

19055

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W Miller, Circuit Court Judge

Case No 2008-CP-23-05739

RECEIVED
APR 04 2011
SC Court of Appeals

Andrew P (Andy) Ballard,

Respondent,

v

Tim Roberson, Rick Thoennes, Rick Thoennes III,
and Warpath Development, Inc

Appellants

**RECORD ON APPEAL
VOLUME II OF III**

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE FOR THE THIRTEENTH JUDICIAL CIRCUIT

2010 APR -b P 2 53

Andrew P (Andy) Ballard,

Plaintiff,

vs

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc ,

Defendants

Case Number 2008-CP-23-5739

**PLAINTIFF'S POST TRIAL
MEMORANDUM**

The plaintiff submits this memorandum in response to the post trial memorandum and email submitted by the defendants

First, we ask that the Court proceed to rule on the issues in the case As Mr Howard notes, the parties have begun tentative discussions about trying to resolve the matter among themselves Mr Ballard met with Mr Robeson to begin those discussions However, we have tried to resolve this matter for almost 2 years, and to date we have not made significant progress We have gone through the process of a full trial, and both sides have had the chance to present their case on the facts as they now stand We believe that the parties need a ruling on the pending issues and ask that the Court make its decision on the matters presented in the trial

Below are our responses to the issues raised by the defendants in their post trial memorandum and email

Escrow First, there can be no doubt that the defendants must place 60,000 of their shares in escrow S C Code § 33-6-210 (e) (emphasis added) provides that "[e]xcept as otherwise provided in subsection (f) [not relevant here], the corporation must place in escrow shares issued

for a contract for future services of benefits or for a promissory note ” Here, the Stock Purchase Agreement clearly provides that Ballard received “\$1,000,000 for 20,000 shares of Ballard’s 40,000 shares” and that the defendants “will receive from the corporation additional shares ” The \$1 million was paid to Ballard personally The remaining 60,000 shares obtained by the defendants were issued by the corporation, which received none of the \$1 million Rather, the defendants committed to provide capital and financial and development services, and they earn their shares by providing that capital and those services

The defendants’ attorney, Jim Fayssoux, issued the stock, and the defendants have handled the corporate affairs since the closing Under the plain language of the Code provision, the “corporation” has an obligation to place the shares in escrow, and, under the leadership of the defendants, it has failed to do so

Further, Mr Thoennes testified directly that he and the other defendants earned their shares by carrying out the tasks they agreed to undertake in the Agreement

Therefore, the shares should be placed in escrow

As Mr Howard points out, the South Carolina Reporter’s Comments state that the record owner may exercise voting rights However, any exercise of voting rights will be subject to the owners’ fiduciary obligations to the minority shareholder, in their capacities as officers, directors, and majority shareholders, and their contractual obligations under the Agreement

Ballard s 20% Ownership The defendants cite a list of statutes which merely set out the normal powers of various corporate actors However, any of these rights and powers can be limited by agreement, and all are subject to the fiduciary duties owed a minority shareholder by officers, directors, and majority shareholders

The defendants seem to suggest that since the powers of directors are set out in statute, they cannot be limited by agreement. Of course, that is not the case. Even constitutional rights – such as the right to jury trial or 4th amendment rights – can be waived or contracted away. For example, Section 33-6-300 provides for preemptive rights for shareholders, but it does not prevent shareholders from agreeing to grant one or all of them greater protection than the statute provides. As well, as the defendants concede in their email, Section 33-8-101 expressly recognizes that the authority of the board of directors can be limited by shareholder agreement.

Every day across South Carolina and the rest of the country, individuals form corporations and enter into shareholder agreements that impose additional restrictions or obligations on themselves or the company. That is what the defendants did here. They cannot avoid their contractual obligations by citing general code provisions concerning the usual powers of corporations or their boards.

Once more, the issue is not the application of any statutory “nondilution” rules. The issue is the provisions of the Stock Purchase Agreement that the defendants agreed to, and their fiduciary duties. The Agreement expressly provides that Mr. Ballard’s final holdings will be 20% and that Mr. Robeson is required to provide the necessary capital to obtain long term financing. The defendants have breached the Agreement and their fiduciary duties by attempting to avoid Mr. Robeson’s contractual obligation and void Mr. Ballard’s final holding by issuing stock to provide the capital and financing for the marina.

In any event, it is undisputed that the articles of incorporation have not been amended and that no one can issue stock in an amount not authorized by the articles. S.C. Code § 33-6-103. Apart from the contractual obligations, the defendants cannot violate the articles of incorporation by issuing more than the outstanding 100,000 shares.

Breach As to anticipatory breach, we believe our jury charges set out the governing standards. By taking action both as directors and as majority shareholders, the defendants made clear that they rejected their obligation to provide the necessary capital to obtain long term financing, and the Thoenneses' many problems make them, in addition, unable to perform their obligations to help with the financing and to develop the marina property.

Restitution Restitution is an appropriate and recognized remedy for breach of contract and for breaches of fiduciary duties. The defendants have wrongfully retained their shares when they have repudiated and anticipatorily breached the contract by which they received the 60,000 shares.

Oppression The facts of this case fall squarely within the definition of oppression, as illustrated in the Kiriakides case. The defendants created and carried out a plan to run Mr. Ballard out of the corporation. They removed him as a director. They voted to issue shares in violation of the articles of incorporation and the Stock Purchase Agreement as part of this plan, and also to avoid their obligations under the Agreement. The defendants froze Mr. Ballard out of the activities of the corporation and did not keep him posted on corporate developments. Then, as a litigation strategy right before the anticipated trial, they re-elected him as a director, but never held a directors meeting and did not provide him with information concerning corporate activities. Mr. Robeson has made it clear that he plans to use the corporation to employ his relatives and friends. The defendants brought bogus counterclaims against Mr. Ballard accusing him of multiple counts of fraud, and were compelled to abandon those claims after Mr. Robeson was cross-examined concerning them. Importantly, all of the evidence that Mr. Robeson had to confront in his cross examination was evidence he and the other defendants knew very well.

when they filed their counterclaims. None of that evidence was discovered by them during discovery or during the trial.

Mr. Ballard has been oppressed and frozen out of the corporation, in every sense.

Permits Mr. Howard describes our current understanding of the status of the permits.

Conclusion As set out in our amended complaint and at the trial, the plaintiff asks: (1) that the Court order the defendants to place 60,000 shares in escrow, (2) that the Court enjoin the defendants from issuing stock as they have attempted to do, in effect continuing in place the injunction that now exists, (3) that the defendants be required to return to the corporation their 60,000 shares, and (4) that the defendants be ordered to buy out the plaintiff's 20% interest in the corporation. Upon the Court issuing a ruling as requested in (4), there would be another proceeding before the Court to determine valuation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Frank S. Holleman III', written over a horizontal line.

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Attorneys for Plaintiff

Date April 6, 2010
Greenville, South Carolina

FILED CLERK OF COURT
SOUTH CAROLINA
COUNTY OF GREENVILLE
APR -9 P 4 06

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

Andrew P (Andy) Ballard,) C A No 2008-CP-23-5739
Plaintiff,)
v) **REPLY TO PLAINTIFF'S**
Tim Roberson, Rick Thoennes, Rick) **RESPONSIVE POST-TRIAL BRIEF**
Thoennes III, and Warpath Development,)
Inc ,)
)

Defendants submit the following brief in reply to Plaintiff's responsive brief

I The decision of the Plaintiff, as the sole director of the corporation up until May 2008, to not, in his capacity to exercise the corporation's power, escrow the shares pursuant to S C Code Ann § 33-6-210(e) prior to their issuance is evidence of Plaintiff's actual state of mind that the consideration for all 80,000 shares was met at the time he received payment of the \$1,000,000

In response to the Defendant's brief, Plaintiff appears to be asserting that the Court should find that the Warpath Board of Director's, which consisted solely of Andy Ballard, decision in May 2007 to presently issue the 60,000 shares, which, according to South Carolina law had to be based on a finding that the consideration offered at that time was adequate, should be displaced and the shares should now be placed in escrow Plaintiff's position in response is simply without merit

According to S C Code Ann § 33-6-210, "[b]efore the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable " At the time of May 2007, the 60,000 shares at issue were

not placed in escrow “to be issued”, they were actually issued by the corporation. Factually and legally, in order to issue shares, the board of directors of Warpath, consisting solely of Andy Ballard in May 2007 and up until May 2008, had to have determined that the consideration received was adequate and that determination is conclusive. The fact that the shares were presently issued and not escrowed is conclusive to show that Plaintiff, acting in his capacity as the sole member of the Warpath board of directors, believed at the time of issuance that there was adequate consideration given for the issuance of the 60,000 shares, i.e. the \$1,000,000 paid for 80% of the corporation.

To now take the present position, Plaintiff must be challenging his own decision, which is an absurd result.¹ To get around the fact that legally it was his decision, Plaintiff now wants to argue that it was not really his decision because the Defendants were really in control and it was their lawyer who should have acted. However, legally, that is not the case. There is no disputing that Plaintiff was the sole member of the board of directors until May 2008. Moreover, Plaintiff wants to have it both ways. Plaintiff certainly wants to cite as proof of his position and makes a big deal out of the fact that the check for the \$1,000,000 was written to Ballard personally. How is that even an issue? Ballard was Warpath when the Defendants were negotiating. Legally and factually, Ballard was actually in control of Warpath during the negotiations. Therefore common sense dictates that it makes perfect sense that the Defendants would issue the check directly to Ballard since Ballard asked that it be done.

Ultimately, Andy Ballard was represented by separate counsel to advise him during and after the negotiations and had the power, as the sole director, to order that the shares be escrowed.

¹ Plaintiff asserts that the corporation must act to escrow shares as if that is significant. This position is perplexing. How does he think a corporation acts? According to the South Carolina code unless legally or contractually delegated to another entity a corporation acts through its board of directors. See S.C. Code Ann. § 33-8-101.

if he or his lawyer believed them to be for future services. If he or his lawyer actually believed that the shares were issued not for the \$1,000,000 paid, but for future consideration, why did neither of them not demand that the shares be escrowed? The Plaintiff and his lawyer also had time to review and comment on the Stock Purchase Agreement. If he or his lawyer actually believed that the shares were issued not for the \$1,000,000 paid, but for future consideration, why did they not demand that such a provision for the escrow of the shares be included in the Stock Purchase Agreement? The clear answer is because everyone, including the Plaintiff and his lawyer, understood that the Defendants paid \$1,000,000 for 80% of the corporation no matter how many shares 80% represented or who or where they were coming from. Plaintiff's *ad hoc* argument just does not add up and Ballard should be estopped from taking such a position now.

For these reasons, there is no legal or factual basis for the Court to displace the decision of the corporation and its board of directors made three years ago that the consideration for the present issuance of the 60,000 shares was adequate. According to South Carolina law, that decision was conclusive. Therefore, for these reasons and all the reasons set forth in argument at trial, judgment should be entered in favor of the Defendants.

2 Plaintiff's assertion that the South Carolina code provisions are irrelevant to the consideration of Plaintiff's anti-dilution claim is without merit.

In Defendants' April 2, 2010 email to the Court, a copy of which is attached hereto, Defendants merely set forth code provisions that Defendants asserted in argument at the conclusion of trial. Defendants made clear in the email that this was not the entire body of law that may be relevant to the Court's determination. Defendants had simply not had a prior opportunity to put these code sections in front of the Court in writing. It was not Defendants' intention to rehash the arguments made at the conclusion of trial. However, Plaintiff, in its responsive memorandum, takes the position that Defendant is suggesting that the powers of a

corporation cannot be limited or altered by agreement. Defendant agrees that the powers of the corporation can be limited, altered or delegated by agreement provided that they are done so properly and in accordance with the law. The problem in this case is that (1) Plaintiff is trying to read into the Stock Purchase Agreement an anti-dilution provision that does not exist and (2) even assuming it does exist, Plaintiff failed to take the proper steps under the law to make the agreement enforceable.

With regard to the factual non existence of the anti-dilution provision, it is undisputed in the record that at no time prior to entering into the Stock Purchase Agreement did any party ever discuss non-dilution, anti-dilution, etc., despite being represented by counsel and having a full and fair opportunity to review and comment on the Agreement, Plaintiff never asked for a non-dilution provision to be included, and the Agreement makes no mention of anti-dilution. As it suits his need in this litigation, Plaintiff now wants the Court to ignore the obvious lack of evidence and read into the agreement an anti-dilution provision despite the fact that there was no meeting of minds between the parties as to the inclusion or existence of such a provision. The South Carolina code is key because the Plaintiff is seeking to restrain a fundamental corporate power set forth by statute to manage its shares whether that be by issuance, redemption, etc. In concerning itself with the limiting of corporate powers, as argued at the conclusion of trial, the code says that no shareholder has a vested property interest in any provision of the Articles of Incorporation, see S.C. Code Ann. § 33-10-101(b), and makes clear that the legislature of South Carolina rejects any attempt to create a ‘tyranny of the minority.’” See id., Official Comments to § -101(b). Given the position of the South Carolina legislature, such powers of the corporation should simply not be set aside lightly.

Further evidence against Plaintiff's strained reading of the Agreement is the fact that the code of laws provides the necessary protection for minority shareholders in the form of preemptive rights set forth in § 33-6-300. Clearly, Plaintiff was well aware of these provisions since he made sure that preemptive rights were specifically reserved without exception in the Warpath Articles of Incorporation signed by the Plaintiff in 2004. Under those circumstances, there is no need for an anti-dilution provision because the Plaintiff's minority protections against dilution are reserved.

At this point, the only issue before the Court relative to this claim of the Plaintiff is whether the corporation can rightfully issue more shares or not. Plaintiff's paranoia about what could happen in the future is not relevant to the decision, not factually established and should be disregarded. Moreover, Plaintiff's claimed lack of financial wherewithal relative to the Defendants to maintain his percentage ownership is likewise irrelevant. Further, even if that claim were somehow relevant, there is absolutely no evidence to support this claim of disparity. All we really know, factually, is that the Plaintiff was \$1,000,000 richer as of May 2007. It is also rather ironic that the Plaintiff wants to on the one hand claim a financial disparity but on the other hand claim that two of the Defendants are financially unfit to carry on this project.

Next, even assuming that the Stock Purchase Agreement contains an anti-dilution provision that restrains the board of directors of Warpath from issuing any additional shares, the South Carolina code sets forth what must happen in order to make unanimous shareholder agreements enforceable against the actions of the corporation by and through its board of directors. Specifically, in order to be enforceable, an agreement unanimously approved by the shareholders must be 'disclosed in the articles of incorporation and on the corporation's share

certificates ” S C Code Ann § 33 8-101(c) It is not a breach of fiduciary duty for the board of directors to take an action that was rightfully and legally theirs to take

Clearly, the vote by the board of directors was legal as the Plaintiff's claimed restraint on the board was not identified in the Articles or disclosed on the share certificates by the Plaintiff as the lone director and only person within Warpath with the power to do so back in May 2007 Certainly with all of these experienced business minds on both sides and two lawyers assisting in the preparation of this deal, if all the parties actually believed that the Stock Purchase Agreement in any way restrained the future actions of the board of directors of Warpath such as the Plaintiff wants this Court to order, then someone would have taken the necessary actions to make it legal

The Court must ask itself why this did not occur The answer is that no one actually believed in 2007 that the Stock Purchase Agreement contained an anti-dilution provision As with the lack of escrow, Plaintiff only asserts this now because it suits his purpose Outside of the \$1,000,000 up front and \$150,000 he was scheduled to receive at the time and after the grand opening Plaintiff knew when he signed this Agreement in 2007 that it would be a long time before he would see any distributions because he agreed that Tim Roberson would get all of his investment back before any distributions would be made In reality, Plaintiff's plan was not to wait that long anyway because he wanted to “flip” the project When Mr Roberson made it known that he wanted to keep the project long-term, that simply did not suit Plaintiff's plan

Finally Plaintiff raises two issues that are mere distractions One, the fact that the Articles of Incorporation have not been amended makes no difference Defendants would agree that according to law no new shares of Warpath can be until after the Articles are amended Since no shares have actually been issued, there has been no violation of the Articles In any

event, the Plaintiff is not harmed by this hypothetical violation of the Articles anyway. The only party harmed in the hypothetical would be the party that provided the corporation consideration thinking they had received legal shares in return.

Two, Roberson's contractual agreement to provide capital to obtain long-term financing makes no difference to the issue of whether additional shares can be issued. This is a separate issue for another day. Roberson stated in trial that he recognized his obligation and had all intentions of performing. If Roberson later fails in that obligation, then the Court can take that failure up when it is ripe.

For these reasons, neither factually nor legally is there an anti-dilution provision or any actual enforceable restraint on the Warpath shareholders' right to vote to amend the Articles of Incorporation or the board of director's power to issue additional shares up to the limit stated in the Articles of Incorporation. Therefore, for these reasons and all the reasons set forth in argument at trial, judgment should be entered in favor of the Defendants.

3 Defendants' actions do not rise to the level of oppression

Finally, the evidence simply does not rise to the level of oppression. In Defendants' April 2, 2010, email, the Defendants were merely directing the Court's attention to the Kiriakides matter, cited therein, which generally sets out the South Carolina law relevant to the consideration of corporate oppression. Kiriakides also expressly sets forth factually what the Supreme Court of South Carolina believes to be the default or "classic" case of oppression. Defendants were simply pointing out that a comparison of the claims of the Plaintiff against the facts in Kiriakides does not compare. Plaintiff responded by reciting his entire case for oppression. Defendant now replies.

In this case, Plaintiff sets forth that his claim of oppression is based on the Defendants actions of taking a vote to issue more shares for not reelecting him a director in May 2008, for not talking to him after he sued them, for re-electing him a director in 2009, for Roberson contemplating hiring family members to help him run the marina, and for filing legally compulsory counterclaims. As for the issuance of shares, this has been well briefed and argued, but the evidence is that the actions were not taken for some nefarious purpose as the Plaintiff wants the Court to believe. The act of taking a vote to potentially issue future shares is a central issue in this case and is not anywhere expressly set forth as a prohibition on the actions of the Defendants. Absent some actual prohibition, the evidence is that the Defendants took actions they believed and still believe they had a right to take. They also took actions they believed were in the best interests of future financial viability of the corporation. The Court clearly believed the issue was debatable when it denied the Plaintiff summary judgment. Taking actions believed to be legal, and for legitimate business purposes cannot be the basis of a claim for oppression.

As for not reelecting him director, there is no evidence that Plaintiff actually ever requested that his name be submitted for a vote. Plaintiff, conveniently, for the first time claimed at trial that he asked to be made a director at the shareholder meeting in May 2008, however this is nowhere reflected in the minutes of that meeting of which Plaintiff received a copy. Plaintiff could have requested an amendment to the minutes but did not. Since Plaintiff's alleged director nomination was not put to a vote there is no evidence that the Defendants "removed him as a director." Therefore, it is not viable evidence of oppression.

As for not talking to him, there is plenty of evidence in the record that the Defendants indeed spoke to Plaintiff and wrote Plaintiff regularly from May 2007 to shortly after May 2008.

Then he sued them. Now, comically, Plaintiff wants to complain that they did not talk to him after he sued them. This complaint is preposterous and in no way evidence of oppression.

Plaintiff claims that Defendants electing him to a slate of directors in 2009 is evidence of oppression. In what way is it oppressive conduct to make Plaintiff a director? Besides, Roberson testified that Ballard's activity and interest in the operations of the corporation began to increase; therefore they felt it appropriate to bring him back within the management. There is simply no evidence of any ill motive. In any event, isn't being named a director a positive development?

As for Roberson contemplating bringing in family members to help run the marina, there was no discussion ever about making any of them partners. There was talk of offering shares or options for shares to management as a form of compensation to help the cash position, but no names have been mentioned. This is in no way oppressive conduct.

Finally, it is absurd that Plaintiff wants to try to profit from Defendants acting on advice of counsel and opting to drop their counterclaims. In trial, no one but Plaintiff's counsel mentioned fraud. Defendants' counsel certainly never did and no evidence of fraud was offered. The only evidence presented was for negligent misrepresentation. Unfortunately for two of the three Defendants, one was unwilling to pass judgment on the motives of the Plaintiff. Due to the fact that they were not unified, Defendants opted to take counsel's advice and dismiss the counterclaims, therefore, other than what was made available in deposition which clearly set forth their belief that Ballard misrepresented the geographic restrictions on the marina, the Court never had the opportunity to hear from Thoennes, Sr. and Thoennes, III on the counterclaims. The evidence of what Ballard knew about the geographic restrictions on the marina ahead of time was significant and was supported by a good faith belief the Plaintiff's actions were

improper The fact that the evidence did not come together at trial such that all Defendants were unified in their claims against the Plaintiff is no basis for a claim of oppression

For these reasons and all the reasons set forth in argument at trial, judgment should be entered in favor of Defendants on Plaintiff's claim of oppression

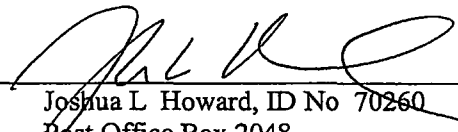
- 4 A lack of a reply by the Defendants to any other issue raised by the Plaintiff should not in any way be construed as an admission Defendants oppose each and every claim asserted by the Plaintiff and all forms of relief requested**

Conclusion

For these reasons and all the reasons set forth in argument at trial, judgment should be entered in favor of Defendants on all of Plaintiff's claims and remedies

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P A

By 
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Attorneys for Defendants

April 9, 2010
Greenville South Carolina

IN THE COURT OF COMMON PLEAS

2010 MAY 14 PM 3 39

FILED-CLERK OF COURT
GREENVILLE, SC No 2008-CP-23-5739

PAUL B. VICE PRESIDENT

**DEFENDANTS' MOTION FOR
RECONSIDERATION AND/OR
FOR A NEW TRIAL**

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- 4 The court's order unfairly misrepresents and/or mischaracterizes the
testimony and evidence presented
- 5 As a matter of law, the Court's order improperly considers the voluntary
dismissal with prejudice of Defendant's counterclaims as evidence of
oppression
- 6 As a matter of law, the court improperly considers Plaintiff's speculation
as to future actions as evidence of oppression
- 7 As a matter of law, the court improperly considers an unsubstantiated
allegation of breach of the Articles of Incorporation as evidence of
oppression
- 8 As a matter of law, the failure of Ballard's bid for reelection to the board
of directors was in accordance with the legal norms of corporate
governance and cannot be evidence of oppression
- 9 As a matter of law, the vote of the shareholders to increase the number of
authorized shares of Warpath was taken in accordance with legal norms of
corporate governance and cannot be evidence of oppression
- 10 As a matter of law, there was no breach of contract, therefore breach of
any contractual provision is not properly evidence of oppression
- 11 As a matter of law, there was no anticipatory breach of contract, therefore
anticipatory breach of any contractual provision is not properly evidence
of oppression
- 12 As a matter of law, the Stock Purchase Agreement cannot be interpreted to
provide for anti-dilution of Plaintiff's interest

13 The Court's stated procedure for handling the valuation hearing set forth
in paragraph 16 on page 16 of the Court's order is improper, unlawful,
against established precedent, and denies the defendants due process

14 The court erred in failing to address Plaintiff's remaining causes of action
In particular, any cause of action which was either abandoned by the
Plaintiff or which the court made no findings should be dismissed

In support of this motion, Defendants rely upon the record at trial, a memorandum of law
and exhibits to follow, and such oral argument as the Court may permit

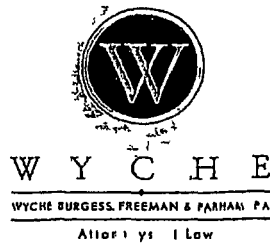
Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P A

By 
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Attorneys for Defendants

May 14, 2010
Greenville, South Carolina



May 17 2010

By Hand Delivery

The Honorable Edward W. Miller
Greenville County Courthouse
305 East North Street Suite 219
Greenville SC 29601

Re *Andrew (Andy) P. Ballard vs. Tim Roberson et al*
Case No. 2008 CP 23 5739

Dear Judge Miller:

We have received a copy of the defendants' Rule 59 (e) motion. We believe it does nothing more than rehash issues that were fully and completely argued and briefed and decided by the Court. Therefore, we would ask that the Court deny the motion. We do not believe that this motion should further delay the resolution of the situation and delay the parties going their separate ways.

Thank you for your consideration.

Sincerely,

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(864) 242 8340
fholleman@wyche.com

FSH:sc

cc Joshua L. Howard Esq.
Matthew Rogers Metcalfe Esq.
Mr. Andy Ballard

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

ANDREW P BALLARD)
)
 PLAINTIFF,)
)
 -VS-)
)
 TIM ROBERSON,)
 RICK THOENNES,)
 RICK THOENNES, III, AND)
 WARPATH DEVELOPMENT, INC ,)
)
 DEFENDANTS)
 _____)

2008-CP-23-5739

TRANSCRIPT OF RECORD
(VOLUME ONE)

MARCH 15 - 17, 2010
GREENVILLE, SOUTH CAROLINA

B E F O R E

THE HONORABLE EDWARD W MILLER

A P P E A R A N C E S

ATTORNEY FOR PLAINTIFF

FRANK S HOLLEMAN, ESQUIRE
HANNAH ROGERS METCALFE, ESQUIRE

ATTORNEY FOR DEFENDANTS

JOSHUA L HOWARD, ESQUIRE

SUSAN W HUDGINS
CIRCUIT COURT REPORTER

1 THAT COULD FIT IN THERE AND THE PRIOR CONCEPTUAL PLAN
2 IS EVIDENCE OF THAT HE NEVER SHOWED IT TO THEM

3 THE COURT WELL, WHY WOULD INTRODUCTION OF A DRAFT
4 AGREEMENT -- HOW IS THAT -- HOW IS THAT ---

5 MR HOWARD IT'S NOT ---

6 THE COURT --- PROPER?

7 MR HOWARD IT MAY BE HELPFUL TO SHOW YOU, YOUR
8 HONOR IT'S NOT ---

9 THE COURT NO I MEAN, I ---

10 MR HOWARD IT'S NOT A DRAFT AGREEMENT IT'S A
11 PRIOR DRAFT OF THE CONCEPTUAL PLAN HE HAD A PRIOR DRAFT
12 OF THIS CONCEPTUAL PLAN THAT HAD A HUNDRED TOTAL
13 CERTAINLY IF THESE GENTLEMEN WERE AWARE THAT THE ELLIS
14 GROUP, WHO PUT THIS TOGETHER UNDER INSTRUCTIONS AND HELP
15 OF ANDY BALLARD HAD ONLY EVALUATED THIS, AND THEIR
16 ARCHITECTS, HAD ONLY EVALUATED THIS AT A HUNDRED TOTAL
17 SLIPS, CERTAINLY THAT'S INFORMATION THEY WOULD HAVE LIKED
18 TO HAVE KNOWN AND IT'S INFORMATION THAT WAS DENIED TO
19 THEM BEFORE THEY ENTERED INTO THIS AGREEMENT

20 THE COURT WELL, HAVE YOU GOT ANY EVIDENCE OF THAT?

21 MR HOWARD WELL, CERTAINLY ---

22 THE COURT OTHER THAN THE -- OTHER THAN THIS
23 AGREEMENT? I MEAN, WHAT YOU'RE TALKING ABOUT IS FRAUD IN
24 THE INDUCEMENT

25 MR HOWARD YEAH, THAT'S A NEGLIGENT

1 MISREPRESENTATION, HOWEVER, WE'VE ALLEGED THAT TOO

2 MR HOLLEMAN: BUT, YOUR HONOR, THE PROBLEM WITH
3 THAT IS THE FINAL DOCUMENT THEY SIGNED THAT THEY HAD
4 BEFOREHAND SAYS CLEARLY ONE HUNDRED ---

5 THE COURT RIGHT

6 MR HOLLEMAN --- TO TWO HUNDRED THEY KNEW THEY
7 DIDN'T HAVE ANY GUARANTEE OF TWO HUNDRED IT'S A
8 HUNDRED TO TWO HUNDRED AND DUKE POWER MADE THE
9 DECISION

10 THE COURT I'M NOT INCLINED TO LET IT IN SO ---

11 MR HOWARD WELL, YOUR HONOR, IT'S -- ACTUALLY THE
12 DOCUMENT THEY SAID IS ALLOW WET SLIPS AS DEMAND
13 INDICATES, AS DEMAND INDICATES FROM A MARKET DEMAND, BUT
14 NOT TO EXCEED A HUNDRED TO TWO HUNDRED THAT'S WHAT THE
15 DOCUMENT SAYS

16 WE'RE SUGGESTING HE LED US TO BELIEVE THAT TWO
17 HUNDRED WERE POSSIBLE AS DEMAND INDICATES, TWO HUNDRED
18 WILL BE POSSIBLE

19 THE COURT WELL, I ---

20 MR HOLLEMAN THAT'S WHAT DUKE POWER LED US TO
21 BELIEVE, YOUR HONOR, BUT DUKE POWER'S ---

22 THE COURT YEAH, I'M NOT, I MEAN, I'M NOT INCLINED
23 TO DO THAT I MEAN, WE'LL JUST HAVE -- BUT THIS IS, YOU
24 KNOW, JUST SEE HOW THE EVIDENCE PLAYS OUT

25 MR HOLLEMAN YOUR HONOR, TWO OTHER POINTS ONE IS

1 MR HOLLEMAN WE DIDN'T HAVE THIS DOCUMENT THERE
2 WAS NOTHING TO ASK THEM ABOUT

3 THE COURT OKAY WELL, LET'S -- THIS ISN'T GOING
4 TO COME UP UNTIL TOMORROW?

5 MR HOLLEMAN YES, SIR

6 THE COURT SO LET'S JUST -- WE'LL CROSS THAT BRIDGE
7 WHEN WE COME TO IT

8 MR HOLLEMAN THAT'S MY COPY

9 THE COURT OKAY

10 MR HOLLEMAN COULD I RECLAIM IT?

11 THE COURT OH, OKAY

12 MR HOLLEMAN ONE LAST THING, YOUR HONOR, WE SHOULD
13 JUST -- THIS ISN'T A MOTION, BUT WE SHOULD LAY OUT THE
14 LEGAL -- THIS IS AN UNUSUAL LEGAL ARCHITECTURE OF THIS
15 CASE

16 ALL OF OUR CLAIMS ASK FOR EQUITABLE RELIEF, THE
17 PLAINTIFF'S CLAIMS WE ASK FOR AN INJUNCTION AGAINST THE
18 ISSUANCE OF NEW STOCK, AND THE COURT'S FAMILIAR WITH
19 THAT, BASED ON THE CONTRACT AND THE ARTICLES OF
20 INCORPORATION

21 WE ASK THAT BECAUSE OF -- AND FOR ANOTHER REASON, WE
22 SAY BECAUSE OF THE BREACH OF THEIR CONTRACT, AND THE
23 BREACH OF THEIR FIDUCIARY DUTIES TO HIM AS A MINORITY
24 SHAREHOLDER AND BECAUSE OF THE FACT THEY HAVEN'T LIVED UP
25 TO THEIR PROMISES TO THE CORPORATION THEY SHOULD BE

1 REQUIRED TO RETURN THE STOCK THEY RECEIVED FROM THE
2 CORPORATION THAT'S AN EQUITABLE REMEDY

3 AND THEN WE ALSO HAVE A CLAIM BASED ON THE
4 SHAREHOLDER, MINORITY SHAREHOLDER IMPRESSIONS STATUTE
5 AND, OF COURSE, THAT'S AN EQUITABLE REMEDY FOR THE COURT
6 AS WELL AND IN THAT INSTANCE WE ASK, AGAIN, FOR THE
7 COURT TO PREVENT THEM FROM ISSUING NEW STOCK AND WE
8 ALSO ASK THE COURT TO ORDER A BUY-OUT OF THE MINORITY
9 SHAREHOLDER AND AN EVALUATION TO OCCUR LATER

10 SO ALL OF OUR CLAIMS ASK FOR EQUITABLE RELIEF HE
11 HAS -- MR HOWARD AND HIS CLIENTS HAVE COUNTER-CLAIMS
12 THAT ASK FOR LEGAL DAMAGES AS WE'VE JUST DESCRIBED

13 SO I THINK WE HAVE A SITUATION WHERE ON OUR CLAIMS
14 THE JURY EITHER IS PASSING ON LEGAL QUESTIONS PRECEDENT
15 TO THE COURT'S DECISION ON EQUITABLE RELIEF AND/OR AS AN
16 ADVISORY JURY

17 AND HIS CLAIMS HAS, ASSUMING THE COUNTER-CLAIMS GO
18 TO THE JURY, AS A REGULAR JURY ON LEGAL CLAIMS, I DON'T
19 THINK THAT REALLY AFFECTS HOW WE PRESENT THE CASE TO THE
20 JURY, BUT I WANTED TO LAY THAT OUT FOR THE COURT OUT
21 FRONT BECAUSE ---

22 THE COURT OKAY

23 MR HOLLEMAN --- IT MAY BECOME APPARENT AS WE GO
24 THROUGH THE CASE

25 THE COURT OKAY MR HOWARD

OPENING STATEMENTS - MR. HOWARD

66

1 BALLARD KNEW THAT, BUT THEY DIDN'T KNOW THAT WE'LL LET
2 YOU DECIDE ON HOW YOU WANT TO DO THAT

3 ULTIMATELY FOLLOWING THE ARCHITECTURAL MEETING,
4 CLEARLY THAT'S ONE PROBLEM THAT AROSE COME THAT FALL
5 OTHER PROBLEMS AROSE OF PARTICULAR IMPORTANCE WAS A
6 MEETING WITH THE PICKENS COUNTY PLANNING COMMISSION MR
7 BALLARD HAD WARPATH'S INTEREST AT THAT MEEING

8 THEY WERE ABLE TO GET MR BALLARD BACK INVOLVED AT
9 THAT POINT WENT DISASTROUSLY, NOT NEARLY THE AMOUNT OF
10 SUPPORT MR BALLARD -- IN PICKENS COUNTY MR BALLARD HAD
11 LED THEM TO BELIEVE WAS PRESENT

12 FOLLOWING THIS THESE MEN WERE GENERALLY UPSET AT
13 THIS POINT I THINK THEY'LL TELL YOU, AND I KNOW THEY'RE
14 GOING TO TELL YOU ACTUALLY THAT THEY FELT LIKE THEY HAD
15 BEEN SWINDLED BY MR BALLARD

16 THEY WERE UPSET ABOUT WHAT HAD OCCURRED THEY WERE
17 UPSET ABOUT WHAT THEY'D FOUND OUT AND THEY WERE UPSET
18 WITH MR BALLARD, NO QUESTION ABOUT IT THEY HAD
19 DISCUSSIONS AMONG THEMSELVES ABOUT WHAT ARE WE GOING TO
20 DO

21 THEY THOUGHT THE OPTIONS -- ONE OF THE OPTIONS WAS
22 TO JUST ASK MR BALLARD TO GIVE THEM BACK THEIR MONEY,
23 THE MILLION DOLLARS THAT THEY PAID, AND IN TURN THEY
24 WOULD GIVE HIM BACK HIS STOCK AND THAT THEY WOULD ALL
25 JUST GO THEIR SEPARATE WAYS THAT WAS BACK IN 2007

OPENING STATEMENTS - MR. HOWARD

73

1 PROJECT FINANCED AND BUILT THAT'S WHAT THEY WANT TO DO
2 THEY WANT TO SEE THIS PROJECT DEVELOPED AND DONE
3 GOING BACK, THIS -- IF ONLY WE HAD HAD THE AMOUNT OF
4 INFORMATION THEY DO NOW IF ONLY THAT FORTHRIGHT HONESTY
5 UPFRONT HAD BEEN HAD WE WOULD NOT BE HERE TODAY ALL
6 THESE GENTLEMEN WOULD BE GOING FORWARD THEY WOULD
7 UNDERSTAND WHERE THEY WERE THEY WOULD UNDERSTAND WHERE
8 THE DEVELOPMENT STOOD

9 BUT INSTEAD, TODAY WE'RE FACED WITH THIS SITUATION
10 WE'RE FACED WITH THE SITUATION WHERE THE REVENUES ON THIS
11 PROJECT ARE ALL SIGNIFICANT THE VALUE OF THIS
12 INVESTMENT UPFRONT IS OFF SIGNIFICANTLY WE HAVE
13 COUNTER-CLAIMED TO RECEIVE BACK SOME OF THE MONEY THAT WE
14 PAID MR BALLARD TO OFFSET WHAT WE HAVE LOST AND WHAT
15 THIS DEVELOPMENT HAS LOST FROM ITS VALUE BECAUSE MR
16 BALLARD WAS OVERPAID FROM ITS VALUE BASED UPON WHAT WE
17 KNOW NOW AND HE WAS OVERPAID BECAUSE HE KEPT
18 INFORMATION FROM US

19 AND NOW WHEN IT'S YOUR TURN TO JUDGE THE FACTS WE'RE
20 GOING TO ASK YOU -- I'M GOING TO ASK YOU THEN AS I ASK
21 YOU NOW TO LOOK AT THE FACTS, AND I THINK THAT YOU WILL
22 RETURN A VERDICT ON OUR COUNTER-CLAIMS IN FAVOR OF MY
23 CLIENTS AND I THINK YOU WILL RETURN A VERDICT ON
24 PLAINTIFF'S CLAIMS AGAINST MY CLIENTS BECAUSE THEY AREN'T
25 DOING ANYTHING WRONG

1 MR HOLLEMAN WHAT TIME DO WE COME BACK?

2 THE COURT 2 15 IS WHAT I TOLD THEM SO SEE Y'ALL

3 THEN

4 (WHEREUPON COURT WAS IN RECESS AT 12 33 PM)

5 THE COURT Y'ALL READY?

6 MR HOLLEMAN YES, SIR

7 THE COURT SEAN SPARACIO IS THE FOREPERSON

8 (WHEREUPON COURT'S EXHIBIT 1 WAS MARKED)

9 THE COURT ALL RIGHT YES, SIR

10 MR HOWARD COULD WE COME UP FOR ONE ITEM, YOUR

11 HONOR?

12 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE

13 RECORD)

14 THE COURT OKAY LET'S BRING 'EM

15 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2 35

16 PM)

17 THE COURT Y'ALL CAN GO AHEAD AND HAVE A SEAT ALL

18 RIGHT, MR HOLLEMAN

19 MR HOLLEMAN THANK YOU, YOUR HONOR I WOULD CALL

20 AS OUR FIRST WITNESS, ANDY BALLARD

21 ANDREW BALLARD, BEING

22 DULY SWORN TESTIFIED AS FOLLOWS

23 MADAME CLERK STATE YOUR NAME, PLEASE

24 MR BALLARD ANDREW BALLARD

25 MADAME CLERK: THANK YOU BE SEATED

1 **DIRECT EXAMINATION BY MR. HOLLEMAN**

2 Q GOOD AFTERNOON, ANDY

3 A GOOD AFTERNOON

4 Q AND IF I CAN'T HEAR YOU I'LL TELL YOU TO SPEAK UP

5 A OKAY

6 Q ANDY, WHERE DO YOU LIVE?

7 A 29 BUTLER SPRING ROAD IN GREENVILLE

8 Q AND HOW OLD ARE YOU?

9 A SIXTY-THREE

10 Q WHERE DID YOU GROW UP?

11 A IN GREENVILLE

12 Q WHERE DID YOU GO TO HIGH SCHOOL?

13 A CAROLINA HIGH SCHOOL

14 Q DO YOU HAVE ANY EDUCATION PAST HIGH SCHOOL?

15 A OH, I HAVE GOT A TWO YEAR DEGREE FROM GREENVILLE

16 TECH

17 Q WHERE DID YOU -- HOW DID YOU SPEND MOST OF YOUR
18 WORKING LIFE?

19 A I WAS IN THE TEXTILE INDUSTRY

20 Q AND WHAT KIND OF INDUSTRY?

21 A I WORKED FOR JP STEVENS, THE COMPANY, DAN RIVER
22 AND THEN I WENT INTO TEXTILE SALES

23 Q DO YOU HAVE ANY CHILDREN AND GRANDCHILDREN?

24 A I HAVE TWO DAUGHTERS AND FIVE GRANDCHILDREN

25 Q WHEN DID YOU GET INTO REAL ESTATE DEVELOPMENT?

1 A ABOUT 1999 OR 2000

2 Q AND BEFORE WE GO ANY FURTHER, DO YOU HAVE ANY OTHER
3 BUSINESSES THAT YOU'RE INVOLVED WITH OTHER THAN REAL
4 ESTATE DEVELOPMENT?

5 A YEAH I OWN MARY BETH'S RESTAURANT IN DOWNTOWN
6 GREENVILLE

7 Q AND WHERE IS IT LOCATED?

8 A 500 EAST MCBEE AVENUE

9 Q OKAY NOW LET'S TALK ABOUT REAL ESTATE DEVELOPMENT
10 WHAT DID YOU DO FIRST IN REAL ESTATE DEVELOPMENT?

11 A I WORKED WITH SOME OTHER PEOPLE, A COUPLE OF OTHER
12 GUYS THAT HAD BEEN IN REAL ESTATE DEVELOPMENT FOR A LONG
13 PERIOD OF TIME SO I COULD LEARN ABOUT THE DEVELOPMENT
14 BUSINESS

15 Q HOW DID YOU -- AS YOU KNOW, THIS LAWSUIT WE'RE
16 DEALING WITH DEALS WITH WARPATH DEVELOPMENT AND PROPOSED
17 MARINA AND HOTEL AND RECREATION AREA ON LAKE KEOWEE CAN
18 YOU TELL THE JURY HOW YOU STARTED THAT UP, HOW THAT ALL
19 CAME?

