Group; and an Approved Sale (as defined in Article hereof).

2. SPECIAL STOCKHOLDER RELATIONSHIPS

2.1 **Information.** Company's property and books and records shall be open to inspection of Stockholders from time to time upon reasonable notice by the Stockholder requesting the inspection. Company shall permit a Stockholder the right to designate up to three (3) individual(s) (including Stockholder) to inspect. The inspecting Stockholder or designee, as the case may be, may make copies or extracts of the books and records, provided that all the costs of making copies shall be borne by the inspecting Stockholder. Additionally, Company shall make any of its employees and agents (including its independent public accountants) reasonably available to the inspecting Stockholder to discuss Company's affairs, records, finances, and accounts, provided that the reasonable costs of making the employees and agents available shall be borne by the inspecting Stockholder. Company may, in its reasonable discretion, choose a reasonable place to make Company's books, records, employees, and agents available to the inspecting Stockholder other than the place where its books and records are maintained.

(a) **Non-disclosure.** Because of the nature of Company's business, any information that a Stockholder or Stockholder obtains from Company about Company or its business activities (including for example and not limitation information obtained from its books and records) shall be presumed to be Proprietary Information. A Stockholder or Stockholder's designee shall keep the Proprietary Information confidential as long as it remains Proprietary Information, and during such period a Stockholder or Stockholder shall not directly or indirectly disclose any of the Proprietary Information to any third party, unless authorized by Company in writing, or in the case of a Stockholder, which is an officer or director of the Company and it is for the purpose of carrying out his responsibilities to Company. A Stockholder shall notify Company, in writing, of any of the Proprietary Information which he asserts is not subject to these obligations and, with specificity, why it is not subject to such restrictions, prior to any disclosure. If a Stockholder or Stockholder is served with a legally enforceable request for the production of information which may include any Proprietary Information, then the Stockholder or Stockholder shall immediately notify Company and allow Company to take any actions that Company determines necessary to protect the Proprietary Information.

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(b) **Proprietary Information Defined.** Proprietary Information means information about Company or its business that derives independent economic value from not being generally known to and ascertainable by other persons who may obtain economic value from its disclosure or use, and Work Product (defined below). Proprietary Information may be written, electronically stored, merged with other information, or memorized. The fact that it may be memorized, however, does not change its character. While some information considered Proprietary Information is not confidential, the form of its compilation or the manner in which it is to be used makes it Proprietary Information. Proprietary Information, however, does not include information which (i) a Person can show by written evidence was in its possession prior to disclosure by Company; (ii) becomes generally available to the public in tangible form other than by acts or omissions of a Person (or persons obtaining Proprietary Information from such Person); and (iii) is lawfully obtained from a third party who is properly in possession of such Proprietary Information, has a right to reveal the same to a Person, and did not obtain the Proprietary Information directly or indirectly from Company with restrictions on disclosure. Work Product means all notes, analyses, records, reports, sketches, compilations, plans, photographs (including negatives), memoranda or other documents, whether prepared by the Person receiving other Proprietary Information or any of its representatives, which contain, reflect or are based upon, in whole or in part, the other Proprietary Information or arise out of or are related to the other Proprietary Information.

(c) **Use.** A Stockholder shall use the Proprietary Information for the purpose of evaluating his interest in Company, and a Stockholder to carry out his duties as such. A Stockholder's dissemination of the Proprietary Information shall be limited to the employees or agents of the Stockholder whose duties justify the "need to know," and then only after those persons agree to be bound by the terms of this article in writing. A Stockholder shall not use the Proprietary Information to compete against Company in any way.

(d) **Ownership.** All Proprietary Information is and shall continue to be the exclusive property of Company, despite the fact that Proprietary Information is entrusted to a Stockholder, whether in his capacity as a Stockholder, director, officer, or employee. A Stockholder's possession of the Proprietary Information does not confer any license, interest or rights of any kind in or to the Proprietary Information.

2.2 **Supermajority Voting and Effect.** Company and Stockholders hereby agree that notwithstanding any other provision of this agreement or of any other document governing the voting rights and privileges of Stockholders, the affirmative vote of at least two-thirds ($\frac{2}{3}$) of the issued and outstanding shares of Company shall be required for any merger or share exchange involving Company's stock, any sale or exchange of substantially all of the assets of Company other than in the ordinary course of the business of Company, or the sale of all the issued and outstanding stock of the Company. Upon approval of any action specified in this section 2.2, the failure of any Stockholder to take any actions necessary for carrying out the transactions contemplated by such approval then the defaulting Stockholder shall be deemed to be notice of intent to transfer stock by a Transferring Stockholder and Company and Remaining Stockholders shall have all the rights set forth in article 1 to purchase the Transferring Stockholder's shares, which shall be deemed to be option shares.

2.3 **Co-Sale Rights.** With respect to any proposed transfer by a Transferring Stockholder, if the offered stock constitutes one third ($\frac{1}{3}$) or more of the stock, then if the Company or Remaining Stockholders do not exercise the option to purchase the option shares,

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each Remaining Stockholder may elect to participate in the contemplated transfer (or transfers) as a seller by delivering written notice that such Stockholder is exercising the rights granted by this section 2.3 to the Transferring Stockholder(s) and the Company within the time required for exercise of the option provided in section 1.3. If one or more Remaining Stockholders have elected to participate in such sale, the Transferring Stockholder(s) and such Remaining Stockholders shall be entitled to sell in the contemplated sale, at the same price and on the same terms, that number of shares of stock equal to the product of (i) the quotient determined by dividing the percentage of the shares (on a fully diluted basis) held by each such Stockholder, by the aggregate percentage of the shares (on a fully diluted basis) owned by the Transferring Stockholder(s) and all Remaining Stockholders electing to sell multiplied by (ii) the number of shares of stock to be purchased in the contemplated sale. This provision shall not apply to a public offering (defined below).

2.4 Public Offering. If an initial public offering of the Company stock is duly approved, the Stockholders will use reasonable efforts to take all necessary or desirable actions in connection with the consummation of such offering. If the public offering is an underwritten offering and the managing underwriters advise the Company in writing that in their opinion the existing capital structure of the Company will adversely affect the marketability of the offering, each Stockholder will consent to and vote for a recapitalization, reorganization and/or exchange of the Company and change the stock into securities that the managing underwriters, the Company determine acceptable and will take all other necessary or desirable actions in connection with the consummation of the recapitalization, reorganization and/or exchange; provided that the resulting securities reflect and are consistent with the rights and preferences among the outstanding classes of securities in effect immediately prior to such recapitalization, reorganization or exchange. For purposes of this agreement **public offering** means a public offering and sale of Shares pursuant to an effective registration statement under applicable securities laws. Each Stockholder shall be entitled to participate in any registration of outstanding stock in proportion to his ownership. If there is a public offering this agreement shall terminate.

2.5 Approved Sale. If the Board approves a Sale of the Company (an "Approved Sale"), each holder of Shares will vote for, consent to and will not object or otherwise impede consummation of the Approved Sale.

2.6 Required Actions. If the Approved Sale is structured as (i) a merger or consolidation, each holder of Shares shall waive any dissenter's rights, appraisal rights or similar rights in connection with such merger or consolidation, (ii) a sale of stock, each holder of Shares shall agree to sell all of its Shares and rights to acquire Shares on the terms and conditions so approved, or (iii) a sale of assets, each holder of Shares shall vote in favor of such sale and any subsequent liquidation of the Company or other distribution of the proceeds therefrom. In furtherance of the foregoing, (i) each holder of Shares shall take all necessary or desirable actions reasonably requested by the Company in connection with the consummation of the Approved Sale and (ii) each holder of Shares will make the same representations, warranties, indemnities and agreements as to each other holder of Shares, including without limitation, voting to approve such transaction and executing the applicable purchase agreement (the "Company Reps"). In any Approved Sale, each holder of Shares shall not be required to make indemnification payments in connection with any Approved Sale except pro rata in accordance with such holder's ownership of Common Stock on a Fully Diluted Basis, unless the applicable

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agreements relating to such Approved Sale require the other holders of Shares to indemnify such holder against, and hold such holder harmless from, amounts for which such holder may become liable in excess of the maximum amount contemplated by the first clause of this sentence; provided that the foregoing limitation shall not apply to any indemnity by a holder of Shares for breach by such holder of any representation or warranty relating solely to the authorization, execution or delivery by such holder of the relevant agreements or as to such holder's ownership of securities sold by such holder thereunder or for breach of any agreement by such holder relating solely to its own conduct; and provided, further that in no event shall any holder of Shares be liable in respect of any indemnity obligations pursuant to any Approved Sale in an aggregate amount in excess of the total consideration payable to such holder in such Approved Sale.

2.7 Conditions to Shareholders' Obligations. The obligations of the holders of Shares with respect to an Approved Sale are subject to the satisfaction of the following conditions: (i) upon the consummation of the Approved Sale, each holder of Shares will receive the same form of consideration and the same portion of the aggregate consideration that such holder of Shares would have received if such aggregate consideration had been distributed by the Company in complete liquidation pursuant to the rights and preferences set forth in the Articles of Incorporation as in effect immediately prior to such Approved Sale; (ii) if any holders of a class of Shares are given an option as to the form and amount of consideration to be received, each holder of such class of Shares will be given the same option; and (iii) each holder of then currently exercisable rights to acquire shares of a class of Shares will be given an opportunity to exercise such rights prior to the consummation of the Approved Sale and participate in such sale as holders of such class of Shares.

2.8 Expenses of Approved Sale. Holders of Shares will bear their pro rata share (based upon holdings of Common Stock on a Fully Diluted Basis) of the costs of any sale of Shares pursuant to an Approved Sale to the extent such costs are incurred for the benefit of all holders of Shares and are not otherwise paid by the Company or the acquiring party. For purposes of this Section 3.5, costs incurred in exercising reasonable efforts to take all necessary actions in connection with the consummation of an Approved Sale in accordance with this Section 3 shall be deemed to be for the benefit of all holders of Shares. Costs incurred by any holder of Shares on its own behalf will not be considered costs of the transaction hereunder and will be the responsibility of such holder.