20 A THE GUYS I WAS WORKING WITH WERE DEVELOPING A MARINA
21 IN CHARLESTON THEY HAD PURCHASED THE MARINA AND WERE
22 GOING TO TAKE IT FROM AN OLD MARINA AND UPDATE IT AND
23 TAKE SOME OF THE LAND AROUND IT AND DEVELOP IT INTO
24 CONDOS, AND HOMESITES AND THAT KIND OF STUFF

25 ONE WEEKEND AFTER BEING IN CHARLESTON WORKING WITH

1 THEM FOR -- DURING THE WEEK A FRIEND OF MINE INVITED ME
2 TO GO UP TO LAKE KEOWEE TO SPEND THE WEEKEND WITH HIM I
3 WENT UP TO LAKE KEOWEE, OF COURSE, WE DID SOME BOATING IN
4 HIS BOAT AND WE WENT TO FILL UP WITH GAS AND WE WENT
5 TO THIS REAL DUMPY PLACE AND I ASKED HIM, I SAID, IS
6 THIS THE BEST MARINA, THE BEST PLACE TO GO BUY GAS, OR
7 GET SOMETHING TO DRINK OR GET SOMETHING TO EAT? AND HE
8 SAID, YEAH

9 SO FROM THAT I GOT THE IDEA, WELL, WHY DON'T WE
10 BUILD A REALLY NICE FIRST CLASS MARINA ON LAKE KEOWEE?
11 AND SO FROM THERE I STARTED TALKING WITH PEOPLE AT DUKE
12 POWER AND PICKENS COUNTY AND THAT'S REALLY HOW IT GOT
13 STARTED

14 Q OKAY AND TELL US WHAT YOU DID IN DEVELOPING THE
15 IDEA AND THE MARINA

16 A WELL, I TALKED WITH DIFFERENT PEOPLE WITH DUKE POWER
17 AND FINALLY GOT TO THE RIGHT PERSON AND HE TOLD ME THAT
18 WHEN DUKE POWER -- WHEN THE LAKE WAS ORIGINALLY BUILT THE
19 CORE AND DUKE POWER HAD SET ASIDE SOME NINE DIFFERENT
20 LOCATIONS ON THE LAKE THAT WERE TO BE RECREATION AREAS

21 SOME WERE TO BE PASSIVE RECREATION AREAS WHICH THERE
22 WOULD ONLY BE MAYBE A FEW CAMPSITES, NO COMMERCIAL STUFF
23 BUT THEY HAD SET ASIDE THREE COMMERCIAL AREAS ON THE LAKE
24 THAT COULD BE DEVELOPED INTO MARINAS AND COMMERCIAL
25 AREAS

1 DUKE HAD BASICALLY GIVEN THESE TO THE COUNTY TO
2 DECIDE HOW THEY WANTED TO USE THEM, HOW THEY WANTED TO
3 LEASE THEM AND SO AFTER TALKING WITH THE DUKE POWER GUY
4 HE SAID YOU OUGHT TO GO -- I WAS LOOKING FOR PROPERTY TO
5 BUY ON THE LAKE TO DO A PROJECT LIKE THIS HE SAID, YOU
6 OUGHT TO GO TO PICKENS COUNTY AND GET THEM TO PUT OUT AN
7 RFP, WHICH IS A REQUEST FOR PROPOSAL AND IF YOU GET THE
8 PROPOSAL, THEN YOU CAN BUILD WHAT YOU'RE TALKING ABOUT

9 SO I WENT TO PICKENS COUNTY AND THEY HAD JUST PUT
10 OUT AN RFP LIKE THIS ABOUT A YEAR BEFORE THEY REALLY
11 DIDN'T WANT TO PUT OUT ANOTHER ONE, BUT I FINALLY
12 CONVINCED THEM TO PUT OUT ANOTHER RFP

13 AND THE REASON THEY DIDN'T IS BECAUSE THEY GOT TWO
14 OR THREE PROPOSALS ONE, A GUY WANTING TO RENT THE WHOLE
15 PROPERTY AND KEEP IT ALL FOR HIMSELF AND HAVE A NICE
16 PLACE ON THE LAKE THE OTHER ONE WAS A GUY WANTED TO PUT
17 NOTHING BUT CAMPSITES ON IT AND PICKENS COUNTY THOUGHT
18 IT WOULD BE BETTER UTILIZED IF IT WERE A COMMERCIAL SITE

19 SO PICKENS COUNTY PUT OUT AN RFP I AND MY ATTORNEY
20 -- ARCHITECT CAME UP WITH THE CONCEPTUAL PLANS OF PUTTING
21 A MARINA, A HOTEL, CABINS, RESTAURANTS, DRY-STACK STORAGE
22 AND DID JUST A ROUGH CONCEPTUAL PLAN AND TURNED IT IN TO
23 PICKENS COUNTY THEIR EXECUTIVE COMMITTEE MET, LOVED IT,
24 AWARDED US THE RFP AND THEN THEY TOOK IT BEFORE THE
25 FULL CITY COUNCIL, AND THE FULL CITY ---

1 Q FULL COUNTY ---

2 A COUNTY COUNCIL, I'M SORRY TOOK IT BEFORE THE FULL
3 COUNTY COUNCIL THE COUNTY COUNCIL APPROVED IT AND SAID
4 PROCEED WITH THE PROJECT

5 AFTER THAT DUKE POWER WAS BROUGHT INTO THE
6 SITUATION DUKE POWER LOVED -- DUKE ENERGY LOVED IT, BUT
7 THEY FELT LIKE THE PROJECT WAS SO BIG THAT INSTEAD OF
8 LETTING THE COUNTY LEASE THE LAND TO ME OR TO WARPATH
9 DEVELOPMENT THAT THEY SHOULD LEASE THE LAND DIRECTLY
10 BECAUSE THEY WOULD HAVE MORE CONTROL OVER THE PROJECT AND
11 THAT THE COUNTY MIGHT NOT HAVE THE EXPERTISE OR WHATEVER
12 TO HANDLE A PROJECT OF THIS SIZE

13 SO THEY WORKED IT OUT WHERE THE COUNTY WOULD RECEIVE
14 ALL THE FUNDS THAT WE PAID IN LEASE FOR THE PROJECT AND
15 THAT DUKE POWER WOULD ACTUALLY GIVE THE LEASE TO WARPATH
16 DEVELOPMENT

17 Q ALL RIGHT NOW DID YOU ULTIMATELY SUCCESSFULLY
18 NEGOTIATE THE LEASE WITH DUKE POWER?

19 A YES WE HAD TO GO -- IT TOOK, YOU KNOW, TWO OR
20 THREE TO FOUR YEARS, I'M NOT SURE HOW LONG, BUT WE HAD TO
21 GO THROUGH FERC FERC IS THE FEDERAL ENERGY REGULATORY
22 COMMISSION FERC IS THE ONE THAT GIVES DUKE POWER THE
23 OPERATING LICENSE TO OPERATE THAT LAKE

24 SO WE HAD TO GET FERC'S APPROVAL FIRST AND THAT
25 TOOK AT LEAST THREE YEARS BUT EVENTUALLY FERC GAVE

1 THEIR APPROVAL, DUKE POWER GAVE ME A LEASE, AND WE HAD A
2 LEASE ON THE PROJECT

3 Q IF YOU WOULD LOOK, WE'VE GOT AN EXHIBIT NOTEBOOK
4 THERE FOR YOU AND OTHER WITNESSES IF YOU'D LOOK AT WHAT
5 IS UNDER TAB 2, AND IT HAS PREVIOUSLY BEEN MARKED AS
6 EXHIBIT 2, PLAINTIFF OR BALLARD'S EXHIBIT 2 IS THAT A
7 COPY OF THE LEASE BETWEEN WARPATH DEVELOPMENT, INC , AND
8 DUKE POWER?

9 A YES, IT IS

10 MR HOLLEMAN AND WE WOULD MOVE ITS ADMISSION, YOUR
11 HONOR

12 MR HOWARD NO OBJECTION

13 THE COURT ALL RIGHT

14 MR HOLLEMAN DO YOU WANT TO MARK, MADAME CLERK, DO
15 YOU WANT TO MARK THE EXHIBITS OR DO YOU WANT US TO DO
16 THAT?

17 (WHEREUPON MR HOLLEMAN WAS CONSULTING WITH THE
18 COURT REPORTER)

19 (WHEREUPON PLAINTIFF'S EXHIBIT 2 WAS MARKED AND
20 ADMITTED INTO EVIDENCE)

21 Q NOW JUST SO WE'LL KEEP OUR TIME-LINE GOING, WHAT IS
22 THE DATE OF THE LEASE?

23 A JANUARY 3RD, 2007

24 Q ALL RIGHT

25 MR HOLLEMAN JUST FOR CONVENIENCE SAKE, WE'RE ALSO

1 GOING TO PUT THEM UP ON THIS PROJECTOR SO ---

2 THE COURT OKAY

3 MR HOLLEMAN --- THE JURY CAN SEE IT

4 Q AND JUST TO ELIMINATE CONFUSION, SOME OF THESE
5 EXHIBITS HAVE A DIFFERENT DEPOSITION -- EXHIBIT NUMBER ON
6 THEM AND THAT'S BECAUSE THEY WERE USED IN DEPOSITIONS
7 BEFORE TODAY SO THAT'S WHY THAT SAYS EXHIBIT 9 BUT
8 THIS IS EXHIBIT 2 TODAY SO THAT'S THE DATE SO IT
9 WOULD BE JANUARY OF 2007, IS THAT RIGHT?

10 A YES

11 Q AND THEN IF YOU LOOK AT THE SECOND PAGE OF THE LEASE
12 AND PARAGRAPH 4 AT THE BOTTOM, IF YOU COULD JUST READ --
13 I DON'T WANT TO READ -- THAT WHOLE SENTENCE GOES ON A
14 LONG, LONG TIME BUT IF YOU'D JUST READ, SAY THE FIRST
15 THREE LINES AT THE BOTTOM OF THE PAGE FOR THE JURY

16 A PARAGRAPH 4?

17 Q WHERE IT SAYS PERMITTED USES, THE LEASED PREMISES
18 ---

19 A YEAH OH, YEAH THE LEASED PREMISES SHALL BE USED
20 BY THE LEASE FOR DEVELOPMENT, OPERATION AND MAINTENANCE
21 OF A PUBLIC PARK AND PUBLIC RECREATION AREA AS SHOWN AND
22 DESCRIBED IN THE CONCEPTUAL PLAN SUBMITTED BY LEASEE
23 WHILE ---

24 Q WHICH

25 A --- WHICH IS ATTACHED HERETO AS EXHIBIT B AND

1 INCORPORATED HEREIN BY REFERENCE AND FOR NO OTHER PURPOSE

2 UNLESS IT IS ---

3 Q AND THAT'S ALL RIGHT NOW IT CONTINUES ON, LENGTHY
4 SO I GUESS -- SO THE CONCEPTUAL PLAN THAT YOU REFERRED TO
5 EARLIER WAS ATTACHED TO THE LEASE, IS THAT CORRECT?

6 A YES

7 Q AND IT WAS MADE A PART OF THE LEASE, IS THAT
8 CORRECT?

9 A YES, IT IS

10 Q NOW WE'LL COME BACK TO THAT IN A MINUTE, BUT LET ME
11 MOVE ON FOR A MINUTE SO AT THIS POINT YOU HAVE A SIGNED
12 LEASE WITH DUKE POWER OH, AND BY THE WAY, HOW LARGE IS
13 THIS PROPERTY?

14 A IT'S ABOUT SIXTY-THREE ACRES

15 Q AND THIS IS ON LAKE KEOWEE ITSELF?

16 A YES, IT IS

17 Q AND CAN YOU TELL US ROUGHLY WHERE IT IS 'IN PICKENS
18 COUNTY GEOGRAPHICALLY?

19 A IT'S -- IF YOU GO THROUGH PICKENS ON 183 AND YOU'RE
20 GOING OUT OF PICKENS TOWARD THE NUCLEAR PLANT, BEFORE YOU
21 GET TO THE BRIDGE CROSSING OVER INTO OCONEE COUNTY IT'S
22 ABOUT TWO MILES BACK THIS SIDE OF IT

23 Q OKAY NOW SO AT THIS POINT YOU HAVE A LEASE WITH
24 DUKE POWER, YOU HAVE PICKENS COUNTY COUNCIL APPROVAL,
25 WHAT DID YOU NEED TO DO NEXT?

1 A PICKENS -- AFTER WE HAD PICKENS COUNTY'S APPROVAL?

2 Q AFTER -- RIGHT, AFTER YOU HAD THAT WHAT DID YOU NEED
3 TO DO NEXT?

4 A WELL, I HAD TO FIND INVESTORS TO COME IN TO THE
5 PROJECT AND HELP ME DEVELOP THE PROJECT

6 Q ALL RIGHT

7 MR HOLLEMAN AT THIS POINT, YOUR HONOR, WE WOULD
8 INTRODUCE WHAT'S IN OUR EXHIBIT BOOK, WHICH IS EXHIBIT 1,
9 THE STOCK PURCHASE AGREEMENT

10 MR HOWARD NO OBJECTION, YOUR HONOR

11 THE COURT ALL RIGHT WITHOUT OBJECTION

12 (WHEREUPON PLAINTIFF'S EXHIBIT 1 WAS MARKED AND
13 ADMITTED INTO EVIDENCE)

14 Q NOW, ANDY, WHAT'S BEEN MARKED AS EXHIBIT 1, IS THAT
15 THE ULTIMATE AGREEMENT YOU REACHED WITH THE DEFENDANTS
16 REGARDING THEIR PARTICIPATION WITH WARPATH DEVELOPMENT?

17 A YES

18 Q ALL RIGHT NOW BEFORE I GET TO THAT LET'S TALK FOR
19 A MINUTE WHAT IS WARPATH DEVELOPMENT, INCORPORATED?

20 A WARPATH DEVELOPMENT IS A CORPORATION THAT I FORMED
21 AND STARTED TO DEVELOP THIS PROJECT

22 Q OKAY AND WHEN YOU STARTED IT WERE YOU THE SOLE
23 SHAREHOLDER?

24 A YES

25 Q OKAY NOW TELL US HOW YOU MET THE DEFENDANTS

1 A I TALKED WITH A NUMBER OF DIFFERENT GROUPS ABOUT
2 DEVELOPING THIS PROJECT AND THERE WAS SOME GUYS OVER ON
3 THE LAKE THAT HAD PROPERTY THEY WERE DOING A
4 DEVELOPMENT CLOSE TO THIS PROJECT

5 I INTRODUCED MYSELF TO THEM AND TOLD THEM THAT, YOU
6 KNOW, I WAS GOING TO START LOOKING FOR INVESTORS TO COME
7 IN AND HELP ME DEVELOP THIS PROJECT THEY INDICATED THAT
8 THEY MIGHT KNOW SOME PEOPLE THAT COULD DO THAT AND FROM
9 THERE THEY SET UP A MEETING WITH ROBERSON AND THE
10 THOENNESES FOR ME TO DISCUSS THE PROJECT WITH THEM

11 Q NOW IN THE END, I GUESS, YOU WERE ABLE TO DO AN
12 ARRANGEMENT WITH THEM, ENTER INTO A CONTRACT, IS THAT
13 RIGHT?

14 A EVENTUALLY WE ENTERED INTO AN AGREEMENT, YES

15 Q AND THERE WERE NEGOTIATIONS THAT PRECEDED THAT,
16 CORRECT?

17 A YES

18 Q WERE THEY FREE TO WALK AWAY FROM THOSE NEGOTIATIONS
19 IF THEY DIDN'T WANT TO ENTER INTO THIS CONTRACT?

20 A YEAH THE FIRST TIME WE TALKED THEY SAID THEY
21 REALLY WEREN'T INTERESTED AND THEN I DON'T KNOW HOW WE
22 GOT BACK TOGETHER, BUT LATER ON WE WERE BACK TOGETHER
23 AGAIN AND STARTED DISCUSSING THE PROJECT AGAIN AND
24 THAT'S WHEN WE CAME TO THIS AGREEMENT

25 MR HOLLEMAN AT THIS POINT, YOUR HONOR, I WOULD

1 MOVE FOR INTRODUCTION WHAT WE'VE PREVIOUSLY MARKED AS
2 EXHIBIT 14, WHICH IS AN EMAIL FROM TIM ROBERSON TO ANDY
3 BALLARD DATED APRIL 4TH, 2007

4 MR HOWARD NO OBJECTION, YOUR HONOR

5 THE COURT OKAY

6 (WHEREUPON PLAINTIFF'S EXHIBIT 14 WAS MARKED AND
7 ADMITTED INTO EVIDENCE)

8 Q NOW, ANDY, IF YOU COULD TURN TO EXHIBIT 14 IN YOUR
9 NOTEBOOK AND THAT EMAIL IS DATED BEFORE THE DATE OF THE
10 EVENTUAL AGREEMENT, IS THAT CORRECT?

11 A YES, IT IS

12 Q OKAY AND IS THAT THE EMAIL BY WHICH THEY TURNED
13 DOWN THE INVESTMENT IN THE BEGINNING BEFORE YOU REACHED
14 ---

15 A I'M ASSUMING SO, YES

16 Q JUST READ OUT THE FIRST PARAGRAPH OF WHAT MR
17 ROBERSON WROTE TO YOU

18 A ON BEHALF OF THE THOENNESES AND MYSELF I WANT TO
19 THANK YOU FOR YOUR -- FOR THE CONSIDERATION AND YOUR TIME
20 YOU HAVE TAKEN WITH -- REGARDING THE OPPORTUNITY OF
21 WARPATH LANDING

22 YOU HAVE DONE A WONDERFUL JOB WITH SECURING A STRONG
23 LEASE FOR THIS PROPOSED PROJECT IT'S OBVIOUS THAT FOR
24 AT -- LAST FEW YEARS YOU HAVE POURED YOURSELF INTO
25 TURNING YOUR VISION INTO A FEASIBLE BUSINESS VENTURE

1 AND WE ALL WISH YOU WELL AND LOOK FORWARD TO YOUR
2 SUCCESS

3 Q ALL RIGHT THEN IF YOU'D LOOK AT THE SECOND
4 PARAGRAPH OF THE -- OF THAT LATTER -- WHEN YOU LOOK AT
5 THE LAST SENTENCE THAT BEGINS OUR PROPOSAL, WHAT WERE
6 THE, AS THEY SAY, UNKNOWNNS THAT THEY WERE TAKING INTO
7 ACCOUNT AS THEY EVALUATED THIS PROPOSAL?

8 A THESE THINGS THAT THEY LISTED BECAUSE ---

9 Q YES, WHAT DID THEY LIST?

10 A THEY LIST YOU SHOULD BE GUARANTEED THE FIRST MILLION
11 DOLLARS OF PROFIT ---

12 Q NO, I GUESS -- IT SAYS OUR PROPOSAL WAS STRUCTURE,
13 ---

14 A OH

15 Q YOU SEE THAT SENTENCE?

16 A OKAY

17 Q WHAT ARE THE UNKNOWNNS THEY LIST?

18 A OUR PROPOSAL WAS STRUCTURED AS TO ALLOW THE
19 UNKNOWNNS, THE TIMING OF THE REVENUE NUMBERS, THE UNKNOWN
20 COSTS, EQUITY SHARING AND QUALITY OF CAPITAL -- QUANTITY
21 OF CAPITAL REQUIRED AND THE VARIOUS SKILL SETS NECESSARY
22 TO COMPLETE THE PROJECT

23 Q OKAY NOW ULTIMATELY YOU ALL ENTERED INTO THE
24 AGREEMENT THAT HAS BEEN MARKED AS EXHIBIT 1, BUT BEFORE
25 THAT DID THE DEFENDANTS HAVE AN OPPORTUNITY TO TALK WITH

1 DUKE POWER?

2 A YES BACK AT THAT TIME THE DROUGHT WAS VERY BAD
3 AND DUKE POWER PEOPLE WERE JUST SCRAMBLING SO WE NEVER
4 COULD SET UP A MEETING SO WE EVENTUALLY SET UP A
5 TELEPHONE CONFERENCE WITH DUKE POWER

6 Q AND WHO PARTICIPATED IN THAT CONFERENCE?

7 A IF I'M NOT MISTAKEN WE WERE ALL THERE, MR ROBERSON,
8 MR THOENNES, MYSELF AND I'M NOT SURE IF RICK, III, WAS
9 THERE OR NOT

10 Q WERE THERE PEOPLE FROM -- OFFICIALS FROM DUKE POWER
11 ON THE OTHER -- ON THE LINE?

12 A YES

13 Q AT THIS TIME DID THE DEFENDANTS HAVE THE DUKE POWER
14 LEASE FOR THEIR REVIEW AND CONSIDERATION?

15 A YES

16 Q AND DO YOU REMEMBER WHAT WAS DISCUSSED DURING THE
17 CONFERENCE CALL?

18 A NOT -- I REALLY DON'T REMEMBER EVERYTHING THAT WAS
19 DISCUSSED THE MAIN THING IS THEY WANTED TO KNOW IF I
20 DEFINITELY HAD THE LEASE, IF DUKE POWER WAS BEHIND THE
21 PROJECT, THOSE SORTS OF QUESTIONS

22 Q DID THEY HAVE AN OPPORTUNITY TO ASK DUKE POWER ANY
23 QUESTION THEY WANTED TO ASK THEM?

24 A AS FAR AS I KNOW THEY DID

25 Q NOW DID YOU -- WAS THERE ALSO A MEETING WITH PICKENS

1 COUNTY BEFORE THEY SIGNED -- BEFORE THEY SIGNED THE
2 CONTRACT OR THE STOCK PURCHASE AGREEMENT?

3 A YES THEY MET WITH THE PICKENS COUNTY EXECUTIVE,
4 THE ADMINISTRATOR MR THOENNES AND I WENT OVER TO MEET
5 WITH HIM HE ASSURED MR THOENNES THAT PICKENS COUNTY
6 WAS ONE HUNDRED PERCENT BEHIND THE PROJECT, COUNTY
7 COUNCIL HAD ALREADY APPROVED IT AND THAT HE WOULD DO
8 ANYTHING WITHIN HIS POWER TO HELP US EXPEDITE THE
9 PROJECT

10 Q WHO WAS IN THE MEETING OTHER THAN YOU AND MR
11 THOENNES AND THE PICKENS COUNTY ADMINISTRATOR?

12 A I BELIEVE THAT WE WERE THE ONLY TWO THAT WENT THAT
13 DAY

14 Q WAS THERE ANYONE ELSE FROM PICKENS COUNTY THERE, DO
15 YOU REMEMBER, OTHER THAN THE ADMINISTRATOR?

16 A NOT AT THAT PARTICULAR MEETING, NO

17 Q DO YOU KNOW IF THERE WERE OTHER MEETINGS WITH
18 PICKENS COUNTY?

19 A WE DID HAVE OTHER MEETINGS WITH PICKENS COUNTY WE
20 MET WITH PICKENS COUNTY AFTER THE ORIGINAL

21 Q LET ME ASK YOU THIS WERE THERE MEETINGS BEFORE THE
22 AGREEMENT WAS SIGNED? DO YOU REMEMBER ANY ---

23 A OH, I DON'T REMEMBER ANY MORE MEETINGS BEFORE THE
24 AGREEMENT WAS SIGNED, NO

25 Q NOW LET'S LOOK OVER THE AGREEMENT, EXHIBIT 1, AGAIN,

1 IF WE COULD CALL THAT BACK AND LET'S LOOK AT IT LET'S
2 START WITH PARAGRAPH 1 AND COULD -- LET'S JUST LOOK AT
3 PARAGRAPH 1 THERE IN THE GROUP OF ---

4 MR HOLLEMAN AND, YOUR HONOR, I THINK AT THIS
5 POINT I WOULD JUST PUBLISH THAT TO THE JURY IF THAT'S
6 OKAY

7 THE COURT ANY OBJECTION TO THAT?

8 MR HOWARD NO OBJECTION, YOUR HONOR

9 THE COURT OKAY

10 Q THE GROUP OF ROBERSON, THOENNES AND THOENNES, III,
11 WILL PAY BALLARD UPON CLOSING THE SUM OF ONE MILLION
12 DOLLARS IN EXCHANGE FOR TWENTY THOUSAND SHARES OF
13 BALLARD'S FORTY THOUSAND SHARES AND WILL RECEIVE FROM THE
14 CORPORATION ADDITIONAL SHARES SO THAT BALLARD WILL HOLD
15 TWENTY PERCENT OF THE STOCK AND THE OTHER EIGHTY PERCENT
16 WILL BE HELD BY ROBERSON, THOENNES AND THOENNES, III,
17 WHEN ALL SHARES ARE FINALLY ISSUED

18 WHEN THE NEW STOCK IS ISSUED THE FINAL HOLDINGS WILL
19 BE AS FOLLOWS, THEN THEY'RE LAID OUT THERE ANDY, WHAT
20 DO THOSE NUMBERS ADD UP TO IN TERMS OF TOTAL NUMBERS OF
21 SHARES OUTSTANDING?

22 A A HUNDRED THOUSAND SHARES

23 Q AND WHERE DID THAT NUMBER, A HUNDRED THOUSAND
24 SHARES, COME FROM?

25 A THAT'S WHAT I SET THE CORPORATION UP FOR

1 Q OKAY

2 MR HOLLEMAN AT THIS POINT, YOUR HONOR, WE WOULD
3 INTRODUCE PARAGRAPH, I'M SORRY, WHAT'S PREVIOUSLY BEEN
4 MARKED EXHIBIT 3, THAT'S THE ARTICLES OF INCORPORATION,
5 WARPATH DEVELOPMENT

6 MR HOWARD NO OBJECTION, YOUR HONOR

7 THE COURT WITHOUT OBJECTION

8 (WHEREUPON PLAINTIFF'S EXHIBIT 3 WAS MARKED AND
9 ADMITTED INTO EVIDENCE)

10 Q NOW, ANDY, IF YOU COULD -- AGAIN, THIS IS THE
11 DOCUMENT FROM THE SECRETARY OF STATE -- STATE OF SOUTH
12 CAROLINA, WHICH ESTABLISHES A CORPORATION AND I GUESS
13 THAT'S YOUR SIGNATURE AT THE TOP OF THE PAGE, IS THAT
14 RIGHT?

15 A YES, IT IS

16 Q AND IF YOU LOOK AT 3A, THE BOX IS CHECKED, AND IT
17 SAYS THE CORPORATION IS AUTHORIZED TO ISSUE SHARES OF
18 STOCK AS FOLLOWS, A OR B AND A IS CHECKED THE
19 CORPORATION IS AUTHORIZED TO ISSUE A SINGLE CLASS OF
20 SHARES THE TOTAL NUMBER OF SHARES AUTHORIZED IS A
21 HUNDRED THOUSAND, IS THAT RIGHT?

22 A THAT'S CORRECT

23 Q AND THAT IS WHAT SHOWS UP IN YOUR AGREEMENT, THE
24 SHAREHOLDER AGREEMENT, IS THAT RIGHT?

25 A THAT'S CORRECT

1 Q OKAY NOW HAS THE -- HAVE THE ARTICLES OF
2 INCORPORATION OF WARPATH DEVELOPMENT, TO YOUR KNOWLEDGE
3 AS OF TODAY, HAVE THEY EVER BEEN AMENDED TO CHANGE THAT
4 NUMBER?

5 A NOT TO MY KNOWLEDGE

6 Q ALL RIGHT LET'S LOOK AT YOUR PERCENTAGE OWNERSHIP
7 AFTER ALL WAS SAID AND DONE WHAT PERCENTAGE WAS YOUR
8 FINAL HOLDING TO BE UNDER THE AGREEMENT THAT IS EXHIBIT 1
9 IN PARAGRAPH 1?

10 A TWENTY PERCENT

11 Q NOW WHO ACTUALLY DRAFTED THIS AGREEMENT?

12 A JIM FARNSWORTH, THEIR ATTORNEY

13 Q JIM FAYSSOUX?

14 A FAYSSOUX, I'M SORRY FAYSSOUX, THEIR ATTORNEY

15 Q AND WHOSE ATTORNEY WAS HE?

16 A HE WAS THEIR -- HE REPRESENTED THEM

17 Q OKAY AND IS THERE ANY PROVISION IN THIS AGREEMENT
18 THAT ALLOWS FOR THE ISSUANCE OF ADDITIONAL STOCK?

19 A NO

20 Q IS THERE ANYTHING IN THIS AGREEMENT THAT ALLOWS FOR
21 YOUR PERCENTAGE OWNERSHIP OF TWENTY PERCENT TO BE
22 REDUCED?

23 A NO

24 Q LET'S LOOK AT PARAGRAPH 6 OF THE AGREEMENT UNDER
25 THE AGREEMENT HOW WAS THE PROJECT TO BE FINANCED?

1 A ROBERSON WAS TO PROVIDE THE NECESSARY CAPITAL TO
2 OBTAIN LONG-TERM FINANCING ON THE PROJECT

3 Q OKAY NOW DOES THE AGREEMENT CONTAIN ANY LIMITATION
4 ON HIS OBLIGATION TO PROVIDE THE NECESSARY CAPITAL?

5 A NO, SIR

6 Q DOES IT CONTAIN A TWENTY PERCENT LIMIT, OR A THIRTY
7 PERCENT LIMIT OR A FORTY PERCENT LIMIT?

8 A NO, SIR

9 Q NOW BEFORE YOU ALL ENTERED INTO THIS AGREEMENT DID
10 YOU HAVE ANY DISCUSSIONS WITH HIM ABOUT HOW MUCH CAPITAL
11 MIGHT HAVE TO BE PUT UP FOR THIS PROJECT?

12 A EVERY GROUP THAT I TALKED TO ABOUT THIS PROJECT --
13 THE ONE NEGATIVE OF THIS PROJECT WAS WHEN YOU BUILD A
14 PROJECT ON LEASED PROPERTY IT REQUIRES MORE CAPITAL
15 UPFRONT, WHICH WAS MORE MONEY UPFRONT AND EVERY GROUP
16 THAT I TALKED TO I WAS TOLD THIS, ---

17 Q NOW WHAT ---

18 A --- TOLD THIS TO

19 Q AND DID YOU TELL MR ROBERSON THAT?

20 A YES

21 Q AND DID YOU DISCUSS ANY PERCENTAGES OR APPROXIMATE
22 PERCENTAGES THAT MIGHT BE REQUIRED?

23 A I DON'T KNOW IF I SPECIFICALLY TALKED WITH HIM ABOUT
24 PERCENTAGES, BUT I TOLD EVERYBODY, AND I PROBABLY TOLD
25 HIM THAT MOST OF THE TIME IT REQUIRED A THIRTY-FIVE TO

1 FORTY TO FIFTY PERCENT INITIAL INVESTMENT UPFRONT

2 Q BECAUSE IT WAS LEASED PROPERTY?

3 A BECAUSE IT'S ON LEASED PROPERTY

4 Q OKAY NOW DOES THAT PARAGRAPH 6 OR ANY OTHER

5 PARAGRAPH PROVIDE THAT ADDITIONAL STOCK CAN BE ISSUED BY

6 THE CORPORATION IN ORDER TO RAISE CAPITAL?

7 A NO, IT DOES NOT

8 Q NOW IF YOU'LL LOOK AT PARAGRAPH 7 OF THE AGREEMENT

9 WAS THERE AN ADDITIONAL PROTECTION FOR YOU IN TERMS OF

10 PROTECTING YOUR INVESTMENT AND WHAT FINANCIAL OBLIGATIONS

11 YOU HAD TO UNDERTAKE?

12 A YES I WAS NOT TO BE REQUIRED TO SIGN ANY PERSONAL

13 GUARANTEES TO OBTAIN THE FINANCING

14 Q OKAY NOW TO YOUR KNOWLEDGE YOU NOW ARE A DIRECTOR

15 OF WARPATH, IS THAT RIGHT?

16 A YES, I AM

17 Q AND THE OFFICERS, THAT IS THE DEFENDANTS WHO ARE THE

18 OFFICERS AND THE OTHER DIRECTORS, HAVE THEY INFORMED YOU

19 THAT FINANCING HAS BEEN OBTAINED FOR THIS PROJECT?

20 A ABSOLUTELY NOT

21 Q AND TO YOUR KNOWLEDGE HAS MR ROBERSON YET PROVIDED

22 THE NECESSARY CAPITAL TO OBTAIN LONG-TERM FINANCING?

23 A NOT THAT I KNOW OF

24 Q AND NOW UNDER THIS AGREEMENT LET'S LOOK AT PARAGRAPH

25 5 THE THOENNESES, MR THOENNES AND HIS SON ALSO

1 RECEIVED STOCK UNDER THIS CONTRACT WHAT -- AND THEY
2 DIDN'T CONTRIBUTE MONEY AS I UNDERSTAND IT WHAT DID
3 THEY CONTRIBUTE TO THE -- UNDER THE AGREEMENT IN ORDER TO
4 RECEIVE STOCK?

5 A AN AGREEMENT WITH WARPATH DEFINING THEIR DUTIES
6 INCLUDING BUT NOT LIMITED TO DEVELOPMENT WORK, EXECUTION
7 OF LOAN DOCUMENTS, ASSIST WITH PROFORMAS, ASSISTING WITH
8 OBTAINING PERMANENT FINANCING AND OTHER SERVICES AS MAY
9 BE APPROPRIATE

10 Q OKAY NOW TO YOUR KNOWLEDGE HAVE THE THOENNESES
11 ASSISTED WITH FINANCING? WELL, TO YOUR KNOWLEDGE HAVE
12 THEY EVER ARRANGED FINANCING FOR THIS PROJECT?

13 A NOT TO MY KNOWLEDGE

14 Q AND DO YOU BELIEVE -- ARE THEY CAPABLE OF CARRYING
15 THROUGH WITH THIS PARAGRAPH 5, THEIR OBLIGATION?

16 MR HOWARD OBJECTION, YOUR HONOR THAT CALLS FOR
17 SPECULATION HE DOESN'T HAVE THAT KNOWLEDGE

18 THE COURT WELL, HE CAN ASK WHAT HIS STATE OF MIND
19 IS, WHETHER OR NOT THAT'S -- BUT DON'T GET HIM

20 SPECULATING, MR HOLLEMAN

21 MR HOLLEMAN OKAY

22 Q WHAT KNOWLEDGE DO YOU HAVE ABOUT THE THOENNESES'
23 CURRENT ABILITY TO PERFORM THESE DUTIES?

24 A I DON'T THINK THEY HAVE THE ABILITY TO DO IT RIGHT
25 NOW

1 Q AND WHY NOT?

2 A JUST FROM WHAT I'VE BEEN TOLD ABOUT THEIR FINANCIAL
3 SITUATION

4 MR HOWARD OBJECTION, YOUR HONOR HEARSAY

5 MR HOLLEMAN WELL, NO, IT'S NOT HEARSAY THEY
6 SAID IT UNDER OATH IN THEIR DEPOSITION, AND HE HEARD IT
7 THE COURT OKAY

8 MR HOLLEMAN THAT'S NOT HEARSAY

9 THE COURT ALL RIGHT WELL, ASK HIM SPECIFICALLY
10 ABOUT THAT

11 Q WHAT HAVE THE THOENNESES SAID UNDER OATH IN THEIR
12 DEPOSITION IN YOUR PRESENCE ABOUT THEIR CURRENT FINANCIAL
13 SITUATION AND THE STATUS OF THEIR COMPANIES?

14 MR HOWARD OBJECTION, YOUR HONOR RELEVANCE, RULE
15 403

16 THE COURT: OKAY OVERRULED

17 MR HOWARD THIS GOES INTO THAT ---

18 THE COURT I'M GOING TO ALLOW HIM TO ANSWER IT

19 Q GO AHEAD ALL RIGHT TELL ME WHAT -- YOU SAT
20 THROUGH THE DEPOSITIONS OF MR THOENNES AND HIS SON, RICK
21 THOENNES, III WHAT DID THEY SAY IN THEIR DEPOSITIONS
22 ABOUT THE STATUS OF THEIR COMPANIES' FINANCIAL SITUATION,
23 AND BUSINESS SITUATION AND THEIR FINANCIAL SITUATION?

24 A WELL, THEY HAD A CONFESSION JUDGMENT THAT THEY HAD
25 SIGNED AND THEY EVIDENTLY HAD SHUT ONE COMPANY DOWN AND

1 STARTED ANOTHER COMPANY THEY WERE IN A PENDING SUIT
2 WITH A HOME THAT THEY'D BUILT FOR A PERSON AND I THINK
3 AT THE TIME THEY HAD A TAX PROBLEM WITH A PIECE OF
4 PROPERTY THAT ONE OF THEM OWNED INDIVIDUALLY

5 Q AND WHAT ABOUT JUDGMENTS, HAD ANY JUDGMENTS BEEN
6 ENTERED AGAINST THEM FOR NOT PAYING THEIR BILLS?

7 A YEAH, THEY HAD A NUMBER OF JUDGMENTS WHICH THEY OWED
8 DIFFERENT COMPANIES MONEY, MONIES FOR DIFFERENT PRODUCTS
9 THAT THEY'D PURCHASED FROM THEM

10 Q DO YOU REMEMBER THE SIZE OF THE CONFESSION OF
11 JUDGMENT?

12 MR HOWARD OBJECTION, YOUR HONOR HE HAD ASKED
13 HIM WHAT HIS MEMORY OF THIS WAS AND NOW ---

14 Q DO YOU REMEMBER WHAT MR -- THE SIZE OF THE
15 CONFESSION OF JUDGMENT THAT MR THOENNES ---

16 THE COURT WELL, I'M GOING TO SUSTAIN THAT THAT'S
17 -- I DON'T THINK THAT'S NECESSARY FOR, I MEAN, HE'S
18 TALKING ABOUT HIS STATE OF MIND WITH RESPECT TO THEIR
19 ABILITY TO CARRY THROUGH AND I THINK THAT WENT UNDER
20 403 I'LL SUSTAIN THAT

21 Q DO YOU REMEMBER WHETHER THEY CONSULTED A BANKRUPTCY
22 ATTORNEY?

23 A THEY SAID THEY HAD

24 MR HOWARD OBJECTION, YOUR HONOR THIS IS STILL
25 CONTINUING -- HE WAS ---

1 THE COURT WELL, ---

2 MR HOWARD --- SUPPOSED TO GIVE THIS INFORMATION
3 THAT HE HAD MEMORY OF

4 THE COURT: OKAY I'M GOING TO OVERRULE THAT BUT
5 I THINK WE'VE GOT THE FLAVOR, MR HOLLEMAN

6 MR HOLLEMAN OKAY

7 Q NOW MR HOWARD RAISED ISSUES ABOUT PERMITS ISSUE
8 LET'S LOOK AT THE AGREEMENT TO SEE SPECIFICALLY WHAT THE
9 AGREEMENT SAYS ABOUT PERMITTING HERE FIRST OF ALL, WERE
10 THE DEFENDANTS AWARE THAT THE PERMIT -- FINAL PERMITS HAD
11 NOT BEEN OBTAINED FOR THIS PROJECT?

12 A ABSOLUTELY

13 Q ALL RIGHT LET'S LOOK AT PARAGRAPH 3 AND IF YOU
14 COULD JUST READ THE LAST SENTENCE OF PARAGRAPH 3 OF THE
15 AGREEMENT

16 A FINAL PERMITS MUST BE OBTAINED TO MOVE FORWARD

17 Q ALL RIGHT THEN LET'S LOOK AT PARAGRAPH 4 OF THE
18 AGREEMENT

19 A BALLARD AGREES TO EXECUTE A SEPARATE AGREEMENT WITH
20 WARPATH ---

21 Q IF YOU COULD, LET'S JUST -- INSTEAD OF READING
22 THROUGH THAT WHOLE THING, IT'S LONG, LOOK AT THE LAST
23 SENTENCE THAT SAYS IF BALLARD IS UNABLE

24 A IF BALLARD IS UNABLE TO OBTAIN MARINA AND DOCK
25 PERMITS PER THE CONCEPTUAL PLANS THE ONE MILLION DOLLAR

1 PAYMENT WILL BE REFUNDED TWO HUNDRED AND FIFTY THOUSAND
2 WILL BE REFUNDED WITHIN NINETY DAYS AND THE BALANCE
3 WITHIN SIX MONTHS AFTER IT IS DETERMINED THAT PERMITS
4 CANNOT BE OBTAINED

5 Q ALL RIGHT NOW DO YOU, ANDY BALLARD, ISSUE PERMITS?

6 A NO

7 Q WHO ISSUES THIS FINAL PERMIT THAT'S AT ISSUE?

8 A WELL, DHEC HAS TO ISSUE THE FINAL PERMIT

9 Q AND DHEC IS THE SOUTH CAROLINA DEPARTMENT OF HEALTH
10 AND ENVIRONMENTAL CONTROL, IS THAT RIGHT?

11 A THAT'S RIGHT

12 Q NOW DO YOU CONTROL WHAT THEY DO OR THE TIMING UNDER
13 WHICH THEY OPERATE?

14 A NO, I DO NOT

15 Q DO YOU KNOW HAS THE PERMIT ACTUALLY OR HAVE THEY
16 ISSUED A NOTICE OF INTENT TO ISSUE THIS PERMIT?

17 A YES, THEY HAVE

18 Q OR A NOTICE OF THEIR DECISION?

19 A YES, THEY HAVE

20 MR HOLLEMAN AT THIS POINT WE WOULD INTRODUCE
21 EXHIBIT 26

22 MR HOWARD NO OBJECTION, YOUR HONOR

23 THE COURT OKAY

24 (WHEREUPON PLAINTIFF'S EXHIBIT 26 WAS MARKED AND
25 ADMITTED INTO EVIDENCE)

1 Q NOW IF YOU COULD LOOK AT EXHIBIT 26 THAT'S DATED
2 FEBRUARY 26 OF THIS YEAR, IS THAT CORRECT?

3 A YES

4 Q AND IT'S ADDRESSED TO WARPATH DEVELOPMENT, INC ,
5 CORRECT?

6 A THAT'S CORRECT

7 Q NOW YOU SUPPOSEDLY HAVE BEEN ELECTED A DIRECTOR OF
8 WARPATH, CORRECT?

9 A THAT'S CORRECT

10 Q HAVE THE DEFENDANTS, YOUR OFFICERS OF THE COMPANY,
11 DID THEY INFORM YOU OF THIS DHEC DECISION?

12 A NO, THEY DID NOT

13 Q IS THIS AN IMPORTANT DECISION FOR THE CORPORATION?

14 A I THINK IT'S PRETTY IMPORTANT

15 Q AND WHY, IF YOU COULD EXPLAIN TO THE JURY?

16 A WELL, DUKE WILL NOT GIVE US THE OKAY TO START UNTIL
17 THIS PERMIT IS ISSUED AND ONCE THIS PERMIT IS ISSUED,
18 THEN THE NEXT STEP IS SITTING DOWN WITH DUKE POWER AND
19 DUKE ENERGY AND DISCUSSING HOW THE FINANCIAL PLAN WILL BE
20 -- HOW THE FINANCES WILL BE HANDLED

21 Q SO AS A DIRECTOR OF THE COMPANY HAVE YOU BEEN GIVEN
22 ANY UPDATE ON THE STATUS OF THIS PERMIT?

23 A NO

24 Q HOW DID YOU FIND OUT ABOUT IT?

25 A DUKE POWER HAS KEPT ME INFORMED

1 Q NOW MR HOWARD STATED IN HIS OPENING THAT YOU
2 HAVEN'T DONE ANYTHING WITH RESPECT TO THIS PROJECT SINCE
3 YOU SIGNED THIS AGREEMENT HAVE YOU DONE ANY WORK ON
4 THESE PERMITS?

5 A ABSOLUTELY

6 Q AND WHAT HAVE YOU BEEN DOING?

7 A THIS WAS HELD UP IN DNR BEFORE IT WENT TO DHEC AND
8 ---

9 Q NOW DNR IS WHAT?

10 A DEPARTMENT OF NATURAL RESOURCES

11 Q OF THE STATE OF SOUTH CAROLINA?

12 A THE STATE OF SOUTH CAROLINA

13 Q GO AHEAD

14 A I CALLED -- MADE A FEW PHONE CALLS TO A CONGRESSMAN,
15 AND WE GOT THAT OUT OF THERE AND THEN THIS IS -- WHEN
16 IT GOT INTO DHEC, DHEC'S JUST BEEN SITTING ON IT ALSO
17 I HAD TALKED WITH SOME PEOPLE, TALKED WITH DUKE
18 POWER DUKE POWER, THEIR ENGINEERS ASKED ME TO HOLD OFF
19 JUST A LITTLE WHILE UNTIL THEY HAD A CHANCE TO MAKE SURE
20 THAT DHEC UNDERSTOOD THE PROJECT TOTALLY

21 AND I DID THAT, AND HELD OFF UNTIL DUKE POWER TOLD
22 ME THAT THEY HAD EVERYTHING THAT THEY COULD POSSIBLY NEED
23 TO APPROVE OR DISAPPROVE THIS PROJECT AND THEN I MADE
24 ANOTHER PHONE CALL, AND THIS WAS ISSUED TWO DAYS LATER

25 Q NOW FOR SOME PERIOD BETWEEN, I GUESS, '08 AND '10

1 YOU WERE NOT A DIRECTOR, CORRECT, OF THE COMPANY?

2 A I WASN'T A DIRECTOR THEY DIDN'T GIVE ME ANY
3 INFORMATION WHATSOEVER

4 Q OKAY SO DURING THAT TIME YOU DIDN'T KNOW FROM THEM
5 WHAT WAS GOING ON WITH THE PERMIT?

6 A NO

7 Q NOW THE OTHER QUESTION THAT HAS BEEN RAISED IS THIS
8 ISSUE OF HOW MANY DOCKS DUKE POWER WILL ALLOW SO LET'S
9 GO BACK TO THE AGREEMENT FIRST, LET'S START WITH THE
10 AGREEMENT, EXHIBIT 1 AND JUST IN GENERAL IS THERE ANY
11 PROVISION IN THERE IN WHICH YOU GUARANTEE THE NUMBER OF
12 BOAT SLIPS THAT DUKE POWER WILL ALLOW IN THE MARINA?

13 A NO, THERE'S NOT

14 Q THEN IF YOU LOOK AT PARAGRAPH 3, WHICH IS ON PAGE 2
15 OF THE AGREEMENT, IT SAYS YOU, BALLARD, WARRANTS AND
16 REPRESENTS THAT HE HOLDS A LEASE WITH DUKE POWER AND THE
17 NECESSARY APPROVALS FROM DUKE POWER AND PICKENS COUNTY IN
18 ORDER TO BUILD A DEVELOPMENT PER THE CONCEPTUAL PLANS FOR
19 WARPATH LANDING, IS THAT CORRECT?

20 A THAT'S CORRECT

21 Q NOW THOSE -- THAT CONCEPTUAL PLAN, THOSE CONCEPTUAL
22 PLANS WERE INCORPORATED IN THE DUKE POWER LEASE, IS THAT
23 RIGHT?

24 A THAT'S CORRECT

25 Q AND THE DEFENDANTS HAD THAT LEASE BEFORE THEY SIGNED

1 THIS AGREEMENT, IS THAT RIGHT?

2 A THAT'S CORRECT

3 Q WELL, LET'S GO BACK TO THE -- LET'S GO TO THE LEASE

4 THEN TO SEE WHAT THE LEASE SAYS AND IF WE COULD START

5 AT PAGE 20 IF YOU COULD, IT'S GOING TO BE HARD FOR YOU,

6 BUT GO TO EXHIBIT 2, WHICH IS ALREADY IN EVIDENCE, AND GO

7 TO THE BACK OF THE CONCEPTUAL PLAN LET'S START AT PAGE

8 23 AND, ANDY, A COPY IS IN FRONT OF YOU -- IT ALSO HAS

9 STAMPED ON THERE APB121

10 A YEAH

11 Q ALL RIGHT AND IF YOU SEE THERE'S A REFERENCE TO

12 BOAT SLIPS HOW MANY BOAT SLIPS DOES THE CONCEPTUAL PLAN

13 AND THE LEASE SAY THERE WILL BE?

14 A ONE HUNDRED TO TWO HUNDRED

15 Q ONE HUNDRED TO TWO HUNDRED NOW DOES IT SAY THERE,

16 SINCE THIS IS AN ISSUE, DOES IT SAY THERE WE GUARANTEE

17 TWO HUNDRED?

18 A NO

19 Q NOW WHY DID -- WHY WAS THE NUMBER TWO HUNDRED IN

20 THIS CONCEPTUAL PLAN?

21 A THE REASON THE NUMBER TWO HUNDRED WAS IN THE

22 CONCEPTUAL PLAN IS BECAUSE DUKE POWER INFORMED ME THAT I

23 SHOULD ASK FOR THE MAXIMUM OF EVERYTHING GOING IN

24 UPFRONT TWO HUNDRED IS THE MAXIMUM NUMBER OF BOAT SLIPS

25 YOU CAN HAVE IN A COMMERCIAL MARINA ON THE LAKE

1 Q AND DID YOU TELL MR ROBERSON THAT BEFORE HE SIGNED
2 THIS AGREEMENT?

3 A YES

4 Q AND HE KNEW THAT?

5 A YES

6 Q NOW WAS THIS THE ONLY CONTINGENCY IN WHICH YOU WENT
7 FOR THE MAXIMUM?

8 A NO WE WENT FOR THE MAXIMUM IN EVERYTHING WE WENT
9 FOR THE MAXIMUM IN DRY-STACK BOAT SLIPS WE'D SET TWO
10 HUNDRED -- ONE HUNDRED TO TWO HUNDRED

11 Q ALL RIGHT WELL, LET'S LOOK AT THAT REAL QUICK ON
12 THE SAME PAGE

13 A WE'VE GOT TWO HUNDRED THERE

14 Q WAIT JUST A MINUTE LET'S LOOK AT -- ALL RIGHT SO
15 THE DRY BOAT STORAGE SAYS ONE HUNDRED TO TWO HUNDRED, IS
16 THAT RIGHT?

17 A RIGHT

18 Q IN THE END HOW MANY DRY BOATS -- STORAGE BOATS DID
19 YOU GET?

20 A TWO HUNDRED

21 Q ALL RIGHT AND THEN WHAT ABOUT THE HOTEL?

22 A THE HOTEL WAS A HUNDRED, I MEAN, SIXTY ROOMS TO A
23 HUNDRED AND TWENTY ROOMS AND WE GOT A HUNDRED AND
24 TWENTY ROOMS

25 Q SO YOU ENDED UP GETTING THE MAXIMUM FROM DUKE POWER

1 ON THAT?

2 A YES

3 Q ALL RIGHT THEN LET'S LOOK BACK TO ONE OTHER PLACE
4 IN THE AGREEMENT AND THAT IS PAGE 16 OF THE AGREEMENT
5 UNDER BOAT SLIPS, IF YOU'LL LOOK AT THE LAST TWO LINES
6 THAT'S ANOTHER REFERENCE TO BOAT SLIPS AGAIN, THAT'S
7 THE OTHER REFERENCE IN THE AGREEMENT TO WET BOAT SLIPS,
8 IS THAT CORRECT?

9 A THAT'S CORRECT

10 Q AND THERE'S ONE HUNDRED TO TWO HUNDRED AGAIN, IS
11 THAT RIGHT?

12 A THAT'S CORRECT

13 Q ALL RIGHT AND THEN LOOK AT PAGE 15, IF YOU WOULD,
14 UNDER B

15 A THAT'S THE DRY -- DRY DOCK STORAGE

16 Q AND HOW MANY DOES IT SAY THERE?

17 A IT SAYS ONE HUNDRED TO TWO HUNDRED

18 Q NOW AND YOU WENT FOR THE MAXIMUM THERE TOO?

19 A YES

20 Q AND DID DUKE POWER END UP APPROVING THAT?

21 A YES, THEY DID

22 Q NOW I BELIEVE WE'LL TALK ABOUT THIS SOME MORE, BUT
23 IN THE END AS TO THE WET BOAT SLIPS DUKE POWER ENDED UP
24 APPROVING HOW MANY?

25 A WITH THE LAYOUT THAT THEY'VE GIVEN THEM NOW, A

1 HUNDRED AND TWO

2 Q OKAY NOW IS IT POSSIBLE TO GET MORE BOAT SLIPS IN
3 THAT LAYOUT, A HUNDRED AND TWO?

4 A THEY COULD PUT MORE BOAT SLIPS

5 MR HOWARD OBJECTION, YOUR HONOR, SPECULATION

6 Q CAN THEY PUT MORE BOAT SLIPS?

7 A YES, THEY COULD IF THEY MADE SMALLER SIZED BOAT
8 SLIPS THEY WANT TO GO WITH THE CRUISER TYPE BOAT SIZE
9 SO THEY'RE PUTTING IN A LARGER BOAT SLIP

10 Q AND THAT CAUSES THE NUMBER OF SLIPS TO BE REDUCED?

11 A THAT'S CORRECT

12 Q OKAY NOW LET'S TALK ABOUT DUKE POWER'S DECISION
13 AFTER YOU HAD SIGNED THE LEASE, YOU HAD YOUR CONCEPTUAL
14 PLAN, DID THEY CREATE DIFFERENT PLANS?

15 A YEAH THE DAY THAT -- AS SOON AS WE SIGNED THE
16 AGREEMENT THEY WENT TO ANOTHER ARCHITECT AND STARTED
17 DRAWING THEIR OWN CONCEPTUAL PLANS AND SITE PLANS

18 Q AND DID THEY ULTIMATELY SUBMIT THEIR PLAN TO DUKE
19 POWER?

20 A YES

21 Q AND WHAT WAS DUKE POWER'S REACTION?

22 A WELL, THE FIRST ONE THEY SUBMITTED THEY MARKED OUT
23 THE THINGS THAT THEY COULDN'T DO AND SENT IT BACK TO THEM
24 AND TOLD THEM TO RESUBMIT

25 Q NOW MR HOWARD SAID THERE WAS A MEETING AT WHICH YOU

1 LOOKED AT THEIR NEW PLANS AND SAID THESE WOULDN'T WORK
2 WHEN DID THAT HAPPEN? DID THAT HAPPEN? TELL US WHAT
3 HAPPENED

4 A YEAH ONE OF THE FIRST TIMES THEY ASKED ME TO COME
5 AND LOOK AT ONE OF THEIR LAYOUTS WAS THEY HAD TAKEN HOUSE
6 BOAT SLIPS AND PUT THEM ON THE OTHER SIDE, NOT IN THE
7 COVE, ON THE OTHER SIDE AND I, YOU KNOW, I SAID DUKE
8 WILL NEVER APPROVE THAT I TOTALLY SAID THAT

9 Q AND ---

10 A BUT THEY WERE ON THE OTHER SIDE I HAD ALWAYS FELT
11 LIKE THAT THE MARINA HAD TO GO IN THE MARINA COVE, WHICH
12 I ALWAYS THOUGHT THE COVE WAS THE MARINA IT WAS THE
13 MARINA COVE BUT THEY HAD PUT BOATS ON THE -- HOUSEBOAT
14 SLIPS ON THE OTHER SIDE OF THE -- WHERE THE RAMPS FOR THE
15 BOATS TO GO IN THE WATER ON, THE BOAT RAMPS

16 Q NOW DID YOU ALL -- DID THEY ULTIMATELY RE-DO THEIR
17 CONCEPTUAL PLAN AGAIN IN RESPONSE TO DUKE POWER'S
18 COMMENTS?

19 A THEY ULTIMATELY RE-DID THAT, BROUGHT THEM ON THIS
20 SIDE OF THE ISLAND AND THEN WE TOOK THOSE PLANS AND
21 WENT TO -- WE SENT THOSE PLANS TO -- THEY SENT THOSE
22 PLANS TO DUKE, DUKE REJECTED THOSE PLANS AND THEN WE
23 ASKED FOR A MEETING WITH DUKE

24 MR ROBERSON, MR THOENNES, III, AND I WENT TO DUKE
25 IN CHARLOTTE, SAT DOWN WITH DUKE TO DISCUSS AND SEE IF WE

1 COULDN'T GET MORE BOAT SLIPS AND I FOUGHT FOR AS MANY

2 BOATS SLIPS AS WE COULD POSSIBLY GET

3 Q DID YOU DISAGREE WITH DUKE'S POSITION?

4 A I TOTALLY DISAGREED WITH DUKE'S POSITION BECAUSE I'D

5 ALWAYS FELT LIKE THAT THE MARINA COVE, THAT COVE WAS

6 WHERE BOAT SLIPS COULD GO THAT'S THE WAY I'D ALWAYS

7 LOOKED AT IT DUKE HAD ALWAYS LOOKED AT IT THAT THEY HAD

8 A MARINA POINT AND THAT'S WHERE THE DISAGREEMENT WAS

9 BETWEEN ME AND DUKE

10 Q ALL RIGHT NOW DID DUKE EVER TELL YOU BEFORE YOU

11 SIGNED THIS AGREEMENT THERE'S NO WAY, WE WILL NEVER ALLOW

12 MORE THAN A HUNDRED AND TWO BOAT SLIPS?

13 A NO, THEY DID NOT

14 Q NOW AS TO THE OTHER TOPICS IN WHICH DUKE HAD A CALL

15 AS TO THE MINIMUM/MAXIMUM OF THE OTHER TOPICS WHAT DID

16 DUKE POWER DO?

17 A THEY GAVE US THE MAXIMUM ON EVERYTHING

18 Q NOW DID YOU CONTROL DUKE POWER'S DECISION?

19 A NO, I DID NOT

20 Q AND AT THIS POINT YOU WERE A MINORITY SHAREHOLDER,

21 CORRECT?

22 A THAT'S CORRECT

23 Q DO YOU HAVE ANY ABILITY TO CONTROL DUKE POWER'S

24 DECISIONS?

25 A I DON'T THINK SO I'D LOWER MY POWER BILL IF I DID

1 Q ALL RIGHT NOW DO YOU REMEMBER A SHAREHOLDERS
2 MEETING ON MAY 1, 2008?

3 A YES

4 MR HOLLEMAN AND WE WOULD GO AHEAD AND INTRODUCE
5 AND THEN WE WILL DISCUSS EXHIBITS, PREVIOUSLY MARKED
6 EXHIBITS 4 AND 5

7 THE COURT ANY OBJECTION, 4 AND 5, SHAREHOLDER
8 MINUTES?

9 MR HOWARD NO OBJECTION, YOUR HONOR

10 THE COURT OKAY

11 (WHEREUPON PLAINTIFF'S EXHIBITS 4 AND 5 WERE MARKED
12 AND ADMITTED INTO EVIDENCE)

13 Q NOW WAS THIS THE FIRST SHAREHOLDERS MEETING AFTER
14 THE -- THEY ACQUIRED EIGHTY PERCENT CONTROL?

15 A YES, IT WAS

16 Q AND WHERE WAS IT HELD?

17 A IT WAS HELD AT FAYSSOUX'S OFFICE

18 Q AT THE OFFICE OF THEIR ATTORNEY?

19 A YES, JIM FAYSSOUX'S OFFICE

20 Q NOW AT THAT MEETING WHAT HAPPENED WHEN THE
21 SHAREHOLDERS MET TO ELECT THE MEMBERS OF THE BOARD?

22 A THEY ELECTED THEMSELVES TO THE DIRECTORS AND THE
23 MEMBERS OF THE BOARD

24 Q PREVIOUSLY YOU WERE THE SOLE SHAREHOLDER AND
25 DIRECTOR, IS THAT CORRECT? AT ONE POINT ---

1 A YEAH, ---

2 Q --- BEFORE THE AGREEMENT?

3 A YEAH BEFORE I SOLD IT TO THEM I WAS THE ONLY
4 MEMBER OF THE BOARD, THE ONLY STOCKHOLDER AND THEN WHEN
5 I SOLD IT TO THEM THEY ---

6 Q NOW MR HOWARD SAID IN OPENING THAT YOU DIDN'T EVEN
7 SEEK TO BE A DIRECTOR AT THAT MEETING, IS THAT CORRECT?

8 A THAT'S A -- THAT IS AN UNTRUTH

9 Q AND TELL US WHAT HAPPENED

10 A THEY ELECTED THEMSELVES TO THE BOARD AND TO THE
11 DIRECTORS AND I ASKED, WELL, WHY CAN'T I BE ON IT? NOT
12 A WORD WAS SAID MR FAYSSOUX SAID I HAVE A MOTION THAT
13 MR BALLARD BE ELECTED TO THE BOARD AND NOT A WORD WAS
14 SAID, NOT A SECOND, NO NOTHING SO WHEN HE SAID NO
15 SECOND, THEN THEY WASHED IT UNDER THE TABLE

16 Q ALL RIGHT SO YOU WERE NOT ELECTED?

17 A I WAS NOT ELECTED

18 Q NOW AFTER THAT THEY HAD A BOARD MEETING IF YOU'LL
19 LOOK AT THE MINUTES ON THE SECOND PAGE OF EXHIBIT 4 AND
20 THERE THEY SAY, THE SECOND PAGE, I'LL JUST READ THAT

21 AFTER THE BOARD WENT INTO SESSION THE BOARD PROPOSED
22 THAT THE CORPORATION ISSUE AN ADDITIONAL NINE HUNDRED
23 THOUSAND SHARES FOR THE PURPOSE OF RAISING ADDITIONAL
24 CAPITAL, PAY EXPENSES AND OFFERING EMPLOYEE INCENTIVES
25 NOW BEFORE THIS MEETING DID YOU KNOW -- HAD THEY

1 DISCUSSED WITH YOU, AS A DIRECTOR AND A SHAREHOLDER, THIS
2 ISSUE OF ISSUING ADDITIONAL SHARES?

3 A NO, THEY HAD NOT

4 Q AND THEN IT SAYS THIS MOTION WAS APPROVED
5 UNANIMOUSLY, PRESENTED TO THE STOCKHOLDERS WHERE THE ONLY
6 DISSENTING VOTE WAS FROM ANDY BALLARD SO ONCE THEY CAME
7 OUT OF THE DIRECTORS MEETING DID THEY PRESENT THIS TO
8 YOU, ALL THE SHAREHOLDERS INCLUDING YOU?

9 A YES

10 Q AND HOW DID YOU VOTE?

11 A I VOTED NO

12 Q ALL RIGHT NOW WAS THERE ANY DISCUSSION AT THAT
13 MEETING AT AMENDING THE ARTICLES OF INCORPORATION?

14 A NO, THERE WAS NOT

15 Q NOW IF WE LOOK AT PARAGRAPH -- IF WE LOOK AT EXHIBIT
16 5 I'M JUST GOING TO READ THAT PARAGRAPH IT BECOMES
17 UPON -- BEGINS UPON MOTION DULY MADE AND SECONDED

18 IT SAYS UPON MOTION DULY MADE AND SECONDED, TIM
19 ROBERSON MOVED TO AUTHORIZE THE CORPORATION TO ISSUE NINE
20 HUNDRED THOUSAND ADDITIONAL SHARES OF TREASURY STOCK IN
21 ORDER TO RAISE CAPITAL, PAY EXPENSES, OFFER EMPLOYEE
22 INCENTIVES

23 AND THEN THE NEXT -- THESE MINUTES OF THE DIRECTORS
24 MEETING, THE NEXT PARAGRAPH SAYS IT WAS THEREBY
25 AUTHORIZED THAT THE CORPORATION FILE THE NECESSARY

1 PAPERWORK TO AUTHORIZE THE ISSUANCE OF AN ADDITIONAL NINE
2 HUNDRED THOUSAND SHARES

3 BUT THEN WHEN YOU GO BACK TO EXHIBIT 4 AND LOOK AT
4 THE LAST PAGE OF THAT, THE SECOND PAGE, WHEN IT WAS
5 PRESENTED TO THE SHAREHOLDERS THERE WAS NO MENTION OF
6 FILING ANY ADDITIONAL PAPERWORK, IS THAT CORRECT?

7 A THAT'S CORRECT

8 Q NOW WHY DID YOU OBJECT TO ISSUING -- HAVING THE
9 CORPORATION ISSUE -- HAVE OUTSTANDING ONE MILLION SHARES
10 OR NINE HUNDRED THOUSAND ADDITIONAL SHARES?

11 A BECAUSE THEY WANTED TO DILUTE MY OWNERSHIP FROM
12 TWENTY PERCENT TO TWO PERCENT THEY WANTED TO USE STOCK
13 TO RAISE MONEY ON WHAT THEY HAD AGREED THAT THEY WOULD DO
14 TO BUILD THE PROJECT

15 Q OKAY SO WHAT DID YOU DO IN RESPONSE TO THIS ---

16 A I FILED A LAWSUIT

17 Q AND WHAT -- AT FIRST WHAT DID YOU ASK THE COURT TO
18 DO IN THE LAWSUIT?

19 A ALL I ASKED WHEN WE STARTED WAS THAT THE COURT NOT
20 ALLOW THEM TO SELL ADDITIONAL STOCK AND DILUTE MY
21 OWNERSHIP IN THE CORPORATION

22 Q DID YOU ASK FOR A BUNCH OF MONEY OR PUNITIVE
23 DAMAGES?

24 A NO

25 Q SUE THEM FOR A BUNCH OF MONEY?

1 A NO

2 Q YOU JUST ASKED FOR IT TO BE PREVENTED FROM GOING
3 FORWARD?

4 A THAT'S CORRECT

5 Q NOW IN THE COURSE OF THE LAWSUIT DID YOU FIND OUT
6 ADDITIONAL THINGS THROUGH REVIEWING DOCUMENTS AND SITTING
7 IN THEIR DEPOSITIONS?

8 A YES

9 Q WHAT DID YOU FIND OUT DIFFERENTLY?

10 A FOUND OUT THAT THEY WANTED ME OUT OF THE
11 CORPORATION

12 Q AND WHAT DID YOU HEAR MR ROBERSON SAY ABOUT WHETHER
13 HE COULD PUT UP THE NECESSARY CAPITAL?

14 A HE SAID THAT HE WOULD NOT PUT -- HE SAID IT WASN'T A
15 GOOD BUSINESS DECISION, AND HE WOULDN'T PUT UP MORE THAN
16 TEN OR FIFTEEN PERCENT, I BELIEVE IS WHAT HE SAID

17 Q OKAY AND DID YOU LEARN INFORMATION ABOUT THE
18 THOENNESES THAT WE DISCUSSED EARLIER?

19 A YES, I DID

20 Q OKAY NOW DID YOU FILE AN AMENDED COMPLAINT RAISING
21 THESE ISSUES?

22 A YES, I DID

23 Q AND THIS HASN'T BEEN MARKED AS AN EXHIBIT, BUT CAN
24 YOU -- THE PRINT IS FAINT SO CAN YOU TELL THE JURY THE
25 DATE OF THE AMENDED COMPLAINT?

1 A 8/25/09

2 Q YOU NEED TO SPEAK UP SO THEY CAN HEAR YOU

3 A 8/25/09

4 Q THAT'S AUGUST 25, '09?

5 A YEAH

6 Q AND IS THAT STAMPED ALSO ON THE FRONT FOR THE -- AT
7 THE COURT'S STAMP?

8 A IT'S STAMPED AUGUST 25TH AT TWELVE NOON OR TWELVE PM
9 MR HOLLEMAN AND, YOUR HONOR, SINCE THIS DATE IS
10 SIGNIFICANT WE WOULD MOVE THE AMENDED COMPLAINT BE MADE
11 AN EXHIBIT

12 MR HOWARD NO OBJECTION, YOUR HONOR

13 THE COURT NO OBJECTION?

14 MR HOWARD NO OBJECTION

15 THE COURT OKAY

16 MR HOLLEMAN: WHAT EXHIBIT NUMBER?

17 MADAME COURT REPORTER 27

18 (WHEREUPON PLAINTIFF'S EXHIBIT 27 WAS MARKED AND
19 ADMITTED INTO EVIDENCE)

20 MR HOLLEMAN NOW WE WOULD MOVE INTO EVIDENCE
21 EXHIBIT 7, WHICH IS THE NOTICE OF SHAREHOLDERS MEETING
22 DATED AUGUST 27, 2009

23 THE COURT MR HOWARD, ANY OBJECTION?

24 MR HOWARD NO OBJECTION, YOUR HONOR

25 THE COURT OKAY

1 MR HOLLEMAN AND THAT IS EXHIBIT 7

2 (WHEREUPON PLAINTIFF'S EXHIBIT 7 WAS MARKED AND
3 ADMITTED INTO EVIDENCE)

4 Q ANDY, TURN TO EXHIBIT 7 NOW IN YOUR AMENDED
5 COMPLAINT DID YOU OBJECT TO THE FACT THAT YOU WERE BEING
6 OPPRESSED AS A SHAREHOLDER AND HAD BEEN REMOVED AS THE
7 DIRECTOR?

8 A YES

9 Q NOW TWO DAYS LATER ON AUGUST 27, 2009 DID YOU -- DID
10 YOU LATER RECEIVE THIS NOTICE OF ANNUAL MEETING DATED TWO
11 DAYS LATER ON AUGUST 27TH, 2009?

12 A YES

13 Q AND THAT WAS FOR A MEETING TO OCCUR ABOUT A MONTH
14 LATER, IS THAT CORRECT?

15 A CORRECT

16 Q WHAT HAPPENED AT THAT MEETING?

17 A THEY ELECTED ME A DIRECTOR

18 Q DID THAT COME AS A SURPRISE TO YOU?

19 A YEAH, CAME AS A SURPRISE AND THEN WHEN I -- SINCE
20 THEN, SINCE THEY'VE ELECTED ME AS A DIRECTOR AND I'VE
21 ASKED FOR INFORMATION, I'VE BEEN TOLD I'D HAVE TO GO
22 THROUGH MY ATTORNEY TO GET IT

23 Q HAS THERE BEEN A DIRECTORS MEETING?

24 A I DON'T KNOW

25 Q HAVE YOU BEEN INVITED TO A DIRECTORS MEETING SINCE

1 YOU WERE ELECTED?

2 A I HAVE NOT BEEN INVITED TO ANYTHING

3 Q HAVE THEY SHARED ANY INFORMATION WITH YOU ABOUT HOW

4 OR WHETHER THIS PROJECT IS GOING TO BE FINANCED?

5 A NO, THEY HAVE NOT

6 Q HAVE THEY SHARED ANY INFORMATION WITH YOU ABOUT THE

7 PERMITTING PROCESS?

8 A NO, THEY HAVE NOT

9 Q AND BY THE WAY, IN TERMS OF WHAT DUKE POWER HAS DONE

10 HAVE THEY -- HAVE THEY SUED DUKE POWER FOR VIOLATING THE

11 LEASE?

12 A NOT THAT I KNOW OF

13 Q HAVE THEY TALKED TO YOU ABOUT THAT?

14 A NOT THAT -- NO, THEY'VE NOT TALKED TO ME ABOUT IT

15 Q AS OF TODAY HAVE THEY GIVEN YOU ANY NOTICE OF ANY

16 SUBSEQUENT DIRECTORS MEETING THAT YOU WOULD TAKE PART IN?

17 A NO

18 Q NOW TODAY WHAT ARE YOU ASKING THE COURT AND THE JURY

19 TO DO? WHAT IS IT YOU -- FIRST, YOU WERE TRYING -- ONLY

20 ASKED THEM NOT TO ISSUE THIS ADDITIONAL STOCK, BUT NOW

21 WHAT ARE YOU ASKING FOR?

22 A BASICALLY THREE THINGS ONE IS I DON'T WANT THEM TO

23 BE ABLE TO DILUTE ME OF MY OWNERSHIP OF THE CORPORATION

24 TWO, SINCE THEY CAN'T -- I DON'T FEEL LIKE THEY CAN LIVE

25 UP TO THEIR OBLIGATIONS AS WHAT THEY PROMISED IN THE

1 CONTRACT, THAT THE STOCK GO BACK TO THE CORPORATION

2 Q WHICH STOCK?

3 A THE SIXTY THOUSAND SHARES OF STOCK THAT THEY WERE

4 ISSUED FOR THEIR PROMISES OF RAISING -- PUTTING UP THE

5 CAPITAL AND BUILDING AND DEVELOPING THE PROJECT

6 Q AND AS TO THE TWENTY THOUSAND SHARES THAT YOU SOLD,

7 DID YOU RECEIVE THAT MONEY PERSONALLY, THE MILLION

8 DOLLARS, OR DID IT GO TO THE COMPANY?

9 A THAT CAME TO ME, PERSONALLY THOSE WERE MY PERSONAL

10 SHARES

11 Q OKAY

12 A THE SIXTY THOUSAND SHARES BELONGED TO THE

13 CORPORATION WHICH ISSUED TO THEM FOR THEIR PROMISES

14 Q AND THEN WHAT ELSE ARE YOU ASKING FOR THE COURT TO

15 DO?

16 A EITHER THAT THEY BUY ME OUT

17 Q LET ME -- LET ME CHECK ONE -- A COUPLE OF THINGS I

18 MAY BE JUST ABOUT THROUGH

19 (PAUSE)

20 Q OH, MR HOWARD TALKED ABOUT THESE PROFORMAS WHO

21 PREPARED THOSE PROFORMAS, THESE FINANCIAL PROJECTIONS?

22 A I ONLY SAW PROFORMAS ONE TIME AND THEY WERE ON THE

23 COMPUTER SCREEN ON A PROJECTION LIKE THIS AND THEY WERE

24 CHANGING NUMBERS SO FAST, YOU KNOW, I DON'T KNOW REALLY

25 WHAT, YOU KNOW, WHAT WAS GOING ON OR -- THEY NEVER GAVE

1 ME A HARD COPY THEY NEVER GAVE ME ANYTHING IN WRITING
2 THAT SHOWED PROFORMAS ALL I DID WAS SAW PROFORMAS ON A
3 COMPUTER SCREEN THAT THEY FLASHED ON THE WALL

4 Q AND DID YOU PREPARE THOSE PROFORMAS?

5 A NO, I DIDN'T

6 Q AND FINALLY, ANDY, THEY HAVE ACCUSED YOU OF FRAUD

7 A BIG WORD

8 Q AND THEY'VE ACCUSED YOU OF FRAUD, WHICH IN ONE WAY
9 TO CALL IT IS INTENTIONAL LYING AND THAT IS ABOUT
10 EITHER HOW MANY BOAT SLIPS DUKE POWER WOULD APPROVE OR
11 HOW LONG IT WOULD TAKE TO GET PERMITS DID YOU COMMIT
12 ANY FRAUD?

13 A NO, I DID NOT

14 Q DID YOU TELL THE TRUTH TO THE BEST OF YOUR
15 KNOWLEDGE?

16 A I ALWAYS HAVE

17 Q AND IN CONNECTION WITH BOTH THE PERMITS AND THE DUKE
18 POWER DOCKS DID YOU CONTROL HOW MANY WOULD BE ISSUED?

19 A NO, I DID NOT

20 Q THAT'S ALL I HAVE THANK YOU

21 MR HOWARD CAN WE TAKE A QUICK BREAK?

22 THE COURT YEAH, WHY DON'T WE DO THAT, LADIES AND
23 GENTLEMEN WE'LL TAKE A SHORT AFTERNOON BREAK Y'ALL
24 PLEASE BE EXCUSED TO YOUR JURY ROOM AND DO NOT DISCUSS
25 THE CASE THANK YOU

ANDY BALLARD - CROSS EXAMINATION BY MR HOWARD

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1 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3 32 PM)

2 THE COURT ALL RIGHT, MR BALLARD, YOU CAN STEP
3 DOWN PLEASE DON'T DISCUSS YOUR TESTIMONY ALL RIGHT
4 TAKE ABOUT TEN, FIFTEEN MINUTES

5 (WHEREUPON COURT WAS IN RECESS AT 3 32 PM)

6 THE COURT YOU READY FOR THEM?

7 MR HOLLEMAN YES

8 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3 54
9 PM)

10 THE COURT OKAY Y'ALL CAN GO AHEAD AND SIT DOWN
11 WE JUST MAKE THE LAWYERS STAND UP ALL RIGHT CROSS
12 EXAMINATION

13 MR HOWARD MAY IT PLEASE THE COURT, YOUR HONOR?

14 THE COURT OKAY

15 CROSS EXAMINATION BY MR HOWARD

16 Q GOOD AFTERNOON, MR BALLARD

17 A GOOD AFTERNOON

18 Q MR BALLARD, THIS IS A DOCUMENT, I BELIEVE IT'S
19 ALREADY BEEN MARKED AS EXHIBIT 1 TO THESE -- TO THIS
20 TRIAL THIS IS THE STOCK PURCHASE AGREEMENT, CORRECT?

21 A THAT IS CORRECT

22 Q YOU'VE ALREADY TESTIFIED TO SOME PORTIONS OF THAT
23 STOCK PURCHASE AGREEMENT, CORRECT?

24 A THAT'S CORRECT

25 Q NOW YOU WOULD AGREE WITH ME THAT THAT STOCK PURCHASE

1 AGREEMENT SAYS -- HAS NO SPECIFIC TERMS IN IT THAT SAY

2 ANYTHING REGARDING NON-DILUTION, CORRECT?

3 A IT DOESN'T SAY ANYTHING ABOUT DILUTION

4 Q IT DOESN'T SAY ANYTHING ABOUT ANTI-DILUTION,

5 CORRECT?

6 A NO

7 Q IT DOESN'T SAY ANYWHERE THAT THESE SHAREHOLDERS

8 SHALL NOT BE DILUTED AT ANY POINT, CORRECT?

9 A IT DOES NOT SAY THAT

10 Q OKAY IT IS JUST YOUR TESTIMONY THAT IT USES THE

11 WORD FINAL, IS THAT RIGHT?

12 A NO, IT'S WRITTEN IN THE CONTRACT HERE

13 Q ANTI-DILUTION OR NON-DILUTION IS ---

14 A NO, ---

15 Q --- WRITTEN IN THE CONTRACT?

16 A --- FINAL FINAL THE FINAL

17 Q YEAH, IT'S YOUR TESTIMONY THAT THE WORDS FINAL ---

18 A RIGHT

19 Q --- MEAN THAT?

20 A CORRECT

21 Q OKAY SO -- AND YOU WOULD AGREE WITH ME THAT ABSENT

22 SOME SORT OF ANTI-DILUTION OR NON-DILUTION IN THAT THAT

23 YOU AGREED TO THAT THE CORPORATION HAS A RIGHT TO ISSUE

24 NEW SHARES, IS THAT RIGHT?

25 A IF THEY AMEND THE ARTICLES OF THE -- AMEND THE

1 ARTICLES

2 Q AND THE SHAREHOLDERS CAN VOTE TO AMEND THE ARTICLES
3 OF INCORPORATION, CORRECT?

4 A THAT'S CORRECT

5 Q AND THEY CAN VOTE TO AMEND IT TO INCREASE THE NUMBER
6 OF AUTHORIZED SHARES, IS THAT RIGHT?

7 A THAT'S CORRECT

8 Q AND THEN YOU WOULD AGREE WITH ME THAT THE BOARD OF
9 DIRECTORS THEN ISSUE SHARES, IS THAT RIGHT?

10 A THAT'S CORRECT

11 Q AND YOU WOULD AGREE WITH ME THAT THE BOARD OF
12 DIRECTORS RIGHT TO ISSUE SHARES CANNOT BE LIMITED EXCEPT
13 -- UNLESS IT'S OTHERWISE LIMITED IN THE BUSINESS
14 CORPORATIONS ACT, IS THAT ---

15 MR HOLLEMAN YOUR HONOR, I'VE ALLOWED SOME OF
16 THESE, BUT HE'S REALLY ASKING THE WITNESS ABOUT HIS, HIS,
17 THE LAWYERS, QUOTATIONS FROM VARIOUS CODE SECTIONS AND
18 THAT'S REALLY NOT FOR A FACT WITNESS

19 THE COURT WELL, HE CAN -- IF HE KNOWS, HE CAN
20 ANSWER WHAT HE KNOWS IF HE DOESN'T KNOW, HE CAN JUST
21 TELL HIM HE DOESN'T KNOW

22 Q LET ME ASK YOU THIS, MR BALLARD DID YOU TAKE ANY
23 STEPS TO HAVE THIS AGREEMENT APPENDED TO THE ARTICLES OF
24 INCORPORATION?

25 A NO

1 Q DID YOU TAKE ANY STEPS TO HAVE THIS REFERENCED IN
2 THE ARTICLES OF INCORPORATION?

3 A NO

4 Q DID YOU TAKE ANY STEPS TO HAVE THIS AGREEMENT
5 REFERENCED ON THE CORPORATE SHARE CERTIFICATES?

6 A I DIDN'T I WOULD HAVE THOUGHT THE ATTORNEY THAT
7 WAS GOING TO ISSUE THE FINAL SHARES WOULD HAVE DONE THAT

8 Q DID YOU EVER LOOK AT YOUR SHARE CERTIFICATES?

9 A YES

10 Q ARE THEY -- IS IT ON THERE?

11 A I DON'T THINK SO

12 Q DID YOU EVER ASK FOR OR MAKE ANY MOTION TO HAVE IT
13 ADDED?

14 A NO, I DID NOT

15 Q NOW YOU WOULD AGREE WITH ME THAT -- DO YOU
16 UNDERSTAND THE DIFFERENCE BETWEEN AUTHORIZING SHARES AND
17 ISSUING SHARES?

18 A YES

19 Q OKAY THOSE ARE TWO SEPARATE PROCESSES, AM I RIGHT?

20 A YES

21 Q OKAY LIKE WE JUST DISCUSSED THE SHAREHOLDERS
22 AGREED TO AMEND THE ARTICLES TO AUTHORIZE ADDITIONAL
23 SHARES, IS THAT RIGHT?

24 A NO, THEY DIDN'T -- THEY DIDN'T AUTHORIZE TO AMEND
25 THE ARTICLES THEY JUST SAID THEY WERE GOING TO ISSUE

1 NINE HUNDRED THOUSAND SHARES

2 Q OKAY THE SHAREHOLDERS VOTE TO AUTHORIZE ADDITIONAL
3 SHARES, IS THAT RIGHT?

4 A THAT'S CORRECT

5 Q AND SIMPLY AUTHORIZING THOSE SHARES IS NOT HARMFUL
6 ACCORDING TO BASICALLY YOUR -- LET ME BACK UP YOU'RE
7 ALLEGING THAT IN ORDER FOR -- IN ORDER FOR YOU TO BE
8 DILUTED THEY'D HAVE TO ISSUE ADDITIONAL SHARES, IS THAT
9 RIGHT?

10 A THAT'S CORRECT

11 Q OKAY SO SIMPLY AUTHORIZING THOSE SHARES IS NOT
12 HARMFUL -- IT'S NOT GOING TO DILUTE YOU TO AUTHORIZE
13 THOSE SHARES, IS THAT RIGHT?

14 A I'M NOT SURE IF AUTHORIZING IT -- IF AUTHORIZING IT
15 GIVES THEM THE AUTHORITY TO DO IT, THEN I PROBABLY NEED
16 TO PROTECT MYSELF

17 Q BUT YOU WOULD AGREE WITH ME THAT SIMPLY INCREASING
18 THE SHARES, THE AUTHORIZED SHARES, FROM A HUNDRED
19 THOUSAND TO A MILLION WITHOUT ISSUING THESE SHARES, THAT
20 IS -- DOES NOTHING TO DILUTE YOUR INTEREST, RIGHT?