3. DEATH OR DISABILITY OF A STOCKHOLDER

3.1 Repurchase in Event of Death or Disability of a Stockholder. Upon the death or Disability (as defined in Section ___ below) of a Stockholder, such Stockholder (hereinafter referred to as the "Terminating Stockholder") shall be deemed to have offered to sell that amount of his or her stock as specified in Section ___ below to the Company, as herein provided, at a price per share equal to the Purchase Price. For purposes of this Agreement, the date of death or Disability of the Terminating Shareholder shall be referred to as the "Termination Date".

3.2 Repurchase Shares. For purposes of this Agreement, the number of Stockholder Shares owned by the Terminating Shareholder which are deemed to be offered pursuant to Section 4.1 hereof (the "Section 4 Repurchase Shares") shall be one hundred percent (100%) of his or her stock.

3.3 Company's Option to Purchase. Upon receipt by the Company of the deemed offer described in Section 4.1 hereof, the Company shall have the option to purchase all, but not

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less than all, of such Terminating Shareholder's Section 4 Repurchase Shares by providing written notice to the Terminating Shareholder of its election to purchase the Section 4 Repurchase Shares. Such notice shall be given within one hundred twenty (120) days after the Termination Date. The closing for the purchase (the "Section 4 Closing") shall be held at the Company's principal place of business not later than the first business day which is one hundred fifty (150) days after the Termination Date.

3.4 Delivery of Repurchase Shares. In the event the Company exercises its option in accordance with Section 4.4 above, the Company shall purchase the Section 4 Repurchase Shares at the Section 4 Closing. Upon receipt of payment of the Purchase Price in accordance with Section 4.6 hereof, the Terminating Shareholder (or his or her personal representative, as appropriate) shall execute and deliver any and all instruments and documents necessary to effectuate the transfer of all of such Section 4 Repurchase Shares to the Company, free and clear of any and all taxes, debts, claims, judgments, liens, restrictions or encumbrances (other than those set forth in this Agreement).

3.5 Payment of Purchase Price. The Purchase Price for the Section 4 Repurchase Shares shall be paid as follows:

(i) In the event the purchase results from the death of the Terminating Shareholder, so much of the proceeds actually received by the Company from any life insurance policy or policies on the life of the Terminating Shareholder as shall not, in the aggregate, exceed the Purchase Price, shall be paid in cash to, or by cashier's check payable to the order of, the Terminating Shareholder; provided, however, that if such proceeds are received after the Section 4 Closing, such proceeds shall be paid as soon as reasonably practicable after the receipt thereof.

4. DISPUTE RESOLUTION

4.1 General. If there is any dispute, controversy, or claim related to the this agreement or Stockholder rights as they relate to Company, then the parties shall attempt in good faith to promptly resolve such dispute, controversy, or claim according to the procedures outlined in this section.

4.2 Notice. Upon any party becoming aware of a dispute, controversy, or claim (Grievance) between them related to their rights under this agreement or their stock ownership in Company, which they cannot resolve by ordinary commercial means, the aggrieved party (the Petitioner) shall, in writing, promptly notify the party against whom the Petitioner has the Grievance (the Respondent). The notice, while not required to be in any specific form, shall set forth with reasonable specificity (i) the nature of the Grievance, (ii) the extent commercially reasonable, all relevant documentary information, or references thereto, related to the Grievance, and (iii) the Petitioner's position and (iv) Petitioner's proposed remedy.

4.3 Response: Respondent shall, within ten (10) business days, respond, in writing, to the notice by (i) agreeing to the Petitioner's position and remedy or (ii) scheduling a dispute resolution meeting to occur within ten (10) business days of Respondent's response to Petitioner's Grievance. If a meeting is scheduled, then, as a part of its response, the Respondent shall also provide to Petitioner Respondent's position, and, to the extent commercially reasonable, all additional relevant documentary information or references to Respondent's position regarding the Grievance.

4.4 Dispute Resolution Meeting. On the date and time of the meeting scheduled according to the preceding section there shall be a meeting, which may be by phone or other

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means of concurrent communication. Each party shall appoint one or more individuals who have responsibility for and authority to resolve the dispute. Those individuals, and if a party deems it desirable their legal counsel, shall discuss each party's respective position, and attempt, in good faith, to resolve the dispute. They can agree to have additional meetings provided that all such meetings are concluded within twenty (20) business days of the Petitioner's Grievance. If they cannot resolve the Grievance, they shall collectively ascertain the areas where the Petitioner's and Respondent's positions are in agreement and where they cannot be reconciled. At the conclusion of this step the parties shall have (i) resolved the dispute or (ii) determined the areas of agreement and disagreement with respect to the Grievance, and they shall prepare a written summary (no longer than three (3) single spaced type written pages with ordinary margins and type size) outlining the areas of agreement and disagreement.

4.5 **Arbitration.** If the parties are unable to resolve the Grievance by the preceding steps, then either party may initiate arbitration proceedings. The matter shall be settled by arbitration in accordance with the CPR Non-Administered Arbitration Rules in effect on the date of this agreement, by a sole arbitrator, provided, however, that if any party will not participate in the non-arbitration dispute resolution procedures above, then the other party may initiate arbitration before expiration of the above period. The arbitration shall be governed by the South Carolina Uniform Arbitration Act (SC Code Title 15 Chapter 48) or the Federal Arbitration Act (9 U.S.C. §§ 1-16), and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Greenville, South Carolina. The arbitrator shall be a qualified arbitrator and lawyer licensed in South Carolina with at least fifteen (15) years experience in the areas of closely held business corporations and partnerships selected by the parties to the dispute. If they cannot agree on an arbitrator, then they shall each select one, at their respective cost, and those arbitrators, who shall also be qualified as set forth above, shall among themselves select a single qualified arbitrator. The arbitrator's fees shall be his normal hourly rate for rendering legal or arbitral services. The arbitrator is not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives all rights to recover such damages with respect to any dispute resolved by arbitration. The statute of limitations of South Carolina applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defenses shall be available based upon the passage of time during any dispute resolution process called for by the preceding sections of this article. Unless all parties to an arbitration agree otherwise the arbitrator shall issue his determination of the dispute within ninety (90) days of his appointment. This provision is not intended to alter the provisions determining option value.

4.6 **General Matters Relating to Disputes.** During the pendency of the procedures set forth in this article the parties shall continue to perform, in good faith, their respective obligations under the agreement. All deadlines specified in this procedure may be extended by mutual agreement. The procedures specified herein shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this agreement. All information or communications between the parties to a Grievance in complying with aforementioned procedures shall be considered as compromise negotiation subject to Federal Rule of Evidence 408 and South Carolina Rule of Evidence 408 (both effective as of the date of this agreement).

4.7 **Costs.** If it is necessary to resolve a dispute in arbitration, then the arbitrator shall determine which party to the dispute is most at fault for the dispute and for the necessity to

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arbitrate. That party shall pay or reimburse, as the case may be, all costs of the arbitration, including the fees of the arbitrator and the reasonable expense of legal representation (including attorney fees) for the other party.

4.8 Special Deadlock Resolution. If the directors, shareholders, or those otherwise in control of Company are deadlocked in the management of the corporate affairs and because of the deadlock the business and affairs of the corporation are not being conducted to the advantage of Stockholders, then upon written notice a Stockholder or group of Stockholders holding at least twenty percent (20%) of the voting stock may elect in writing to have the deadlock broken. Upon such election, Company's president shall notify the individual last designated at a meeting (or written action) of the directors as the deadlock arbitrator for Company. The arbitrator, within ten (10) business days of notification, shall hear the various issues and review the information related to the deadlock, and within five (5) business days make a decision resolving the deadlock. Company and Stockholders shall reasonably cooperate with the arbitrator. The decision of the arbitrator resolving the deadlock shall be binding on Company, its Stockholders, directors and officers. It is the intention of this section to eliminate the possibility that Stockholders may cause a judicial dissolution by reason of a director or Stockholder deadlock. Initially, the special deadlock arbitrator is Robert A. Dobson, III, and he shall remain in that capacity until he is no longer willing or able to serve in that capacity or until his successor is appointed.

5. GENERAL

5.1 Transfers in Violation of Agreement. Any Transfer or attempted Transfer of any stock in violation of any provision of this Agreement shall be void, and the Company shall not record such Transfer on its books or treat any purported transferee of such stock as the owner of such shares for any purpose.

5.2 Amendment and Waiver. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective against the Company or the Stockholders unless such modification, amendment or waiver is approved in writing by the Company, the holders of a majority of the outstanding shares of Common Stock voting as a class on a per share basis.

5.3 New Shareholders. The Company shall not issue any shares of its capital stock to a Person not currently a party to this Agreement unless and until such Person shall agree in writing to be bound by the provisions of this Agreement.

5.4 No Inconsistent Agreements. The Company will not hereafter enter into any agreement with respect to its securities which is inconsistent with or violates the rights granted to the Investor in this Agreement.

5.5 Remedies. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that the Company and any Stockholder shall have the right to injunctive relief, in addition to all of their respective rights and remedies at law or in equity, to enforce the provisions of this Agreement. Nothing contained in this Agreement shall be construed to confer upon any Person who is not a signatory hereto any rights or benefits, as a third party beneficiary or otherwise.

5.6 Gender and Definitions. For convenience the gender of persons described in this agreement will generally be either masculine or neuter. As the context so requires, however, the gender of all words used shall be interpreted to include the masculine, feminine, or neuter.

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Additionally, the singular of any word shall include the plural and the converse shall also be true. Defined terms shall include words derived from the root of such term.