21 A THAT'S CORRECT

22 Q AND YOU WOULD AGREE WITH ME THAT AT THIS POINT NO
23 SHARES HAVE BEEN ISSUED, HAVE THEY NOT?

24 A THAT'S CORRECT

25 Q NO SHARES IN EXCESS OF A HUNDRED THOUSAND, CORRECT?

1 A THAT'S CORRECT

2 Q AND YOU WOULD AGREE WITH ME THAT THE ARTICLES OF
3 INCORPORATION HAVE NOT EVEN BEEN AMENDED, HAVE THEY?

4 A THAT'S CORRECT

5 Q NOW, MR BALLARD, ARE YOU AWARE OF THE TERM
6 PREEMPTIVE RIGHTS?

7 A I MEAN, I'VE HEARD THE TERM I DON'T KNOW IF I KNOW
8 EXACTLY THE LEGAL DEFINITION OF IT

9 Q OKAY NOW YOU'VE HAD ---
10 THE COURT LET ME INTERRUPT YOU FOR ONE SECOND
11 CAN EVERYBODY HEAR THE WITNESS? IF Y'ALL HAVE TROUBLE
12 JUST LET ME KNOW, OKAY? AND WOULD YOU -- JUST GET --
13 PULL THE MICROPHONE A LITTLE CLOSER

14 Q NOW THESE HAVE ALREADY BEEN ENTERED AS EXHIBIT 3, I
15 BELIEVE, TO THIS TRIAL THIS IS THE ARTICLES OF
16 INCORPORATION CAN YOU GO DOWN TO 5A? WELL, FIRST GO UP
17 TO 2 THAT'S YOUR SIGNATURE, IS IT NOT?

18 A YES, IT IS

19 Q NOW GO DOWN TO 5A AND YOU HAD THIS ARTICLES OF
20 INCORPORATION DRAFTED, CORRECT?

21 A THAT'S CORRECT

22 Q AND YOU SEE THERE WHERE IT SAYS PREEMPTIVE RIGHTS OF
23 STOCKHOLDERS SHALL APPLY WITHOUT EXCEPTION TO ALL THE
24 COMMON STOCK ISSUED BY THIS CORPORATION FOR ANY
25 CONSIDERATION WHATSOEVER

1 A THAT'S CORRECT

2 Q DO YOU UNDERSTAND PREEMPTIVE RIGHTS GIVE YOU THE
3 RIGHT THAT IF THEY ISSUE ADDITIONAL SHARES THAT YOU CAN
4 PURCHASE SHARES TO KEEP YOUR PERCENTAGE OWNERSHIP? IS
5 THAT YOUR UNDERSTANDING?

6 A THAT WOULD BE CORRECT

7 Q OKAY AND YOU HAD PLACED IN THESE ARTICLES OF
8 INCORPORATION BACK IN SEPTEMBER OF '04 THAT PREEMPTIVE
9 RIGHTS APPLY WITHOUT EXCEPTION, CORRECT?

10 A CORRECT

11 Q SO IF ANY ADDITIONAL SHARES WERE ISSUED YOU WOULD
12 HAVE THE RIGHT TO ACQUIRE ADDITIONAL SHARES TO KEEP YOUR
13 PERCENTAGE OWNERSHIP, CORRECT?

14 A YES

15 Q AND THAT WOULD CERTAINLY PROTECT YOUR PERCENTAGE
16 OWNERSHIP AND YOUR MINORITY SHAREHOLDER STATUS, IS THAT
17 RIGHT?

18 A BY ME PURCHASING ADDITIONAL SHARES?

19 Q YES

20 A (AFFIRMATIVE NOD)

21 Q AND THOSE RIGHTS WERE EXPRESSED IN THE ARTICLES OF
22 INCORPORATION, CORRECT?

23 A THAT'S CORRECT

24 Q WHEREIN YOU DIDN'T EXPRESS ANY ADDITIONAL RIGHTS OF
25 NON-DILUTION IN THE ARTICLES OF INCORPORATION, CORRECT?

1 A CORRECT

2 Q NOW, MR BALLARD, I BELIEVE THE LEASE WITH THE

3 CONCEPTUAL PLAN WAS PREVIOUSLY MARKED AS EXHIBIT 2

4 MR HOLLEMAN YOUR HONOR, CAN WE APPROACH?

5 (PAUSE)

6 MR HOLLEMAN OKAY NO OBJECTION

7 THE COURT ALL RIGHT

8 Q THIS IS THE FRONT PAGE OF THE CONCEPTUAL PLAN,

9 CORRECT?

10 A YES, IT IS

11 Q AND YOU WOULD AGREE WITH ME THAT THIS IS THE FRONT

12 PAGE OF THE CONCEPTUAL PLAN THAT WAS PROVIDED TO THESE

13 GENTLEMEN WHEN YOU FIRST MET THEM, IS THAT RIGHT?

14 A I WOULD ASSUME IT IS, YES

15 Q OKAY AND ON PAGE -- DOES THIS APPEAR TO BE PAGE 16

16 OF THE CONCEPTUAL PLAN?

17 A YES

18 Q AM I CORRECT IN STATING ---

19 A YES

20 Q --- THAT'S PAGE 16? IF YOU'D GO DOWN TO SECTION E

21 A OKAY

22 Q AND YOU WOULD AGREE WITH ME THAT THIS CONCEPTUAL

23 PLAN STATES WITH REGARD -- AND THIS -- WELL, LET ME BACK

24 UP THIS SECTION E IS REFERRING TO WET BOAT SLIPS, IS

25 THAT RIGHT?

1 A THAT IS CORRECT

2 Q AND YOU WOULD AGREE WITH ME THAT THIS SECTION E
3 STATES THERE WILL EVENTUALLY BE TWO WALK-WAYS WITH SLIPS
4 ON EACH SIDE TO BE DEVELOPED AS THE DEMAND INDICATES, BUT
5 NOT TO EXCEED SPACE FOR ONE HUNDRED TO TWO HUNDRED BOATS?

6 A THAT'S CORRECT

7 Q THIS IS QUALIFIED WITH THE TERM AS THE DEMAND
8 INDICATES, CORRECT?

9 A THAT'S CORRECT

10 Q OKAY IMPLYING THAT IF THE MARKET HAS A DEMAND FOR
11 TWO HUNDRED SLIPS, YOU CAN PUT IN TWO HUNDRED SLIPS?

12 A NO THEY ALWAYS KNEW THAT DUKE POWER HAD THE FINAL
13 SAY-SO ABOUT EVERYTHING IN THE CONTRACT

14 Q THESE ---

15 A AND IT SAYS ONE HUNDRED TO TWO HUNDRED

16 Q SIR, THESE GENTLEMEN DID NOT CONTRACT WITH DUKE
17 POWER, DID THEY?

18 A YEAH

19 MR HOLLEMAN OBJECT TO THE FORM

20 Q THESE GENTLEMEN CONTACTED WITH YOU

21 A THESE GENTLEMEN ACCEPTED THE CONCEPTUAL PLANS THAT
22 DUKE POWER GAVE ME THE LEASE FOR THE PROPERTY FOR

23 Q THESE GENTLEMEN NEGOTIATED WITH YOU THEY DIDN'T
24 NEGOTIATE TO PAY A MILLION DOLLARS TO DUKE POWER

25 A NO, THEY DIDN'T THEY PAID A MILLION DOLLARS FOR

1 TWENTY THOUSAND OF MY SHARES

2 Q THEY PAID A MILLION DOLLARS TO YOU

3 A THAT'S CORRECT

4 Q AND IT WAS YOU THAT HAD SPENT -- WHO WAS WARPATH,

5 CORRECT, AT THAT TIME?

6 A THAT IS CORRECT

7 Q YOU WERE THE ONLY EMPLOYEE, ONLY OFFICER AND ONLY

8 DIRECTOR

9 A YES, SIR

10 Q AND IT WAS YOU WHO HAD SPENT THREE TO FOUR YEARS

11 WITH DUKE POWER, IS THAT RIGHT?

12 A THAT'S CORRECT

13 Q AND SPENT THREE TO FOUR YEARS WITH PICKENS COUNTY,

14 IS THAT RIGHT?

15 A CORRECT

16 Q AND IT WAS YOU THAT THESE GENTLEMEN WERE LOOKING TO

17 TO PROVIDE THEM CORRECT INFORMATION, IS THAT RIGHT?

18 A THAT'S CORRECT

19 Q NOW, SIR, YOU WERE AWARE -- I BELIEVE YOU INDICATED

20 THAT YOU PARTICIPATED IN AT LEAST ONE PROFORMAS MEETING,

21 IS THAT RIGHT?

22 A THAT'S CORRECT

23 Q AND YOU ARE AWARE THAT THESE GENTLEMEN BELIEVED AND

24 WERE LED TO BELIEVE THAT THEY COULD GET TWO HUNDRED

25 SLIPS

1 A I AM AWARE THAT THESE GENTLEMEN KNEW THAT THAT WAS
2 THE MAXIMUM NUMBER OF SLIPS YOU COULD GET IN A COMMERCIAL
3 MARINA ON THE LAKE

4 Q YOU WERE AWARE THAT THEY BELIEVED THAT AS LONG AS
5 DEMAND INDICATED THAT THEY COULD GET TWO HUNDRED SLIPS

6 A I DON'T KNOW IF I WAS AWARE OF THAT OR NOT

7 Q YOU WERE AWARE THAT THEIR PROFORMAS ---

8 A I KNOW THAT THERE'S A PROFORMA BASED ON TWO HUNDRED
9 SLIPS, YES

10 Q THEY WERE RUNNING THEIR PROFORMAS BASED ON TWO
11 HUNDRED SLIPS?

12 A ABSOLUTELY, YES

13 Q AND YOU KNEW THAT

14 A YES

15 Q AND AT NO POINT DID YOU EVER SAY, GUYS, THAT'S
16 PROBABLY A LITTLE AGGRESSIVE, DID YOU?

17 A I DON'T EVER REMEMBER SAYING THAT NO

18 Q OKAY NOT IN THOSE SUCH WORDS I MEAN, DID YOU
19 EVER TELL THEM, GUYS, I DON'T KNOW THAT TWO HUNDRED SLIPS
20 IS REALLY POSSIBLE?

21 A I DON'T REMEMBER

22 Q DID YOU EVER TELL THEM I DON'T KNOW THAT I CAN GET
23 TWO HUNDRED SLIPS?

24 A NO, I NEVER TOLD THEM THAT

25 Q AND AS A RESULT OF ENTERING INTO THIS DEAL YOU WERE

1 GOING TO BE PARTNERS WITH THESE GENTLEMEN, WERE YOU NOT?

2 A I THOUGHT I'D PICKED THE PERFECT MATCH FOR ME AND
3 WARPATH AND WHAT IT NEEDED, A FINANCIAL GUY AND SOMEBODY
4 THAT COULD BUILD IT

5 Q AND SHORTLY AFTER Y'ALL ENTERED THIS AGREEMENT AN
6 ARCHITECT WAS ENGAGED, IS THAT RIGHT?

7 A THEY PICKED -- YEAH, THEY HIRED THEIR OWN ARCHITECT

8 Q AND THAT ARCHITECT STARTED DEVELOPING PLANS, IS THAT
9 CORRECT?

10 A THAT'S CORRECT

11 Q OKAY NOW I BELIEVE YOU INDICATED BEFORE -- LET ME
12 BACK UP AND YOU HAD A MEETING TO GO OVER THOSE
13 ARCHITECTURAL PLANS, IS THAT RIGHT?

14 A I THINK WE HAD MORE THAN ONE MEETING

15 MR HOLLEMAN NO OBJECTION

16 MR HOWARD MAY I APPROACH, YOUR HONOR?

17 Q DOES THAT APPEAR TO BE THE SITE PLAN THAT Y'ALL
18 REVIEWED?

19 A THAT'S ONE OF THE SITE PLANS WE REVIEWED IT'S ONE
20 OF THE SITE PLANS, I BELIEVE, THAT WAS SENT TO DUKE FOR
21 APPROVAL

22 Q THIS IS THE SITE PLAN AND ON THE BOTTOM RIGHT HAND
23 CORNER IT STATES FOR REVIEW AND FINAL COMMENT, CORRECT?

24 A YES

25 (WHEREUPON DEFENDANT'S EXHIBIT 1 WAS MARKED FOR

1 IDENTIFICATION)

2 MR HOWARD YOUR HONOR, WE'VE ALREADY INDICATED NO
3 OBJECTION, BUT CAN I MOVE TO ADMIT DEFENDANT'S EXHIBIT
4 ---

5 MR HOLLEMAN NO OBJECTION

6 MR HOWARD --- 1 INTO EVIDENCE?

7 THE COURT OKAY

8 (WHEREUPON DEFENDANT'S EXHIBIT 1 WAS ADMITTED INTO
9 EVIDENCE)

10 Q IT'S HARD TO SEE UP THERE ON THE SCREEN SO LET'S
11 LOOK AT IT FROM RIGHT HERE YOU ALL MET AS A GROUP TO
12 DISCUSS THIS SITE PLAN, IS THAT CORRECT?

13 A THAT'S CORRECT

14 Q AND THIS LOOKS LIKE THE ONE THAT WAS PRESENTED TO
15 DUKE POWER, IS THAT CORRECT?

16 A THAT'S CORRECT

17 Q AND IN THE COURSE OF DISCUSSING THIS SITE PLAN YOU
18 INDICATED TO THESE GENTLEMEN THAT DUKE POWER WAS NOT
19 GOING TO ALLOW Y'ALL TO GO BEYOND THIS POINT RIGHT HERE,
20 CORRECT?

21 A I NEVER SAID THAT

22 Q YOU NEVER SAID THAT?

23 A NO

24 Q YOU NEVER TOLD THESE GENTLEMEN THAT DUKE POWER'S NOT
25 GOING TO ALLOW YOU TO GO PHYSICALLY, GEOGRAPHICALLY

1 BEYOND THAT POINT?

2 A NOT TIL WE MET WITH DUKE POWER IN CHARLOTTE AND DUKE
3 POWER TOLD US THAT THEY WERE CONSIDERING THAT THE MARINA
4 POINT AND IT WAS NOT A MARINA COVE

5 Q WASN'T THE MARINA COVE THE IDEA OF MR ROBERSON?

6 A NO I DON'T THINK SO NO I ALWAYS THOUGHT -- I
7 ALWAYS THOUGHT THIS WAS THE MARINA COVE, FROM THIS POINT
8 HERE TO THIS POINT HERE

9 THE COURT WAIT A MINUTE MR BALLARD, YOU STEP
10 DOWN, IF YOU DON'T MIND, SO THE JURY CAN SEE WHAT YOU'RE
11 TALKING ABOUT I THINK THAT'S IMPORTANT AND KEEP --

12 MR BALLARD, LET ME CAUTION YOU, KEEP YOUR VOICE UP

13 A OKAY

14 Q LET ME ASK MY QUESTION AGAIN, MR BALLARD DIDN'T
15 YOU TELL THESE GENTLEMEN SITTING THERE AT THAT MEETING
16 AND TELL THEM THAT DUKE POWER IS NEVER GOING TO LET YOU
17 GO UP THIS SIDE, NOR UP THAT FAR, ISN'T THAT CORRECT?

18 A NO, IT'S NOT CORRECT

19 Q SO YOU DID NOT TELL THESE GENTLEMEN THAT AT ALL?

20 A NO THE ONLY THING I TOLD THEM FOR SURE THAT DUKE
21 POWER WAS NOT GOING TO ALLOW WAS THE FIRST TIME I WENT
22 INTO THE MEETING, THEY HAD DOCKS UP THIS SIDE AND I
23 TOLD THEM THAT THIS WAS A MARINA COVE AND THAT THE SLIPS
24 WOULD HAVE TO BE IN THE COVE

25 Q YOU CAN GO TAKE YOUR SEAT, MR BALLARD MR

1 BALLARD, LET'S TALK ABOUT THE RENDERINGS THAT YOU SAY
2 EXIST SIR, YOU HAD MADE A REQUEST FOR THOSE RENDERINGS,
3 HAD YOU NOT?

4 A YES, I DID

5 Q THE ONE YOU BELIEVED EXISTED WHERE IT HAD ON THE
6 BACK SIDE?

7 A I DON'T BELIEVE IT EXISTED, IT EXISTED

8 Q OKAY AND YOU ACTUALLY CALLED MR JUSTICE, RIGHT?

9 A YEAH

10 Q AND SAM JUSTICE, THE ARCHITECT IN THE MATTER?

11 A YES, I DID AND HE WOULDN'T -- HE WOULDN'T GIVE ME
12 ANYTHING WITHOUT TALKING TO MR THOENNES FIRST AND THEN
13 HE CALLED ME BACK AND SAID HE WOULDN'T GIVE ME ANYTHING

14 Q NOW THAT MIGHT HAVE BEEN THE FIRST TIME YOU TALKED
15 TO MR JUSTICE DIDN'T YOU TALK TO MR JUSTICE AGAIN?

16 A THE ONLY TIME I TALKED TO MR JUSTICE WAS WHEN I
17 CALLED HIM AND ASKED HIM AND THEN WHEN HE CALLED ME BACK
18 AND TOLD ME THAT I WOULD HAVE TO GO THROUGH MR THOENNES
19 THIS WAS AFTER I WAS ELECTED BACK TO THE BOARD

20 MR HOWARD MAY I APPROACH, YOUR HONOR?

21 THE COURT YEAH

22 Q MR BALLARD, DO YOU RECOGNIZE THIS EMAIL? WE MAY
23 HAVE TO TURN THE LIGHTS ---

24 THE COURT CAN YOU SEE THAT?

25 A YEAH, I THINK I -- I DON'T REMEMBER IF I GOT IT OR

1 NOT

2 Q THIS IS YOUR ---

3 A IT'S ADDRESSED TO ME, YES

4 Q OKAY THIS IS YOUR EMAIL ADDRESS UP HERE, RIGHT?

5 A THAT'S CORRECT

6 Q AND WOULD YOU AGREE -- AND DO YOU RECOGNIZE THE APB
7 NUMBER DOWN HERE?

8 A YEAH

9 Q DO YOU RECOGNIZE THAT AS A DOCUMENT THAT WAS
10 PRODUCED BY YOUR LAWYERS TO ME?

11 A NO, I DON'T

12 Q OKAY APB, THOSE ARE YOUR INITIALS?

13 A YEAH

14 (WHEREUPON DEFENDANT'S EXHIBIT 2 WAS MARKED)

15 MR HOWARD YOUR HONOR, DEFENDANTS MOVE TO HAVE
16 DEFENDANT'S EXHIBIT 2 ENTERED INTO EVIDENCE

17 MR HOLLEMAN NO OBJECTION

18 THE COURT OKAY

19 (WHEREUPON DEFENDANT'S EXHIBIT 2 WAS ADMITTED INTO
20 EVIDENCE)

21 Q NOW, MR BALLARD, THIS IS -- PLEASE TAKE A LOOK UP
22 ON THE SCREEN THIS APPEARS TO BE THE TOP OF THE
23 DOCUMENT THAT YOU'RE LOOKING AT, IS THAT RIGHT?

24 A CORRECT

25 Q AND THAT IS YOUR EMAIL ADDRESS IN THE TO, CORRECT?

1 A YES

2 Q AND THAT IS FROM RICK THOENNES, CORRECT?

3 A CORRECT

4 Q AND THAT WAS SENT TO YOU ON MONDAY, JUNE 11, 2007,

5 CORRECT?

6 A I'M SURE IT WAS

7 Q OKAY AND YOU SEE THE SUBJECT OF THE FOLLOWING

8 EMAIL, THAT LOOKS LIKE IT WAS AN EMAIL THAT WAS FORWARDED

9 TO YOU, IS THAT RIGHT?

10 A YES, A DOCK LAYOUT

11 Q AND ATTACHED TO THAT IS A DOCK LAYOUT, JUNE 11,

12 2007, CORRECT?

13 A YES

14 Q AND DO YOU SEE DOWN BELOW IT IT APPEARS TO BE THE

15 EMAIL THAT WAS FORWARDED TO YOU, CORRECT? THE ONE BELOW

16 A I'M SORRY, I DIDN'T HEAR THE QUESTION

17 Q I'M SORRY THE EMAIL BELOW, FORWARDED TO YOU GO

18 BACK TO THE FIRST PAGE THAT APPEARS TO BE THE ATTACHED

19 EMAIL?

20 A YEAH, JUNE 11, 2007

21 Q OKAY AND IT STATES TO RICK, ATTACHED IS A

22 PRELIMINARY DOCK -- PRE-LIM DOCK LAYOUT FOR REVIEW,

23 CORRECT?

24 A YES

25 Q IT SAYS I DON'T HAVE ANDY'S EMAIL, CAN YOU FORWARD

1 IT TO HIM? CORRECT?

2 A YES

3 Q NOW AS OF JUNE 11, 2002 -- 2007 DO YOU RECOGNIZE

4 THIS AREA RIGHT HERE AS BEING WHERE THE HOUSEBOATS ARE

5 LOCATED? THE AREA I'M POINTING TO? IF YOU'LL LOOK UP ON

6 THE SCREEN I APOLOGIZE

7 A DO I RECOGNIZE THAT?

8 Q YES

9 A YES

10 Q OKAY THERE ARE NO HOUSEBOATS ALONG THE BACK SIDE

11 HERE

12 A NO, NOT IN THIS DRAWING

13 Q OKAY WELL, THIS IS THE EARLIEST DRAWING I COULD

14 FIND YOU PRODUCED THIS TO US DO YOU HAVE ANY OTHER

15 DRAWINGS TO SUGGEST THAT THE HOUSEBOATS WERE EVER ON THE

16 OTHER SIDE OF THAT INITIALLY?

17 A I DON'T HAVE ANY DRAWINGS I WENT TO GET -- I WENT

18 AND ASKED FOR THE DRAWINGS

19 Q YOU DON'T HAVE ANY OTHER DRAWINGS TO SUGGEST ---

20 A NO, I DON'T HAVE ANY

21 Q SO YOU'RE JUST SUPPLYING THIS INFORMATION OFF OF

22 YOUR RECALL, IS THAT CORRECT?

23 A I'M SUPPLYING THIS INFORMATION OFF OF WHAT THEY

24 SHOWED ME THE FIRST TIME THEY SHOWED ME A DRAWING

25 Q BUT YOU DON'T HAVE A COPY OF ---

1 A I DON'T HAVE A COPY OF THE DRAWING, NO

2 Q NOW WHEN YOU MET WITH DUKE POWER SOMETIME THAT
3 SUMMER OF 2007, IS THAT ABOUT -- SOMEWHERE IN THAT RANGE,
4 IS THAT CORRECT?

5 A (AFFIRMATIVE NOD)

6 Q AND YOU ATTENDED THAT MEETING?

7 A YES

8 Q AND YOU WERE THERE, I GUESS, WITH MR ROBERSON, IS
9 THAT CORRECT?

10 A THAT'S CORRECT

11 Q AND WAS IT RICK THE THREE, RICK, III?

12 A MR THOENNES, III, YES

13 Q AND AT THAT MEETING DUKE POWER SAID YOU CAN'T GO
14 BEYOND THAT POINT THAT WE WERE TALKING ABOUT, CORRECT,
15 GEOGRAPHICALLY? YOU WANT ME TO PUT THE DOCUMENT BACK UP
16 AGAIN?

17 A NO I BELIEVE A COUPLE, AND I COULD BE WRONG, BUT I
18 BELIEVE A COUPLE OF DRAWINGS HAD ALREADY BEEN SENT TO
19 DUKE AND THEY HAD MARKED X'S OUT TO WHERE THEY DIDN'T
20 WANT THINGS TO BE

21 AND WE FELT LIKE IT WAS TO OUR BEST INTEREST TO GO
22 UP AND SIT DOWN WITH DUKE AND TRY TO FIGURE OUT EXACTLY
23 WHERE WE COULD PUT MARINA SLIPS AND SO THAT'S -- MR
24 ROBERSON, MR THOENNES AND I WENT UP AND TALKED -- ASKED
25 -- CALLED DUKE AND ASKED FOR A MEETING SO THAT WE COULD

1 TRY TO FIGURE OUT EXACTLY WHERE WE COULD DO A BOAT LAYOUT
2 BECAUSE WE'D ALREADY SENT THEM, FROM WHAT I UNDERSTAND,
3 TWO OR THREE THAT THEY HAD REJECTED

4 Q AND DUKE POWER INDICATED YOU COULDN'T GO
5 GEOGRAPHICALLY BEYOND THAT MARINA POINT, IS THAT CORRECT?

6 A DUKE POWER AT THAT MEETING TOLD US THAT THEY --
7 FIRST OF ALL, WHEN WE GOT THERE I TOLD DUKE POWER THAT I
8 HAD ALWAYS FELT LIKE THAT THE MARINA COVE WAS THE COVE,
9 AND THAT'S WHERE WE SHOULD BE ALLOWED TO PUT BOAT SLIPS
10 AND IF THEY HADN'T -- IF THEY WEREN'T GOING TO LET US PUT
11 BOAT SLIPS IN THE COVE, THEN THEY SHOULD HAVE MADE US DO
12 A BOAT LAYOUT, A MARINA LAYOUT BEFORE THEY EVER GAVE US
13 THE LEASE

14 AND THEN THEY TOLD US THAT THE CONCEPTUAL PLANS --
15 EVERYTHING THAT WE DID THE WHOLE TIME WE WERE WORKING ON
16 A CONCEPTUAL PLAN, NOT ONLY DID WE HAVE TO HAVE THE
17 VERBIAGE, THE WORDING CORRECT, BUT THE VISUAL SITES HAD
18 TO BE THE SAME IS WHAT THEY TOLD US THAT DAY AND THEY
19 WERE BASING THEIR RECOMMENDATION THAT WE COULD ONLY USE
20 THAT POINT FOR THE MARINA BECAUSE OF THE WAY THE
21 CONCEPTUAL PLANS WERE

22 Q THEY TOLD YOU YOU COULDN'T GO BEYOND, GEOGRAPHICALLY
23 BEYOND THAT AREA, CORRECT?

24 A THAT'S CORRECT

25 Q AND I KNOW YOU'VE DENIED IT, BUT -- NEVER MIND NOW

1 DUKE POWER HAS NEVER SAID YOU COULD ONLY HAVE A HUNDRED

2 AND TWO BOAT SLIPS, HAVE THEY NOT?

3 A NO, THEY'VE NEVER SAID THAT

4 Q THE HUNDRED AND TWO BOAT SLIPS CAME FROM WHAT WE --

5 WHAT THESE GENTLEMEN AND THE ARCHITECTS WERE ABLE TO

6 SQUEEZE INTO THAT SPACE, IS THAT RIGHT?

7 A FOR THE SIZE SLIPS THAT THEY WANTED

8 Q AND THEY ACTUALLY REDUCED THE SIZE OF THE SLIPS,

9 RIGHT, TO GET TO THAT POINT?

10 A NO, NOT THAT I KNOW OF

11 Q THEY HAVE THE HOUSEBOAT SLIPS AND THEN THEY HAVE THE

12 TYPE 1, TYPE D1 AND TYPE D2, RIGHT? AND THEY'VE GOT

13 FOURTEEN FOOT BY THIRTY FOOT, CORRECT?

14 A THAT'S CORRECT THAT'S WHAT IT SAYS UP THERE

15 Q MR BALLARD, DO YOU RECOGNIZE THAT AS THE FINAL PLAN

16 AND LAYOUT?

17 A IT LOOKS LIKE IT TO ME

18 MR HOLLEMAN NO OBJECTION

19 THE COURT OKAY

20 (WHEREUPON DEFENDANT'S EXHIBIT 3 WAS MARKED AND

21 ADMITTED INTO EVIDENCE)

22 Q YOU'VE BEEN PLACED IN FRONT OF YOU WHAT'S BEEN

23 MARKED AS DEFENDANT'S EXHIBIT 3 CAN YOU SEE THE MARINA

24 PAY DOCKS, CORRECT?

25 A UM-HUM (AFFIRMATIVE)

1 Q THE TOTAL THEY WERE ABLE TO SQUEEZE IN WAS A HUNDRED

2 AND TWO

3 A UM-HUM (AFFIRMATIVE)

4 Q AND YOU SEE THEY REDUCED THE SIZE OF IT, CORRECT?

5 A TWELVE BY THIRTY

6 Q TWELVE FEET BY THIRTY SO THEY ALREADY REDUCED THE

7 SIZE TO GET IT IN THERE, CORRECT?

8 A I GUESS ---

9 Q TO GET ---

10 A I GUESS THEY HAVE AND THESE WERE FOURTEEN BY

11 THIRTY

12 Q SO THEY REDUCED -- THEY'VE ALREADY REDUCED THE SIZE

13 OF THE DOCK TO TRY TO GET MORE IN THERE, CORRECT?

14 A THEY'VE ALREADY REDUCED THE SIZE OF THE DOCKS TO GET

15 MORE IN THERE

16 Q OKAY

17 A I'LL GIVE YOU THAT

18 Q AND NOW WE'RE LEFT WITH A HUNDRED AND TWO PAY BOAT

19 SLIPS, CORRECT?

20 A THAT'S CORRECT

21 Q DOWN FROM THE NINETY-EIGHT THAT THEY -- DOWN FROM

22 THE TWO HUNDRED THAT THEY BELIEVED THAT THEY WERE

23 GETTING, CORRECT?

24 A YOU'RE GETTING A HUNDRED AND TWO SLIPS

25 Q LOST NINETY-EIGHT SLIPS

1 A THEY KNEW THAT THE CONCEPTUAL PLAN WAS SET BETWEEN
2 ONE HUNDRED AND TWO HUNDRED

3 Q AND SO THEY'RE GETTING THE BOTTOM AMOUNT OF WHAT
4 DEMAND WOULD INDICATE, CORRECT?

5 A THAT'S CORRECT

6 Q NOW A HUNDRED BOAT SLIPS IS NOT THE FIRST TIME WE'VE
7 SEEN THAT, IS IT?

8 MR HOLLEMAN YOUR HONOR, IF WE COULD APPROACH
9 THE COURT OKAY

10 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE
11 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR
12 HEARING)

13 THE COURT MR FOREMAN, LADIES AND GENTLEMEN OF THE
14 JURY, THIS IS ONE OF THOSE TIMES I GOT TO ASK YOU TO STEP
15 TO YOUR JURY ROOM I HAVE TO GO OVER A LEGAL ISSUE WITH
16 THE ATTORNEYS WE THOUGHT WE MIGHT COULD GET IT RESOLVED
17 RIGHT HERE, BUT JUST COULDN'T DO IT SO WE'LL BE WITH
18 YOU IN JUST A FEW MINUTES

19 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4 29 PM)

20 THE COURT OKAY MR HOWARD

21 MR HOWARD YOUR HONOR, CAN I MARK IT FOR
22 IDENTIFICATION PURPOSES?

23 THE COURT CERTAINLY

24 (WHEREUPON DEFENDANT'S EXHIBIT 4 WAS MARKED FOR
25 IDENTIFICATION)

1 Q MR BALLARD, I'VE PLACED IN FRONT OF YOU WHAT'S

2 MARKED AS DEFENDANT'S EXHIBIT 4 FOR IDENTIFICATION

3 PURPOSES DO YOU SEE THAT?

4 A YES

5 Q DO YOU RECOGNIZE THE DOCUMENT I'VE PLACED IN FRONT

6 OF YOU?

7 A YES

8 Q PLEASE TELL ME WHAT THIS DOCUMENT WAS

9 A I'M NOT SURE IF THIS WAS THE ABSOLUTE FIRST, BUT

10 THIS WAS ONE OF THE FIRST CONCEPTUAL PLANS THAT WAS GIVEN

11 TO DUKE POWER

12 Q OKAY YOU SEE DOWN IN THE LOWER RIGHT HAND CORNER,

13 I GUESS, WHERE IT HAS APB00149, CORRECT?

14 A THAT'S CORRECT

15 Q AND THAT APPEARS TO BE ANOTHER DOCUMENT PRODUCED BY

16 YOUR LAWYERS, CORRECT?

17 A YES

18 Q AND MY UNDERSTANDING IS THAT THIS DOCUMENT WAS NEVER

19 MADE AVAILABLE TO MY CLIENTS, CORRECT?

20 A THERE WAS NO NEED TO GIVE THEM THIS DOCUMENT THIS

21 DOCUMENT DOESN'T HAVE ANY BEARING

22 Q WELL, MR BALLARD, THIS DOCUMENT DOES -- ON THIS

23 PAGE RIGHT HERE, CORRECT, THIS DOCUMENT IN EXHIBIT

24 SECTION E DOES INDICATE BOAT SLIPS, CORRECT, COVERED AND

25 UNCOVERED SLIPS, ONE HUNDRED TOTAL?

1 A YEAH

2 Q DID YOU EVER TELL MY CLIENTS THAT YOU HAD A PRIOR
3 CONCEPTUAL PLAN WHEREIN -- AND THIS IS BEFORE YOU ASKED
4 THEM TO ENTER INTO THAT AGREEMENT, ASKED THEM AND GOT --
5 AND SIGNED THE AGREEMENT WITH THEM, DID YOU EVER TELL
6 THEM THERE WAS A PRIOR CONCEPTUAL PLAN, GUYS, WHERE WE
7 ONLY HAD A TOTAL HUNDRED SLIPS REPRESENTED?

8 A NO

9 Q YOU DID NOT?

10 A I DID NOT I DIDN'T ALSO TELL -- IT ALSO SAYS A
11 HUNDRED DRY-STACK SLIPS TOO WE GOT TWO HUNDRED IT
12 SAYS THIRTY-EIGHT COVERED AND THIRTY-EIGHT UNCOVERED
13 IT'S A LOT OF THINGS IN HERE THAT DON'T PERTAIN TO THE
14 FINAL LEASE, TO THE FINAL DOCUMENT

15 MR HOWARD YOUR HONOR, I ---

16 A YOU'RE PICKING OUT ONE THING AND WANTING TO BLOW IT
17 OUT OF PROPORTION

18 Q MR BALLARD, I BELIEVE YOU JUST SAID SOMETHING
19 THAT'S INCORRECT PLEASE GO UP TO B, PLEASE DRY DOCK
20 STORAGE SAYS TWO HUNDRED BOATS, CORRECT?

21 A OVER HERE IT SAYS ONE HUNDRED THIS IS ALL PART OF
22 A CONCEPTUAL PLAN EVERYTHING HAS TO CORRELATE TOGETHER
23 THAT'S WHAT DUKE MADE US -- THAT'S WHY WE WENT THROUGH
24 THREE OR FOUR DIFFERENT CONCEPTUAL PLANS BECAUSE THE
25 WORDAGE HERE HAS TO BE THE SAME AS THE PICTURES ON THE --

1 THAT'S WHY I HAD TO -- THAT'S WHY WE WENT THROUGH THREE
2 OR FOUR OF THESE BEFORE WE GOT DUKE TO APPROVE ONE
3 THE ONLY ONE THAT'S IMPORTANT IS THE ONE DUKE
4 APPROVED THAT'S THE ONE THEY WERE SHOWN IT WOULDN'T
5 HAVE DONE ME ANY GOOD -- WHAT IF I'D HAD A THOUSAND BOAT
6 SLIPS HERE, IT WOULDN'T HAVE DONE ME ANY GOOD TO SHOW IT
7 TO THEM THEN

8 IT ALSO SAYS SIXTY ROOMS AT A HOTEL WE GOT A
9 HUNDRED AND TWENTY ROOMS YOU'RE PULLING ONE THING OUT
10 OF A CONCEPTUAL PLAN THAT HAS NO BEARING ON THE ACTUAL
11 CONTRACT I HAD WITH DUKE POWER

12 Q WELL CERTAINLY YOU WERE ONLY ABLE TO GET,
13 CONVENIENTLY ABLE TO SQUEEZE IN A HUNDRED AND TWO BOAT
14 SLIPS

15 A THAT WAS NOT MY CALL THAT'S DUKE POWER'S CALL

16 Q IT WAS YOUR OBLIGATION TO DISTRIBUTE INFORMATION TO
17 THEM ABOUT ANY GEOGRAPHICAL RESTRAINTS THAT DUKE POWER
18 WAS GOING TO IMPOSE ON THIS ---

19 A AND MY GEOGRAPHICAL RESTRAINTS WAS I THOUGHT THE
20 WHOLE COVE WAS PART OF THE MARINA

21 Q AND IT WAS DUKE -- IT WASN'T DUKE POWER'S CALL TO
22 PUT A HUNDRED TOTAL BOATS IN THERE THAT'S ALL WE COULD
23 FIT, CORRECT?

24 A THAT'S WHAT DUKE POWER SAID THAT'S THE ONLY SPACE
25 THEY WOULD GIVE US TO PUT THE BOAT SLIPS AND THAT WAS

1 DUKE POWER'S CALL THEY ALWAYS KNEW THAT DUKE POWER HAD
2 THE LAST SAY ABOUT EVERYTHING

3 Q AND YOU CREATED THIS CONCEPTUAL PLAN, THIS PRIOR
4 CONCEPTUAL PLAN WITH YOUR ARCHITECTS, CORRECT?

5 A RIGHT

6 Q THE ARCHITECTS ASSISTED YOU IN PUTTING THIS PLAN
7 TOGETHER

8 A THE ARCHITECT PUT THE PLAN TOGETHER

9 Q AND YOU ASSISTED IN THE CONTENT

10 A I DON'T KNOW IF I ASSISTED THE CONTENT OR NOT I
11 DON'T REMEMBER, EVER REMEMBER TELLING THE ARCHITECT TO
12 PUT A HUNDRED BOAT SLIPS THERE BUT WHEN WE GOT IN WITH
13 DUKE POWER AND THEY SAW THIS ORIGINAL CONCEPTUAL PLAN,
14 THEY TOLD US WE NEEDED TO ASK FOR THE MAX OF EVERYTHING
15 AND THEY SAID, GO FOR -- WE DON'T KNOW HOW MANY YOU CAN
16 GET IN THERE, BUT THE MAXIMUM COMMERCIAL MARINA IS TWO
17 HUNDRED THAT'S WHY IT WAS PUT IN THERE I HAVE TOLD
18 THIS I DON'T KNOW HOW MANY TIMES

19 MR. HOWARD YOUR HONOR, I BELIEVE THIS IS EVIDENCE
20 OF PRIOR KNOWLEDGE, PRIOR POTENTIAL KNOWLEDGE

21 THE COURT MR. HOLLEMAN, ANYTHING YOU WANT TO ---

22 MR. HOLLEMAN I WOULD JUST SAY ---

23 MR. HOWARD HE MAY DENY IT ---

24 THE COURT WAIT A MINUTE LET HIM FINISH HIS
25 ARGUMENT

1 MR HOWARD HE MAY DENY IT, BUT IT'S STILL
2 CONVENIENT EVIDENCE OF PRIOR KNOWLEDGE THAT HE HAD HE
3 CAN DENY IT ALL HE WANTS TO

4 MR HOLLEMAN: I MEAN, HERE'S THE -- THE PAROLE
5 EVIDENCE RULE IS A TOTAL BAR TO INTRODUCTION OF SOMETHING
6 LIKE THIS IT'S BLACK LETTER LAW

7 APART FROM THAT, HERE'S THE PROBLEM, THERE IS A
8 LEASE BETWEEN DUKE POWER AND WARPATH DUKE POWER HAS
9 TAKEN THE POSITION THIS IS ALL YOU CAN HAVE UNDER THIS
10 DOCUMENT AS WRITTEN, WHICH IS THE ONE THEY SIGNED OFF ON
11 IF THAT'S WRONG UNDER THAT DOCUMENT, THEY SHOULD SUE DUKE
12 POWER

13 ANDY BALLARD IS NOT THE ONE STOPPING THIS HE'S NOT
14 THE PARTY TO THIS AGREEMENT IF THERE ARE RIGHTS UNDER
15 THIS DOCUMENT THAT EXCEED A HUNDRED, THEN GO AFTER DUKE
16 POWER THEY'RE VIOLATING THE LEASE THAT'S WHAT THEY
17 SIGNED UP FOR IS WHAT WAS IN THAT LEASE

18 THE COURT OKAY

19 MR HOLLEMAN ANDY BALLARD HAD NOTHING TO DO WITH
20 THAT

21 THE COURT ALL RIGHT

22 MR HOWARD YOUR HONOR,

23 THE COURT YEAH, GO AHEAD, MR HOWARD

24 MR HOWARD THEY CONTRACTED WITH MR BALLARD THEY
25 DIDN'T CONTRACT -- DUKE POWER WAS NOT THERE NEGOTIATING

1 WITH THEM HE WAS NOT THERE -- HE WAS NOT THE ONE THAT
2 MADE REPRESENTATIONS TO THEM WHEN THEY ENTERED INTO THIS
3 AGREEMENT IT'S NOT DUKE POWER THAT IS SITTING THERE
4 DOING THIS

5 THE COURT OKAY WELL, I'M NOT GOING TO ALLOW THIS
6 DOCUMENT AND -- BUT YOU CAN EXAMINE HIM ABOUT WHETHER
7 OR NOT HE HAD SOME PRIOR KNOWLEDGE THAT IT WAS -- THE
8 ONLY WAY IT COULD FIT WAS -- THE ONLY NUMBER OF SLIPS YOU
9 COULD GET WAS A HUNDRED

10 AND, YOU KNOW, IF YOU CAN DRAW IT OUT OF HIM,
11 ALTHOUGH, I MEAN, I AGREE WITH MR HOLLEMAN THAT THE
12 PAROLE EVIDENCE BARS THIS DOCUMENT TO VARY THE TERMS OF
13 -- THE WRITTEN DOCUMENT THAT'S THE BASIS OF THIS LAWSUIT

14 MR HOWARD WELL, ---

15 THE COURT IF I WERE TO LET IT IN HIS ANSWERS ARE
16 PRETTY CONVINCING BUT I'M NOT GOING TO, YOU KNOW, I'M
17 NOT GOING TO THROW THAT WRENCH INTO THE WORKS, OKAY?

18 MR HOWARD WELL, LET ME -- I AM GOING TO STATE AN
19 OBJECTION ON THE RECORD, YOUR HONOR, TO THAT

20 THE COURT OKAY I UNDERSTAND THAT'S WHY I SENT
21 THE JURY OUT TO LET YOU PROFFER IT

22 MR HOWARD AND THE OBJECTION IS THAT THE PAROLE
23 EVIDENCE RULE IS NOT APPLICABLE TO THIS BECAUSE I AM NOT
24 OFFERING IT IN AN EFFORT TO VARY THE AGREEMENT BETWEEN
25 THESE PARTIES WE ARE NOT TRYING TO EXPLAIN A DIFFERENT

1 AGREEMENT

2 WHAT WE ARE OFFERING IS -- IT AS EVIDENCE THAT MR
3 BALLARD HAD SOME KNOWLEDGE THAT TWO HUNDRED BOAT SLIPS
4 WEREN'T POSSIBLE

5 THE COURT WELL, THAT'S NOT WHAT THIS DOCUMENT
6 SAYS

7 MR HOWARD THIS DOCUMENT GIVES A HUNDRED TOTAL

8 THE COURT WELL, A HUNDRED IN ONE PLACE, TWO
9 HUNDRED ANOTHER YOU CAN EXAMINE HIM ABOUT IT AND IF
10 YOU THINK YOU CAN IMPEACH HIM WITH SOME DOCUMENT, THAT'S
11 ONE THING BUT THAT'S ENTIRELY SEPARATE FROM INTRODUCING
12 IT AS EVIDENCE VIOLATING -- I CONSIDER IT TO BE VIOLATING
13 THE PAROLE EVIDENCE RULE

14 I'M NOT GOING TO LIMIT YOU IN TRYING TO SHOW THAT
15 HE'S INDUCED YOUR CLIENTS FRAUDULENTLY IF YOU CAN
16 EXAMINE HIM AND FIND THAT, THEN SO BE IT BUT THIS
17 DOCUMENT, FROM WHAT I'VE SEEN AND HEARD DOES NOT DO
18 THAT OKAY?

19 MR HOWARD THANK YOU, YOUR HONOR

20 THE COURT Y'ALL READY?

21 MR HOLLEMAN THANK YOU, YOUR HONOR

22 THE COURT YOU READY TO BRING THE JURY BACK?

23 MR HOWARD YEAH, THAT'S FINE

24 THE COURT OKAY

25 MR BALLARD WHAT DO YOU WANT ME TO DO WITH THIS?

1 THE COURT THAT IS A COURT'S -- THE CONCEPTUAL PLAN
2 THAT HE JUST -- GIVE THAT TO THE COURT REPORTER THAT'S
3 NOT IN EVIDENCE, BUT IT'S IN THE RECORD

4 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4 39
5 PM)

6 THE COURT ALL RIGHT, MR. HOWARD

7 MR. HOWARD THANK YOU, YOUR HONOR

8 CROSS EXAMINATION BY MR. HOWARD CONTINUED

9 Q MR. BALLARD, YOU'D PREVIOUSLY TESTIFIED TO YOUR
10 BELIEFS REGARDING THE THOENNESES' ABILITIES TO COMPLETE
11 THEIR OBLIGATIONS, CORRECT?

12 A YES

13 Q NOW THE THOENNESES HAVE NEVER TOLD YOU THAT THEY
14 WOULD NOT MEET THEIR OBLIGATIONS, HAVE THEY?

15 A NO

16 Q AND THEY HAVE WORKED THROUGHOUT THIS LAST THREE
17 YEARS TO -- AND PURSUING THESE PERMITS, CORRECT?

18 A I ASSUME THEY HAVEN'T TOLD ME ANYTHING SO I
19 DON'T -- I ASSUME THEY HAVE

20 Q WELL, YOU'VE RECEIVED DOCUMENTS FROM US HAVE YOU
21 REVIEWED THOSE DOCUMENTS?

22 A RIGHT

23 Q OKAY AND YOU SAW IN THERE MULTITUDES OF
24 CONVERSATIONS AND COMMUNICATIONS WITH GOLDIE &
25 ASSOCIATES, CORRECT?

1 A THAT'S CORRECT

2 Q AND GOLDIE & ASSOCIATES ARE THE ENGINEERS THAT ARE
3 ASSISTING WARPATH IN PURSUING THESE PERMITS, CORRECT?

4 A THAT'S CORRECT

5 Q AND MOST OF THESE COMMUNICATIONS THAT YOU SAW, WOULD
6 YOU AGREE WITH ME, ARE BETWEEN GOLDIE AND MR THOENNES,
7 CORRECT?

8 A YES

9 Q AND THESE COMMUNICATIONS YOU'VE SEEN HAVE BEARING
10 UPON MANY OF THE PERMITS INVOLVED THAT THEY DID ACHIEVE,
11 CORRECT?

12 A YES

13 Q AND YOU WOULD AGREE WITH ME THAT GOLDIE & ASSOCIATES
14 HAS -- IT'S COST MONEY TO HAVE GOLDIE & ASSOCIATES?

15 A I'M SURE IT HAS, YES

16 Q AND IT'S COST PROBABLY -- AND YOU WOULD AGREE WITH
17 ME THAT YOU'VE SEEN WHERE MR ROBERSON HAS MADE ATTEMPTS
18 TO ACHIEVE FINANCING, IS THAT CORRECT?

19 A YES

20 Q AND YOU WOULD AGREE WITH ME THAT MR ROBERSON HAS
21 PURCHASED A PIECE OF PROPERTY IN EXCESS OF WHAT WAS
22 ALREADY IN PLACE FOR SEWAGE, CORRECT?

23 A THAT'S CORRECT

24 Q BY SEWAGE I MEAN WASTE WATER TREATMENT, CORRECT?

25 A THAT'S CORRECT

1 Q AND THAT WAS BECAUSE PICKENS COUNTY REQUIRED THAT,
2 CORRECT?

3 A THAT'S WHAT THEY TOLD ME

4 Q OKAY AND YOU WOULD AGREE THAT THAT PIECE OF
5 PROPERTY WAS AT OR AROUND FIVE HUNDRED THOUSAND DOLLARS,
6 IS THAT RIGHT?

7 A THAT S WHAT THEY TOLD ME

8 Q ABOUT THE TIME THEY ENTERED INTO THIS AGREEMENT WITH
9 YOU DID THEY NOT -- DID YOU NOT TELL THEM THAT THIS
10 PROJECT WAS IN ITS FINAL STAGES?

11 A I DON'T KNOW IF I EVER TOLD THEM IT WAS IN ITS FINAL
12 STAGES I TOLD THEM THAT I HAD FERC'S APPROVAL, I HAD
13 DHEC'S APPROVAL, I MEAN, NOT DHEC, I HAD DUKE'S APPROVAL,
14 AND I HAD PICKENS COUNTY AND THAT WE STILL HAD TO GO
15 THROUGH THE PERMITTING PROCESS

16 Q OKAY BUT YOU DIDN'T HAVE ALL OF PICKENS COUNTY,
17 CORRECT?

18 A I HAD PICKENS COUNTY -- COUNTY COUNCIL HAD VOTED TO
19 APPROVE THE PROJECT AND HAD GIVEN US PERMISSION TO GO
20 AHEAD WITH THE PROJECT

21 Q HAD -- BUT YOU HADN'T GOTTEN THE APPROVAL OF THE
22 PLANNING COMMISSION, CORRECT?

23 A THE ONLY REASON THE PLANNING COMMISSION HAD TO SEE
24 IT, WHEN IT GOES OVER A HUNDRED AND SEVENTY-FIVE PARKING
25 SPACES, THEN THE PLANNING COMMISSION HAS TO REVIEW IT

1 PICKENS COUNTY COUNCIL HAD NOT GIVEN THE PLANNING
2 COMMISSION A REVIEW ON THE PROJECT SO THEY WERE CAUGHT
3 OFF GUARD ON THE PROJECT
4 Q NOW LET'S GO BACK ---
5 A IT MAY HAVE TOOK A MEETING WITH THEM, AND THEY
6 APPROVED IT
7 Q LET'S GO BACK TO THE FINANCIAL OBLIGATIONS HAS MR
8 ROBERSON EVER TOLD YOU THAT HE IS NOT GOING TO GO FORWARD
9 WITH FINANCING THIS PROJECT?
10 A HE STATED IN DEPOSITIONS THAT HE WOULD NOT PUT UP
11 MORE THAN, I BELIEVE, TEN OR FIFTEEN PERCENT
12 Q TEN OR FIFTEEN PERCENT, HUH? ARE YOU SURE ABOUT
13 THAT?
14 A I'M NOT SURE IT WAS TEN, FIFTEEN OR TWENTY
15 PERCENT HE STATED IN DEPOSITIONS HE WAS ONLY GOING TO
16 PUT UP A CERTAIN AMOUNT OF MONEY
17 Q ISN'T WHAT HE SAID THAT THE TWENTY PERCENT WAS WHAT
18 WAS AVAILABLE, THAT A EIGHTY/TWENTY LOAN WAS WHAT WAS
19 AVAILABLE BACK IN 2007?
20 MR HOLLEMAN OBJECTION TO CROSS EXAMINING THE
21 WITNESS ABOUT WHAT ANOTHER WITNESS SAID I MEAN, HE
22 ASKED HIS MEMORY OF WHAT THE WITNESS SAID ---
23 THE COURT DON'T PIT THE WITNESSES YOUR CLIENT
24 WILL GET A CHANCE TO TESTIFY
25 MR HOWARD OKAY THANK YOU, YOUR HONOR

1 Q NOW THE OBLIGATION TO FINANCE THIS DEVELOPMENT ISN'T
2 DUE AT THIS TIME, IS IT NOT?

3 A IT ISN'T DUE AT THIS TIME?

4 Q IT'S NOT DUE AT THIS TIME, CORRECT?

5 A IT'S NOT DUE AT THIS TIME RIGHT NOW IF THERE ARE
6 NO OBJECTIONS ON THE FIFTEEN DHEC -- FIFTEEN DAY WAIT
7 FROM DHEC, DHEC WILL ISSUE THE PERMIT TO ACTUALLY GO
8 AHEAD THE NEXT STEP IS A MEETING WITH DUKE POWER TO LAY
9 OUT THE FINANCIAL PLAN FOR THE PROJECT

10 Q SO THERE IS ACTUALLY -- THERE IS ABSOLUTELY NO
11 PRESENT OBLIGATION ON THE PART OF MR. ROBERSON TO SUPPLY
12 ANY CAPITAL TO OBTAIN FINANCING AT THIS POINT, CORRECT?

13 A YOU WOULD THINK IF I WAS ON THE BOARD AND A PARTNER
14 THEY WOULD BE LETTING ME KNOW HOW THEY'RE PLANNING TO DO
15 IT

16 Q THE PERMITS HAVEN'T ISSUED, RIGHT?

17 A 5 00 TODAY WE'LL KNOW

18 Q AND THEY'RE NOT GOING TO -- AND THERE'S NO BANK OUT
19 THERE THAT'S GOING TO ISSUE MONEY WITHOUT THIS PROJECT
20 BEING READY TO GO, IS IT NOT? ARE THEY?

21 A NO, NOT -- ISSUE MONEY, NO GIVE YOU LETTERS OF
22 INTENT, GIVE YOU COMMITMENTS THAT THEY COULD DO THE
23 PROJECT ONCE THE FINAL PERMIT WAS RELEASED BUT, YOU
24 KNOW, EVERY TIME WE'VE ASKED THEM ABOUT FINANCING,
25 THEY'VE SIGNED CONFIDENTIALITIES THEY CAN'T TELL ME

1 Q NOW THE -- CLEARLY AWARE OF THE PRESENT ECONOMIC
2 CIRCUMSTANCES, CORRECT?

3 A ABSOLUTELY

4 Q OKAY WE'VE SEEN NEWS EVERYWHERE ABOUT BANKS NOT
5 HAVING MONEY, NOT LENDING MONEY, CORRECT?

6 A CORRECT

7 Q OKAY AND THAT'S SOMETHING THAT EVEN THESE
8 GENTLEMEN ARE GOING TO BE DEALING WITH, CORRECT?

9 A THEY COULD BE DEALING WITH THAT, YES

10 Q OKAY NOW HAVE YOU SIGNED ANY CONFIDENTIALITY
11 AGREEMENTS?

12 A HAVE I EVER SIGNED A CONFIDENTIALITY AGREEMENT?

13 Q HAVE YOU SIGNED ANY CONFIDENTIALITY AGREEMENTS TO
14 RECEIVE INFORMATION ABOUT ANY FUNDING THAT THEY'VE ---

15 A NO

16 Q --- LOOKED AT?

17 A NO I HAVEN'T BEEN ASKED TO

18 Q NOW YOU WOULD AGREE WITH ME -- THIS IS EXHIBIT 1
19 AGAIN GO TO NUMBER 6 NOW I BELIEVE YOU TESTIFIED
20 PREVIOUSLY THAT THERE WERE NO TIMING REQUIREMENTS FOR YOU
21 OR ANY TIMING REQUIREMENTS YOU ENTERED ABOUT PERMITS, IS
22 THAT CORRECT?

23 A RESTATE THE QUESTION

24 Q YOU TESTIFIED PREVIOUSLY THAT THERE WERE NO TIMING
25 REQUIREMENTS IMPOSED UPON YOU IN REPRESENTATIONS ABOUT

1 PERMITS, IS THAT RIGHT?

2 A I BELIEVE THAT'S CORRECT

3 Q AND YOU DIDN'T PUT THEM IN THIS AGREEMENT?

4 A RIGHT

5 Q AND YOU WOULD AGREE WITH ME THERE'S NO TIMING

6 REQUIREMENTS ON MR ROBERSON'S AGREEMENT EITHER, CORRECT?

7 A I AGREE YES

8 Q SO YOU WOULD AGREE WITH ME THAT MR ROBERSON HAS

9 EVERY RIGHT TO LOOK FOR AS GOOD A DEAL AS HE CAN GET,

10 CORRECT?

11 A I WOULD THINK HE WOULD BE LOOKING FOR EVERY DEAL

12 Q OKAY AND SO HE'S BETTER OFF TO TAKE THE TIME TO

13 FIND THE BEST DEAL THAT HE CAN MAKE, CORRECT?

14 A CORRECT

15 Q SO YOU WOULD AGREE WITH ME THAT AT PRESENT THERE HAS

16 BEEN NO BREACH OF THAT OBLIGATION BY MR ROBERSON?

17 A OTHER THAN WHAT HE STATED IN HIS DEPOSITION

18 Q THERE HAS BEEN NO BREACH -- MR ROBERSON HAS NOT

19 FAILED AT THIS POINT TO PROVIDE CAPITAL?

20 A CORRECT

21 MR HOLLEMAN ASKED AND ANSWERED

22 THE COURT I'LL LET HIM ANSWER IT GO AHEAD

23 A NO

24 Q NOW, MR BALLARD, YOU'VE HAD -- GO TO SECTION 4

25 YOU HAD OBLIGATIONS UNDER THIS AGREEMENT TOO, DID YOU

1 NOT?

2 A YES

3 Q OKAY AND YOUR OBLIGATIONS WERE TO TAKE ACTIONS AND
4 WORK TO SECURE DOCK PERMITS, CORRECT?

5 A IT STATES BALLARD AGREES TO EXECUTE SEPARATE
6 AGREEMENT WITH WARPATH HIS DUTIES IN THE PROJECT
7 DEVELOPMENT WHICH SHALL, BUT NOT LIMITED TO, SECURING
8 DOCK PERMITS, BUILDING PERMITS, HOTEL LEASES, RESTAURANT
9 LEASES, ENGINEERING SERVICES, ARCHITECTURAL SERVICES AND
10 ANY OTHER SERVICES DEEMED NECESSARY AND APPROPRIATE TO
11 COMPLETE THE CONCEPTUAL PLANS FOR WARPATH

12 Q NOW THE WORK THAT'S BEEN DONE TO SECURE DOCK
13 PERMITS, THAT'S BEEN DONE BY THE THOENNESES, HAS IT NOT?

14 A NOT TOTALLY

15 Q THEY'RE THE ONES THAT HAVE WORKED WITH GOLDIE
16 ENGINEERING, CORRECT?

17 A THEY HAVE WORKED WITH GOLDIE ENGINEERING

18 Q AND GOLDIE ENGINEERING IS THE ONE THAT SUBMITTED THE
19 APPLICATIONS TO DHEC AND TO OTHER ENTITIES, CORRECT?

20 A YEP

21 Q AND YOU HAVE NOT WORKED WITH GOLDIE ENGINEERING?

22 A I HAVE TALKED WITH GOLDIE ENGINEERING A NUMBER OF
23 TIMES

24 Q OKAY AND, OF COURSE, BUILDING PERMITS, I GUESS,
25 AREN'T DUE DO YOU INTEND ON ---

1 A ONCE THEY THREW ME OFF THE BOARD THEY NEVER EXECUTED
2 AN AGREEMENT WITH ME THEY NEVER BROUGHT ME INTO
3 ANYTHING THEY NEVER GAVE ME ANY INFORMATION

4 Q ARE YOU SAYING ---

5 A HOW CAN I DO ANYTHING TO HELP THEM WHEN THEY THROW
6 YOU OFF THE BOARD, DON'T GIVE YOU ANY INFORMATION AND
7 WON'T -- AND THEN YOU BRING UP I'M SUPPOSED TO EXECUTE

8

9 Q WELL, SIR, THE BOARD -- THAT MEETING THAT YOU
10 SUGGEST THEY "THREW YOU OFF THE BOARD", THAT HAPPENED A
11 YEAR AFTER Y'ALL SIGNED THIS AGREEMENT, DID IT NOT?

12 A AND I HAD BEEN WORKING WITH THEM UP UNTIL THEN

13 Q YOU HAD BEEN -- SIR, ISN'T IT TRUE THAT YOU HAD
14 STARTED DEVELOPING YOUR RESTAURANT AT THAT POINT?

15 A IT MIGHT HAVE BEEN IN THE PLAN -- PLANNING WORK

16 Q ISN'T IT TRUE ---

17 A THEY NEVER HAD A MEETING -- DID THEY EVER HAVE A
18 MEETING THEY ASKED ME TO COME TO THAT I DIDN'T GO TO?

19 Q SIR, DID YOU EVER OFFER YOUR SERVICES TO THEM?

20 A YES ABSOLUTELY

21 Q DID YOU EVER CALL ---

22 A I FOLLOWED THIS CONTRACT BALLARD WILL EXECUTE
23 WHATEVER DUTIES YOU ASK HIM TO DO

24 Q AFTER YOU SIGNED THIS CONTRACT -- SO IT'S YOUR
25 SUGGESTION THAT OUTSIDE OF GETTING ANOTHER AGREEMENT YOU

1 DON'T HAVE TO MEET THESE OBLIGATIONS, IS THAT RIGHT?

2 A I HAVE TO MEET THE OBLIGATIONS OR I HAVE TO GIVE
3 BACK THE MILLION DOLLARS THEY PAID ME THAT'S WHY -- NOT
4 KEEPING IN TOUCH WITH THEM, BUT KEEPING IN TOUCH WITH
5 DUKE POWER, KEEPING IN TOUCH WITH DHEC AND TALKING TO
6 GOLDIE & ASSOCIATES, I'VE KNOWN WHAT'S GOING ON BECAUSE
7 THEY HAVEN'T TOLD ME THE FIRST THING

8 Q YOU SAID -- WELL, SIR, YOU JUST SAID THAT THEY
9 HAVEN'T CALLED YOU HAVE YOU MADE ANY ATTEMPT TO CALL
10 THEM AND ASK THEM WHAT YOU COULD DO TO HELP THEM?

11 A I HAD -- I HAD NO AUTHORITY IN THE COMPANY THEY
12 THREW ME OFF THE BOARD I WAS THE ONLY SHAREHOLDER I
13 OWNED THE CORPORATION I SOLD IT TO THEM, PART OF IT

14 Q SIR, WHERE YOU CLAIM THEY THREW YOU OFF THE BOARD
15 WAS A YEAR AFTER YOU SIGNED THIS AGREEMENT

16 A AND THAT'S BECAUSE THEY DECIDED THAT IT WASN'T GOING
17 TO BE AS PROFITABLE FOR THEM AS THEY THOUGHT SO THEY
18 WANTED TO DILUTE ME PART OF THE STOCK AND THE BEST WAY
19 WAS TO GET ME OUT OF THERE

20 Q YOU DID NOT CONTACT THEM AT ANY POINT AND OFFER YOUR
21 SERVICES TO THEM ---

22 A THAT IS NOT ---

23 Q --- IN THE YEAR BETWEEN SIGNING THIS AGREEMENT AND
24 GOING TO THAT SHAREHOLDERS ---

25 A THAT IS NOT TRUE I WENT TO THE MEETING WITH

1 PICKENS COUNTY I WENT TO MEETINGS WITH DUKE POWER I
2 MET WITH THEIR ARCHITECT THAT THEY HIRED YOU JUST
3 TALKED ABOUT ME MEETING THERE AND SEEING THESE PLANS
4 THAT WAS AFTER THE AGREEMENT WAS SIGNED

5 Q I UNDERSTAND ---

6 A THAT'S IN THAT YEAR WE WENT TO DUKE POWER IN THAT
7 YEAR

8 Q AFTER YOU MET WITH DUKE POWER AND AFTER ONE MORE
9 MEETING WITH PICKENS COUNTY DID YOU PARTICIPATE AT ALL IN
10 TRYING TO FURTHER THIS -- FURTHER THE DEVELOPMENT OF
11 WARPATH? YOU DID NOT, DID YOU?

12 A I CAN'T REMEMBER THE EXACT DATES OF WHAT WE DID AND
13 WHEN WE DID IT BUT DURING THAT TIME UNTIL THEY CALLED
14 THAT MEETING AND SAID THAT THEY WERE GOING -- SENT THE
15 NOTICE THAT THEY WERE GOING TO ELECT THE THREE OF THEM,
16 THE BOARD OF DIRECTORS, THE OFFICERS OF THE CORPORATION
17 AND NOT GOING TO ELECT ME AND THEN WHEN I ASKED THEM TO
18 PUT ME ON THE BOARD AND THEY DIDN'T SAY A WORD, THEN THEY
19 NEVER ASKED ME TO DO A THING AGAIN

20 Q THAT WAS A YEAR AFTER THE SHAREHOLDERS ---

21 A A LOT OF THINGS HAPPENED IN THAT YEAR UP UNTIL THEN

22 Q THE MEETING WITH PICKENS COUNTY WAS IN THE FALL OF
23 2007, CORRECT?

24 A IF YOU SAY SO

25 Q YOU DID NOTHING MORE TO ASSIST IN PUSHING THIS

1 FORWARD AFTER THAT MEETING WITH PICKENS COUNTY, DID YOU
2 NOT?

3 A YES, I DID

4 Q WHAT OTHER THINGS DID YOU ATTEND?

5 A I WENT TO DUKE POWER WITH THEM

6 Q THAT WAS BEFOREHAND

7 A AFTER WE SIGNED THE AGREEMENT I WENT TO DUKE POWER
8 WITH THEM I MET WITH THEIR ARCHITECTURE AND THE
9 CONCEPTUAL PLAN ARCHITECT I WENT TO PICKENS COUNTY I
10 DON'T KNOW, A NUMBER OF THINGS ANYTHING THAT THEY
11 WANTED TO TALK TO ME ABOUT OR ANYTHING THEY WANTED ME TO
12 DO, I DID

13 AND THEN THEY CALLED THE BOARD -- THE STOCKHOLDERS
14 MEETING AND TOOK ME OFF THE BOARD, TOOK ME -- NOT AS AN
15 OFFICER OF THE CORPORATION AND THEN TRIED TO CHANGE THEIR
16 CORPORATION FROM A HUNDRED THOUSAND SHARES TO NINE
17 HUNDRED THOUSAND SHARES SO THEY COULD DILUTE ME AND
18 DIDN'T WANT ME TO HAVE ANY PART OF IT

19 Q NOW CERTAINLY, MR BALLARD, AND I DON'T THINK THIS
20 -- WE HAVE TO GO -- THIS GOES WITHOUT SAYING, IF THERE
21 WAS NO ANTI-DILUTION PROVISION IN THIS AGREEMENT, THEN
22 THERE'S NOTHING WRONG WITH THEM DILUTING YOU OR
23 THEMSELVES, IS THAT CORRECT?

24 A WELL, THAT'S YOUR OPINION I FEEL LIKE THEY'VE GOT
25 AN OBLIGATION TO A CORPORATION THAT HAD A HUNDRED

1 THOUSAND SHARES THEY DIDN'T PAY ANYTHING FOR THE SIXTY
2 THOUSAND SHARES, BUT THEY SIGNED AN OBLIGATION, AN
3 AGREEMENT TO BUILD A MARINA AND GET PERMANENT FINANCING
4 FOR IT

5 NOW IT LOOKS LIKE TO ME IF THEY PAID ME A MILLION
6 DOLLARS FOR TWENTY THOUSAND AND THEY SIGNED A PROMISSORY
7 COMMITMENT FOR THE OTHER SIXTY THOUSAND, THAT THEY OUGHT
8 TO BE ABLE TO DO THAT BEFORE THEY START DILUTING ME OF
9 THE CORPORATION

10 Q LET'S TALK ABOUT THAT TOPIC ACTUALLY THE FIRST
11 PAGE OF THE STOCK PURCHASE AGREEMENT YOU SEE THE FOURTH
12 WHEREAS?

13 A YES

14 Q THAT SAYS WHEREAS BALLARD WISHES TO CONVEY TO THE
15 OTHER PARTIES EIGHTY PERCENT OF THE CORPORATION, CORRECT?

16 A THAT'S CORRECT

17 Q YOU WISHED TO CONVEY TO THEM EIGHTY PERCENT OF THE
18 CORPORATION

19 A RIGHT

20 Q AND THEY PAID YOU A MILLION DOLLARS FOR THAT EIGHTY
21 PERCENT OF THE CORPORATION ---

22 A NO, THEY DID NOT THEY PAID ME A MILLION DOLLARS
23 FOR TWENTY THOUSAND SHARES AND SINCE I WAS THE ONLY
24 OFFICER OF THE CORPORATION AND THE ONLY STOCKHOLDER,
25 BALLARD HAD TO ISSUE IT TO THEM

1 Q BUT YOU'RE CLAIMING THE ADDITIONAL SIXTY THOUSAND
2 SHARES WAS ISSUED IN EXCHANGE FOR FUTURE PROMISES, IS
3 THAT RIGHT?

4 A NOT FUTURE PROMISES, PROMISES IN THAT AGREEMENT
5 PROMISES THAT ROBERSON WOULD PUT UP THE MONEY TO BUILD
6 THE PROJECT PROMISES THAT THOENNES AND THOENNES WOULD
7 BUILD AND OBTAIN PERMANENT FINANCING PROMISES THAT
8 BALLARD WOULDN'T HAVE TO SIGN ON ANY OF THE PERSONAL
9 GUARANTEES I MEAN, THAT'S WHAT IT SAYS HERE

10 Q WELL, THOSE ARE FUTURE SERVICES, IS THAT RIGHT?

11 A OKAY IF THAT'S WHAT YOU WANT TO SAY, FUTURE
12 SERVICES

13 Q DID YOU MAKE ANY ATTEMPT TO HAVE THOSE SHARES
14 ESCROWED?

15 A DID I WHAT?

16 Q DID YOU ESCROW THOSE SHARES?

17 A NO, I DID NOT

18 Q OKAY THEY WERE ISSUED DIRECTLY TO THEM, CORRECT?

19 A WHEN WE LEFT THAT DAY WE -- FAYSSOUX ISSUED THE
20 STOCK

21 Q YOU DIDN'T ASK THAT THEY BE ESCROWED?

22 A NO, I DIDN'T

23 Q ARE YOU AWARE THAT SHARES ISSUED AND CONTRACTS OF
24 FUTURE SERVICES ARE SUPPOSED TO BE ESCROWED?

25 MR HOLLEMAN OBJECT TO THE FORM

1 THE COURT WELL, ---

2 MR HOLLEMAN I JUST OBJECT TO THE QUESTION HE'S
3 ASKING HIM SOME LEGAL JARGON

4 THE COURT WELL, LET'S SEE IF HE KNOWS THE ANSWER
5 I DON'T KNOW GO AHEAD

6 A I DIDN'T KNOW THAT I WISH I HAD OF

7 Q NOW ISN'T IT TRUE, SIR, WITH REGARD TO THOSE -- TO
8 THE SHARES YOU HAD FORTY THOUSAND SHARES ALREADY ISSUED
9 TO YOU, CORRECT?

10 A THAT'S CORRECT

11 Q OKAY AND SO TO ACTUALLY -- THAT HUNDRED THOUSAND
12 WAS JUST PICKED OUT OF THE AIR, WAS IT NOT?

13 A I DON'T KNOW THAT IT WAS PICKED OUT OF -- NO I
14 TOLD THE ATTORNEY THAT DREW THE CORPORATION UP FOR ME I
15 WANTED TO SET UP A CORPORATION WITH A HUNDRED THOUSAND
16 SHARES

17 Q NO, I'M -- SIR, I'M TALKING ABOUT THE -- HAVING AS
18 WE SEE IN NUMBER 1 THERE, FORTY THOUSAND TO ROBERSON,
19 TWENTY THOUSAND TO THOENNES, TWENTY THOUSAND TO THOENNES,
20 III, AND TWENTY THOUSAND TO BALLARD, THAT WAS JUST PULLED
21 OUT OF THE AIR, CORRECT?

22 A DIDN'T PULL IT OUT OF THE AIR

23 Q IT COULD HAVE BEEN ANY NUMBER, COULDN'T IT?

24 A NO, IT COULD NOT HAVE BEEN ANY NUMBER IT'S THE
25 SHARES IN THE CORPORATION IT'S A HUNDRED THOUSAND

1 SHARES IN THE CORPORATION BALLARD WAS TO KEEP TWENTY
2 PERCENT OR TWENTY THOUSAND SHARES THOENNES WAS TO KEEP
3 TWENTY THOUSAND SHARES THOENNES, III, AND ROBERSON WAS
4 TO GET FORTY THOUSAND SHARES 'CAUSE HE PUT UP THE MILLION
5 DOLLARS

6 Q DIDN'T THESE GENTLEMEN TELL YOU THAT THEY WERE
7 PAYING YOU A MILLION DOLLARS FOR EIGHTY PERCENT OF THIS
8 CORPORATION?

9 A NO

10 Q AND THAT IT DIDN'T MATTER WHAT THE NUMBER OF SHARES
11 WERE?

12 A NO THEY NEVER TOLD ME THAT

13 Q IT COULD HAVE -- THEY COULD HAVE USED YOUR FORTY
14 THOUSAND SHARES AND JUST DONE THEM AT A DIFFERENT RATIO,
15 CORRECT?

16 A NO I WOULDN'T HAVE NEVER AGREED TO THAT

17 Q YOU WOULD HAVE NEVER AGREED TO THAT?

18 A I WOULD NEVER AGREED, YOU KNOW, I HAD SOME SAY-SO
19 ABOUT THE -- HOW THIS WAS SPLIT UP AND DRAWN UP WHEN I
20 WAS SELLING THEM MY SHARES THEY KNEW THEY WERE GETTING
21 TWENTY THOUSAND OF MY PERSONAL SHARES THAT'S WHY THE
22 CHECK WENT TO ANDY BALLARD

23 Q I UNDERSTAND, SIR

24 A OKAY

25 Q BUT THEY WERE PURCHASING EIGHTY PERCENT OF THE

1 CORPORATION, RIGHT?

2 A I GUESS THAT'S WHY WE'RE HERE

3 Q YOU WERE AWARE COME THE FALL OF 2007 THAT THESE

4 GENTLEMEN WERE UPSET WITH YOU, CORRECT?

5 A I WAS AWARE OF IT WHEN I WENT TO THE STOCKHOLDERS

6 MEETING

7 Q NO, YOU WERE AWARE OF IT BEFORE THEN, WERE YOU NOT?

8 A OH, YES WE DID HAVE A MEETING -- THEY DID -- THEY

9 DID COME TO ME EARLIER BEFORE THAT AND -- WHEN WE WERE

10 FINDING OUT WHAT WE WERE ACTUALLY GOING TO GET FROM DUKE

11 AND ASKED FOR A MEETING WITH ME

12 Q THEY HAD PROVIDED YOU A MEMORANDUM BEFORE THEN,

13 CORRECT?

14 A I THINK SO, YEAH

15 Q OUTLINING WHAT THEY FELT LIKE YOU HAD LEFT OUT AND

16 MISREPRESENTED, CORRECT?

17 A I ASSUME SO

18 Q AND AM I CORRECT IN SAYING THAT THESE MEN NEVER TOLD

19 YOU THAT THEY DON'T WANT YOU IN THEIR CORPORATION

20 ANYMORE?

21 A THEY'VE NEVER TOLD ME TO MY FACE

22 Q THEY'VE NEVER TOLD YOU THEY DON'T WANT YOU TO BE A

23 SHAREHOLDER WITH THEM, HAVE THEY?

24 A I THINK THEY'VE INDICATED

25 Q THEY'VE NEVER TOLD YOU THEY DIDN'T WANT YOU TO BE A

1 SHAREHOLDER, HAVE THEY?

2 A THEY'VE INDICATED IT IN THEIR EMAILS, YOU KNOW

3 BALLARD WILL POUT, AND FUSS, AND CRY, BUT HE'LL

4 EVENTUALLY GO AWAY

5 Q THEY'VE NEVER INDICATED TO YOU THAT THEY DON'T WANT

6 YOU TO BE A SHAREHOLDER?

7 A NO, THEY'VE NEVER TOLD ME DIRECTLY THEY DIDN'T WANT

8 ME TO BE A SHAREHOLDER

9 Q THEY TRIED TO GIVE YOU BACK THE SHARES, DID THEY

10 NOT?

11 A DO WHAT NOW?

12 Q DIDN'T THEY MAKE AN OFFER TO GIVE YOU BACK THE

13 SHARES AND YOU GIVE THEM BACK THE MILLION DOLLARS?

14 A I DON'T -- MAYBE THEY DID I THINK THEY DID AT ONE

15 TIME

16 Q THEY GAVE YOU A COUPLE OF DIFFERENT OPTIONS, DIDN'T

17 THEY? ONE WAS TO GIVE BACK THE SHARES AND YOU GIVE BACK

18 THE MILLION DOLLARS AND THE OTHER WAS YOU GIVE BACK A

19 LITTLE BACK OF THE MILLION DOLLARS, IS THAT RIGHT?

20 A IT WASN'T AS MUCH AS THEY OFFERED ME -- WHAT THEY

21 TRIED TO DO WAS TELL ME -- THEY TOLD ME -- THEY CALLED A

22 MEETING AND SAID THAT THEY HAD RUN THEIR PROFORMAS AND IT

23 DIDN'T LOOK LIKE IT WAS GOING TO MAKE AS MUCH AS THEY

24 THOUGHT IT WAS GOING TO MAKE

25 AND THEY FELT LIKE THAT I OUGHT TO -- THAT IN ORDER

1 FOR THEM TO MAKE THE AMOUNT OF MONEY THAT THEY WANTED TO
2 MAKE OR THOUGHT THEY WERE GOING TO MAKE, THAT I SHOULD
3 EITHER TAKE A LESS PERCENTAGE OF THE STOCK OR GIVE THEM
4 PART OF THE MONEY BACK AND I TOLD THEM THAT I FELT LIKE
5 NEITHER LEGALLY OR MORALLY THAT I HAD TO DO THAT

6 Q DO YOU RECALL GETTING A MEMORANDUM FROM RICK
7 THOENNES ON SATURDAY, DECEMBER 15TH, 2007?

8 A NO

9 (WHEREUPON DEFENDANT'S EXHIBIT 5 WAS MARKED FOR
10 IDENTIFICATION)

11 MR HOWARD YOUR HONOR, DEFENDANT MOVES TO ADMIT
12 EXHIBIT 5

13 THE COURT WITHOUT OBJECTION?

14 MR HOLLEMAN NO OBJECTION

15 (WHEREUPON DEFENDANT'S EXHIBIT 5 WAS ADMITTED INTO
16 EVIDENCE)

17 Q MR BALLARD, DO YOU RECOGNIZE THAT EMAIL?

18 A YEAH, I REMEMBER IT

19 Q IN THAT EMAIL THESE GENTLEMEN OR MR THOENNES
20 THROUGH THAT EMAIL EXPLAINED TO YOU THAT THEY FELT THAT
21 YOU HAD MISREPRESENTED TO THEM, DID THEY NOT?

22 A THAT'S WHAT HE'S SAYING

23 Q AND IT WAS YOUR UNDERSTANDING AT THAT TIME THAT
24 THAT'S WHAT THEY BELIEVED, ISN'T THAT RIGHT?

25 A I DON'T KNOW WHAT THEY BELIEVE

1 Q AND THEY GAVE YOU -- INDICATED TO YOU THAT THEY WERE
2 LOOKING BACK AT SOME -- FOR SOME PORTION OF THE MILLION
3 DOLLARS AND CONTINUE ON OR THEY JUST -- YOU GIVE BACK THE
4 MILLION AND YOU CONTINUE WITH SOMEBODY ELSE, IS THAT
5 RIGHT?

6 A YES

7 Q AND YOU REJECTED THOSE OFFERS?

8 A AT THAT TIME, YES

9 Q OKAY AT THAT TIME? DID YOU EVER ACCEPT THAT
10 OFFER?

11 A NO, I NEVER ACCEPTED THAT OFFER I THINK I'VE
12 OFFERED TO BUY THEM OUT

13 Q AND SHORTLY AFTER RECEIVING THAT MEMORANDUM Y'ALL
14 MET, CORRECT?

15 A THAT'S CORRECT

16 Q AND AT THAT MEETING THEY WANTED TO DISCUSS OPTIONS
17 GOING FORWARD, CORRECT?

18 A YES

19 Q AND ISN'T IT CORRECT THAT YOU DIDN'T HAVE ANYTHING
20 TO OFFER AT THAT TIME, CORRECT?

21 A THEY WANTED TO -- IT WAS NOT SO MUCH THAT I DIDN'T
22 HAVE ANYTHING TO OFFER IT WAS THAT THEY WANTED TO TELL
23 ME WHAT THEY WANTED TO DO

24 Q YOU DID NOT OFFER ANY SUGGESTIONS FOR HOW TO MOVE
25 FORWARD, DID YOU?

1 A NO, I DID NOT

2 Q AND THEN MR ROBERSON APPROACHED YOU AGAIN ABOUT
3 SUGGESTIONS FOR MOVING FORWARD, CORRECT?

4 A HE MAY HAVE I DON'T

5 Q HE CONTACTED YOU AND TOLD YOU HE WAS INTERESTED IN
6 ASSUMING THE PRESIDENCY FOR THE CORPORATION, CORRECT?

7 A YES

8 Q AND YOU SAID YOU DIDN'T HAVE ANY OBJECTION TO THAT,
9 DID YOU?

10 A I TOLD HIM I DIDN'T HAVE ANY OBJECTION TO HIM
11 BECOMING PRESIDENT OF THE CORPORATION

12 Q OKAY AND ISN'T IT TRUE THE ONLY THING THAT YOU
13 HAVE EVER SAID IS BUILD IT CHEAPER, IS THAT CORRECT?

14 A I DON'T KNOW THAT I'VE EVER SAID THAT

15 Q DIDN'T YOU TELL THEM TO BUILD IT -- JUST BUILD IT
16 CHEAPER?

17 A I'VE NEVER SAID THAT THE ONLY THING I'VE EVER SAID
18 ABOUT DOING THINGS LESS EXPENSIVE WAS THEY CHANGED THE
19 ROAD, THEY CHANGED THE CONCEPTUAL PLANS, THEY MOVED
20 THINGS, THEY DID THINGS THAT WERE GOING TO COST MORE
21 MONEY THAN THE ORIGINAL CONCEPTUAL PLANS

22 THE ORIGINAL CONCEPTUAL PLANS ARE DIFFERENT FROM
23 WHAT THE FINAL SITE PLAN THAT THEY HAD APPROVED WAS BUT
24 THEY WENT AND GOT ANOTHER ARCHITECT AND TOLD HIM HOW THEY
25 WANTED IT DONE

1 AND THOSE ARE THE SITE PLANS THAT THEY GOT APPROVED
2 SO WHOEVER BUILDS IT OR WHOEVER DOES IT NOW HAS GOT TO GO
3 BY THOSE SITE PLANS THEY ARE NOT THE SAME AS THE
4 ORIGINAL CONCEPTUAL PLANS

5 Q WOULD YOU AGREE WITH ME THAT THE LOSS OF THOSE
6 NINETY-EIGHT DOCKS HAS COST A SIGNIFICANT AMOUNT OF LOSS
7 OF REVENUE?

8 A IT WOULD -- THE DIFFERENCE BETWEEN A HUNDRED AND TWO
9 AND TWO HUNDRED DOCKS IS A DEFINITE DIFFERENCE IN
10 REVENUE

11 Q AND THAT'S TO THE NEGATIVE, CORRECT?

12 A YES

13 Q AND THAT'S CERTAINLY GOING TO AFFECT OTHER PARTS OF
14 THE OPERATION, CORRECT?

15 A WHY WOULD IT AFFECT OTHER PARTS OF THE OPERATION?

16 Q HAVING NINETY-EIGHT LESS BOAT SLIPS MEANS LESS
17 TRAFFIC, CORRECT?

18 A I UNDERSTAND THAT PART, YES

19 Q AND IT MEANS LESS PEOPLE?

20 A I DON'T KNOW THAT IT MEANS LESS PEOPLE

21 Q OKAY IF THERE WERE LESS TRAFFIC AND ---

22 A THAT'S ONE LITTLE PHASE OF THE MARINA, THE BOAT
23 SLIPS THERE'S A DRY-STACK STORAGE FOR TWO HUNDRED
24 THERE'S A HOTEL FOR A HUNDRED AND TWENTY ROOMS THERE'S
25 FORTY CABINS THAT'S ONE PIECE OF THE WHOLE PROJECT

1 Q I UNDERSTAND, ---

2 A AND THAT'S ALL YOU WANT TO TALK ABOUT IS THE TWO
3 HUNDRED SLIPS

4 Q ISN'T THE GREATEST RENTS THAT YOU CAN GET, THE
5 GREATEST -- THE HIGHEST LEVEL, THE AMOUNT OF MONEY THAT
6 WAS BRINGING IN WAS ON THOSE WET SLIPS, RIGHT?