5.7 Construction. Unless otherwise specified, all references to article, section, subsection, or clause are to the appropriate portion of this agreement. The captions used are included for convenience and are not relevant for interpretation.

5.8 Interpretation. If one or more provisions of this agreement appear to be in conflict with other provisions, then Company board of directors shall exercise reasonable discretion in interpreting the agreement and to choose which of the conflicting provisions are to control. Wide latitude is given to Company board of directors in interpreting the provisions of this agreement to accomplish the purposes and objectives of Company in the best interests of Stockholders as a group.

5.9 No Drafting Presumptions. Each party has received or has had the opportunity to receive independent legal advice with respect to the advisability of executing this agreement and the meaning of its provisions. All provisions shall be construed as to their reasonable meaning, with no presumptions or inferences in favor of or against any party.

5.10 Notice. Any notice required under this agreement must be comprehensible and in writing unless oral notice is reasonable under the circumstances (oral notice is not reasonable when written notice is specifically required hereby). Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. Written notice is effective at the earliest of the following: (i) when mailed, if mailed postpaid and correctly addressed to the Stockholder's address shown in Company's current records; (ii) when received; (iii) three (3) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or (iv) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee. Oral notice is effective when communicated.

5.11 Entire Agreement; Supersedure. This agreement, the Stock Option Agreement, and the documents referenced herein and therein embody the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supercede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way, constitutes the entire agreement of Stockholders relating to the formation, operation, and dissolution of Company and with the exception of any surviving obligations under any subscription agreements supersedes all prior contracts or agreements with respect to Company.

5.12 Binding Effect. This agreement is binding on and inures to the benefit of Stockholders and their respective heirs, legal representatives, successors, and assigns. This section does not modify any restrictions on transfer.

5.13 Effect of Waiver or Consent. A waiver of or consent to any breach or default by any person in the performance by that person of his obligations under this agreement is not a consent to or waiver of any other breach or default in the performance by that person. Failure on the part of a person to complain of any act or to declare a default with respect to Company or this agreement, irrespective of how long that failure continues, does not constitute a waiver by that person of its rights with respect to that default until the applicable statute-of-limitations period has run.

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5.14 **Severability.** If any provision of this agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this agreement and the application of that provision to other Persons or circumstances shall not be affected, and that provision shall be enforced to the greatest extent permitted by law.

5.15 **Governing Law.** This agreement is governed by and shall be construed in accordance with the law of Delaware, excluding any conflict-of-laws rules or principles. This section specifically contemplates the application of the South Carolina Uniform Arbitration Act or the Federal Arbitration Act with respect to resolution of disputes.

5.16 **Time of Essence.** With regard to all dates and time periods set forth or referred to in this agreement, time is of the essence.

5.17 **Counterparts.** This agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

5.18 **Further Actions.** In connection with this agreement and any transactions contemplated Company and each Stockholder shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the intent of the provisions of this agreement and those transactions. **Notice.** Any notice required by this agreement shall be deposited with the U.S. Postal Service, postage prepaid, certified or registered mail, or Federal Express, prepaid, addressed to Stockholders' at the addresses held by the secretary of Company, and shall be deemed received two (2) days after being appropriately deposited.

5.19 **Termination.** This agreement shall terminate upon the bankruptcy, receivership or dissolution of Company, or by mutual consent of all parties to this agreement.

5.20 **Restrictive Endorsement.** The parties agree that all certificates representing shares of capital stock of Company shall be stamped or printed with a restrictive endorsement substantially in the following form:

The sale or transfer of the stock represented by this certificate is subject to certain transfer restrictions pursuant to an agreement between Stockholders and the corporation, a copy of which is on file in the office of the secretary of the corporation.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE NOT REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY STATE SECURITIES LAWS, AND MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION FROM REGISTRATION. A COPY OF SUCH STOCKHOLDER AGREEMENT WILL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST TO THE COMPANY'S CHIEF FINANCIAL OFFICER.

The Company shall imprint such legend on certificates evidencing stock outstanding prior to the date hereof. The legend set forth above shall be promptly removed from the certificates evidencing any shares which cease to be stock.

5.21 **Successors Bound.** All transferees who obtain an interest by any means of the stock of Company shall take such interest subject to the terms of this agreement. No sale of stock of Company shall be recognized on the records of Company unless and until the transferee

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NORTH AMERICAN RESCUE PRODUCTS, INC. - STOCKHOLDER AGREEMENT

becomes a signatory to this agreement, expressly consenting to be bound by the terms hereof. Any sale in violation of this section shall be void.

5.22 S Corporation Status. During any period in which Company has in effect an election under section 1362 of the Internal Revenue Code of 1986, or any successor provision, Company shall not be required to recognize any sale of stock of Company in the event that such sale will cause a disqualification of Company's election.

5.23 Covenant of Assurance by Company and Stockholders. If Company is unable to take any action required of it hereunder because of the provisions of the applicable statutes or its Articles of Incorporation or Bylaws, Company agrees to make such amendments or provisions as may be necessary to permit it to take such action, and Stockholders agree that they will take such action as may be necessary to allow Company to take the action required of it.

5.24 Life Insurance. Any party hereto shall have the right to purchase life insurance on the life of any Stockholder of Company, to the extent reasonably necessary to finance any stock purchases provided for hereinabove. In such case, such insured Stockholder shall cooperate fully by performing all the requirements of the life insurer which are necessary conditions precedent to the issuance of life insurance policies.

5.25 Amendment. This agreement may be altered, amended, or terminated only by a writing signed by all of Stockholders of Company.

5.26 Preparation. This agreement was prepared by Curtis Stodghill of Stodghill Law Firm Chartered as legal counsel to North American Rescue Products, Inc. He also represents Robert A. Castellani individually. The parties acknowledge that they have thoroughly discussed potential conflicts of interest with him or their separate legal counsel, and that they reasonably believe that he can act in without prejudice to his clients, and they waive the potential conflict of interest.

The parties have executed this agreement to be effective the day and year first above written.

COMPANY:
North American Rescue Products, Inc.

By: _____
Robert A. Castellani, President

STOCKHOLDERS:

Robert A. Castellani

Robert M. Miller

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NORTH AMERICAN RESCUE PRODUCTS, INC. - STOCKHOLDER AGREEMENT

NEW STOCKHOLDER SIGNATURE PAGE

The undersigned party has executed and become a party to the North American Rescue Products, Inc. Stockholders Agreement first effective October ____, 2004.

Date: _____

Signature

Print Name

Address

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COMPARISON INFORMATION		
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NORTH AMERICAN RESCUE PRODUCTS, INC.

Stock Option Agreement
October , 2004

This agreement is effective on the date above (the Date of Agreement) and is executed and delivered by North American Rescue Products, Inc., a Delaware corporation (NARP) to the undersigned (Optionee).

RECITALS

A. Optionee has been elected as a member of the board of directors of NARP- (the "Board"). Because of his experience and skills it is anticipated that he will make valuable contributions to the management of NARP in the best interests of NARP and its stockholders.

B. In an effort to conserve cash for future growth and other business opportunities, and to further align Optionee's interests with those of NARP and its stockholders, in lieu of directors fees to be paid in the foreseeable future NARP, its directors, and Stockholders wish to grant Optionee an option to purchase capital stock in NARP in accordance with this Stock Option Agreement.

C. In conjunction with this Stock Option Agreement, the parties have entered into a Stockholder Agreement, of even date herewith, which is incorporated herein by reference.

NARP and Optionee agree as follows:

Article 1 - AGREEMENT OF OPTION.

1.1 ~~ARTICLE 1 - AGREEMENT OF OPTION.~~ Subject to the terms and conditions hereinafter set forth, NARP with the approval and at the direction of the ~~Committee~~Board, hereby grants to the Optionee, as of the Date of Agreement, an option to purchase the number of shares of common capital stock equivalent to seven and one-half percent (7½%) of the common capital stock outstanding on the date of this agreement, subject to adjustment as provided for herein, at an exercise price of \$.01 per share (the "Exercise Price"). Such option is hereinafter referred to as the Stock Option and the shares of stock purchasable upon exercise of the Stock Option are hereinafter sometimes referred to as the Option Shares. The Stock Option is not intended by the parties hereto to be, and shall not be treated as, an "incentive stock option" as defined in Internal Revenue Code § 422.

1.2 Exercise Schedule. This Stock Option shall be exercised in accordance with the following schedule: The Option Shares subject to the Stock Option shall be exercisable upon the closing of an Approved Sale (as defined in the Stockholder Agreement).

1.3 YOU MUST EXERCISE THIS STOCK PURCHASE RIGHT BEFORE THE EXPIRATION DATE OR IT WILL TERMINATE AND YOU WILL HAVE NO FURTHER RIGHT TO PURCHASE THE SHARES.

Article 2 - TERMINATION OF OPTION.

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2.1 The Stock Option and all rights hereunder with respect thereto, to the extent such rights shall not have been exercised, shall terminate and become null and void after the expiration of ten (10) years from the Date of Agreement (the **Option Term**).

2.2 ~~Upon the death of~~ Optionee dies, the Stock Option may be exercised by the Optionee's heirs, executors, legal representative(s) or trusts for the benefit of Optionee or Optionee's family, but only to the extent that the Stock Option would otherwise have been exercisable by the Optionee.

2.3 Notwithstanding any other provisions set forth herein if the Optionee shall (i) recklessly, intentionally, or with gross negligence ~~commits~~ commit an act of malfeasance or wrongdoing which materially and adversely affects NARP or its affiliates; or (ii) materially breaches any covenant not to compete, or employment contract, with NARP or its affiliate any unexercised portion of the Stock Option shall immediately terminate and be void. **Affiliate** means a person (legal or natural) that controls, is under common control with, or is controlled by another person, whether through one or more intermediaries; **control** means the possession of the power to direct or cause the direction of management and policies of a person, whether by ownership, contract, or otherwise.