7 A THE WET SLIPS AND THE DRY-STACK STORAGE AND THE
8 HOTEL ROOMS

9 Q WET SLIPS COST MORE THAN THE DRY-STACK STORAGE,
10 CORRECT?

11 A THEY COST MORE TO BUILD TOO

12 Q AND THE AMOUNT OF REVENUE THAT YOU COULD GENERATE
13 FROM THE WET SLIPS WAS HIGHER THAN THE DRY-STACKS,
14 CORRECT?

15 A IT COULD BE

16 Q AND CERTAINLY LOSING HALF YOUR WET SLIPS -- WELL,
17 BASICALLY DRY-STACKS AND WET SLIPS COMBINED, THAT WOULD
18 BE ABOUT FOUR HUNDRED TOTAL SLIPS, CORRECT, ---

19 A CORRECT

20 Q --- FROM WHAT ---

21 A RIGHT

22 Q AND SO LOSING NINETY-EIGHT OF YOUR WET SLIPS MEANS
23 LOSING TWENTY-FIVE PERCENT OF THE BOATS THAT YOU COULD BE
24 STORING, CORRECT?

25 MR HOLLEMAN YOUR HONOR, I HAVE TO OBJECT HE'S

1 SAYING LOSING NINETY-EIGHT NOBODY LOST NINETY-EIGHT

2 THE AGREEMENT SAID ONE HUNDRED TO TWO HUNDRED THEY

3 GAINED TWO IN ONE SENSE

4 THE COURT ALL RIGHT WELL, I THINK THAT'S MORE A

5 MATTER OF ARGUMENT FOR THE JURY GO AHEAD

6 Q ISN'T IT CORRECT THAT THAT'S A REDUCTION OF NINETY-

7 EIGHT, I MEAN, TWENTY-FIVE OR APPROXIMATELY TWENTY-FIVE

8 PERCENT OF THE NUMBER OF BOATS THAT WOULD BE IN STORAGE

9 AT THIS MARINA? OR COULD BE IN STORAGE AT THIS MARINA,

10 CORRECT?

11 A IF DUKE HAD OF GIVEN THEM TWO HUNDRED SLIPS, YES

12 Q OKAY AND CERTAINLY LESS BOATS MEANS LESS GAS IS

13 THAT ---

14 A I WOULD THINK SO

15 Q YOU WOULD THINK SO, YES LESS BOATS MEANS LESS FOOD

16 SOLD

17 A (AFFIRMATIVE NOD)

18 Q LESS BOATS MEANS LESS PEOPLE LODGING, CORRECT?

19 A I DON'T KNOW ABOUT THAT

20 Q OKAY LESS BOATS POTENTIALLY MEANS LESS PEOPLE AT

21 THE RESTAURANT

22 A I DON'T KNOW ABOUT THAT EITHER

23 Q MR BALLARD, WOULD YOU AGREE WITH ME THAT YOU HAD A

24 OBLIGATION TO REASONABLY CONVEY TRUTHFUL INFORMATION IN

25 THE CONCEPTUAL PLAN?

1 A YES, I DO

2 Q AND AN OBLIGATION TO REASONABLY CONVEY TRUTHFUL
3 INFORMATION IN ANY CONVERSATIONS THAT YOU HAD WITH THESE
4 GENTLEMEN BEFORE ENTERING INTO THIS AGREEMENT?

5 A YES, I DO, AND YES, I DID

6 Q AND ANY WRITINGS THAT YOU HAD BETWEEN YOU AND THESE
7 GENTLEMEN?

8 A YEAH

9 Q AND YOU HAD AN OBLIGATION TO DISPEL ANY KNOWN
10 MISUNDERSTANDINGS THAT THESE GENTLEMEN MIGHT HAVE HAD
11 THAT YOU HAD KNOWLEDGE OF, CORRECT?

12 A ANY KNOWN MISUNDERSTANDING?

13 Q IF THESE GENTLEMEN HAD A MISUNDERSTANDING THAT YOU
14 HAD KNOWLEDGE AND YOU COULD DISPEL, YOU HAD AN OBLIGATION
15 TO LET THEM KNOW THAT, DIDN'T YOU?

16 MR HOLLEMAN I HAVE TO OBJECT TO THAT THAT'S A
17 LEGAL QUESTION DEPENDING UPON A WHOLE RANGE OF FACTORS
18 HE'S JUST MAKING A GENERAL STATEMENT AND ASKING THE
19 WITNESS

20 THE COURT YEAH LET'S MOVE ALONG

21 MR HOWARD NOTHING FURTHER, YOUR HONOR

22 THE COURT: ALL RIGHT

23 MR HOLLEMAN I DO HAVE SOME REDIRECT

24 THE COURT OKAY HOW LONG DO YOU ANTICIPATE THAT
25 WOULD RUN?

1 MR HOLLEMAN FIFTEEN MINUTES

2 THE COURT OKAY LET'S GO GO FORWARD WITH IT

3 MR HOLLEMAN I'LL TRY TO DO THIS QUICKLY WE MAY
4 NOT NEED ALL THE -- WE'LL TRY TO FIX THIS TECHNOLOGY, BUT
5 I'LL GO AHEAD AND GET STARTED IF THAT'S -- WELL, LET'S
6 SEE IF WE CAN DO IT WITHOUT THE TECHNOLOGY SO WE CAN MOVE
7 QUICKLY UNLESS, DOES IT WORK NOW? IT WORKS NOW, OKAY

8 REDIRECT EXAMINATION BY MR HOLLEMAN

9 Q MR HOWARD BEGAN BY ASKING YOU ABOUT ANTI-DILUTION
10 -- DILUTION PROVISIONS IN THE AGREEMENT AND I BELIEVE
11 YOU POINTED TO THE PROVISION WHERE IT SAYS YOU WILL HAVE
12 TWENTY PERCENT OWNERSHIP AND THAT WOULD BE THE FINAL
13 HOLDING, DO YOU REMEMBER THAT ---

14 A THAT'S CORRECT

15 Q --- QUESTION? IS THERE ALSO A PROVISION IN THE
16 AGREEMENT, PARAGRAPH 6, THAT DEALS WITH HOW THE CAPITAL
17 WILL BE RAISED AND WHERE IT WILL COME FROM?

18 A YES

19 Q AND WHAT DOES IT SAY?

20 A IT SAYS THAT MR ROBERSON AGREES TO PROVIDE THE
21 NECESSARY CAPITAL TO OBTAIN LONG-TERM FINANCING ON THE
22 PROJECT

23 Q AND THAT DOES NOT INCLUDE ISSUING STOCK TO SELL TO
24 OTHER PEOPLE, DOES IT?

25 A NO, IT DOES NOT

1 Q NOW HE ASKED -- HE MADE THE POINT TOO THAT SHARES --
2 THAT THE SHAREHOLDERS HAD AUTHORIZED THE ISSUANCE OF
3 SHARES, BUT THE DIRECTORS COULD ISSUE THE SHARES, AND
4 THEY HADN'T ISSUED THEM YET DO YOU REMEMBER THAT?

5 A YES

6 Q NOW, IN FACT, YOU FILED SUIT VERY SOON AFTER THAT
7 SHAREHOLDERS MEETING TO ASK THE COURT TO STOP THEM, STOP
8 THE DIRECTORS FROM ISSUING STOCK, ---

9 A YES, I DID

10 Q --- CORRECT?

11 MR HOLLEMAN AND, YOUR HONOR, CAN WE APPROACH THE
12 BENCH?

13 THE COURT ALL RIGHT

14 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE
15 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR
16 HEARING)

17 Q AND IN ADDITION, MR BALLARD, YOU WERE AT THE COURT,
18 ENTERED IN COURT PREVENTING THE ISSUANCE OF STOCK BY THE
19 DIRECTORS ---

20 A YES

21 Q --- SINCE THE ONSET OF THIS TRIAL?

22 A YES

23 Q YOU WERE ASKED ABOUT PREEMPTIVE RIGHTS AND THAT IS
24 THE RIGHT OF OTHER SHAREHOLDERS, THE ALLEGED RIGHT OF
25 OTHER SHAREHOLDERS TO BUY STOCK BUT IN ORDER TO DO THAT

1 YOU HAVE TO PUT UP MONEY TO BUY STOCK, ISN'T THAT

2 CORRECT?

3 A THAT'S CORRECT

4 Q AND MR ROBERSON AS A SHAREHOLDER WOULD ALSO HAVE

5 THOSE PREEMPTIVE RIGHTS, IS THAT RIGHT?

6 A THAT'S CORRECT

7 Q WHO DO YOU THINK WOULD HAVE -- ACCORDING TO YOUR

8 KNOWLEDGE WHO WOULD HAVE THE MOST MONEY TO BUY THE

9 PREEMPTIVE SHARES IF THEY WANTED TO?

10 A NOT ONLY THAT, BUT FROM WHAT I UNDERSTAND WHEN THEY

11 ISSUED THAT THEY SAID THEY COULD ISSUE STOCK BASED ON

12 PEOPLE -- CONTRIBUTION TO THE COMPANY OR IN OTHER WORDS

13 THE WAY THEY INFORMED ME OR TOLD ME ABOUT IT WAS THEY

14 COULD PRETTY MUCH ISSUE STOCK ANY WAY THEY WANTED TO IF

15 THEY HIRED SOMEBODY OR PUT ONE OF THEM ON THE PAYROLL,

16 THEY COULD ISSUE THEM STOCK THEY COULD DO ANYTHING THEY

17 WANTED TO WITH THE STOCK

18 Q ALL RIGHT NOW HE ASKED YOU QUESTIONS ABOUT WHETHER

19 THEY WERE LOOKING TO YOU TO PROVIDE CORRECT INFORMATION

20 ABOUT THE LEASE DID THEY ALSO LOOK TO DUKE POWER AND

21 VISIT DUKE POWER AND ASK THEM QUESTIONS ABOUT THE LEASE?

22 A THEY HAD THE OPPORTUNITY TO

23 Q HE ASKED YOU QUESTIONS ABOUT WHEN YOU CALLED THE

24 ARCHITECT WHEN YOU CALLED THE ARCHITECT WERE YOU A

25 DIRECTOR OF THE COMPANY?

1 A NO

2 Q I MEAN, AT -- LATER?

3 A OH, YEAH YEAH WHEN I CALLED THE ARCHITECT A
4 COUPLE OF WEEKS OR MONTH OR SO AGO TO GET A FINAL SITE
5 PLAN AND TO GET THE DRAWINGS THAT I WANTED HE SAID THAT
6 HE COULDN'T GIVE THEM TO ME, THAT I WOULD HAVE TO GO TO
7 MR THOENNES SO I WENT TO MR THOENNES AND ASKED HIM
8 FOR THEM AND HE CAME BACK AND SAID ANYTHING THAT I
9 WANTED I WOULD HAVE TO GO THROUGH MY ATTORNEY

10 Q EVEN WHEN YOU WERE A DIRECTOR?

11 A EVEN WHEN I WAS A DIRECTOR

12 Q ALL RIGHT HE ASKED YOU ABOUT WHAT THE THOENNESES
13 HAD OR HADN'T TOLD YOU AND WHETHER YOU BELIEVED THEM
14 SINCE THIS LAWSUIT HAS STARTED HAVE YOU DISCOVERED ANY
15 INFORMATION TO INDICATE WHETHER YOU COULD BELIEVE WHAT
16 THE THOENNESES TOLD YOU OR NOT?

17 A YOU KNOW, JUST FROM WHAT I'VE HEARD AND FROM WHAT I
18 KNOW IS GOING ON IN THE COURTS, IT WOULD BE HARD TO PUT A
19 LOT OF FAITH IN WHAT THEY'RE SAYING RIGHT NOW

20 Q OKAY YOU WERE ASKED IF YOU'VE SIGNED ANY
21 CONFIDENTIALITY AGREEMENTS HAVE THEY TRIED TO PUT
22 TOGETHER A CONFIDENTIALITY AGREEMENT THAT WOULD ALLOW ALL
23 DIRECTORS TO KNOW WHAT WAS GOING ON?

24 A THEY HAVEN'T ASKED ME TO SIGN ANYTHING

25 Q AND THEY ASKED YOU IF MR ROBERSON HAS A TIME LIMIT

1 ON PROVIDING THIS FINANCING DO YOU BELIEVE HE COULD
2 JUST SIT AND WAIT FOR YEARS AND YEARS AND NEVER CARRY
3 THROUGH BECAUSE HE THINKS THE ECONOMY ISN'T GOOD ENOUGH?

4 A NO I THINK DUKE POWER WOULD STEP BACK IN DUKE
5 POWER HAS ALWAYS SAID THAT AS LONG AS WE'RE CONTINUALLY
6 WORKING ON THE PROJECT THAT THERE'S NO TIME LIMIT AS LONG
7 AS WE'RE CONTINUALLY MOVING FORWARD NO MATTER HOW LONG
8 THE PERMITS TAKE OR WHATEVER BUT AS LONG AS EVERYTHING
9 IS CONTINUING TO -- CONTINUALLY MOVING FORWARD, THERE'S
10 NOT A TIME LIMIT

11 Q AND DO YOU CONSIDER MR ROBERSON'S STATEMENT THAT HE
12 WILL NOT PROVIDE WHATEVER CAPITAL WAS NECESSARY TO OBTAIN
13 LONG-TERM FINANCING TO BE A REPUDIATION AND BREACH OF THE
14 CONTRACT?

15 A I DO

16 Q WE'VE HEARD ALL THE TALK ABOUT GOING FROM TWO
17 HUNDRED TO A HUNDRED AND TWO WET DOCKS AGAIN, WERE
18 THINGS GAINED ABOVE THE MINIMUM FROM DUKE POWER FROM THE
19 CONCEPTUAL PLAN?

20 A YEAH WHEN WE -- WHEN DUKE -- WHEN WE STARTED WITH
21 THE CONCEPTUAL PLANS DUKE TOLD US WE NEEDED TO GO THE
22 LIMIT FOR EVERYTHING I THINK ORIGINALLY WE HAD SIXTY
23 ROOMS WE GOT A HUNDRED AND TWENTY ROOMS WE ORIGINALLY
24 HAD THE DRY-STACK STORAGE AT, I THINK, A HUNDRED AND WE
25 GOT TWO HUNDRED IN THE DRY-STACK STORAGE

1 I DON'T REMEMBER EXACTLY THE NUMBER OF CABINS, BUT
2 WE GOT THE MAX OF EVERYTHING EXCEPT THE WET SLIPS AND
3 BECAUSE OF THE WAY THAT DUKE WANTED THE MARINA LAID OUT
4 ON THAT POINT IS THE REASON THEY ONLY GOT A HUNDRED AND
5 TWO SLIPS

6 Q AND DID YOU CONTROL THAT OR DID DUKE CONTROL THAT?

7 A I DID NOT HAVE CONTROL OVER THAT

8 MR HOLLEMAN NO FURTHER QUESTIONS

9 THE COURT ALL RIGHT ANYTHING VERY BRIEFLY?

10 MR HOWARD NOTHING FURTHER, YOUR HONOR

11 THE COURT OKAY ALL RIGHT THANK YOU, SIR YOU

12 CAN STEP DOWN ALL RIGHT MR FOREMAN, LADIES AND

13 GENTLEMEN OF THE JURY, WE'RE GOING TO BREAK FOR THE

14 EVENING AND I KNOW IT BREAKS YOUR HEART THAT WE'RE NOT

15 GOING TO PUT YOU UP IN THE MOTEL TONIGHT

16 BUT REMEMBER WHAT I TOLD YOU ABOUT NOT TALKING ABOUT

17 THE CASE AND DON'T DO ANY INDEPENDENT RESEARCH DON'T

18 DRIVE OVER TO LAKE KEOWEE DON'T DO ANYTHING LIKE THAT

19 AND Y'ALL HAVE A PLEASANT EVENING WE'LL SEE YOU BACK AT

20 9 30 IN THE MORNING, OKAY?

21 (WHEREUPON THE JURY EXITED THE COURTROOM AT 5 23 PM)

22 THE COURT ALL RIGHT ANYTHING BEFORE WE BREAK?

23 MR HOLLEMAN NO, SIR, YOUR HONOR

24 THE COURT OKAY ALL RIGHT WE'LL SEE Y'ALL IN

25 THE MORNING AND IF YOU LEAVE THINGS IN HERE, IT'S FINE

1 (WHEREUPON EXCERPTS OF THE DEPOSITION TESTIMONY OF
2 FREDERICK THOENNES WERE READ INTO THE RECORD)

3 DESIGNATIONS BY MR. HOLLEMAN

4 Q ALL RIGHT HANNAH, YOU ARE MR THOENNES IN THIS
5 PROCESS SO LET ME -- I'M GOING TO START ON PAGE 5, LINE
6 25 MR THOENNES, WHAT IS YOUR CURRENT EMPLOYMENT?

7 A I'M SELF-EMPLOYED

8 Q IN WHAT FIELD?

9 A CONSTRUCTION MOSTLY

10 Q WHERE DID YOU GROW UP?

11 A UNTIL I WAS EIGHTEEN, IN CONNECTICUT, AND THEN HERE

12 Q DO YOU HAVE A HIGH SCHOOL DIPLOMA?

13 A UH-HUH

14 Q AND FROM WHICH HIGH SCHOOL?

15 A AMITY HIGH SCHOOL IN CONNECTICUT

16 Q DID YOU GO TO ANY KIND OF POST HIGH SCHOOL
17 EDUCATION?

18 A I DID

19 Q AND WHERE?

20 A BOB JONES

21 Q AND WHAT WAS YOUR -- DID YOU GET A DEGREE THERE?

22 A UH-HUH

23 Q WHAT WAS YOUR MAJOR?

24 A I HAD A DOUBLE MAJOR IN ACCOUNTING AND MANAGEMENT

25 Q SO DID YOU COME TO GREENVILLE TO ATTEND BOB JONES?

1 A YES

2 Q SO LET'S GO TO PAGE 9, LINE 14 HOW LONG DID YOU
3 STAY IN FLORIDA THIS TIME?

4 A I THINK TIL '85

5 Q AND THEN YOU RETURNED TO GREENVILLE?

6 A RETURNED TO GREENVILLE

7 Q AND WHAT DID YOU DO IN GREENVILLE THEN?

8 A WENT TO WORK FOR U S SHELTER

9 Q WHAT DID YOU DO FOR U S SHELTER?

10 A BUILT APARTMENTS

11 Q NEXT PAGE, LINE 4 WHAT WAS YOUR JOB TITLE WITH
12 U S SHELTER?

13 A I WAS THE VICE-PRESIDENT OF MULTI-FAMILY
14 CONSTRUCTION

15 Q AND WHAT DID YOU DO AFTER YOU LEFT U S SHELTER?

16 A STARTED BUILDING AGAIN FOR MYSELF DID ANOTHER
17 PROJECT IN EASLEY AND BUILDING HOUSES

18 Q WAS THE NAME OF YOUR COMPANY THEN RICK THOENNES
19 BUILDERS?

20 A UH-HUH

21 Q AND YOU NEED TO SAY YES FOR HER

22 A YES

23 Q AND DOWN AT THE BOTTOM OF THE PAGE DID YOU MOVE
24 INTO OTHER LINES OF WORK AS TIMES WENT BY?

25 A WE DEVELOPED SOME PROPERTY, DEVELOPED COBBLESTONE

1 AND A COUPLE OF TOWNHOUSE PROJECTS, LOTS OF SINGLE
2 FAMILY

3 Q SO SINCE YOU LEFT U S SHELTER HAS RICK THOENNES
4 BUILDERS BEEN YOUR PRINCIPAL BUSINESS OPERATION?

5 A UNTIL WE OPENED MARICK HOME BUILDERS, WHICH WAS '99,
6 MAYBE

7 Q AND THEN AFTER '99 MARICK HAS BEEN YOUR PRINCIPAL
8 BUSINESS, IS THAT RIGHT?

9 A YEAH UNTIL THE LAST PROBABLY SIX OR EIGHT MONTHS,
10 AND WE OPENED M-GROUP

11 Q ALL RIGHT COULD YOU TELL ME, IF YOU COULD, LIST
12 FOR ME THE COMPANIES THAT YOU CURRENTLY HAVE AN INTEREST
13 IN

14 A M-GROUP, I'M A PARTNER MARICK, I'M A PARTNER ONE
15 SOURCE, I'M A PARTNER IMK, I'M A PARTNER AND WARPATH,
16 I'M A SHAREHOLDER, AND AN OFFICER AND A BOARD MEMBER
17 GATEWAY DEVELOPERS, I'M A PARTNER AND I BELIEVE THAT'S

18 IT

19 Q ALL RIGHT LET'S GO TO PAGE 12, LINE 12 NOW IS
20 MARICK STILL OPERATING?

21 A IT'S -- YEAH

22 Q AND WHAT IS IT DOING NOW?

23 A NOTHING

24 Q LET'S GO TO PAGE 14, LINE 3 IS IMK OPERATING?

25 A NO

1 Q WHAT WAS ITS BUSINESS?

2 A THEY OWN STONELEDGE TOWNHOUSES IN SENECA

3 Q WHO ARE THE PARTNERS IN IT?

4 A RICK, III, AND MYSELF ACTUALLY, THAT'S NOT TRUE

5 MARICK WAS A PARTNER AND IK WAS A PARTNER

6 Q WHAT IS IK?

7 A IK WAS MADE UP OF TIM ROBERSON, BILL COX AND LARRY

8 WALLACE

9 Q AND AT THE BOTTOM OF THAT PAGE AND WHAT WAS THE
10 BUSINESS OF GATEWAY DEVELOPERS?

11 A WE BOUGHT THE OLD AUDITORIUM SITE

12 Q AND DOES IT STILL EXIST?

13 A YES

14 Q IS IT HOLDING THE SITE AT THE MOMENT?

15 A YES

16 Q IS IT INVOLVED IN ANY ACTIVE BUSINESS OPERATIONS?

17 A NO

18 Q WHO ARE THE PARTNERS IN IT?

19 A I DON'T KNOW LEGALLY HOW IT'S HELD I CAN'T
20 REMEMBER BUT RICK AND I, RICK, III, AND MYSELF AND THEN
21 SOZO 7, WHICH IS OWNED BY TIM ROBERSON AND DARRELL
22 WHITAKER AND THEN -- I CAN'T REMEMBER THE LEGAL ENTITY
23 THAT BILL ROGERS HAS BILL ROGERS OWNS A PORTION OF IT
24 AS WELL THROUGH AN LLC OF SOME KIND

25 Q TO PAGE 16 TURN OVER TO PAGE 16 AND AT THE

1 BOTTOM, HOW MANY DHEC PERMIT PROCEEDINGS HAVE YOU BEEN
2 INVOLVED IN?

3 A PROBABLY JUST, I GUESS, WOULD BE HALF A DOZEN

4 Q ALL RIGHT AND PAGE 21, LINE 2 ARE YOU OR ARE ANY
5 OF YOUR COMPANIES CURRENTLY BONDED FOR CONSTRUCTION
6 PURPOSES?

7 A NO

8 Q ARE YOU ABLE TO OBTAIN A BOND AT PRESENT?

9 A I DON'T KNOW

10 Q PAGE 22, LINE 10 WHEN WAS THE LAST TIME YOU
11 OBTAINED A BOND FOR CONSTRUCTION?

12 A WE HAVEN'T

13 Q AND AT LINE 21, AND WE'LL STOP AT LINE 8 ON THE NEXT
14 PAGE ARE YOU CURRENTLY INVOLVED IN ANY LITIGATION?

15 A YES

16 Q AND WHAT LITIGATION IS THAT?

17 A UH, FOR MARICK WE'VE GOT AN UNPAID BILL THAT THEY
18 HAVE SUED FOR ON SOME FLOORING FROM SCOTT CLARK

19 Q WHAT IS THE MAGNITUDE OF THAT BILL?

20 A I'M GOING TO SAY IT'S THREE OR FOUR THOUSAND
21 DOLLARS

22 Q OKAY DID THAT FLOORING BILL RESULT IN A JUDGMENT
23 AGAINST MARICK?

24 A YES

25 Q ALL RIGHT THEN WE GO OVER TO PAGE 25, LINE 19

1 HAVE YOU HAD ANY DISPUTE WITH A GENTLEMAN NAMED CHAD

2 ODOM?

3 A YEAH

4 Q AND WHAT WAS THAT?

5 A THERE WAS SOME BILLS THAT WERE UNPAID ON HIS HOUSE

6 Q BY HIM OR BY YOU?

7 A BY US, MARICK

8 Q DOES THAT MEAN YOU DIDN'T PAY SUBS?

9 A THAT'S CORRECT OR MATERIAL SUPPLIERS

10 Q OKAY AND WHY NOT?

11 A DIDN'T HAVE THE CASH

12 Q AND WHAT'S THE STATUS OF THAT?

13 A MOST OF THOSE ARE SOME SUBCONTRACTORS WE HAD WORKED

14 FOR -- WORKED WITH FOR A LONG TIME SO THEY'RE JUST

15 GOING TO WAIT TO GET THEIR MONEY

16 Q HAVE THEY FILED LIENS ON MR ODOM'S HOUSE?

17 A THERE'S ONE LIEN THAT WAS FILED BY FOOTHILLS

18 MASONRY THAT'S ABOUT THE ONLY ONE I KNOW OF

19 Q AND HOW MUCH IS THAT ONE?

20 A I DON'T KNOW

21 Q HAVE YOU PAID THAT ONE OFF?

22 A UH-HUH [SIC]

23 Q ARE ANY OF THE MATTERS RELATED TO MR ODOM'S HOUSE,

24 ARE ANY OF THOSE IN LITIGATION?

25 A NOT THAT I KNOW OF, NO

1 Q NOW HOW MUCH HAS MR ODOM PAID YOU?

2 A HMM

3 Q OR PAID YOUR COMPANY?

4 A WELL, IN FEES OR IN

5 Q TOTAL?

6 A DRAWS? I DON'T KNOW I'D HAVE TO LOOK BUT IT'D

7 BE IN EXCESS OF A MILLION DOLLARS

8 Q SO HOW DID THE SUBS END UP NOT BEING PAID?

9 A THEY WERE -- WE HAD THREE OR FOUR SPEC HOUSES THAT

10 SAT AND SAT SO THEY ATE UP THE CASH

11 Q SO THE CASH HE PAID YOU WAS USED TO PAY DOWN OTHER

12 -- PAY EXPENSES ON OTHER HOUSES?

13 A PARTIALLY, YES

14 Q ARE THERE ANY OTHER THREATENED OR PENDING CLAIMS

15 AGAINST YOU OR ANY OF YOUR COMPANIES?

16 A NOT THAT I CAN THINK OF, BUT YOU SEEM TO KNOW MORE

17 ABOUT -- MORE THAN I DO ABOUT THESE

18 Q ALL RIGHT GO TO PAGE 28, LINE 18 DO YOU KNOW IF

19 THE ARTICLES OF INCORPORATION OF WARPATH HAVE EVER BEEN

20 AMENDED?

21 A HMM, I DON'T KNOW

22 Q DO YOU KNOW IF THEY'VE BEEN AMENDED IN THE LAST

23 MONTH?

24 A I DON'T THINK SO

25 Q AND LINE -- PAGE 29, LINE 7 NOW I BELIEVE IN THE

1 END YOU WERE ONE OF THE SIGNATORIES TO A STOCK PURCHASE
2 AGREEMENT, IS THAT CORRECT?
3 A THAT'S RIGHT
4 Q A SHAREHOLDERS AGREEMENT?
5 A YES
6 Q BEFORE THAT AGREEMENT WAS ENTERED INTO DID YOU MEET
7 WITH ANYONE AT DUKE POWER?
8 A UMM NO
9 Q DID YOU TALK TO ANYONE AT DUKE POWER?
10 A YES
11 Q WHO DID YOU TALK TO?
12 A OH, I WANT TO SAY JOE CARRIKER AND SCOTT JOLLEY
13 Q AND WHERE WERE THEY WHEN YOU TALKED WITH THEM? I
14 GATHER YOU TALKED TO THEM ON THE TELEPHONE, IS THAT
15 RIGHT?
16 A YES
17 Q DOWN TO LINE 25 AND WHAT DID THEY -- WHY WERE YOU
18 CALLING THEM?
19 A TO DISCUSS THE WARPATH DEVELOPMENT WITH THEM
20 Q AND WOULD YOU CONSIDER THIS PART OF THE DUE
21 DILIGENCE YOU WERE DOING?
22 A YES
23 Q BEFORE ENTERING INTO THE AGREEMENT?
24 A YES
25 Q I NEED YOU TO SAY YES OR NO YOU SAID YES OKAY

1 OKAY WHAT QUESTIONS DID YOU ASK THEM?

2 A I DON'T REMEMBER

3 Q WELL, TELL ME GENERALLY WHAT WAS DISCUSSED

4 A WE TALKED ABOUT THE LEASE, HOW LONG THE LEASE WAS
5 AND HOW IT WAS RENEWED I REMEMBER WE TALKED ABOUT THE
6 RENEWAL OF IT WE TALKED ABOUT WHAT WAS ALLOWED TO BE
7 BUILT ON THE PROPERTY AND WE TALKED ABOUT WHAT WE
8 NEEDED TO DO TO BUILD IT, AS I RECALL

9 Q NOW YOU HAD SEEN THE DUKE POWER LEASE BEFORE YOU
10 CALLED THEM, IS THAT CORRECT?

11 A YES

12 Q AND YOU HAD READ THE LEASE?

13 A YES

14 Q AND YOU HAD READ THE CONCEPTUAL PLAN THAT WAS
15 ATTACHED TO THE LEASE AND REFERRED TO IN THE LEASE?

16 A I LOOKED AT THE PLAN, YES

17 Q NOW IN YOUR DISCUSSIONS WITH THE DUKE POWER
18 OFFICIALS CONCERNING THE LEASE DID YOU DISCUSS WITH THEM
19 HOW MANY BOAT SLIPS YOU COULD HAVE AT THE MARINA?

20 A YES

21 Q AND WHAT DID YOU ASK THEM?

22 A HOW MANY BOAT SLIPS WE COULD HAVE AT THE MARINA

23 Q AND WHAT DID THEY TELL YOU?

24 A A HUNDRED TO TWO HUNDRED

25 Q AND DID YOU ARGUE WITH THEM ABOUT THAT?

1 A DID I ARGUE WITH THEM?

2 Q YES I MEAN, DID YOU DISPUTE THAT AND SAY THAT
3 WASN'T CORRECT OR DID YOU AGREE THAT THAT WAS A CORRECT
4 STATEMENT?

5 A I DON'T KNOW THAT I DID I DON'T REMEMBER ARGUING
6 WITH THEM I WOULD NEVER ARGUE WITH DUKE POWER

7 Q BUT ANYWAY, YOU KNEW THE NUMBER WOULD RANGE
8 SOMEWHERE BETWEEN ONE HUNDRED TO TWO HUNDRED?

9 A THAT'S CORRECT

10 Q GO TO PAGE 32, LINE 5 BUT WHAT YOU REMEMBER THE
11 DUKE POWER PEOPLE TOLD YOU WAS ONE HUNDRED TO TWO
12 HUNDRED, IS THAT CORRECT?

13 A THAT'S CORRECT

14 Q WOULD YOU AGREE THAT PHRASE DOES NOT MEAN YOU ARE
15 GUARANTEED TWO HUNDRED BOAT SLIPS?

16 A IF THE MARKET WAS -- IF THE MARKET WAS THERE I WOULD
17 SAY THAT IT DID GUARANTEE TWO HUNDRED BOAT SLIPS, YES

18 Q OKAY SO YOU'RE SAYING YOU UNDERSTOOD FROM THESE
19 TWO DUKE POWER OFFICIALS THAT IF THE MARKET SUPPORTED IT
20 THEY WOULD GUARANTEE YOU TWO HUNDRED BOAT SLIPS?

21 A I DON'T KNOW ABOUT GUARANTEE THEY WOULDN'T
22 GUARANTEE US ANYTHING WE WOULD HAVE TO BUILD THEM

23 Q BUT THEY WOULD ALLOW YOU TO BUILD TWO HUNDRED?

24 A THAT'S RIGHT

25 Q AND THAT'S WHAT YOU UNDERSTOOD FROM THEM?

1 A THAT'S CORRECT

2 Q IF THE MARKET ALLOWED IT?

3 A THAT'S CORRECT

4 Q AND TO PAGE 33 DID YOU DISCUSS WITH THE DUKE POWER

5 OFFICIALS THE PERMITTING?

6 A YES

7 Q AND WHAT DID YOU DISCUSS WITH THEM?

8 A WE ASKED THEM IF IT HAD BEEN PERMITTED AND THEY

9 SAID IT HAD ALREADY BEEN APPROVED BY FERC

10 Q OKAY

11 A AND ALL THE AGENCY LETTERS HAD -- I CAN'T REMEMBER

12 WHETHER THEY TOLD ME OR ANDY TOLD ME ALL THE AGENCY

13 LETTERS HAD BEEN SENT

14 Q AND WAS THAT TRUE?

15 A WAS WHAT TRUE?

16 Q THAT ALL AGENCY LETTERS HAD BEEN SENT?

17 A YES

18 Q SO DID YOU HAVE AN OPPORTUNITY TO ASK THE DUKE POWER

19 OFFICIALS ANYTHING YOU WANTED TO ABOUT PERMITTING?

20 A YEAH

21 Q DO YOU REMEMBER ANYTHING ELSE THEY TOLD YOU ABOUT

22 PERMITTING?

23 A IT WAS A LONG CONVERSATION BUT THAT'S ALL I

24 REMEMBER WE TALKED ABOUT -- WE TALKED ABOUT DRY-STACK

25 Q AND THEN DOWN ON LINE 8 ON THAT SAME PAGE SO PRIOR

1 TO ENTERING INTO THE SHAREHOLDERS AGREEMENT DID YOU HAVE
2 AN OPPORTUNITY TO ASK ANY QUESTIONS YOU WANTED TO OF THE
3 DUKE POWER OFFICIALS?

4 A YES

5 Q DID YOU HAVE ANY OTHER CONVERSATIONS OR MEETINGS
6 WITH DUKE POWER OTHER THAN THIS ONE PHONE CALL?

7 A SEEMS TO ME THERE WAS MORE THAN ONE PHONE
8 CONVERSATION, BUT I CAN'T REMEMBER

9 Q AND IF THERE WAS MORE THAN ONE IT WAS WITH ONE OR
10 BOTH OF THESE GENTLEMEN, JOE CARRIKER AND SCOTT JOLLEY?

11 A YEAH EITHER ONE OF THEM OR BOTH

12 Q AND THEN PAGE 3 -- PAGE 35 NOW AFTER YOU ENTERED
13 INTO THE SHAREHOLDERS AGREEMENT, AT SOME POINT DUKE POWER
14 HAS TOLD YOU THEY WILL NOT APPROVE TWO HUNDRED BOAT
15 SLIPS, IS THAT RIGHT?

16 A RIGHT

17 Q HOW MANY HAVE THEY SAID THEY WOULD APPROVE?

18 A A HUNDRED AND TWO

19 Q AND WHO AT DUKE POWER TOLD YOU THAT?

20 A EITHER BOTH OF THEM OR ONE OF THEM I DON'T REALLY
21 REMEMBER

22 Q AND AT THE BOTTOM, LINE 22 ALL RIGHT AFTER YOU
23 ENTERED INTO THE SHAREHOLDERS AGREEMENT, WHEN THEY TOLD
24 YOU YOU COULD HAVE A HUNDRED AND TWO BOAT SLIPS HAVE YOU
25 TOLD THE DUKE POWER OFFICIALS THAT THAT WAS NOT

1 CONSISTENT WITH WHAT THEY TOLD YOU BEFOREHAND?

2 A UH-HUH

3 Q DID YOU SAY YES?

4 A YES

5 Q THEN TO LINE 8 SO IT'S YOUR VIEW THAT WHAT DUKE
6 POWER TOLD YOU AFTER THE SHAREHOLDERS AGREEMENT WAS
7 ENTERED INTO, THAT IS APPROVING A HUNDRED AND TWO BOAT
8 SLIPS WAS INCONSISTENT WITH WHAT THEY TOLD YOU BEFORE YOU
9 ENTERED INTO THE SHAREHOLDERS AGREEMENT?

10 A RIGHT

11 Q NOW DO YOU BELIEVE THAT THEIR POSITION, THAT IS A
12 HUNDRED AND TWO BOAT SLIPS, IS CONSISTENT WITH THE LEASE
13 YOU SIGNED, THE LEASE FOR THE PROPERTY?

14 A NO

15 Q YOU THINK IT'S INCONSISTENT WITH THE LEASE?

16 A CORRECT

17 Q OKAY HAVE YOU CONSIDERED TAKING ANY LEGAL ACTION
18 AGAINST DUKE POWER FOR BREACHING THE LEASE OR ACTING
19 CONTRARY TO WHAT THEY TOLD YOU BEFORE YOU ENTERED INTO
20 THE SHAREHOLDERS AGREEMENT?

21 A NO

22 Q NOW DID ANDY BALLARD EVER TELL YOU ANYTHING ABOUT
23 HOW MANY BOAT SLIPS WERE PERMITTED UNDER THE LEASE?

24 A UH-HUH

25 Q AND WHAT DID HE TELL YOU?

1 A A HUNDRED TO TWO HUNDRED

2 Q DID HE TELL YOU THAT BEFORE YOU ENTERED INTO THE
3 SHAREHOLDERS AGREEMENT?

4 A YES

5 Q AND WHAT ANDY TOLD YOU, WAS THAT CONSISTENT WITH
6 WHAT THE DUKE POWER PEOPLE TOLD YOU?

7 A YES

8 Q IN FACT, IT WAS EXACTLY WHAT THE DUKE POWER PEOPLE
9 TOLD YOU, IS THAT RIGHT?

10 A RIGHT

11 MR HOLLEMAN AND THEN, YOUR HONOR, I'M GOING TO
12 READ -- SINCE HANNAH DOESN'T HAVE IT, I'M GOING TO READ
13 THIS PORTION THAT MR HOWARD AND I LOOKED AT

14 Q AND WHAT ANDY TOLD YOU WAS ALSO CONSISTENT WITH WHAT
15 WAS IN THE LEASE, CORRECT, ONE HUNDRED TO TWO HUNDRED?
16 THE ANSWER IS, UH-HUH HOW MANY TIMES YOU GOING TO ASK
17 THAT WELL, I'M GOING TO -- WHICH PART OF IT DON'T YOU
18 UNDERSTAND?

19 THEN CONTINUING ON PAGE 38 AT LINE 20 WHAT I DON'T
20 UNDERSTAND IS HOW YOU CAN TESTIFY THAT HE WAS MISLEADING
21 YOU WHEN ALL HE SAID WAS WHAT DUKE POWER WAS TELLING YOU
22 AND WHAT THE LEASE SAID

23 A RIGHT

24 Q SO HOW CAN YOU SAY ANDY WAS MISLEADING YOU?

25 A BECAUSE WE SHOULD HAVE BEEN ABLE TO HAVE PUT -- TO

1 HAVE UP TO TWO HUNDRED UNITS

2 Q BUT THAT'S REALLY DUKE -- DUKE POWER'S CALL, NOT

3 ANDY'S, CORRECT?

4 A RIGHT

5 Q AND DUKE POWER IS THE ONE WHO SAID, AFTER THE

6 AGREEMENT WAS ENTERED INTO, YOU COULD HAVE A HUNDRED AND

7 TWO IT WASN'T ANDY WHO SAID THAT, RIGHT?

8 A THAT IS CORRECT

9 Q AND, IN FACT, ISN'T IT TRUE ---

10 A BUT ANDY ---

11 Q --- THAT ANDY ---

12 A ANDY BELIEVED AT THE TIME THAT HE COULD GET TWO

13 HUNDRED UNITS

14 Q AND IS IT TRUE THAT ANDY HAS ARGUED WITH DUKE POWER

15 AFTER THE FACT TOO THAT ---

16 A YES

17 Q --- YOU SHOULD BE ABLE TO HAVE TWO HUNDRED?

18 A YES

19 Q SO HE HAS AGREED WITH YOU AND TRYING TO ARGUE FOR

20 TWO HUNDRED?

21 A CORRECT

22 Q SO WOULD YOU SAY THAT ANDY AND YOU ARE IN THE SAME

23 BOAT HERE?

24 A WE ARE IN THE SAME BOAT WE'RE BOTH STOCKHOLDERS

25 Q GO TO PAGE 41, LINE 6 OKAY BUT THAT CALL WAS

1 DUKE POWER'S CALL?

2 A THAT CALL WAS DUKE POWER'S CALL

3 Q AND BEFORE YOU ENTERED INTO THE SHAREHOLDERS

4 AGREEMENT DID YOU HAVE A CHANCE TO TALK WITH PEOPLE AT

5 PICKENS COUNTY ABOUT PERMITTING AND OTHER ISSUES?

6 A YES

7 Q DID YOU MEET WITH SOMEONE AT PICKENS COUNTY?

8 A YES

9 Q AND WHOM DID YOU MEET WITH?

10 A COUNTY ADMINISTRATOR, CHAP -- CHAP, I WANT TO SAY

11 HURST

12 Q WAS ANYONE ELSE IN THAT MEETING?

13 A YES AND ANDY AND THERE WERE TWO OR THREE OTHER

14 COUNTY STAFF THERE TOO AND I REALLY CAN'T TELL YOU WHO

15 THEY WERE I THINK ONE OF THEM WAS LIKE PLANNING AND ONE

16 OF THEM WAS BUILDING DEPARTMENT

17 SEEMS TO ME THERE WAS ANOTHER ONE FROM LIKE ROADS

18 AND EVERYTHING, BUT I REALLY COULDN'T TELL YOU WHO ALL

19 WAS THERE I DO REMEMBER ANDY, AND I AND CHAP HURST

20 BECAUSE CHAP BASICALLY RAN THE MEETING

21 Q TURN OVER TO PAGE 42, LINE 6 AND WHAT DID THE

22 PICKENS COUNTY OFFICIALS TELL YOU ABOUT THE WARPETH PLAN?

23 A CHAP TOLD US THAT THE COUNTY WAS BEHIND IT AND

24 THEY'D LIKE TO SEE IT BUILT

25 Q DID YOU ASK HIM ANY SPECIFIC QUESTIONS ABOUT PERMITS

1 OR PERMITTING AT THAT POINT IN TIME?

2 A I'M SURE I DID

3 Q DO YOU REMEMBER WHAT HE TOLD YOU ABOUT PERMITTING?

4 A I DON'T

5 Q DID THE COUNTY OFFICIALS TELL YOU ANYTHING IN THAT
6 MEETING THAT CAUSED YOU ANY CONCERN?

7 A NO IT SOUNDED LIKE THEY WERE BEHIND THE PROJECT
8 AND WANTED TO SEE IT BUILT

9 Q NOW WHAT THE COUNTY OFFICIALS TOLD YOU, WAS THAT
10 CONSISTENT WITH WHAT ANDY BALLARD HAD BEEN TELLING YOU
11 ABOUT THE PROJECT?

12 A YES

13 Q BEFORE YOU ENTERED INTO THE SHAREHOLDERS AGREEMENT
14 DID YOU TALK TO ANYONE ELSE AT PICKENS COUNTY?

15 A I DON'T BELIEVE SO

16 Q NOW WHAT THE PICKENS COUNTY OFFICIALS TOLD YOU, DID
17 IT PROVE TO BE TRUE AFTER YOU ENTERED INTO THE
18 SHAREHOLDERS AGREEMENT?

19 A HALF OF IT DID AND HALF OF IT DIDN'T

20 Q WHICH HALF WAS NOT TRUE?

21 A COUNTY COUNCIL WAS BEHIND IT THE PLANNING
22 DEPARTMENT WASN'T OR PLANNING COMMISSION

23 Q ULTIMATELY DID THE PLANNING COMMISSION APPROVE IT?

24 A YES

25 Q AND DID ANDY BALLARD HELP YOU WITH YOUR WORK WITH

1 THE PLANNING COMMISSION IN GETTING THEM TO APPROVE IT?

2 A YES

3 Q AND DOWN AT LINE 19 OF THE SAME PAGE OKAY NOW DO
4 YOU THINK ANDY MISLED YOU IN ANY WAY ABOUT PICKENS COUNTY
5 BEFORE YOU ENTERED INTO THE SHAREHOLDERS AGREEMENT?

6 A I DON'T KNOW THAT HE MISLED US ON PURPOSE

7 Q YOU THINK HE ---

8 A I THINK HE WAS MISLED

9 Q BY WHOM?

10 A BY THE COUNTY

11 Q ALL RIGHT THEN AT LINE 25 ON PAGE 44 BUT YOU HAD
12 A CHANCE TO MEET WITH DHEC IF YOU WANTED TO?

13 A I COULD HAVE, YEAH

14 Q AND THEN LINE 12 BUT YOU KNEW THE PERMITS WERE NOT
15 IN PLACE THOUGH, IS THAT CORRECT?

16 A CORRECT

17 Q AND YOU KNEW UNTIL IT WAS FINAL THERE'S ALWAYS
18 UNCERTAINTY AS TO WHEN AND HOW PERMITS WILL BE ISSUED?
19 CORRECT?

20 A TRUE

21 Q PAGE 46, LINE 8 WELL, WITH REGULATORY AUTHORITIES,
22 UNTIL THEY MAKE A FINAL DECISION, YOU DON'T REALLY KNOW
23 WHAT THEY'RE GOING TO DO, CORRECT?

24 A TIL YOU GO DOWN AND PAY FOR THEM, YEAH IF YOU HAVE
25 TO PAY FOR THEM OR UNTIL THEY ISSUE THE FINAL PERMIT

1 Q AND PART OF THE PROCESS IS PUBLIC COMMENT, IS THAT
2 RIGHT?

3 A UH-HUH

4 Q AND SO THE REGULATORY AUTHORITIES ARE -- THE REASON
5 THEY HAVE PUBLIC COMMENT PERIOD IS TO CONSIDER WHATEVER
6 MEMBERS OF THE PUBLIC MIGHT SAY, IS THAT CORRECT?

7 A RIGHT

8 Q AND THAT CAN AFFECT THEIR DECISION, CORRECT?

9 A ABSOLUTELY

10 Q SO UNTIL THE FINAL DECISION IS MADE THE BEST YOU CAN
11 DO IS MAKE A PREDICTION AS TO WHAT YOU THINK THE
12 REGULATORY AUTHORITIES WILL DO, IS THAT CORRECT?

13 A I GUESS I DON'T KNOW WHAT YOUR QUESTION WAS THERE

14 Q AND GOING TO PAGE 47, LINE 10 THIS IS ALREADY AN
15 EXHIBIT IT'S THE SHAREHOLDERS AGREEMENT I CAN'T TELL
16 YOU THE EXHIBIT NUMBER OFF THE TOP OF MY HEAD, BUT HERE
17 IS EXHIBIT 1 THE DEPOSITION WAS EXHIBIT 20 SO I'LL
18 SAY -- SO THIS IS EXHIBIT 1 I'LL JUST SHOW YOU A COPY
19 OF IT

20 IF YOU LOOK AT PARAGRAPH 3, DO YOU SEE THE LAST
21 SENTENCE IN PARAGRAPH 3 SAYS "FINAL PERMITS MUST BE
22 OBTAINED TO MOVE FORWARD," IS THAT CORRECT?

23 A CORRECT

24 Q SO IN THE AGREEMENT YOU KNEW FINAL PERMITS HAD NOT
25 BEEN OBTAINED, IS THAT RIGHT?

1 A THAT'S RIGHT

2 Q AND IF YOU LOOK AT PARAGRAPH 4, THE LAST SENTENCE

3 SAYS "IF BALLARD IS UNABLE TO OBTAIN THE MARINA AND DOCK

4 PERMITS PER THE CONCEPTUAL PLAN THE ONE MILLION DOLLAR

5 PAYMENT WILL BE REFUNDED " DO YOU SEE THAT?

6 A YES

7 Q SO YOU KNEW THAT THERE WAS A POSSIBILITY THE PERMITS

8 WOULD NOT BE ISSUED AT ALL, IS THAT RIGHT?

9 A NO

10 Q WELL, ISN'T THAT WHAT THE AGREEMENT PROVIDES FOR?

11 A UH-HUH

12 Q AND, OF COURSE, YOU'VE SIGNED THE AGREEMENT,

13 CORRECT?

14 A YES

15 Q DID YOU READ IT BEFORE YOU SIGNED IT?

16 A YES

17 Q AND OVER TO PAGE 49, LINE 4 WELL, YOU TALKED TO

18 DUKE POWER, CORRECT?

19 A CORRECT

20 Q AND THEY TOLD YOU THEY HAD APPROVED THE PROJECT?

21 A YES

22 Q AND AT LINE 14 OKAY SO YOU HAD A CHANCE TO --

23 YOU KNEW THE STATUS OF PICKENS COUNTY'S APPROVAL WHEN YOU

24 SIGNED THE AGREEMENT?

25 A YES

1 Q AND ULTIMATELY THE PICKENS COUNTY PLANNING

2 COMMISSION APPROVED IT TOO?

3 A YES

4 Q PARAGRAPH 5 SAYS YOU AND YOUR SON WILL EXECUTE AN

5 AGREEMENT WITH WARPATH DEFINING YOUR DUTIES HAS THAT

6 EVER HAPPENED?

7 A NO

8 Q HAS ONE EVER BEEN PREPARED?

9 A NO

10 Q IF YOU LOOK AT PARAGRAPH 6 IS IT YOUR UNDERSTANDING

11 THAT MR ROBERSON IS GOING TO PROVIDE THE NECESSARY

12 CAPITAL TO OBTAIN LONG-TERM FINANCING ON THE PROJECT?

13 A YES

14 Q AND THERE'S NO LIMIT ON THE AMOUNT OF NECESSARY

15 CAPITAL HE MUST PROVIDE, IS THAT CORRECT?

16 A I DON'T KNOW

17 Q I MEAN, THE AGREEMENT DOESN'T CONTAIN A LIMITATION,

18 DOES IT?

19 A NO

20 Q WHEN YOU SIGNED THE SHAREHOLDERS AGREEMENT WAS IT

21 YOUR UNDERSTANDING THAT MR BALLARD WOULD OWN TWENTY

22 PERCENT OF THE STOCK AND THAT -- AND THAT WOULD BE HIS

23 HOLDINGS WHEN THE SHARES WERE FINALLY ISSUED?

24 A YES

25 Q AND THAT HIS FINAL HOLDING WOULD BE TWENTY THOUSAND

1 SHARES?

2 A I DON'T KNOW ABOUT THE TWENTY THOUSAND

3 Q OR TWENTY PERCENT OF THE COMPANY?

4 A TWENTY PERCENT, RIGHT

5 Q WHEN YOU ENTERED INTO THE AGREEMENT DID YOU ALL

6 CONTEMPLATE THAT NEW STOCK WOULD BE ISSUED AND THAT THERE

7 WOULD BE ANY DILUTION OF THE SHAREHOLDERS?

8 A NO, I DIDN'T I MEAN, I DIDN'T THINK ABOUT IT ONE

9 WAY OR THE OTHER

10 Q BUT YOU DIDN'T HAVE IN MIND ISSUING ANY STOCK OR

11 DILUTING SHAREHOLDERS?

12 A NO

13 Q DO YOU KNOW IF IN YOUR COUNTER-CLAIM WHETHER YOU ALL

14 HAVE ACCUSED MR BALLARD OF FRAUD?

15 A I WOULDN'T KNOW

16 Q DO YOU BELIEVE HE COMMITTED ANY FRAUD?

17 A I DON'T KNOW WHAT IT IS

18 Q YOU DON'T KNOW WHAT FRAUD IS?

19 A HUH-UH

20 Q DO YOU BELIEVE IT'S FAIR TO ACCUSE HIM OF FRAUD?

21 A WELL, IF I DON'T KNOW WHAT FRAUD IS I DON'T KNOW HOW

22 I COULD ACCUSE HIM OF IT

23 Q WELL, LET'S SAY FRAUD MEANS YOU INTENTIONALLY LIE

24 AND MAKE A FALSE STATEMENT

25 A I DON'T THINK HE INTENTIONALLY LIED

1 Q PAGE 52, LINE 13 WHO CAME UP WITH THE IDEA OF
2 ISSUING ADDITIONAL STOCK?

3 A TIM

4 Q PAGE 53, LINE 13 LET ME SHOW YOU WHAT WAS EXHIBIT
5 10 TO MR ROBERSON'S DEPOSITION OR TO THE DEPOSITION

6 A UH-HUH

7 Q IT'S AN EMAIL AS I UNDERSTAND IT IS THAT FROM YOU
8 OR YOU -- R_THOENNES@ATT.NET?

9 A YES

10 MR HOLLEMAN AND, YOUR HONOR, AT THIS POINT WE
11 WOULD INTRODUCE THAT, WHICH WE HAVE MARKED AS TRIAL
12 EXHIBIT 8

13 MR HOWARD NO OBJECTION, YOUR HONOR

14 THE COURT ALL RIGHT WITHOUT OBJECTION

15 (WHEREUPON PLAINTIFF'S EXHIBIT 8 WAS MARKED AND
16 ADMITTED INTO EVIDENCE)

17 Q AND THIS WAS BEFORE YOU ENTERED INTO THIS
18 SHAREHOLDERS AGREEMENT, CORRECT?

19 A I ASSUME WHAT'S THE DATE?

20 Q WELL, THE SHAREHOLDERS AGREEMENT'S DATED MAY 29,
21 2007

22 A YES

23 Q AND IF YOU SEE THE NEXT TO LAST PARAGRAPH YOU SAY, I
24 DON'T BELIEVE WE CAN GIVE ANDY MUCH UNTIL ALL PERMITS AND
25 APPROVALS PROVE TO BE REAL, IS THAT CORRECT?

1 A RIGHT

2 Q DOWN TO LINE 9 DOES THIS STATEMENT BY YOU INDICATE
3 THAT BEFORE YOU ENTERED INTO THE SHAREHOLDERS AGREEMENT
4 YOU KNEW THAT ALL THE PERMITS AND APPROVALS MIGHT NOT
5 COME THROUGH?

6 A YEAH YES, I GUESS

7 Q AND IF YOU LOOK DOWN BELOW THAT THERE'S AN EMAIL
8 FROM MR ROBERSON TO YOU RIGHT AT THE BOTTOM OF THE PAGE

9 A UH-HUH

10 Q HE SAYS, "THE NUMBERS LOOK GOOD AS-IS, BUT THE
11 REALITY IS THE LOAN MIGHT BE SIXTY PERCENT EQUITY
12 REQUIRED," IS THAT CORRECT?

13 A UH-HUH

14 Q SO YOU ALL KNEW THAT THE NECESSARY CAPITAL TO OBTAIN
15 THE FINANCING, THE LONG-TERM FINANCING, MIGHT BE AS MUCH
16 AS SIXTY PERCENT?

17 A WELL, TIM -- THAT'S TIM'S NUMBER, NOT MINE

18 Q BUT HE TOLD YOU THAT?

19 A HE TOLD ME THAT

20 Q I SHOW YOU WHAT'S BEEN MARKED EXHIBIT 15 AND IS
21 THAT AN EMAIL FROM YOU DATED MAY 8TH, 2007?

22 A YES

23 MR HOLLEMAN AND WE HAD PREVIOUSLY MARKED THAT AS
24 TRIAL EXHIBIT 9 AND WE WOULD MOVE ITS ADMISSION, YOUR
25 HONOR

1 MR HOWARD NO OBJECTION, YOUR HONOR

2 THE COURT ALL RIGHT

3 (WHEREUPON PLAINTIFF'S EXHIBIT 9 WAS MARKED AND
4 ADMITTED INTO EVIDENCE)

5 Q AND THAT'S AN EMAIL FROM YOU TO AMANDA TURNER SO
6 THAT WAS BEFORE THE SHAREHOLDERS AGREEMENT ON MAY 29, IS
7 THAT CORRECT?

8 A THAT'S CORRECT

9 Q IF YOU LOOK AT, I GUESS, THE FIRST BULLET, IT SAYS,
10 "ONE MILLION DOLLARS FOR THE TWENTY THOUSAND SHARES,
11 PAYABLE AT CLOSING," IS THAT CORRECT?

12 A YES

13 Q SO IT WAS YOUR UNDERSTANDING THAT YOU WERE PAYING
14 ANDY BALLARD A MILLION DOLLARS FOR TWENTY THOUSAND
15 SHARES, IS THAT RIGHT?

16 A YES

17 Q NOW WHEN YOU ALL HAD YOUR SHAREHOLDERS MEETING IN
18 MAY OF 2008 YOU DID NOT ELECT ANDY BALLARD A DIRECTOR AT
19 THAT TIME, IS THAT CORRECT?

20 A YES

21 Q AND WHY DID YOU DO THAT?

22 A I GUESS WE WERE TICKED OFF AT THAT POINT

23 Q AND WHY WERE YOU TICKED OFF?

24 A BECAUSE IT WAS TAKING SO LONG AND WE'D GOTTEN SO
25 LITTLE

1 Q BUT HAD ANDY DONE ANYTHING TO DELAY THE PROGRESS?
2 A TO DELAY THE PROGRESS?
3 Q YES
4 A NO BUT HE HAD TOLD US IT WOULD TAKE A MUCH SHORTER
5 TIME THAN IT DID
6 Q AND HE HAD TRIED TO HELP?
7 A YES
8 Q DURING THE PROCESS?
9 A YES
10 Q SO WOULD IT BE CORRECT TO SAY IT WASN'T ANDY
11 BALLARD'S FAULT THAT IT WAS TAKING LONGER THAN EXPECTED?
12 A IT WASN'T HIS FAULT, BUT HE HAD TOLD US IT WOULD
13 TAKE SHORTER -- AND THERE WOULD BE MORE DOCKS
14 Q BUT, I MEAN, JUST TO BE CLEAR AGAIN, HE SAID ONE
15 HUNDRED TO TWO HUNDRED, CORRECT?
16 A IF THE MARKET BORE IT, IT WOULD BE TWO HUNDRED
17 UNITS
18 Q AND DUKE POWER HAD SAID EXACTLY WHAT HE SAID, IS
19 THAT CORRECT?
20 A YES
21 Q LET ME SHOW YOU WHAT'S BEEN MARKED EXHIBIT 25 IS
22 IT CORRECT TO SAY THAT AFTER THE SHAREHOLDERS AGREEMENT,
23 THE STOCK PURCHASE AGREEMENT, BEFORE THE MAY OF 2008
24 SHAREHOLDER MEETING YOU ALL HAD DECIDED THAT YOU WANTED
25 ANDY OUT OF THE DEAL?

1 A YES, KIND OF A KNEE-JERK REACTION

2 MR HOLLEMAN AND WE HAD PREVIOUSLY MARKED THAT AS
3 EXHIBIT 10, TRIAL EXHIBIT 10 AND I WOULD MOVE ITS
4 ADMISSION, YOUR HONOR

5 MR HOWARD NO OBJECTION

6 (WHEREUPON PLAINTIFF'S EXHIBIT 10 WAS MARKED AND
7 ADMITTED INTO EVIDENCE)

8 Q THEN WE GO TO PAGE 57, LINE 6 BUT IF YOU LOOK DOWN
9 HERE ON OCTOBER 28TH, 2007 YOUR SON WRITES TO YOU "DON'T
10 WE WANT TO GET HIM OUT OF THE DEAL?"

11 A RIGHT

12 Q SO BY THAT POINT IN TIME YOU ALL HAD DECIDED YOU
13 WANTED HIM OUT OF THE DEAL, CORRECT?

14 A YOU'D HAVE TO ASK RICK, I GUESS HE WROTE IT, NOT
15 ME

16 Q THEN AT LINE 20 WELL, IF YOU LOOK UP AT THE TOP,
17 THIS IS TIM ROBERSON WRITING YOU AND YOUR SON HE SAYS,
18 "I THINK HE WILL TAKE HIS ONE MILLION DOLLARS AND RUN
19 AFTER A LITTLE THREATENING, POSTURING AND WHINING "

20 A UH-HUH

21 Q DO YOU SEE THAT?

22 A UH-HUH

23 Q DO YOU AGREE WITH THAT STATEMENT?

24 A NO I HAD NO WAY OF KNOWING WHETHER IT WAS TRUE OR
25 NOT

1 Q DID YOU EVER INDICATE TO TIM THAT YOU DISAGREED WITH
2 THAT STATEMENT?

3 A NO

4 Q LET ME SHOW YOU EXHIBIT 28 THIS IS A DECEMBER 28,
5 2007, AN EMAIL FROM TIM ROBERSON TO YOU, IS THAT CORRECT?

6 A THAT'S CORRECT

7 MR HOLLEMAN AND, YOUR HONOR, WE HAD PREVIOUSLY
8 MARKED THAT TRIAL EXHIBIT 11 AND WOULD MOVE ITS
9 ADMISSION

10 MR HOWARD NO OBJECTION

11 THE COURT ALL RIGHT

12 (WHEREUPON PLAINTIFF'S EXHIBIT 11 WAS MARKED AND
13 ADMITTED INTO EVIDENCE)

14 Q HE SAYS AT THE BOTTOM WHEN AN -- "WHEN AN INVESTOR
15 REALIZES THAT AN EXPECTED RETURN ON INVESTMENT IS NOT
16 FORTHCOMING, ITS ONLY VIABLE OPTION IS TO ACQUIRE MORE
17 EQUITY AT A REDUCED RATE," IS THAT CORRECT?

18 A THAT'S WHAT IT SAYS

19 Q AND THEN IT SAYS "IN ORDER TO PROPERLY REFINANCE THE
20 PROJECT I WOULD SUGGEST THAT WE INCREASE THE NUMBER OF
21 OUTSTANDING SHARES TO FIVE HUNDRED THOUSAND WITH A
22 MIXTURE OF BOTH PREFERRED AND COMMON STOCK, IS THAT
23 CORRECT?

24 A THAT'S WHAT IT SAYS

25 Q NOW WAS IT YOUR UNDERSTANDING -- WHO WERE THE

1 INVESTORS IN THE PROJECT AT THE TIME HE WROTE THIS EMAIL?
2 A TIM
3 Q ANYONE ELSE?
4 A UH-UH
5 Q PAGE 59, LINE 22 ALL RIGHT LOOK AT THE LAST
6 PARAGRAPH THE LAST PARAGRAPH SAYS, "I BELIEVE WITH
7 LEGAL REVIEW AND PROPER PLANNING WE SHOULD BE ABLE TO
8 ACCOMPLISH THE NEEDS OF A VIABLE BUSINESS AND APPROPRIATE
9 RETURN ON INVESTMENT " DO YOU SEE THAT SENTENCE?
10 A YES
11 Q AND DID YOU UNDERSTAND THAT HE WAS REFERRING TO HIS
12 RETURN ON INVESTMENT IN THIS SENTENCE?
13 A NO I WOULD HAVE THOUGHT IT WOULD BE ANY INVESTOR,
14 INCLUDING US
15 Q OKAY BUT AT THAT POINT IN TIME HE WAS THE ONLY
16 INVESTOR, IS THAT RIGHT?
17 A HE WAS THE ONLY EQUITY INVESTOR
18 Q ALL RIGHT DOWN AT LINE 18 NOW DID YOU ALL TALK
19 WITH ANDY ABOUT THIS PROPOSAL TO INCREASE THE NUMBER OF
20 SHARES TO BE ISSUED BEFORE YOU PASSED?
21 A YOU'D HAVE TO ASK TIM
22 Q DID YOU TALK WITH HIM ABOUT IT?
23 A NO
24 Q AT THE SHAREHOLDERS MEETING WAS ANDY OPPOSED TO THAT
25 IDEA?

1 A AS I RECALL, HE WAS

2 Q AND DOWN AT LINE 23, THE SAME PAGE WAS IT YOUR
3 UNDERSTANDING THAT THE LONG-TERM FINANCING WOULD BE
4 OBTAINED BY TIM ROBERSON?

5 A YES

6 Q AND WAS IT YOUR UNDERSTANDING THAT LONG-TERM
7 FINANCING WOULD BE IN THE FORM OF EQUITY CONTRIBUTION BY
8 TIM, FUNDS PUT UP BY TIM AND DEBT -- LONG-TERM DEBT?

9 A YES

10 Q DID YOU KNOW THE ARTICLES OF INCORPORATION FOR
11 WARPATH PROVIDE FOR A HUNDRED THOUSAND SHARES?

12 A I'D HAVE TO SEE IT IF IT SAYS SO, YES

13 Q I'LL SHOW IT TO YOU IT WAS IN EXHIBIT 48 UNDER
14 PARAGRAPH 3 A

15 A YES

16 Q AND A HUNDRED THOUSAND SHARES HAD ALREADY BEEN
17 ISSUED, CORRECT?

18 A THAT'S CORRECT

19 Q I'LL SHOW YOU EXHIBIT 20, WHICH IS EXHIBIT 1, AGAIN,
20 THE SHAREHOLDERS AGREEMENT UNDER ITEM 1 IF YOU ADD UP
21 THE TOTAL SHARES THAT'S A HUNDRED THOUSAND

22 A THAT'S CORRECT

23 Q OKAY SO WOULD IT BE CORRECT TO SAY THAT ISSUING
24 MORE THAN A HUNDRED THOUSAND SHARES WOULD NOT BE
25 PERMITTED UNDER THE ARTICLES OF INCORPORATION OF WARPATH?

1 A UNLESS IT WAS CHANGED

2 Q AND TO YOUR KNOWLEDGE HAS IT BEEN CHANGED?

3 A I DON'T KNOW

4 Q AND THEN I'M GOING TO READ A PORTION OF PAGE 64 THAT

5 WE TALKED TO MR HOWARD ABOUT BEFORE THE QUESTION IS,

6 WELL, DUKE POWER WAS THE JUDGE OF ITS OWN DECISIONS

7 THOUGH, CORRECT, NOT ANDY? ANSWER, I DON'T KNOW YOU'D

8 HAVE TO ASK DUKE POWER

9 QUESTION, BUT, I MEAN, DUKE POWER MADE ITS OWN

10 DECISIONS IT JUST DIDN'T DO WHAT ANDY BALLARD SAID,

11 CORRECT? ANSWER, I DON'T KNOW WHAT DUKE POWER DID

12 DUKE POWER IS ITS OWN ENTITY I CAN'T ANSWER FOR THEM

13 QUESTION, AND IT'S A MUCH BIGGER COMPANY THAN JUST

14 ANDY BALLARD? ANSWER, IT'S QUITE -- IT'S A MUCH BIGGER

15 ENTITY THAN JUST ANDY BALLARD I DON'T KNOW HOW BIG ANDY

16 IS, BUT I WOULD ASSUME SO I DON'T WANT TO UNDERESTIMATE

17 ANDY'S ABILITIES OVER THERE

18 AND THEN AT PAGE 79, QUESTION, MY QUESTION WAS,

19 OKAY THE ANSWER WAS, IN FACT, THEY TOLD US WE'D HAVE TO

20 GO BACK TO FERC, IF I RECALL CORRECTLY WE'D HAVE TO GO

21 BACK TO FERC IN ORDER TO DO ANYTHING DIFFERENT THAN THAT

22 AND THAT WOULD BE ANOTHER START OVER OF THREE OR FOUR

23 YEARS

24 Q NOW TO PAGE 89, LINE 8 IN TERMS OF THE PURCHASE OF

25 THE STOCK DO YOU KNOW TO WHOM THE ONE MILLION DOLLAR

1 CHECK WAS MADE PAYABLE?

2 A ANDY

3 Q SO THAT WAS PURCHASING STOCK OWNED BY MR BALLARD,
4 CORRECT?

5 A THAT'S CORRECT

6 Q OKAY OTHER STOCK WAS ACTUALLY ISSUED BY THE
7 CORPORATION TO YOU ALL, RIGHT?

8 A THAT'S CORRECT

9 Q AND IN YOUR SHAREHOLDER AGREEMENT YOU ALL MADE
10 CERTAIN COMMITMENTS TO THE COMPANY APART FROM THE MONEY
11 YOU PAID MR BALLARD, IS THAT RIGHT?

12 A YOU'D HAVE TO BE A LITTLE MORE SPECIFIC

13 Q I MEAN, YOU MADE COMMITMENTS ABOUT WHAT WORK YOU
14 WERE DOING IN CONNECTION WITH THE COMPANY I MEAN, YOU
15 WERE GOING TO PROVIDE CERTAIN CONSTRUCTION AND OTHER
16 SERVICES, IS THAT RIGHT?

17 A CORRECT

18 Q PAGE 90, LINE 4 BUT MR ROBERSON WAS GOING TO
19 PROVIDE THE LONG-TERM FINANCING, THE NECESSARY CAPITAL IN
20 ORDER TO OBTAIN LONG-TERM FINANCING, IS THAT RIGHT?

21 A CORRECT

22 Q SO THE SHAREHOLDER AGREEMENT CONTAINED CERTAIN
23 PROMISES FROM EACH OF YOU TO THE COMPANY APART FROM THE
24 PAYMENT OF MONEY TO MR BALLARD, IS THAT CORRECT?

25 A APART FROM THE PAYMENT OF MONEY?

1 Q RIGHT IN OTHER WORDS, MR BALLARD WAS TO BE PAID
2 ONE MILLION DOLLARS, IS THAT CORRECT?

3 A CORRECT

4 Q AND THEN OTHER PROMISES WERE MADE BY MR ROBERSON
5 AND YOU AND YOUR SON AS TO WHAT YOU WERE GOING TO DO TO
6 DEVELOP THE COMPANY'S BUSINESS, IS THAT CORRECT?

7 A CORRECT

8 MR HOLLEMAN AND THAT'S ALL I HAVE OF THIS
9 WITNESS, YOUR HONOR

10 THE COURT ALL RIGHT

11 MR HOWARD ADDITIONAL DESIGNATIONS, YOUR HONOR

12 THE COURT YES, SIR

13 DESIGNATIONS BY MR HOWARD.

14 Q HANNAH, THIS IS GOING BACK TO PAGE 31 QUESTION,
15 AND DID YOU, THEREFORE, UNDERSTAND THAT YOU DIDN'T HAVE A
16 GUARANTEE OF TWO HUNDRED BOAT SLIPS UNDER THE DUKE POWER
17 LEASE?

18 A NO, I DIDN'T UNDERSTAND THAT

19 Q WHY NOT?

20 A BECAUSE IT WAS ONE HUNDRED TO TWO HUNDRED DEPENDING
21 ON THE MARKET

22 Q AND DEPENDING ON THE MARKET ---

23 A UH-HUH

24 Q DID THEY SAY DEPENDING ON THE MARKET?

25 A I DON'T REMEMBER

1 Q OKAY

2 A SEEMS TO ME IT WAS IN THE CONCEPTUAL PLAN, IF I
3 REMEMBER IT RIGHT

4 Q SKIPPING OVER TO PAGE 37 SO IS IT YOUR BELIEF THAT
5 ANDY WAS TELLING YOU WHAT THE DUKE POWER PEOPLE WERE
6 TELLING HIM?

7 A I DON'T KNOW YOU'D HAVE TO ASK ANDY THAT

8 Q OKAY WHAT'S YOUR BELIEF?

9 A I DON'T KNOW

10 Q DO YOU THINK ANDY MISLED YOU IN ANY WAY WITH RESPECT
11 TO THE NUMBER OF BOAT SLIPS?

12 A UH, YES

13 Q AND TELL ME WHY IF HE WAS TELLING YOU EXACTLY WHAT
14 DUKE POWER WOULD SAY

15 A BECAUSE WE HAD ALL ALONG FIGURED ON TWO HUNDRED
16 UNITS, TWO HUNDRED BOAT SLIPS

17 Q BUT HE AND ---

18 A BECAUSE WE FELT LIKE THE MARKET WOULD BEAR TWO
19 HUNDRED

20 Q BUT YOU KNEW THAT DUKE POWER WAS SAYING ONE HUNDRED
21 TO TWO HUNDRED, IS THAT RIGHT?

22 A ONE HUNDRED TO TWO HUNDRED BASED ON THE MARKETING

23 Q AND ANDY WAS REPEATING THE SAME THING, IS THAT
24 RIGHT?

25 A RIGHT

1 Q SO WHY WOULD YOU THINK HE'S MISLEADING YOU IF HE'S
2 TELLING YOU WHAT DUKE POWER WAS SAYING AS WELL?

3 A WELL, BECAUSE WHEN WE SUBMITTED THE PLAT HE ABOUT
4 HAD A HEART ATTACK WHEN HE SAW THE TWO HUNDRED UNITS
5 AND WE WOULD HAVE THOUGHT THAT HE WOULD HAVE REALIZED WE
6 WERE GOING TO APPLY FOR TWO HUNDRED BECAUSE THAT WAS THE
7 PROFORMAS WE HAD DONE LEADING UP TO AND THROUGH THIS
8 SIGNING OF THE STOCKHOLDERS AGREEMENT

9 Q SKIPPING OVER TO PAGE 51 QUESTION, RECENTLY YOU
10 ALL ELECTED MR. BALLARD AS A DIRECTOR, IS THAT RIGHT?

11 A UH-HUH

12 Q WHY DID YOU DECIDE TO DO THAT?

13 A WE WERE REALLY HOPING TO DRAW HIM BACK INTO THE WORK
14 WITH US GOING FORWARD WITH THE DEVELOPMENT

15 Q AND DID YOU SUCCEED WITH THAT?

16 A PROBABLY NOT

17 Q WHY DO YOU SAY THAT?

18 A WELL, IT HASN'T BEEN LONG ENOUGH FOR ONE THING

19 Q HAVE YOU DONE ANYTHING ELSE TO BRING HIM INTO THE
20 DEVELOPMENT SINCE THEN?

21 A I CALLED HIM -- I CALLED A COUPLE OF TIMES AND
22 TALKED TO HIM ABOUT THE PERMITTING AND HE HAD SOME
23 SUGGESTIONS, AND GOOD ONES, ABOUT THE DHEC PERMITS

24 Q AND WHAT WERE THOSE?

25 A HE KNEW SOME PEOPLE AT DHEC AND KNEW SOME PEOPLE

1 THAT MIGHT -- THAT MIGHT COULD INFLUENCE DHEC AND HE
2 WOULD CHECK WITH THEM AND SEE IF THERE WAS ANY
3 POSSIBILITY OF DOING THAT

4 Q SKIPPING DOWN TO LINE 16 AND WHAT WAS YOUR
5 UNDERSTANDING OF HIS REASONING FOR THAT?

6 A IN CASE WE HAD TO MAKE AN EQUITY PARTNER OUT OF
7 SOMEBODY THAT WAS GOING TO PROVIDE FINANCING OR POSSIBLY
8 FOR KEY EMPLOYEES, THAT KIND OF THING

9 Q WHO WERE THE KEY EMPLOYEES?

10 A I DON'T KNOW

11 Q WAS THERE ANYONE SPECIFIC IN MIND?

12 A NO WE TALKED ABOUT HOTEL MANAGEMENT TYPE PEOPLE,
13 ESPECIALLY THE HOTEL MANAGEMENT THAT'S ALL I CAN
14 REMEMBER

15 Q ANY SPECIFIC PEOPLE OR JUST IN GENERAL?

16 A NO, JUST IN GENERAL WE HAD TALKED TO ANDY CHIKA,
17 WHO'S A HOTEL GUY HERE IN GREENVILLE, BUT WE NEVER REALLY
18 TALKED ABOUT ANYBODY IN SPECIFIC AS FAR AS GIVING THEM
19 STOCK

20 Q DID YOU TALK TO ANDY CHIKA ABOUT STOCK IN
21 PARTICULAR?

22 A NO NOW YOU'RE TALKING TO ME I CAN'T ANSWER FOR
23 ANYBODY ELSE

24 Q RIGHT DID YOU HAVE ANYONE SPECIFIC IN MIND IN
25 TERMS OF EQUITY INTEREST OR STOCKS?

1 A NO

2 Q SKIPPING OVER TO PAGE 56 AND THE ACTION YOU TOOK
3 AT THE SHAREHOLDERS MEETING, WERE YOU HOPING THAT WOULD
4 PUSH ANDY OUT OF THE DEAL?

5 A NO I DON'T THINK SO BUT TIM WOULD HAVE TO ANSWER
6 THAT BECAUSE WE HAD REALLY WANTED ANDY IN THE DEAL I
7 MEAN, HE KNEW THE DEAL IT WAS HIS BABY HE HAD WORKED
8 WITH IT FOR THREE, OR FOUR OR FIVE YEARS AND WHEN WE
9 BOUGHT IT FROM HIM WE HAD ANTICIPATED IT JUST BEING A
10 PARTNERSHIP

11 Q SKIPPING DOWN TO LINE 14 WHAT WAS YOUR
12 UNDERSTANDING AT THAT TIME?

13 A MY UNDERSTANDING WAS IF WE COULDN'T GET THE PERMITS
14 IN THE TIME THAT WE WERE SUPPOSED TO, AND WE DIDN'T GET
15 THE TWO HUNDRED UNITS LIKE WE WERE SUPPOSED TO, AND THE
16 TWO HUNDRED DRY-STACKS OR ANY OTHER THINGS THAT IT WOULD
17 BE HARD WORK WITH HIM BECAUSE WE HAD -- BE HARD TO WORK
18 WITH HIM BECAUSE WE HAD BEEN MISLED

19 Q SKIPPING OVER TO PAGE 59 SO WHEN HE SAID WHEN AN
20 INVESTOR REALIZES THAT AN EXPECTED RETURN ON INVESTMENT
21 IS NOT FORTHCOMING, HIS ONLY VIABLE OPTION IS TO ACQUIRE
22 MORE EQUITY AT A REDUCED RATE, WAS IT YOUR UNDERSTANDING
23 FROM THE SENTENCE THAT TIM IS PROPOSING THAT HE WOULD
24 ACQUIRE MORE EQUITY IN THE COMPANY AT A REDUCED RATE?

25 A NO

1 Q WELL, WHO IS HE REFERRING TO WHEN HE SAID AN
2 INVESTOR?

3 A I WOULD ASSUME IT WOULD BE A FUTURE INVESTOR

4 Q YEAH, BUT HE SAYS HIS ONLY VIABLE OPTION IS TO
5 ACQUIRE MORE EQUITY AT A REDUCED RATE

6 A UH-HUH

7 Q WELL, FUTURE INVESTORS AT THAT TIME DIDN'T OWN ANY
8 EQUITY

9 A YOU'D HAVE TO ASK TIM THAT

10 Q WELL, WHAT WAS YOUR UNDERSTANDING WHEN YOU RECEIVED
11 IT?

12 A JUST WHAT I TOLD YOU

13 Q YOU DIDN'T THINK HE WAS REFERRING TO HIMSELF?

14 A NO, NOT AT ALL

15 Q THIS IS ON PAGE 60 THAT YOU DON'T HAVE MR
16 HOLLEMAN JUST -- THIS IS IN RESPONSE TO INVESTORS HE
17 WAS THE ONLY EQUITY INVESTOR OKAY WE WERE SWEAT
18 EQUITY OKAY SO YOU TWO AND HE WERE THE ONLY INVESTORS
19 IN THE COMPANY AT THAT TIME? ANSWER, I DON'T KNOW IF
20 YOU'D INCLUDE ANDY IN THAT QUESTION, OTHER THAN ANDY?
21 YES

22 SKIPPING OVER TO PAGE 61

23 A I DON'T REMEMBER THAT

24 Q DO YOU BELIEVE IT'S CONSISTENT WITH THE STOCK
25 PURCHASE AGREEMENT TO REDUCE ANDY'S HOLDINGS BELOW

1 TWENTY PERCENT?

2 A YES, BUT NOT JUST ANDY I DON'T THINK WE COULD JUST
3 DILUTE ANDY

4 Q DO YOU THINK IT'S CONSISTENT WITH THE SHAREHOLDERS
5 AGREEMENT TO DILUTE HIM AND ---

6 A IF WE ARE ALL DILUTED, YES

7 Q EVEN THOUGH THE SHAREHOLDERS AGREEMENT SAYS IT'S --
8 HIS FINAL HOLDING WOULD BE TWENTY PERCENT?

9 A AT THE TIME OF CLOSING, THAT'S CORRECT

10 Q SKIPPING OVER TO PAGE 63 DO YOU REMEMBER ANDY
11 BALLARD TELLING YOU THAT WARPATH DEVELOPMENT WAS SHOVEL
12 READY?

13 A I DON'T KNOW ABOUT SHOVEL READY, BUT IT WAS READY TO
14 START CONSTRUCTION WITHIN MONTHS

15 Q BUT DO YOU REMEMBER HIM USING THE PHRASE SHOVEL
16 READY?

17 A I DON'T REMEMBER ONE WAY OR THE OTHER SEEMS TO ME
18 THAT SHOVEL READY CAME UP WITH THE STIMULUS BILL

19 Q WHICH WAS AFTER THE WARPATH SHAREHOLDERS MEETING?

20 A YES BUT THE MEANING -- I WOULD SAY YES

21 Q WELL, SOMETHING REALLY ISN'T SHOVEL READY UNTIL YOU
22 HAVE ALL THE FINAL PERMITS IN PLACE, IS THAT CORRECT?

23 A OH, THAT'S TRUE

24 Q DO YOU BELIEVE THAT ANDY BALLARD WAS ENTITLED TO
25 RELY ON WHAT DUKE POWER WAS TELLING HIM AND YOU?

1 A YOU'D HAVE TO ASK ANDY THAT

2 Q WELL, WHAT'S YOUR BELIEF?

3 A I DON'T KNOW

4 Q WELL, DID YOU BELIEVE YOU WERE ENTITLED TO RELY ON

5 WHAT DUKE POWER WAS TELLING YOU?

6 A I WAS REALLY RELYING MORE ON ANDY BECAUSE HE'D SPENT

7 THREE OR FOUR YEARS IN BED WITH THEM, EXCUSE ME, HE'D

8 SPENT THREE OR FOUR YEARS NEGOTIATING WITH THEM SO HE

9 KNEW BETTER THAN ANYBODY ELSE, PROBABLY ANYBODY ON THE

10 LAKE

11 Q TURN OVER TO PAGE 68 QUESTION, YOU WERE ASKED

12 ABOUT EXHIBIT -- YOU WERE ASKED A QUESTION ABOUT

13 PURCHASING TWENTY THOUSAND SHARES DO YOU RECALL THAT?

14 A YES

15 Q WHEN Y'ALL PAID A MILLION DOLLARS WERE YOU

16 PURCHASING TWENTY THOUSAND OR EIGHTY PERCENT OF THE

17 COMPANY?

18 A EIGHTY PERCENT OF THE COMPANY

19 Q OKAY

20 A WE WERE SUPPOSED TO END UP WITH EIGHTY PERCENT

21 ANDY WAS SUPPOSED TO END UP WITH TWENTY PERCENT

22 Q AND IS IT FAIR TO SAY IT DIDN'T MATTER HOW IT WAS

23 DIVIDED UP? WHAT I MEAN BY THAT, IT'S JUST THE TOTAL

24 NUMBER

25 A THE PERCENTAGE WAS SUPPOSED TO BE EIGHTY, TWENTY

1 REGARDLESS OF THE NUMBER OF SHARES
2 Q SO DO YOU RECALL HOW MANY SHARES MR BALLARD HAD AT
3 THAT TIME?
4 A I HONESTLY DON'T
5 Q LET'S SAY IT WAS FORTY THOUSAND SHARES
6 A UH-HUH
7 Q LET'S ASSUME THAT IF IT WAS FORTY THOUSAND SHARES,
8 COULD Y'ALL HAVE DIVIDED IT UP EIGHT, EIGHT, EIGHT AND
9 SIXTEEN TO GIVE YOU FORTY?
10 A I GUESS WE COULD HAVE
11 Q YEAH?
12 A YEAH
13 Q AND WOULD THAT HAVE GIVEN THE TWENTY PERCENT FOR YOU
14 AND ---
15 A YES
16 Q --- THE TWENTY PERCENT FOR RICK, III, AND FORTY
17 PERCENT FOR TIM?
18 A YES
19 Q AND THEN LEFT ANDY WITH HIS TWENTY PERCENT?
20 A THAT'S RIGHT
21 Q OKAY
22 A IT WAS EASIER TO DEAL WITH A HUNDRED THOUSAND
23 SHARES, TWENTY, TWENTY, TWENTY, FORTY
24 Q TURN TO PAGE 71 LET ME ASK YOU THIS WHEN YOU GOT
25 ASKED SEVERAL QUESTIONS ABOUT DUKE POWER AND THEIR

1 RELATIONSHIP IN THIS, DO YOU RECALL THOSE QUESTIONS?

2 A YES

3 Q OKAY NOW WHEN YOU, TIM AND RICK, III, WENT TO MEET
4 WITH MR BALLARD WERE YOU BUYING A LEASE OR WERE YOU
5 BUYING A STAKE IN A COMPANY THAT HELD A LEASE?