Article 3 - EXERCISE OF OPTIONS.

3.1 The Optionee may exercise the Stock Option during its term in accordance with the Exercise Schedule set forth in Article 1.2 and the applicable provisions of this Option Agreement with respect to all or any part of the number of Option Shares then exercisable hereunder by giving the ~~secretary~~ Secretary of NARP written notice in the form attached as Exhibit A (the "Exercise Notice") of intent to exercise and such other representations and agreements as may be required by the Company. The notice of exercise shall specify the number of Option Shares as to which the Stock Option is to be exercised and the date of exercise thereof, which date shall be at least five days after the giving of such notice unless an earlier time shall have been mutually agreed upon.

3.2 ~~Full~~ The Exercise Notice shall be accompanied by full payment (in U.S. dollars) by the Optionee of the option price for the Exercise Price as to all Option Shares purchased shall be made on or before. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by such aggregate Exercise Price. No Shares shall be issued pursuant to the exercise date specified in of this Option unless such issuance and exercise complies with Applicable Laws. Assuming such compliance, for income tax purposes the notice of exercise in cash Exercised Shares shall be considered transferred to the Optionee on the date the Option is exercised with respect to such Exercised Shares.

3.3 Non-Transferability of Option. This Option may not be transferred in any manner otherwise than to a trust or trusts for the benefit of Optionee or Optionees' family.

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by will or by the laws of descent or distribution and subject to the terms of this Agreement and the Stockholder Agreement. The terms of the Stockholder Agreement and this Option Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.

3.4 Term of Option. This Option may be exercised only within the term set out in the Notice of Grant, and may be exercised during such term only in accordance with the Stockholder Agreement and the terms of this Option Agreement.

3.5 Tax Consequences. THE TAX LAWS AND REGULATIONS ARE SUBJECT TO CHANGE. THE OPTIONEE SHOULD CONSULT A TAX ADVISER BEFORE EXERCISING THIS OPTION OR DISPOSING OF THE SHARES.

3.6 3.3 On the exercise date specified in the Optionee's notice or as soon thereafter as is practicable, NARP shall cause to be delivered to the Optionee, a certificate or certificates for the Option Shares then being purchased (out of theretofore unissued common stock or reacquired common stock, as NARP may elect) upon full payment for such Option Shares. The obligation of NARP to deliver Stock shall, however, be subject to the condition that if at any time the board of directors shall determine, in its discretion, that the listing, registration or qualification of the Stock Option or the Option Shares upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of, or in connection with, the Stock Option or the issuance or purchase of Stock thereunder, the Stock Option may not be exercised in whole or in part unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the board of directors.

3.7 3.4 If the Optionee fails to pay for any of the Option Shares specified in such notice ~~Exercise Notice~~ or fails to accept delivery thereof, the Optionee's right to purchase such Option Shares may be terminated by NARP. The date specified in the Optionee's ~~Exercise~~ notice ~~Notice~~ as the date of exercise shall be deemed the date of exercise of the Stock Option, provided that payment in full for the Option Shares to be purchased upon such exercise shall have been received by such date.

Article 4 - ADJUSTMENT OF AND CHANGES IN NARP COMMON STOCK. If there is a reorganization, recapitalization, change of shares, stock split, spin-off, stock dividend, reclassification, subdivision or combination of shares, merger consolidation, rights offering, or any other change in the corporate structure or shares of capital stock of NARP, the board of directors shall make such adjustment as it deems appropriate in the number and kind of shares of common stock as is necessary and sufficient so that the number of shares of common capital stock purchasable by Optionee as option shares are equivalent to seven and one half percent (7½%) of the common capital stock outstanding on a Fully Diluted Basis. "Fully Diluted Basis" means, without duplication, (i) all shares of Common Stock outstanding at the time of determination plus (ii) all shares of Common Stock issuable directly or indirectly upon conversion of all outstanding

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convertible securities, including without limitation the Preferred Stock, or the exercise or exchange of all outstanding warrants or similar rights, whether or not such convertible security, warrant or similar right is then convertible, exercisable or exchangeable plus (iii) all shares reserved for issuance under the Company's Stock Option Plan subject to the option or in the option price; provided, however, that no such adjustment shall give the Optionee any additional benefits under the Stock Option.

Article 5 - NO RIGHTS OF STOCKHOLDERS. Neither the Optionee nor any personal representative shall be, or shall have any of the rights and privileges of, a stockholder of NARP in respect to any shares of common stock purchasable or issuable upon the exercise of the Stock Option, in whole or in part, prior to the date of exercise of the Stock Option.

Article 6 - NON-TRANSFERABILITY OF OPTION. During the Optionee's lifetime, the Stock Option hereunder shall be exercisable only by the Optionee or any guardian or legal representative of the Optionee or trusts for the benefit of Optionee or Optionee's family, and the Stock Option shall not be transferable except, in case of the death of the Optionee, as provided for in Article 2.2, or by will or the laws of descent and distribution, nor shall the Stock Option be subject to attachment, execution or other similar process. In no event of (a) any attempt by the Optionee to alienate, assign, pledge, hypothecate or otherwise dispose of the Stock Option, except as provided for herein, or (b) the levy of any attachment, execution or similar process upon the rights or interest hereby conferred, NARP may terminate the Stock Option by notice to the Optionee and it shall thereupon become void. All stock purchased according to this Agreement shall be subject to the terms of the North American Rescue Products, Inc. - Stockholder Agreement as set forth in Appendix AB (Stockholder Agreement) attached hereto and made a part hereof. Optionee agrees to the terms set forth in Appendix AB, and upon exercise will exercise a counterpart signature page to such agreement.

Article 7 - EMPLOYMENT NOT AFFECTED. The granting of the Stock Option nor its exercise shall not be construed as granting to the Optionee any right with respect to employment with NARP.

Article 8 - ~~ARTICLE 7 - EMPLOYMENT NOT AFFECTED. The granting of the Stock Option nor its exercise shall not be construed as granting to the Optionee any right with respect to employment with NARP.~~ **NO GUARANTEE OF CONTINUED SERVICE. OPTIONEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF WAS EARNED BY A MEMBER OF THE BOARD AT THE WILL OF THE COMPANY. OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A MEMBER OF THE BOARD FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH OPTIONEE'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE OPTIONEE'S RELATIONSHIP AS A MEMBER OF THE BOARD AT ANY TIME, WITH OR WITHOUT CAUSE. Except as may otherwise be limited by a written agreement between NARP**

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~~NORTH AMERICAN RESCUE PRODUCTS, INC. STOCK OPTION AGREEMENT 2003~~
and the Optionee, the right of NARP to terminate at will the Optionee's employment with it at any time (whether by dismissal, discharge, retirement or otherwise) is specifically reserved by NARP, as NARP or on behalf of NARP (whichever the case may be), and acknowledged by the Optionee.

Article 9 - ~~ARTICLE 8 - AMENDMENT OF OPTION.~~ The Stock Option may be amended by the board of directors at any time (i) if the board of directors determines, in its sole discretion, that amendment is necessary or advisable in the light of any addition to or change in the Internal Revenue Code or in the regulations issued thereunder, or any federal or state securities law or other law or regulation, which change occurs after the Date of Agreement and by its terms applies to the Stock Option, provided that such amendment shall be strictly limited to changes necessary for the Option Agreement to conform to the aforementioned change in the Internal Revenue Code or federal or state securities law or regulations issued thereunder, provided further that this Option Agreement may not be modified adversely to Optionee's interest except by means of a writing signed by NARP and Optionee; or (ii) other than in the circumstances described in clause (i), with the written consent of the Optionee.

Article 10 - ~~ARTICLE 9 - NOTICE.~~ Any notice The Exercise Notice to NARP provided for in this instrument shall be in writing and shall be addressed to it in care of its President at its principal place of business as set forth below and any notice to the Optionee shall be addressed to the Optionee at the address shown below. Any notice or other communication shall be conclusively deemed to have been given if by (a) personal delivery, on the day of actual delivery; (b) nationally recognized delivery service, delivery prepaid on the day of actual delivery, provided written confirmation of receipt is obtained by the delivery service; (c) certified US mail, on the second business day after deposit, postage prepaid, properly addressed, with the US Postal Service; and (d) electronic communication, on the day of transmittal, if given during the normal business hours of the recipient and on the next business day if given after normal business hours on any day, in either event upon confirmation of receipt by electronic means or acknowledgment of recipient.

If to the Company:

NORTH AMERICAN RESCUE PRODUCTS, INC.

Attention: President

with a copy to:
(which shall not constitute notice to the Company)

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~~NORTH AMERICAN RESCUE PRODUCTS, INC. STOCK OPTION AGREEMENT 2003~~

If to the Optionee:

P.J. Richardson

with a copy to:

(which shall not constitute notice to the Optionee)

Article 11 - ~~ARTICLE 10~~ INCORPORATION OF PLAN BY REFERENCE ~~ENTIRE AGREEMENT; INCORPORATION OF PLAN BY REFERENCE~~. The Stock Option is granted pursuant to the terms of this instrument. Any dispute with respect to this Stock Option shall be resolved according to the Dispute Resolution provisions of the Stockholder Agreement which is incorporated herein by reference. This Stock Option Agreement and the Stockholder Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supercede in their entirety all prior representations, warranties, undertakings, covenants and agreements of the Company and the Optionee with respect to the subject matter hereof and may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and Optionee.

Article 12 - ~~ARTICLE 11~~ GOVERNING LAW ~~GOVERNING LAW~~. The validity, construction, interpretation and effect of this instrument shall exclusively be governed by and determined in accordance with the law of Delaware, except to the extent preempted by federal law, which shall to the extent govern.

NARP has caused its duly authorized officers to execute an attest this Agreement of Stock Option, and to apply the corporate seal hereto, and the Optionee has placed his or her signature heron, effective as of the Date of Agreement. By your signature and the signature of the Company's representative below, you and the Company agree that this Option is granted under and governed by the terms and conditions of this Option Agreement and the Stockholder's Agreement. Optionee has reviewed the Stockholder's Agreement and this Option Agreement in their entirety, has had an opportunity to obtain the advise of counsel prior to executing this Option Agreement and fully understands all provisions of the and the Stockholders Agreement and Option Agreement. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

North American Rescue Products, Inc.

By: _____
Robert A. Castellani, President/CEO

Accepted and Agreed to:

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~~NORTH AMERICAN RESCUE PRODUCTS, INC. STOCK OPTION AGREEMENT 2003~~

P. J. Richardson Optionee

Optionee Notice Address

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EXHIBIT A

EXERCISE NOTICE

North American Rescue Products, Inc.
[ADDRESS]

Attention: Corporate Secretary

1. Exercise of Option. Effective as of today, _____, 2004, the undersigned ("Purchaser") hereby elects to purchase _____ shares (the "Shares") of the Common Stock of North American Rescue Products, Inc. (the "Company") under and pursuant to the Stock Option Agreement dated _____, 2004 (the "Option Agreement"). The purchase price for the Shares shall be \$0.01, as required by the Option Agreement.

2. Delivery of Payment. Purchaser herewith delivers to the Company the full purchase price for the Shares.

3. Representations of Purchaser. Purchaser acknowledges that Purchaser has received, read and understood the Stockholder Agreement and the Option Agreement and agrees to abide by and be bound by their terms and conditions.

4. Rights as Stockholder. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the Shares, no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Shares so acquired shall be issued to the Optionee as soon as practicable after exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date of issuance.

5. Tax Consultation. Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted with any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

6. Entire Agreement; Governing Law. The Stockholder Agreement and Option Agreement are incorporated herein by reference. This Agreement, the Stockholder Agreement and the Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Purchaser with respect to the subject matter hereof, and may not be modified adversely to the Purchaser's interest except by means of a writing signed by the Company and Purchaser. This agreement is governed by the internal substantive laws, but not the choice of law rules, of the State of Delaware.

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COMPARISON INFORMATION		
[REDLINE: 244283.1 v. 244283.3]		10/12/2004 @ 2:43 PM

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COMPARISON INFORMATION		
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Submitted by: _____ Accepted by: _____

PURCHASER: _____ REEVES MANUFACTURING, INC.

By: _____
Signature _____ Signature _____

Print Name _____ Print Name _____

_____ Title _____

Address: _____ Address: _____

 _____ Reeves Manufacturing, Inc.
 _____ [ADDRESS] _____

Telephone _____ Date Received _____

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COMPARISON INFORMATION		
[REDLINE: 244278.1 v. 244278.3]		10/12/2004 @ 2:52 PM

EXHIBIT B

NORTH AMERICAN RESCUE PRODUCTS, INC. – STOCKHOLDER AGREEMENT

This agreement is made and entered into as of the _____ day of October, 2004, by and between the persons signing on the signature page(s) hereof as stockholders (individually **Stockholder** and collectively **Stockholders** when no distinction is required), and North American Rescue Products, Inc., a Delaware corporation (Company). **THIS AGREEMENT IS SUBJECT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT (TITLE 15 CHAPTER 48) OR THE FEDERAL ARBITRATION ACT (9 U.S.C. §§1-16).**

BACKGROUND. Stockholders own all the issued and outstanding capital stock of Company, and their on the date hereof. Their respective ownership is reflected adjacent to their names on the signature page(s) below (including any counterpart signature pages). References to **stock**, **capital stock**, or **shares** shall be to capital stock of Company unless the context clearly indicates otherwise. Stockholders wish to provide a market for their shares of the stock in certain events. They wish to restrict ownership of the stock to the present Stockholders and to persons with whom they will easily work and communicate. Stockholders believe that they will be able to do that with each other and that it is in their best interests and in Company's best interests that all corporate activities be controlled by persons who work and communicate easily with each other. To accomplish these objectives, Stockholders and Company, wish to arrange ~~for certain restrictions on~~ (i) restrict the sale, assignment, transfer, encumbrance or other disposition of Stockholders' shares of stock to persons other than the parties to this agreement; and (ii) provide for certain rights and obligations in respect thereto.

In consideration of the background above, which the parties acknowledge are accurate in all material respects, and the mutual covenants and agreements herein contained and the provisions below the parties agree as follows:

1. **RESTRICTIONS ON TRANSFER OF STOCK**

1.1 Applicability. Every share of capital stock of Company outstanding, and every share of Company stock issued after the effective date of this agreement and all shares of capital stock issuable directly or indirectly upon conversion of all outstanding convertible securities including without limitation Preferred Stock or the exercise or exchange of all outstanding warrants or similar rights, whether or not such convertible security, warrant or similar right is then exchangeable, convertible or exercisable, is, and shall be held, subject to the provisions of this agreement.

1.2 General Restriction; Notice. No Stockholder shall sell ~~or~~, transfer, assign, pledge or otherwise directly or indirectly dispose of (a "Transfer") any rights to or interest in his Company stock except pursuant to and in accordance with the provisions of this Agreement and without first notifying Company and the other Stockholders in writing of his intent to do so (the Notice). At least thirty (30) days prior to making any Transfer of any stock (the "Transferring Stockholder") shall deliver a written notice (the "Sale Notice") to the Company and the other Stockholders. The Sale Notice shall disclose in reasonable detail the proposed number or principal amount, as applicable, of each type or class of stock to be transferred, the proposed terms and conditions of the Transfer, including proposed price by class or type of each of such

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stock to be transferred, and the identity of the prospective transferee(s). The purchase price specified in any Sale Notice shall be payable solely in cash at the closing of the transaction. The Notice must state the identity of the proposed transferee, and the highest bona fide offer of a third party, if any, such prospective transferee has made for the stock involved. A Stockholder providing the Notice may be referred to as the Transferring Stockholder.

1.3 Option to Purchase and Procedure. Upon receipt of the Notice, Company shall have an option to purchase all but not less than all of the stock proposed to be transferred by the Transferring Stockholder's, as the case may be, upon at the price and on the terms determined in sections 1.4 and 1.5, respectively conditions specified in the Sale Notice by delivering written notice of such election to the Transferring Stockholder as soon as practicable but in any event within 30 days of the delivery of the Sale Notice. The stock subject to the option may be referred to as the **option shares**. The option shall be for a period of (i) thirty (30) days following receipt of notice per section 1.2 or (ii) ten (10) days following determination of option value by appraisers according to section 1.4, whichever is later. If the Company has not exercised this option, the other Stockholders (**Remaining Stockholders**) shall have the right to purchase the Transferring Stockholder's stock for an additional ten (10) days. The maximum number of shares any Remaining Stockholder shall have the right to purchase is equal to the number of shares owned by the Transferring Stockholder multiplied by a fraction, the numerator of which is the number of shares owned by the purchasing Stockholder, and the denominator of which is the total number outstanding shares of capital stock of Company less the number owned by the Transferring Stockholder. If any Stockholder elects not to exercise this right, the stock to which he would have been entitled to purchase shall be subject to the proportionate rights of the remaining Stockholders.

1.4 Price. The price to be paid for the ~~option shares~~ Option Shares shall be the shall be the fair market value of the ~~option shares (option value)~~ Option Shares at 12:00 am on the day following the event resulting in the option to purchase set forth in section 1.3 above (~~trigger event~~), price and shall be determined according to the ~~procedures~~ terms set forth in this section 1.4 below the Sale Notice.

(a) If the Transferring Stockholder proposes to sell the option shares to another person, then Company (and/or the Remaining Stockholders exercising their option) may elect, by written notice to the Transferring Stockholder within the period set forth in section 1.3, to purchase the option shares according to the price and terms of the sale to the other person set forth in the Notice.

(b) [Notwithstanding (a) above, the Company may elect by written notice not to use the price and terms of the sale to the other person, in which case the option value shall be determined according to the procedure set forth below.

(1) No more than ten (10) days after the trigger event the Transferring Stockholder and Company shall in good faith attempt to determine the option value. They may agree, in which case the agreed option value shall be final and binding on the parties.

(2) If the Transferring Stockholder and Company cannot agree on the option value, then within fifteen (15) days of the trigger event the Transferring Stockholder and Company shall, in good faith, attempt to agree upon and appoint an appraiser to determine the

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option value. For purposes of this agreement an (appraiser) is a person who by qualification and experience is qualified to determine the value of business enterprises and the securities evidencing ownership of such enterprises. If Company and Transferring Stockholder agree on an appraiser, then Company shall bear the expense of the appraiser. If the Transferring Stockholder and Company are unable to agree on an appraiser, then within thirty (30) days of the trigger event the Transferring Stockholder and Company shall each appoint an appraiser, and each party shall bear the expense of their respective appraiser.

(3) The appraiser or appraisers, as the case may be, shall provide a written report of the option value within thirty (30) days of their engagement (the total time for the appraiser's reports from the trigger event shall not exceed sixty (60) days). During the appraisal process the Company shall provide the appraisers with reasonable access to the Company's business records and facilities, subject only to the appraiser's agreeing none exists to reasonable non-disclosure non-exploitation obligations. If there are two appraisers, each is encouraged to communicate with the other about their respective determination of option value and the methodologies used to arrive at such value.

(4) If there is one appraiser his determination of option value shall be final and binding on the parties. If there are two appraisers and their determinations of option value differ by less than twenty percent (20%) (with the lowest as the base for computing the percentage of difference), then the option value shall be the arithmetic mean of the two. If there are two appraisers and their determinations differ by more than twenty percent (20%), then within five (5) days of the last of the two appraiser's determinations they shall appoint a third appraiser (the cost of which shall be shared equally by Company and the Transferring Stockholder) and within ten (10) days following such appointment, the third appraiser shall pick the most valid of the other two appraisers' determinations of option value, which in his opinion is in accordance with accepted practice by appraisers at the time of the determinations, and the third appraiser's selection shall be final and binding on the parties.]

1.5 Terms.

(a) If the price is determined in accordance with section 1.4(a), then the option value shall be paid in exchange for the option shares according to the terms of the bona fide third party offer.

(b) [If the option value is determined in accordance with section 1.4(b), then the option value for the option shares shall be paid to the Transferring Stockholder (i) twenty (20%) percent down at closing and (ii) the balance shall be paid in five (5) equal annual installments of principal and interest at three percentage points over the prime rate, as published by the Wall Street Journal on the date closest to the date of the trigger event.

(c) The closing of the purchase of the option shares shall take place at a location agreed upon by the parties to the sale no more than thirty (30) days after the later of (i) dispatch to the Transferring Stockholder of notice of intent to exercise the option granted hereunder by the purchasers, or (ii) delivery to the parties of appraiser(s) determination of option value.]

1.6 Stockholder Rights Upon Refusal. If a Stockholder gives the Notice, and neither Company nor Stockholders exercise their respective options to purchase the option shares, then

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upon request, the other Stockholders and Company, by its duly authorized officers, shall execute reasonable instruments providing notification to all other parties to this agreement of their waiver of rights under this agreement, so as to permit the sale of the option shares within thirty (30) days of (i) the closing date set forth in the terms contained in the Notice or (ii) the termination the Company's and Stockholders' option, which ever is later. However, execution and delivery of any waiver of rights under this agreement is expressly conditioned on the transferee becoming a party to this agreement. Anyone acquiring stock of Company shall hold such stock subject to all provisions of this agreement, and shall not transfer the same without complying with the provisions of this agreement.

1.7 Rights Reserved. Nothing herein contained shall be construed to prevent any Stockholder from:

(a) [Pledging his stock as security for any debt or obligation; provided, however, that before any transfer of said stock shall be effected by the pledgee/creditor or otherwise, Company and subsequently Stockholders shall have the option to purchase said stock or any part thereof at the price and terms provided herein, subject to all terms and conditions set forth herein for transfers. In such case, the required written notice required by section 1.2 shall be given by the pledgee of such stock. In the event that this option is exercised, payment of said price shall be made to the owner and pledgee of said stock as their interests may appear, and such payment shall constitute a complete satisfaction and release of any such pledge. In the event that the option granted herein is not exercised within the prescribed time periods, the person acquiring such stock by foreclosure or otherwise shall hold it subject to all terms and conditions of this agreement.]

(b) Assigning or transferring all or part of his stock by way of gift to such Stockholder's spouse, children, or lineal descendants, or to other Stockholders, whether directly or in trust; provided that a majority in interest of the remaining Stockholders shall approve for the benefit of a Stockholder and/or the Stockholder's family; a guardian or conservator of a Shareholder and/or the Shareholder's Family Group; a Transfer of stock by any Shareholder pursuant to the laws of descent and distribution or among such gratuitous transfer or assignment Shareholder's Family Group; and all transferees become parties to this agreement an Approved Sale (as defined in Article hereof).

2. SPECIAL STOCKHOLDER RELATIONSHIPS:

2.1 Information. Company's property and books and records shall be open to inspection of Stockholders from time to time upon reasonable notice by the Stockholder requesting the inspection. Company shall permit a Stockholder the right to designate up to three (3) individual(s) (including Stockholder) to inspect. The inspecting Stockholder or designee, as the case may be, may make copies or extracts of the books and records, provided that all the costs of making copies shall be borne by the inspecting Stockholder. Additionally, Company shall make any of its employees and agents (including its independent public accountants) reasonably available to the inspecting Stockholder to discuss Company's affairs, records, finances, and accounts, provided that the reasonable costs of making the employees and agents available shall be borne by the inspecting Stockholder. Company may, in its reasonable discretion, choose a reasonable place to make Company's books, records, employees, and agents

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available to the inspecting Stockholder other than the place where its books and records are maintained.

(a) **Non-disclosure.** Because of the nature of Company's business, any information that a Stockholder or Stockholder obtains from Company about Company or its business activities (including for example and not limitation information obtained from its books and records) shall be presumed to be Proprietary Information. A Stockholder or Stockholder's designee shall keep the Proprietary Information confidential as long as it remains Proprietary Information, and during such period a Stockholder or Stockholder shall not directly or indirectly disclose any of the Proprietary Information to any third party, unless authorized by Company in writing, or in the case of a Stockholder, which is an officer or director of the Company and it is for the purpose of carrying out his responsibilities to Company. A Stockholder shall notify Company, in writing, of any of the Proprietary Information which he asserts is not subject to these obligations and, with specificity, why it is not subject to such restrictions, prior to any disclosure. If a Stockholder or Stockholder is served with a legally enforceable request for the production of information which may include any Proprietary Information, then the Stockholder or Stockholder shall immediately notify Company and allow Company to take any actions that Company determines necessary to protect the Proprietary Information.

(b) **Proprietary Information Defined.** Proprietary Information means information about Company or its business that derives independent economic value from not being generally known to and ascertainable by other persons who may obtain economic value from its disclosure or use, and Work Product (defined below). Proprietary Information may be written, electronically stored, merged with other information, or memorized. The fact that it may be memorized, however, does not change its character. While some information considered Proprietary Information is not confidential, the form of its compilation or the manner in which it is to be used makes it Proprietary Information. Proprietary Information, however, does not include information which (i) a Person can show by written evidence was in its possession prior to disclosure by Company; (ii) becomes generally available to the public in tangible form other than by acts or omissions of a Person (or persons obtaining Proprietary Information from such Person); and (iii) is lawfully obtained from a third party who is properly in possession of such Proprietary Information, has a right to reveal the same to a Person, and did not obtain the Proprietary Information directly or indirectly from Company with restrictions on disclosure. **Work Product** means all notes, analyses, records, reports, sketches, compilations, plans, photographs (including negatives), memoranda or other documents, whether prepared by the Person receiving other Proprietary Information or any of its representatives, which contain, reflect or are based upon, in whole or in part, the other Proprietary Information or arise out of or are related to the other Proprietary Information.

(c) **Use.** A Stockholder shall use the Proprietary Information for the purpose of evaluating his interest in Company, and a Stockholder to carry out his duties as such. A Stockholder's dissemination of the Proprietary Information shall be limited to the employees or agents of the Stockholder whose duties justify the "need to know," and then only after those persons agree to be bound by the terms of this article in writing. A Stockholder shall not use the Proprietary Information to compete against Company in any way.

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(d) **Ownership.** All Proprietary Information is and shall continue to be the exclusive property of Company, despite the fact that Proprietary Information is entrusted to a Stockholder, whether in his capacity as a Stockholder, director, officer, or employee. A Stockholder's possession of the Proprietary Information does not confer any license, interest or rights of any kind in or to the Proprietary Information.

2.2 Supermajority Voting and Effect. Company and Stockholders hereby agree that notwithstanding any other provision of this agreement or of any other document governing the voting rights and privileges of Stockholders, the affirmative vote of at least two-thirds ($\frac{2}{3}$) of the issued and outstanding shares of Company shall be required for any merger or share exchange involving Company's stock, any sale or exchange of substantially all of the assets of Company other than in the ordinary course of the business of Company, or the sale of all the issued and outstanding stock of the Company. Upon approval of any action specified in this section 2.2, the failure of any Stockholder to take any actions necessary for carrying out the transactions contemplated by such approval then the defaulting Stockholder shall be deemed to be notice of intent to transfer stock by a Transferring Stockholder and Company and Remaining Stockholders shall have all the rights set forth in article 1 to purchase the Transferring Stockholder's shares, which shall be deemed to be option shares.

2.3 Co-Sale Rights. With respect to any proposed transfer by a Transferring Stockholder, if the offered stock constitutes one third ($\frac{1}{3}$) or more of the stock, then if the Company or Remaining Stockholders do not exercise the option to purchase the option shares, each Remaining Stockholder may elect to participate in the contemplated transfer (or transfers) as a seller by delivering written notice that such Stockholder is exercising the rights granted by this section 2.3 to the Transferring Stockholder(s) and the Company within the time required for exercise of the option provided in section 1.3. If one or more Remaining Stockholders have elected to participate in such sale, the Transferring Stockholder(s) and such Remaining Stockholders shall be entitled to sell in the contemplated sale, at the same price and on the same terms, that number of shares of stock equal to the product of (i) the quotient determined by dividing the percentage of the shares (on a fully diluted basis) held by each such Stockholder, by the aggregate percentage of the shares (on a fully diluted basis) owned by the Transferring Stockholder(s) and all Remaining Stockholders electing to sell multiplied by (ii) the number of shares of stock to be purchased in the contemplated sale. This provision shall not apply to a public offering (defined below).

2.4 Public Offering. If an initial public offering of the Company stock is duly approved, the Stockholders will use reasonable efforts to take all necessary or desirable actions in connection with the consummation of such offering. If the public offering is an underwritten offering and the managing underwriters advise the Company in writing that in their opinion the existing capital structure of the Company will adversely affect the marketability of the offering, each Stockholder will consent to and vote for a recapitalization, reorganization and/or exchange of the Company and change the stock into securities that the managing underwriters, the Company determine acceptable and will take all other necessary or desirable actions in connection with the consummation of the recapitalization, reorganization and/or exchange; provided that the resulting securities reflect and are consistent with the rights and preferences

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among the outstanding classes of securities in effect immediately prior to such recapitalization, reorganization or exchange. For purposes of this agreement **public offering** means a public offering and sale of Shareholder-Shares pursuant to an effective registration statement under applicable securities laws. Each Stockholder shall be entitled to participate in any registration of outstanding stock in proportion to his ownership. If there is a public offering this agreement shall terminate.

2.5 Approved Sale. If the Board approves a Sale of the Company (an "Approved Sale"), each holder of Shares will vote for, consent to and will not object or otherwise impede consummation of the Approved Sale.

2.6 Required Actions. If the Approved Sale is structured as (i) a merger or consolidation, each holder of Shares shall waive any dissenter's rights, appraisal rights or similar rights in connection with such merger or consolidation, (ii) a sale of stock, each holder of Shares shall agree to sell all of its Shares and rights to acquire Shares on the terms and conditions so approved, or (iii) a sale of assets, each holder of Shares shall vote in favor of such sale and any subsequent liquidation of the Company or other distribution of the proceeds therefrom. In furtherance of the foregoing, (i) each holder of Shares shall take all necessary or desirable actions reasonably requested by the Company in connection with the consummation of the Approved Sale and (ii) each holder of Shares will make the same representations, warranties, indemnities and agreements as to each other holder of Shares, including without limitation, voting to approve such transaction and executing the applicable purchase agreement (the "Company Reps"). In any Approved Sale, each holder of Shares shall not be required to make indemnification payments in connection with any Approved Sale except pro rata in accordance with such holder's ownership of Common Stock on a Fully Diluted Basis, unless the applicable agreements relating to such Approved Sale require the other holders of Shares to indemnify such holder against, and hold such holder harmless from, amounts for which such holder may become liable in excess of the maximum amount contemplated by the first clause of this sentence; provided that the foregoing limitation shall not apply to any indemnity by a holder of Shares for breach by such holder of any representation or warranty relating solely to the authorization, execution or delivery by such holder of the relevant agreements or as to such holder's ownership of securities sold by such holder thereunder or for breach of any agreement by such holder relating solely to its own conduct; and provided, further that in no event shall any holder of Shares be liable in respect of any indemnity obligations pursuant to any Approved Sale in an aggregate amount in excess of the total consideration payable to such holder in such Approved Sale.

2.7 Conditions to Shareholders' Obligations. The obligations of the holders of Shares with respect to an Approved Sale are subject to the satisfaction of the following conditions: (i) upon the consummation of the Approved Sale, each holder of Shares will receive the same form of consideration and the same portion of the aggregate consideration that such holder of Shares would have received if such aggregate consideration had been distributed by the Company in complete liquidation pursuant to the rights and preferences set forth in the Articles of Incorporation as in effect immediately prior to such Approved Sale; (ii) if any holders of a class of Shares are given an option as to the form and amount of consideration to be received,

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each holder of such class of Shares will be given the same option; and (iii) each holder of then currently exercisable rights to acquire shares of a class of Shares will be given an opportunity to exercise such rights prior to the consummation of the Approved Sale and participate in such sale as holders of such class of Shares.

2.8 Expenses of Approved Sale. Holders of Shares will bear their pro rata share (based upon holdings of Common Stock on a Fully Diluted Basis) of the costs of any sale of Shares pursuant to an Approved Sale to the extent such costs are incurred for the benefit of all holders of Shares and are not otherwise paid by the Company or the acquiring party. For purposes of this Section 3.5, costs incurred in exercising reasonable efforts to take all necessary actions in connection with the consummation of an Approved Sale in accordance with this Section 3 shall be deemed to be for the benefit of all holders of Shares. Costs incurred by any holder of Shares on its own behalf will not be considered costs of the transaction hereunder and will be the responsibility of such holder.

3. DEATH OR DISABILITY OF A STOCKHOLDER

3.1 Repurchase in Event of Death or Disability of a Stockholder. Upon the death or Disability (as defined in Section below) of a Stockholder, such Stockholder (hereinafter referred to as the "Terminating Stockholder") shall be deemed to have offered to sell that amount of his or her stock as specified in Section below to the Company, as herein provided, at a price per share equal to the Purchase Price. For purposes of this Agreement, the date of death or Disability of the Terminating Shareholder shall be referred to as the "Termination Date".

3.2 Repurchase Shares. For purposes of this Agreement, the number of Stockholder Shares owned by the Terminating Shareholder which are deemed to be offered pursuant to Section 4.1 hereof (the "Section 4 Repurchase Shares") shall be one hundred percent (100%) of his or her stock.

3.3 Company's Option to Purchase. Upon receipt by the Company of the deemed offer described in Section 4.1 hereof, the Company shall have the option to purchase all, but not less than all, of such Terminating Shareholder's Section 4 Repurchase Shares by providing written notice to the Terminating Shareholder of its election to purchase the Section 4 Repurchase Shares. Such notice shall be given within one hundred twenty (120) days after the Termination Date. The closing for the purchase (the "Section 4 Closing") shall be held at the Company's principal place of business not later than the first business day which is one hundred fifty (150) days after the Termination Date.

3.4 Delivery of Repurchase Shares. In the event the Company exercises its option in accordance with Section 4.4 above, the Company shall purchase the Section 4 Repurchase Shares at the Section 4 Closing. Upon receipt of payment of the Purchase Price in accordance with Section 4.6 hereof, the Terminating Shareholder (or his or her personal representative, as appropriate) shall execute and deliver any and all instruments and documents necessary to effectuate the transfer of all of such Section 4 Repurchase Shares to the Company, free and clear of any and all taxes, debts, claims, judgments, liens, restrictions or encumbrances (other than those set forth in this Agreement).

3.5 Payment of Purchase Price. The Purchase Price for the Section 4 Repurchase Shares shall be paid as follows:

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(i) In the event the purchase results from the death of the Terminating Shareholder, so much of the proceeds actually received by the Company from any life insurance policy or policies on the life of the Terminating Shareholder as shall not, in the aggregate, exceed the Purchase Price, shall be paid in cash to, or by cashier's check payable to the order of, the Terminating Shareholder, provided, however, that if such proceeds are received after the Section 4 Closing, such proceeds shall be paid as soon as reasonably practicable after the receipt thereof.

4. 3-DISPUTE RESOLUTION

4.1 3.1-General. If there is any dispute, controversy, or claim related to the this agreement or Stockholder rights as they relate to Company, then the parties shall attempt in good faith to promptly resolve such dispute, controversy, or claim according to the procedures outlined in this section.

4.2 3.2-Notice. Upon any party becoming aware of a dispute, controversy, or claim (Grievance) between them related to their rights under this agreement or their stock ownership in Company, which they cannot resolve by ordinary commercial means, the aggrieved party (the Petitioner) shall, in writing, promptly notify the party against whom the Petitioner has the Grievance (the Respondent). The notice, while not required to be in any specific form, shall set forth with reasonable specificity (i) the nature of the Grievance, (ii) the extent commercially reasonable, all relevant documentary information, or references thereto, related to the Grievance, and (iii) the Petitioner's position and (iv) Petitioner's proposed remedy.

4.3 3.3-Response. Respondent shall, within ten (10) business days, respond, in writing, to the notice by (i) agreeing to the Petitioner's position and remedy or (ii) scheduling a dispute resolution meeting to occur within ten (10) business days of Respondent's response to Petitioner's Grievance. If a meeting is scheduled, then, as a part of its response, the Respondent shall also provide to Petitioner Respondent's position, and, to the extent commercially reasonable, all additional relevant documentary information or references to Respondent's position regarding the Grievance.

4.4 3.4-Dispute Resolution Meeting. On the date and time of the meeting scheduled according to the preceding section there shall be a meeting, which may be by phone or other means of concurrent communication. Each party shall appoint one or more individuals who have responsibility for and authority to resolve the dispute. Those individuals, and if a party deems it desirable their legal counsel, shall discuss each party's respective position, and attempt, in good faith, to resolve the dispute. They can agree to have additional meetings provided that all such meetings are concluded within twenty (20) business days of the Petitioner's Grievance. If they cannot resolve the Grievance, they shall collectively ascertain the areas where the Petitioner's and Respondent's positions are in agreement and where they cannot be reconciled. At the conclusion of this step the parties shall have (i) resolved the dispute or (ii) determined the areas of agreement and disagreement with respect to the Grievance, and they shall prepare a written summary (no longer than three (3) single spaced type written pages with ordinary margins and type size) outlining the areas of agreement and disagreement.

4.5 3.5-Arbitration. If the parties are unable to resolve the Grievance by the preceding steps, then either party may initiate arbitration proceedings. The matter shall be settled

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by arbitration in accordance with the CPR Non-Administered Arbitration Rules in effect on the date of this agreement, by a sole arbitrator, provided, however, that if any party will not participate in the non-arbitration dispute resolution procedures above, then the other party may initiate arbitration before expiration of the above period. The arbitration shall be governed by the South Carolina Uniform Arbitration Act (SC Code Title 15 Chapter 48) or the Federal Arbitration Act (9 U.S.C. §§ 1-16), and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Greenville, South Carolina. The arbitrator shall be a qualified arbitrator and lawyer licensed in South Carolina with at least fifteen (15) years experience in the areas of closely held business corporations and partnerships selected by the parties to the dispute. If they cannot agree on an arbitrator, then they shall each select one, at their respective cost, and those arbitrators, who shall also be qualified as set forth above, shall among themselves select a single qualified arbitrator. The arbitrator's fees shall be his normal hourly rate for rendering legal or arbitral services. The arbitrator is not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives all rights to recover such damages with respect to any dispute resolved by arbitration. The statute of limitations of South Carolina applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defenses shall be available based upon the passage of time during any dispute resolution process called for by the preceding sections of this article. Unless all parties to an arbitration agree otherwise the arbitrator shall issue his determination of the dispute within ninety (90) days of his appointment. This provision is not intended to alter the provisions determining option value

4.6 3.6—General Matters Relating to Disputes. During the pendency of the procedures set forth in this article the parties shall continue to perform, in good faith, their respective obligations under the agreement. All deadlines specified in this procedure may be extended by mutual agreement. The procedures specified herein shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this agreement. All information or communications between the parties to a Grievance in complying with aforementioned procedures shall be considered as compromise negotiation subject to Federal Rule of Evidence 408 and South Carolina Rule of Evidence 408 (both effective as of the date of this agreement).

4.7 3.7—Costs. If it is necessary to resolve a dispute in arbitration, then the arbitrator shall determine which party to the dispute is most at fault for the dispute and for the necessity to arbitrate. That party shall pay or reimburse, as the case may be, all costs of the arbitration, including the fees of the arbitrator and the reasonable expense of legal representation (including attorney fees) for the other party.

4.8 3.8—Special Deadlock Resolution. If the directors, shareholders, or those otherwise in control of Company are deadlocked in the management of the corporate affairs and because of the deadlock the business and affairs of the corporation are not being conducted to the advantage of Stockholders, then upon written notice a Stockholder or group of Stockholders holding at least twenty percent (20%) of the voting stock may elect in writing to have the deadlock broken. Upon such election, Company's president shall notify the individual last

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designated at a meeting (or written action) of the directors as the deadlock arbitrator for Company. The arbitrator, within ten (10) business days of notification, shall hear the various issues and review the information related to the deadlock, and within five (5) business days make a decision resolving the deadlock. Company and Stockholders shall reasonably cooperate with the arbitrator. The decision of the arbitrator resolving the deadlock shall be binding on Company, its Stockholders, directors and officers. It is the intention of this section to eliminate the possibility that Stockholders may cause a judicial dissolution by reason of a director or Stockholder deadlock. Initially, the special deadlock arbitrator is Robert A. Dobson, III, and he shall remain in that capacity until he is no longer willing or able to serve in that capacity or until his successor is appointed.

5. GENERAL

5.1 Transfers in Violation of Agreement. Any Transfer or attempted Transfer of any stock in violation of any provision of this Agreement shall be void, and the Company shall not record such Transfer on its books or treat any purported transferee of such stock as the owner of such shares for any purpose.

5.2 Amendment and Waiver. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective against the Company or the Stockholders unless such modification, amendment or waiver is approved in writing by the Company, the holders of a majority of the outstanding shares of Common Stock voting as a class on a per share basis.

5.3 New Shareholders. The Company shall not issue any shares of its capital stock to a Person not currently a party to this Agreement unless and until such Person shall agree in writing to be bound by the provisions of this Agreement.

5.4 No Inconsistent Agreements. The Company will not hereafter enter into any agreement with respect to its securities which is inconsistent with or violates the rights granted to the Investor in this Agreement.

5.5 Remedies. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that the Company and any Stockholder shall have the right to injunctive relief, in addition to all of their respective rights and remedies at law or in equity, to enforce the provisions of this Agreement. Nothing contained in this Agreement shall be construed to confer upon any Person who is not a signatory hereto any rights or benefits, as a third party beneficiary or otherwise.

5.6 4.1 Gender and Definitions. For convenience the gender of persons described in this agreement will generally be either masculine or neuter. As the context so requires, however, the gender of all words used shall be interpreted to include the masculine, feminine, or neuter. Additionally, the singular of any word shall include the plural and the converse shall also be true. Defined terms shall include words derived from the root of such term.

5.7 4.2 Construction. Unless otherwise specified, all references to article, section, subsection, or clause are to the appropriate portion of this agreement. The captions used are included for convenience and are not relevant for interpretation.

5.8 4.3 Interpretation. If one or more provisions of this agreement appear to be in conflict with other provisions, then Company board of directors shall exercise reasonable

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discretion in interpreting the agreement and to choose which of the conflicting provisions are to control. Wide latitude is given to Company board of directors in interpreting the provisions of this agreement to accomplish the purposes and objectives of Company in the best interests of Stockholders as a group.

5.9 4.4—No Drafting Presumptions. Each party has received or has had the opportunity to receive independent legal advice with respect to the advisability of executing this agreement and the meaning of its provisions. All provisions shall be construed as to their reasonable meaning, with no presumptions or inferences in favor of or against any party.

5.10 4.5—Notice. Any notice required under this agreement must be comprehensible and in writing unless oral notice is reasonable under the circumstances (oral notice is not reasonable when written notice is specifically required hereby). Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. Written notice is effective at the earliest of the following: (i) when mailed, if mailed postpaid and correctly addressed to the Stockholder's address shown in Company's current records; (ii) when received; (iii) three (3) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or (iv) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee. Oral notice is effective when communicated.

5.11 4.6—Entire Agreement; Supersedure. This agreement, the Stock Option Agreement, and the documents referenced herein and therein embody the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supercede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way. constitutes the entire agreement of Stockholders relating to the formation, operation, and dissolution of Company and with the exception of any surviving obligations under any subscription agreements supersedes all prior contracts or agreements with respect to Company.

5.12 4.7—Binding Effect. This agreement is binding on and inures to the benefit of Stockholders and their respective heirs, legal representatives, successors, and assigns. This section does not modify any restrictions on transfer.

5.13 4.8—Effect of Waiver or Consent. A waiver of or consent to any breach or default by any person in the performance by that person of his obligations under this agreement is not a consent to or waiver of any other breach or default in the performance by that person. Failure on the part of a person to complain of any act or to declare a default with respect to Company or this agreement, irrespective of how long that failure continues, does not constitute a waiver by that person of its rights with respect to that default until the applicable statute-of-limitations period has run.

5.14 4.9—Severability. If any provision of this agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this agreement and the application of that provision to other Persons or circumstances shall not be affected, and that provision shall be enforced to the greatest extent permitted by law.

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5.15 ~~4.10-Governing Law.~~ This agreement is governed by and shall be construed in accordance with the law of Delaware, excluding any conflict-of-laws rules or principles. This section specifically contemplates the application of the South Carolina Uniform Arbitration Act or the Federal Arbitration Act with respect to resolution of disputes.

5.16 ~~4.11-Time of Essence.~~ With regard to all dates and time periods set forth or referred to in this agreement, time is of the essence.

5.17 ~~4.12-Counterparts.~~ This agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

5.18 ~~4.13-Further Actions.~~ In connection with this agreement and any transactions contemplated Company and each Stockholder shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the intent of the provisions of this agreement and those transactions. Notice. Any notice required by this agreement shall be deposited with the U.S. Postal Service, postage prepaid, certified or registered mail, or Federal Express, prepaid, addressed to Stockholders' at the addresses held by the secretary of Company, and shall be deemed received two (2) days after being appropriately deposited.

5.19 ~~4.14-Termination.~~ This agreement shall terminate upon the bankruptcy, receivership or dissolution of Company, or by mutual consent of all parties to this agreement.

5.20 ~~4.15-Restrictive Endorsement.~~ The parties agree that all certificates representing shares of capital stock of Company shall be stamped or printed with a restrictive endorsement substantially in the following form:

The sale or transfer of the stock represented by this certificate is subject to certain transfer restrictions pursuant to an agreement between Stockholders and the corporation, a copy of which is on file in the office of the secretary of the corporation.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE NOT REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY STATE SECURITIES LAWS, AND MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION FROM REGISTRATION. A COPY OF SUCH STOCKHOLDER AGREEMENT WILL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST TO THE COMPANY'S CHIEF FINANCIAL OFFICER.

The securities represented by this certificate are not registered under the Securities Act of 1933 or any state securities laws, and may not be transferred except pursuant to an effective registration statement or an exemption from registration. Company shall imprint such legend on certificates evidencing stock outstanding prior to the date hereof. The legend set forth above shall be promptly removed from the certificates evidencing any shares which cease to be stock.

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5.21 4.16-Successors Bound. All transferees who obtain an interest by any means of the stock of Company shall take such interest subject to the terms of this agreement. No sale of stock of Company shall be recognized on the records of Company unless and until the transferee becomes a signatory to this agreement, expressly consenting to be bound by the terms hereof. Any sale in violation of this section shall be void.

5.22 4.17-S Corporation Status. During any period in which Company has in effect an election under section 1362 of the Internal Revenue Code of 1986, or any successor provision, Company shall not be required to recognize any sale of stock of Company in the event that such sale will cause a disqualification of Company's election.

5.23 4.18-Covenant of Assurance by Company and Stockholders. If Company is unable to take any action required of it hereunder because of the provisions of the applicable statutes or its Articles of Incorporation or Bylaws, Company agrees to make such amendments or provisions as may be necessary to permit it to take such action, and Stockholders agree that they will take such action as may be necessary to allow Company to take the action required of it.

5.24 4.19-Life Insurance. Any party hereto shall have the right to purchase life insurance on the life of any Stockholder of Company, to the extent reasonably necessary to finance any stock purchases provided for hereinabove. In such case, such insured Stockholder shall cooperate fully by performing all the requirements of the life insurer which are necessary conditions precedent to the issuance of life insurance policies.

5.25 4.20-Amendment. This agreement may be altered, amended, or terminated only by a writing signed by all of Stockholders of Company.

5.26 4.21-Preparation. This agreement was prepared by Curtis Stodghill of Stodghill Law Firm Chartered as legal counsel to North American Rescue Products, Inc. He also represents Robert A. Castellani individually. The parties acknowledge that they have thoroughly discussed potential conflicts of interest with him or their separate legal counsel, and that they reasonably believe that he can act in without prejudice to his clients, and they waive the potential conflict of interest.

The parties have executed this agreement to be effective the day and year first above written.

COMPANY:

North American Rescue Products, Inc.

By: _____
Robert A. Castellani, President

STOCKHOLDERS:

Robert A. Castellani

Robert M. Miller

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NEW STOCKHOLDER SIGNATURE PAGE

The undersigned party has executed and become a party to the North American Rescue Products, Inc. Stockholders Agreement first effective October ____, 2004.

Date: _____

Signature

Print Name

Address

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