6 A WE BOUGHT A STAKE IN A COMPANY THAT HELD A LEASE
7 WARPATH HELD THE LEASE

8 Q OKAY

9 A WE COULDN'T BUY THE -- IN FACT, WE COULDN'T BUY THE
10 LEASE IT HAD TO STAY IN WARPATH WE COULDN'T CHANGE
11 THE NAME OR ANYTHING

12 Q OKAY NOW AS PART OF THE PRESENTATION, WELL, LET ME
13 ASK YOU THIS WHEN YOU WENT TO MEET WITH MR BALLARD WAS
14 A PRESENTATION MADE?

15 A YEAH

16 Q OKAY NOW AS PART OF THE PRESENTATION WERE YOU
17 SHOWN A CONCEPTUAL PLAN?

18 A YES

19 Q WAS EXHIBIT -- I CANNOT RECALL THE EXHIBIT BUT IN
20 THIS DEPOSITION DOES EXHIBIT 6 APPEAR TO BE A COPY OF THE
21 CONCEPTUAL PLAN YOU WERE SHOWN?

22 A YES IT WAS IN COLOR AND EVERYTHING, BUT

23 MR HOWARD FOR THE RECORD, YOUR HONOR, IT APPEARS
24 TO BE -- IT'S PLAINTIFF'S EXHIBIT 2 WAS THE CONCEPTUAL
25 PLAN

1 THE COURT: OKAY

2 Q OKAY DO YOU KNOW WHO COMMISSIONED THE CONCEPTUAL
3 PLAN?

4 A I ASSUME ANDY DID

5 Q AND OBVIOUSLY FROM THE FRONT OF IT IT IS PREPARED BY
6 SOMEBODY ELSE

7 A BOB ELLIS

8 Q BUT JUST BY YOUR ANSWER IS IT YOUR UNDERSTANDING
9 THAT THIS PLAN WAS COMMISSIONED BY MR BALLARD?

10 A YES

11 Q OKAY

12 A OR WARPATH LANDING I DON'T KNOW WHICH

13 Q OKAY

14 A THE CORPORATION OR ANDY I DON'T KNOW WHICH

15 Q OKAY NOW DID YOU HAVE AN OPPORTUNITY TO LOOK AT
16 THE CONCEPTUAL PLAN?

17 A YES

18 Q AND YOU READ THE CONCEPTUAL PLAN, IS THAT RIGHT?

19 A READ AND LOOKED AT IT YES

20 Q OKAY ON PAGE 16 OF THE CONCEPTUAL PLAN DO YOU SEE
21 SECTION E?

22 A YES

23 Q CAN YOU GO AHEAD AND TAKE A SECOND TO READ SECTION
24 E?

25 A OKAY

1 Q WHAT WAS YOUR UNDERSTANDING OF WHAT WAS BEING
2 REPRESENTED TO YOU BY THE CONCEPTUAL PLAN OF MR BALLARD
3 AS WHAT YOU COULD EXPECT FROM THE BOAT SLIPS?

4 A YES

5 Q AND IN THIS SECTION HE'S REFERRING TO THE WET BOAT
6 SLIPS, IS THAT RIGHT?

7 A THAT IS CORRECT

8 Q WHAT WAS YOUR UNDERSTANDING OF SECTION E?

9 A LIKE I TOLD HIM WHEN I ANSWERED THE QUESTION BEFORE,
10 OUR UNDERSTANDING WAS WE COULD HAVE TWO HUNDRED SLIPS IF
11 THE MARKET WAS THERE

12 Q OKAY DID THIS CONCEPTUAL PLAN OR DID MR BALLARD
13 -- DID IT MAKE IT APPEAR TO YOU THAT TWO HUNDRED SLIPS
14 WERE POSSIBLE?

15 A YES

16 Q DID YOU INCLUDE TWO HUNDRED BOAT SLIPS IN PROFORMAS
17 YOU PREPARED?

18 A YES

19 Q AND WHEN I SAY BOAT SLIPS, I MEAN WET SLIPS

20 A WET SLIPS

21 Q DID MR BALLARD -- WAS HE EVER PRIVY TO THE
22 PROFORMAS YOU HAD PREPARED?

23 A YES

24 Q WAS HE PRIVY TO THE FACT THAT Y'ALL BELIEVED THAT
25 TWO HUNDRED BOAT SLIPS, WET SLIPS WERE POSSIBLE?

1 A YES

2 Q DID HE EVER DO ANYTHING TO DISPEL YOU OF THAT
3 NOTION?

4 A NO, NOT UNTIL -- NO, NEVER

5 Q OKAY LET ME ASK YOU THIS YOU INDICATED THAT NOW
6 AFTER Y'ALL HAD BOUGHT THE STAKE IN THE COMPANY YOU
7 EVENTUALLY STARTED DOING WORK, IS THAT RIGHT?

8 A THAT'S CORRECT

9 Q AS PART OF THE WORK DID YOU COMMISSION AN
10 ARCHITECTURAL RENDERING?

11 A YES

12 Q AND WAS THE ARCHITECT ABLE TO FIT IN TWO HUNDRED
13 BOAT SLIPS IN THAT FIRST RENDERING?

14 A YES

15 Q AND NOW -- NOW WE'RE TALKING, EXCUSE ME YOURS IS
16 THE NEXT ONE

17 A NOW WE'RE TALKING ABOUT TWO HUNDRED PAID BOAT SLIPS

18 Q SKIP OVER

19 A THERE'S ALSO COURTESY DOCKS

20 Q BUT THAT WAS IN ADDITION TO -- OKAY

21 A BUT THAT WAS IN ADDITION TO THOSE

22 Q SKIP OVER TO PAGE 76 IT STARTS WITH AN ANSWER

23 A I THINK THEY CALLED IT THE MARINA COVE OR SOMETHING
24 LIKE THAT

25 Q OKAY NOW WAS THIS PLAN, THIS RENDERING SHOWN TO

1 MR BALLARD THAT THE ARCHITECT MADE OF THE TWO HUNDRED?

2 A YES

3 Q AND I BELIEVE YOU SAID SOMETHING ABOUT HIM REACTING

4 BEFORE HOW DID MR BALLARD REACT WHEN HE SAW IT?

5 A HE WAS SURPRISED, EXTREMELY SURPRISED

6 Q AFTER HE HAD STOPPED BEING SURPRISED WHAT DID HE

7 TELL YOU AT THAT POINT?

8 A HE DIDN'T THINK DUKE POWER WOULD GO FOR THAT

9 Q SKIPPING DOWN TO LINE 21 OKAY DO YOU KNOW

10 ULTIMATELY WHAT DUKE POWER DID AS A RESULT OF THAT

11 MEETING?

12 A THEY TOLD US WE COULDN'T DO IT AND WE HAD TO

13 REDESIGN IT

14 Q SKIPPING OVER TO PAGE 79 QUESTION, SO IS IT FAIR

15 TO SAY THAT DUKE POWER DIDN'T TELL YOU YOU COULD ONLY

16 HAVE ONE HUNDRED AND TWO SLIPS, IS THAT RIGHT?

17 A THAT'S TRUE WE CAME UP WITH A HUNDRED AND TWO

18 AFTER THEY TOLD US WHERE WE COULD PUT THEM

19 Q OKAY

20 A THEY DIDN'T COME UP WITH THE HUNDRED AND TWO

21 Q OKAY THEY JUST TOLD YOU THE AREA YOU WOULD BE

22 CONFINED TO?

23 A THAT'S RIGHT AND WE HAD TO MEET THEIR CRITERIA OF

24 -- YOU COULD ONLY GO ONE THIRD OUT IN THE COVE AND YOU

25 COULD ONLY GO TWO HUNDRED FEET OUT IN THE OPEN

1 Q OKAY

2 A AND YOU HAVE TO HAVE SO MUCH ROOM BETWEEN THEM I
3 DON'T REMEMBER WHAT THAT DIMENSION IS SO THAT'S HOW WE
4 CAME UP WITH A HUNDRED AND TWO

5 Q GO OVER -- QUESTION, OKAY WHEN YOU WERE
6 EVALUATING THIS INVESTMENT HOW IMPORTANT WERE THE WET
7 SLIPS TO YOUR OVERALL VALUE OF THE INVESTMENT?

8 A THE WET SLIPS AND THE DRY-STACK ARE THE MAJOR
9 REVENUE PRODUCERS PRIMARILY AND THEN SECONDARILY THEY
10 SPIN OFF FOR GAS, THE RESTAURANT, THE MARINA STORE AND
11 ALL THAT

12 Q OKAY HOW DID -- HOW DID THE LOSS OF ALMOST A
13 HUNDRED WET SLIPS AFFECT THE INVESTMENT?

14 A IT CUT OUR REVENUE FOR PAID IN-WATER SLIPS IN HALF
15 BASICALLY, ALMOST HALF

16 Q WAS THE LOSS OF HALF OF THOSE PAID IN-WATER SLIPS --
17 WAS THAT SIGNIFICANT TO THE VALUE OF THE INVESTMENT?

18 A YES

19 Q IF YOU HAD KNOWN FROM THE BEGINNING THAT ONLY A
20 HUNDRED AND TWO WET SLIPS WOULD HAVE BEEN THE MAXIMUM,
21 HOW WOULD THAT HAVE AFFECTED THE INVESTMENT?

22 A WELL, IT WOULD HAVE LOWERED OUR PROFORMA SO I
23 WOULD ASSUME IT WOULD HAVE LOWERED THE ONE MILLION DOLLAR
24 PAYMENT AND THE TWENTY PERCENT STOCK

25 Q POTENTIALLY BY SOME MULTIPLE?

1 A BY SOME MAGNITUDE

2 Q QUESTION, BY SOME MAGNITUDE?

3 A IT'D BE BY A PERCENTAGE AND I WOULD HAVE TO FIGURE
4 OUT WHAT PERCENTAGE REVENUE IT DROPPED OR HOW MUCH OUR
5 RETURN WAS

6 Q THANK YOU

7 MR HOLLEMAN YOUR HONOR, OUR NEXT WITNESS IS --
8 READING A PORTION OF THE DEPOSITION OF TIM ROBERSON

9 MR HOWARD I HAVE ONE OBJECTION

10 THE COURT OKAY Y'ALL COME UP HERE FOR JUST A
11 SECOND

12 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE
13 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR
14 HEARING)

15 THE COURT IF Y'ALL WANT TO STAND UP AND STRETCH
16 FOR JUST A MINUTE, THAT'D BE FINE THANK YOU

17 (WHEREUPON THE BENCH CONFERENCE CONTINUED)

18 THE COURT AFTER FURTHER CONSIDERATION I'VE
19 DETERMINED THAT NOW WOULD BE A GOOD TIME FOR A MORNING
20 BREAK ALL RIGHT DON'T TALK ABOUT THE CASE THANK
21 YOU

22 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11 30
23 AM)

24 THE COURT ALL RIGHT JUST FOR THE -- ON THE
25 RECORD, WE HAD A BRIEF BENCH CONFERENCE MR HOWARD

1 AM)

2 MR HOLLEMAN YOUR HONOR, WE WOULD CALL MR
3 ROBERSON TO THE STAND BY PRESENTING HIS PREVIOUS SWORN
4 TESTIMONY IN THE CASE THROUGH DEPOSITION

5 THE COURT ALL RIGHT

6 (WHEREUPON EXCERPTS OF THE DEPOSITION TESTIMONY OF
7 TIMOTHY ROBERSON WERE READ INTO THE RECORD)

8 DESIGNATIONS BY MR HOLLEMAN

9 Q ALL RIGHT HANNAH, WE'LL START WITH MR ROBERSON
10 THEN AT PAGE 10 MR ROBERSON, WHAT IS YOUR EDUCATIONAL
11 BACKGROUND?

12 A I HAVE A BS IN BUSINESS ADMINISTRATION

13 Q WHAT DID YOU DO AFTER LEAVING COLLEGE?

14 A WENT TO WORK FOR NCR, NATIONAL CASH REGISTER

15 Q WHAT DID YOU DO WITH NATIONAL CASH REGISTER?

16 A SOLD SYSTEMS, CASH REGISTERS

17 Q HOW LONG WERE YOU A SALESPERSON FOR NCR?

18 A SEVEN YEARS

19 Q THAT'S ABOUT 1975?

20 A UNTIL '75 I QUIT

21 Q THEN WHAT DID YOU DO?

22 A WENT INTO BUSINESS WITH TWO FORMER NCR PEOPLE, AND
23 WE STARTED A CASH REGISTER COMPANY, ENTREPRENEUR

24 Q WHERE WAS THAT COMPANY LOCATED?

25 A WELL, KINGSPORT, TENNESSEE

1 Q OKAY AND WHAT WAS YOUR ROLE WITH THE COMPANY?

2 A I WAS VICE-PRESIDENT OF SALES

3 Q AND YOU WERE ONE OF THE OWNERS ALSO?

4 A UH-HUH

5 Q AND YOU NEED TO SAY YES FOR HER ---

6 A YES, SIR I'M SORRY

7 Q HOW LONG WERE YOU -- WHAT WAS THE NAME OF THAT
8 COMPANY?

9 A MIDSOUTH DATA, MIDSOUTH CASH REGISTER SYSTEMS

10 Q AND HOW LONG WERE YOU WITH THAT COMPANY?

11 A WELL, THAT COMPANY ACTUALLY EVOLVED INTO -- THROUGH
12 A COUPLE OF NAME CHANGES UNTIL SEPTEMBER OF '03, AND I
13 SOLD IT

14 Q WELL, LET'S BACK UP A LITTLE BIT WHERE WERE YOU
15 LIVING WHEN THIS COMPANY WAS FORMED?

16 A JOHNSON CITY, TENNESSEE

17 Q OKAY AND HOW LONG DID YOU -- DID YOU SUBSEQUENTLY
18 LEAVE JOHNSON CITY AND MOVE SOMEWHERE ELSE?

19 A I LEFT JOHNSON CITY IN 1981 AND MOVED HERE AND WE
20 HAD -- AS WE WERE EXPANDING, WE BOUGHT WHAT WAS CALLED
21 CHECK-OUT SYSTEMS HERE IN GREENVILLE

22 Q WHAT WAS THE NAME OF YOUR COMPANY AT THE TIME YOU
23 MOVED TO GREENVILLE? WAS IT STILL MIDATLANTIC OR

24 A MIDSOUTH CASH REGISTER SALES

25 Q AND WHAT WAS YOUR POSITION WITH THE COMPANY WHEN YOU

1 MOVED TO GREENVILLE?

2 A I WAS PRESIDENT OF MIDSOUTH DOING BUSINESS AS CHECK-
3 OUT SYSTEMS

4 Q AT THAT TIME WERE YOU A HUNDRED PERCENT OWNER OR
5 WERE YOU JUST ONE OF TWO OR THREE?

6 A NO I WAS ONE OF FOUR OWNERS

7 Q NOW HOW DID THE COMPANY CHANGE NEXT AFTER YOU MOVED
8 HERE IN '81?

9 A THE NEXT CHANGE WAS WE GREW AND WE GREW OUT OF OUR
10 FACILITIES WE ALSO GREW OUT OF OUR NAME AND WE
11 CHANGED THE NAME TO MIDSOUTH DATA SYSTEMS BECAUSE IT WAS
12 NO LONGER JUST CASH REGISTERS IT WAS ALL THE SYSTEMS
13 THAT HAVE TO DO WITH STORE OR RETAIL STORE SYSTEMS

14 Q AND DID YOU REMAIN PRESIDENT?

15 A I DID, YES

16 Q AND CEO?

17 A I DON'T KNOW THAT WE ACTUALLY HAD A CEO DESIGNATION

18 Q YOU WERE THE CHIEF MANAGER OF THE COMPANY, IS THAT
19 RIGHT?

20 A YES, THAT'S CORRECT

21 Q HOW DID THE COMPANY CHANGE BEFORE IT WAS SOLD IN
22 '03?

23 A IT CHANGED AGAIN WHEN WE OUTGREW THE MIDSOUTH NAME
24 AND IN 1997 WE CALLED IT KYRUS, K-Y-R-U-S, INC AND THEN
25 IN, EXCUSE ME, YEAH, IN '97 WE CHANGED IT TO KYRUS, INC

1 AND I BOUGHT OUT THE ORIGINAL PARTNERS, MOST OF THEM, AND
2 BECAME THE CHAIRMAN, AND CEO AND PRESIDENT

3 Q OKAY NOW IN '03 YOU SOLD THE COMPANY, IS THAT
4 CORRECT?

5 A THAT'S CORRECT

6 Q AND TO WHOM DID YOU SELL IT?

7 A THE COMPANY GOES BY THE NAME OF AGILYSYS I BELIEVE
8 AT THE TIME THEIR LEGAL NAME WAS PIONEER ELECTRONICS

9 Q BEFORE YOU SOLD THE COMPANY WHAT WAS ITS GROSS
10 REVENUES?

11 A AT ONE -- WE PEAKED OUT AT JUST A LITTLE OVER TWO
12 HUNDRED MILLION

13 Q HOW MANY EMPLOYEES DID YOU HAVE?

14 A JUST OVER SIX HUNDRED

15 Q NOW AFTER YOU SOLD THE COMPANY TO THE NEW BUYER WHAT
16 DID YOU DO?

17 A I HAD TWO HEART VALVES PUT IN I REALLY TOOK A
18 LITTLE BIT OF TIME TO TAKE CARE OF THAT AND A CROSS
19 COUNTRY MOTORCYCLE TRIP ONCE I GOT ALL THAT BEHIND ME I
20 JOINED WITH AN INDIVIDUAL AND BECAME A PARTNER IN
21 INTEGRYS HOLDINGS, LLC

22 Q APPROXIMATELY WHEN?

23 A THAT WOULD HAVE PROBABLY BEEN SPRING OF '04

24 Q ALL RIGHT AND WHAT WAS YOUR ROLE IN INTEGRYS?

25 A I WAS A PARTNER LOOKING FOR SOLUTIONS TO INVEST

1 MONEY EITHER TO BUY BUSINESSES, GROW BUSINESSES, DO
2 DEVELOPMENT

3 Q OKAY

4 A JUST VARIOUS

5 Q HOW LONG DID YOU STAY WITH INTEGRYS, INC ?

6 A I BELIEVE IT WAS THE SPRING OF LAST YEAR, '08
7 SPRING OF '08, I THINK IT IS I CAN'T GIVE YOU AN EXACT
8 DATE WITHOUT CHECKING

9 Q AND WHY DID YOU LEAVE INTEGRYS?

10 A WE SOLD OUR LARGEST HOLDING AND THAT LEFT A COUPLE
11 OF SMALL COMPANIES THERE WERE ONLY TWO OF US THAT WERE
12 PARTNERS AND HE TOOK ONE, AND I TOOK THE OTHER WE
13 DOWNSIZED BASICALLY AFTER SELLING THE LARGE HOLDING

14 Q WHAT WAS YOUR JOB OR POSITION TITLE WHEN YOU WERE AT
15 INTEGRYS? DID YOU HAVE A TITLE?

16 A MEMBER BUT I'M NOT SURE IF IT WAS THE RIGHT LEGAL
17 TITLE BUT WE CALLED ME VICE-PRESIDENT I'M NOT SURE AN
18 LLC HAS A VICE-PRESIDENT

19 Q LET'S GO TO THE BOTTOM OF PAGE 17 WHAT ABOUT SINCE
20 2005? OTHER THAN THE BUSINESSES AND VENTURES YOU HAVE
21 DESCRIBED TO ME, ARE THERE ANY OTHERS?

22 A WELL, OKAY, YEAH AS AN EXAMPLE, I'M A MEMBER OF
23 IMK, LLC , WHICH IS A -- THE REMNANTS -- IT'S STILL A
24 LEGAL ENTITY, BUT IT WAS FORMED TO DEVELOP TOWNHOMES ON
25 KEOWEE

1 Q OKAY

2 A AND WE'VE SOLD -- WE'VE NOW SOLD OUT OF THAT
3 PROJECT, BUT WE STILL HAVE A LITTLE BIT OF SOME ASSETS
4 LEFT AND WE HAVE TO DISPOSE OF THOSE

5 Q WHAT WAS YOUR ROLE WITH IMK?

6 A SOME MARKETING OUR TEAM ON OUR SIDE OF THE GROUP
7 WAS RESPONSIBLE FOR FINDING FINANCE AND IT REALLY WAS
8 BASICALLY ANYTHING THAT I COULD DO THAT I WAS QUALIFIED
9 FOR I WAS ON-SITE A LOT, BUT NOT SO MUCH FROM A
10 CONSTRUCTION POINT OF VIEW

11 I ALSO SERVED AS THE -- IT WAS AN EXISTING PROJECT
12 THAT HAD SOME HOMEOWNERS ALREADY THAT WE FINISHED UP
13 BUT I SERVED AS THE PRESIDENT OF THE HOMEOWNERS
14 ASSOCIATION AND HAD A LOT OF INTERFACE WITH CURRENT AND
15 NEW HOMEOWNERS I WOULD ATTEND SOME CLOSINGS, BUT IT WAS
16 NOT EXCLUSIVE IN MY ROLE TO JUST DO THE CLOSINGS
17 Q IN ADDITION TO IMK AND WARPETH, DURING YOUR CAREER
18 HAVE YOU BEEN INVOLVED IN ANY OTHER REAL ESTATE
19 DEVELOPMENTS?

20 A YES ONE OF THE -- ONE OF THE BUSINESSES THAT WE
21 HAD AT INTEGRYS HOLDINGS WAS INTEGRYS REALTY AND WE
22 DEVELOPED A PARCEL OFF OF WHITE HORSE ROAD, BASICALLY
23 STARTER HOMES, MAYBE EIGHTY SOME HOMES

24 Q WHAT WAS YOUR ROLE IN THAT ENTERPRISE?

25 A REALLY JUST CONSULTANT AND BEING AVAILABLE IN

1 FACT, LET ME BACK UP MY ROLE WHEN I JOINED INTEGRYS
2 HOLDINGS WAS TO -- WAS NOT A SPECIFIC ROLE IN FACT,
3 SPECIFICALLY I'D ASKED NOT TO HAVE ANYBODY NECESSARILY
4 REPORTING TO ME OR TO HAVE TO FILL OUT ANY REPORTS TO
5 ANYONE ELSE IT WAS TO BRING SOME BUSINESS ACUMEN TO THE
6 PROCESS OF TRYING TO IDENTIFY OPPORTUNITIES AND THEN HELP
7 EXECUTE THOSE OPPORTUNITIES

8 Q I BELIEVE YOU TOLD ME YOU OBTAINED A BS DEGREE?

9 A UH-HUH

10 Q HAVE YOU OBTAINED ANY OTHER DEGREES OR CERTIFICATES
11 DURING YOUR ADULT LIFE?

12 A NO ATTACHED DEGREES, BUT FURTHER EXECUTIVE EDUCATION
13 AT BOTH WHARTON AND HARVARD

14 Q DID YOU GET CERTIFICATES FOR EITHER OF THOSE OR ---

15 A NO THE CERTIFICATES HAD TO DO WITH -- AND I CAN'T
16 EVEN RECALL -- YES, I GOT CERTIFICATES, BUT IT WAS LIKE
17 IN THOSE CASES IBM SPONSORED IT WAS, YOU KNOW, I DON'T
18 KNOW REALLY WHAT THEY CALLED THE CERTIFICATES, BUT IT WAS
19 ---

20 Q WHEN YOU SAY HARVARD DO YOU MEAN THE HARVARD
21 BUSINESS SCHOOL?

22 A UH-HUH

23 Q NOW OVER RICK AND RICK DID CONSTRUCTION WORK FOR
24 ---

25 A THAT'S CORRECT

1 Q --- IMK ON THE LAKE?

2 A THAT'S CORRECT

3 Q WERE THEY OWNERS OR OFFICERS OF IMK?

4 A AGAIN, MEMBERS

5 Q OKAY SO YOU ASKED THEM TO COME -- YOU CONTACTED
6 THEM ABOUT COMING TO THIS MEETING?

7 A YEAH ONCE I FELT MY OBLIGATION WAS NO LONGER TO MY
8 PRIMARY COMPANY, WHICH WAS INTEGRYS HOLDINGS, I THEN
9 ASKED THEM WOULD THEY BE WILLING OR INTERESTED IN GOING
10 WITH ME TO THE MEETING AND LET'S LOOK AT A SIDE
11 OPPORTUNITY FOR INVESTMENT

12 Q DID YOU GET THE CONCEPTUAL PLAN?

13 A YES

14 Q AND THE CONCEPTUAL PLAN YOU GOT IS A DOCUMENT YOUR
15 ATTORNEY HAS MADE DEPOSITION EXHIBIT 6, WHICH IS ATTACHED
16 TO THE LEASE AS PART OF EXHIBIT 1?

17 A IT APPEARS TO BE THAT

18 Q AND DID YOU REVIEW IT?

19 A OH, YES

20 Q OKAY AT THAT POINT WHEN YOU MET WITH MR BALLARD
21 THE FIRST INSTANCE, PERHAPS IN MARCH OF '07, WAS THERE A
22 LEASE WITH DUKE POWER AT THAT TIME? HAD MR BALLARD
23 OBTAINED THE LEASE?

24 A YES

25 Q DID YOU EVER REVIEW THE LEASE FROM DUKE POWER?

1 A YES

2 Q AND THE NEXT PAGE LET ME SHOW YOU WHAT'S BEEN
3 MARKED AS EXHIBIT 9, AND THAT'S NOW EXHIBIT 1, AND ASK
4 YOU IF THAT IS THE DUKE POWER LEASE FOR THE WARPATH
5 MARINA SITE WITH THE ATTACHMENTS?

6 A IT APPEARS TO BE

7 Q AND GO TO LINE 15 AND I BELIEVE THIS IS ALSO AN
8 EXHIBIT ALREADY, IS THAT RIGHT? IT'S -- WELL, LET ME
9 SHOW YOU WHAT'S BEEN MARKED AS DEPOSITION EXHIBIT 10
10 THAT'S A DOCUMENT THAT YOUR LAWYER PRODUCED TO US IS
11 THAT AN EMAIL FROM RICK TO YOU AND RICK?

12 A YES

13 Q AND IT'S EXHIBIT 8, TRIAL EXHIBIT 8 AND IS THAT
14 FROM RICK, THE FATHER, OR RICK, THE SON?

15 A THAT WOULD BE FROM RICK, SR

16 Q TO YOU AND HIS SON?

17 A RIGHT EXACTLY

18 Q AND IF YOU LOOK AT THAT THAT EMAIL TO YOU IS DATED
19 MARCH 24TH, 2007, IS THAT CORRECT?

20 A MARCH 24TH, 2007 IS CORRECT

21 Q SO THIS WOULD HAVE BEEN SOMETIME AFTER YOUR FIRST
22 MEETING WITH ANDY BALLARD?

23 A YES I MEAN, WE WOULD HAVE HAD NO REASON TO LOOK AT
24 ANYTHING

25 Q IF YOU'LL LOOK IN THIS EMAIL TO YOU, THAT TOP EMAIL,

1 YOU'LL SEE THE NEXT TO LAST PARAGRAPH HE SAYS TO YOU, I
2 DON'T BELIEVE WE CAN GIVE ANDY MUCH UNTIL ALL PERMITS AND
3 APPROVALS PROVE TO BE REAL DO YOU SEE THAT?

4 A YES

5 Q SO BY THAT TIME ISN'T IT TRUE THAT YOU KNEW PERMITS
6 WOULD BE REQUIRED FOR THIS DEVELOPMENT?

7 A YES I MEAN, THAT WAS NEVER IN QUESTION

8 Q LET ME SHOW YOU DEPOSITION EXHIBIT 11 I GUESS
9 THAT'S ANOTHER EMAIL FROM RICK, SR , TO YOU AND RICK, THE
10 SON, IS THAT CORRECT?

11 A YES

12 MR HOLLEMAN AND WE HAVE MARKED THAT AS TRIAL
13 EXHIBIT 13 ANY OBJECTION?

14 MR HOWARD NO OBJECTION

15 (WHEREUPON PLAINTIFF'S EXHIBIT 13 WAS MARKED AND
16 ADMITTED INTO EVIDENCE)

17 Q AND IN THE MIDDLE OF THAT HE SAYS WE NEED A MINIMUM
18 OF THIRTY DAYS TO SATISFY, AND HE LISTS SEWER, WATER,
19 DUKE DOCKS, FERC DOCKS, PICKENS COUNTY, BANK INTEREST AND
20 LEASE PROBLEMS, IS THAT CORRECT?

21 A I'M NOT SURE WHERE YOU ARE READING

22 Q DO YOU SEE THE PARAGRAPH THAT BEGINS WE NEED, AND
23 THEN IT HAS A LIST OF THINGS?

24 A OH, YEAH

25 Q IT SAYS WE NEED A MINIMUM OF THIRTY DAYS TO SATISFY,

1 IS THAT RIGHT?

2 A RIGHT

3 Q SO THAT INDICATED YOU KNEW YOU ALL NEEDED TO DO DUE
4 DILIGENCE INTO THE SEWER ISSUE, IS THAT CORRECT?

5 A YES

6 Q AND THE WATER ISSUE?

7 A YES

8 Q AND INTO THE DUKE DOCK ISSUE?

9 A YES

10 Q AND THE FERC DOCK ISSUE?

11 A YES

12 Q AND THE PICKENS COUNTY ISSUE?

13 A YES

14 Q AND IN THE BANK INTEREST AND LEASE PROBLEMS ISSUE,
15 IS THAT CORRECT?

16 A YES IN OTHER WORDS, THAT WAS OUR DUE DILIGENCE
17 LIST PRIOR TO AGREEING TO CLOSE

18 Q RIGHT AND, OF COURSE, I BELIEVE YOU SAID IN YOUR
19 ROLE AS CORPORATE CEO YOU HAD PARTICIPATED IN, I GUESS, A
20 NUMBER OF ACQUISITIONS, IS THAT CORRECT?

21 A YES

22 Q WHAT WAS THE LARGEST ACQUISITION YOU HAD
23 PARTICIPATED IN?

24 A EIGHTEEN MILLION

25 Q OKAY AND I GUESS YOU KNOW OF THE CONCEPT OF DUE

1 DILIGENCE WHEN YOU'RE GOING TO ACQUIRE SOMETHING,
2 CORRECT?

3 A UH-HUH

4 Q AND WHAT THAT MEANS IS IN THE CORPORATE CONTEXT YOU
5 OFTEN HIRE ENGINEERS, LAWYERS, FINANCIAL PEOPLE AND
6 OTHERS TO CHECK OUT VARIOUS ASPECTS OF A DEAL BEFORE YOU
7 ENTER INTO IT, IS THAT CORRECT?

8 A DEPENDING ON THE SIZE OF THE DEAL, AND YOUR
9 FAMILIARITY WITH THE LANDSCAPE OF THE OPPORTUNITY

10 Q RIGHT AND THE CONCEPT IS THAT THE ACQUIRER NEEDS
11 TO BE SURE IT, OR HE, OR SHE KNOWS WHAT THEY'RE ACQUIRING
12 BEFORE THEY DO IT, AND THEY TRY TO CHECK OUT THE BASIC
13 IMPORTANT FACTORS, IS THAT CORRECT?

14 A THAT'S CORRECT

15 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 12 TO
16 THE DEPOSITION IS THAT AN EMAIL FROM YOU TO ANDY
17 BALLARD DATED APRIL 4TH?

18 A YES

19 MR HOLLEMAN AND THAT MAY -- IT'S ALREADY EXHIBIT
20 14

21 Q AND IS THIS THE EMAIL YOU'RE REFERRING TO WHEN YOU
22 TOLD HIM THAT BASICALLY YOU ALL WEREN'T PLANNING TO DO
23 THIS DEAL?

24 A GIVE ME A MOMENT IT IS

25 Q BUT YOU HAD REVIEWED THE CONCEPTUAL PLAN?

1 A YES

2 Q AND YOU HAD REVIEWED THE DUKE POWER LEASE?

3 A YES

4 Q AND GOING OVER TO PAGE 47 AND THEN DOWN IN THE
5 SECOND PARAGRAPH YOU DISCUSS YOUR PROPOSAL AND YOU SAY
6 YOUR PROPOSAL WAS STRUCTURED AS TO ALLOW FOR THE
7 UNKNOWNNS, IS THAT CORRECT?

8 A THAT'S WHAT IT SAYS

9 Q SO THERE WERE A LOT OF UNKNOWNNS IN THIS PROJECT, IS
10 THAT A CORRECT STATEMENT?

11 A YES YOU ALWAYS BUILD IN A CONTINGENCY NUMBER IN
12 ANY PROFORMA

13 Q AND IN THIS ONE IN PARTICULAR THERE WERE UNKNOWNNS?

14 A IN THIS ONE THERE ARE AS WELL

15 Q AND YOU WERE ALLOWING FOR THE POSSIBLE THINNING
16 REVENUE NUMBERS, IS THAT RIGHT?

17 A YES

18 Q AND FOR UNKNOWN COSTS, IS THAT RIGHT?

19 A YES

20 Q AND UNKNOWN QUANTITY OF CAPITAL REQUIRED, IS THAT
21 RIGHT?

22 A YES, CORRECT

23 Q ALL RIGHT NOW IF YOU'LL LOOK AT WHAT'S BEEN MARKED
24 AS EXHIBIT 13 IS THAT AN EMAIL FROM MR BALLARD TO YOU
25 AND ---

1 A YES

2 Q --- RICK?

3 A YES

4 MR HOLLEMAN WE WOULD INTRODUCE THIS AS EXHIBIT --

5 TRIAL EXHIBIT 15

6 MR HOWARD NO OBJECTION

7 THE COURT ALL RIGHT

8 (WHEREUPON PLAINTIFF'S EXHIBIT 15 WAS MARKED AND

9 ADMITTED INTO EVIDENCE)

10 Q IF YOU LOOK -- ATTACHED TO IT THERE'S A REVISED

11 PROPOSAL, IS THAT CORRECT?

12 A YES

13 Q ALL RIGHT FIRST OF ALL, THE PROPOSAL REFERS TO THE

14 LEASE AND THE CONCEPTUAL PLANS, IS THAT CORRECT, IN THE

15 SECOND PARAGRAPH?

16 A YES

17 Q AND THE FIRST POINT IS PRIOR TO WRITING ANY CHECK WE

18 MEET WITH DUKE POWER AND SENECA AND PICKENS COUNTIES TO

19 REASSURE YOU THAT MY ASSESSMENTS ARE CORRECT, IS THAT

20 RIGHT?

21 A THAT'S WHAT IT SAYS

22 Q AND THE SECOND POINT IS THAT ONE MILLION DOLLARS

23 WOULD BE PAID FOR TWENTY THOUSAND SHARES OF STOCK, IS

24 THAT CORRECT?

25 A THAT'S CORRECT

1 Q AND THE THIRD POINT IS THAT MR BALLARD RETAINS
2 TWENTY PERCENT OWNERSHIP OF WARPATH, IS THAT RIGHT?

3 A THAT'S CORRECT

4 Q SO IS IT CORRECT TO SAY THAT DURING THESE
5 NEGOTIATIONS YOU KNEW YOU HAD FULL OPPORTUNITY TO MEET
6 WITH DUKE POWER, SENECA OR PICKENS COUNTY TO DO YOUR DUE
7 DILIGENCE, IS THAT CORRECT?

8 A THAT'S CORRECT

9 Q OKAY DID YOU MEET WITH PICKENS COUNTY?

10 A WE MET WITH THE CITY MANAGER OF PICKENS COUNTY AND
11 ---

12 Q LET ME CORRECT YOU DO YOU MEAN THE COUNTY MANAGER?

13 A EXCUSE ME THE COUNTY ADMINISTRATOR, I BELIEVE, HE
14 WAS

15 Q OKAY

16 A AND THERE WAS ANOTHER INDIVIDUAL THERE WHO WAS -- HE
17 WASN'T A COUNTY ATTORNEY, BUT HE WAS -- HE HAD SOME LEGAL
18 ROLE AND WAS INTERFACING WITHIN THE LEGAL SIDE AND THE
19 COUNTY SIDE

20 Q NOW THE COUNTY ADMINISTRATOR IN PICKENS COUNTY IS IN
21 EFFECT THE CHIEF EXECUTIVE OFFICER OF COUNTY GOVERNMENT,
22 IS THAT CORRECT?

23 A I DON'T KNOW

24 Q WELL, HE'S THE TOP PROFESSIONAL PERSON IN COUNTY
25 GOVERNMENT IN PICKENS COUNTY, IS THAT CORRECT?

1 A I DON'T KNOW

2 Q WHAT WAS HIS NAME? DO YOU REMEMBER?

3 A I DON'T REMEMBER IN FACT, LET ME CLARIFY THAT
4 BECAUSE RICK MAY HAVE MET WITH SOMEONE EVEN UNILATERALLY
5 BEFORE I DID I'M RECALLING A MEETING I WAS AT WHEN WE
6 MET WITH THE COUNTY ADMINISTRATOR

7 Q AND WHERE WAS THAT MEETING?

8 A THE ONE I WAS AT WAS IN THE ADMINISTRATIVE OFFICES
9 OF PICKENS COUNTY

10 Q WHAT WAS THE MEETING ABOUT?

11 A THIS PROJECT, WHETHER IT WAS NEWS TO THEM, WHETHER
12 THEY WERE IN FAVOR OF IT AND ANYTHING THEY COULD TELL US
13 THAT WOULD IMPACT OUR DECISION

14 Q WHO WAS AT THE MEETING?

15 A THE MEETING I WAS AT INCLUDED RICK AND MYSELF, THE
16 COUNTY ADMINISTRATOR, AND ANOTHER INDIVIDUAL WHO HAS A
17 QUASI LEGAL ROLE

18 Q WHEN YOU SAY RICK, YOU MEAN RICK, THE FATHER?

19 A RICK, THE FATHER

20 Q WAS MR FOWLER AT THIS MEETING?

21 A I DON'T RECALL

22 Q OKAY NOW WHAT WAS DISCUSSED AT THE MEETING OR WHAT
23 DID THE COUNTY ADMINISTRATOR TELL YOU?

24 A I CAN ONLY -- I CAN'T TELL YOU THE CONVERSATION
25 ONLY THAT I CAME AWAY FEELING LIKE THESE FOLKS -- THIS IS

1 NOT NEWS TO THEM THIS IS NOT A SCAM THIS IS SOMETHING
2 THEY WOULD LIKE TO SEE HAPPEN

3 Q SO THE COUNTY ADMINISTRATOR WAS POSITIVE ON THE
4 PROJECT?

5 A YES

6 Q DID YOU EVER LEARN THAT THE EXECUTIVE COMMITTEE OF
7 PICKENS COUNTY COUNCIL VOTED IN FAVOR OF THE PROJECT?

8 A I READ IT IN THESE PAPERS

9 Q DID THE COUNTY ADMINISTRATOR, WHEN YOU MET WITH HIM,
10 DID HE EXPRESS ANY RESERVATIONS ABOUT THE PROJECT?

11 A NOT THAT I RECALL

12 Q OKAY DID YOU HAVE AN OPPORTUNITY TO ASK HIM
13 WHATEVER QUESTION YOU WANTED?

14 A I DID BUT I DIDN'T ASK -- I DON'T REMEMBER EVEN
15 ASKING ANY QUESTIONS I WAS LETTING RICK CARRY ON THAT
16 CONVERSATION THAT WAS MORE OF HIS EXPERTISE

17 Q DID RICK HAVE AN OPPORTUNITY TO ASK THE
18 ADMINISTRATOR ANY QUESTIONS HE WANTED TO ASK HIM?

19 A I WOULD THINK HE DID, YES

20 Q SO AFTER YOUR MEETING WITH THE PICKENS COUNTY
21 ADMINISTRATOR YOU CAME AWAY WITH NO RESERVATIONS ABOUT
22 THE PROJECT AS FAR AS PICKENS COUNTY WAS CONCERNED?

23 A I CAME AWAY WITH NO RESERVATIONS REGARDING WAS THIS
24 FACTUAL, WAS THIS SOMETHING THAT WAS -- THAT THEY WERE
25 AWARE OF, AND IS THIS SOMETHING THAT THEY WOULD SUPPORT

1 I CAME AWAY WITH THAT UNDERSTANDING, WHICH LATER
2 TURNED OUT NOT TO BE QUITE THE FACTS BECAUSE THERE WERE
3 FOLKS ON THE COUNCIL THAT WERE TRYING TO KILL IT BUT I
4 DIDN'T KNOW THAT THEN AND DIDN'T ACTUALLY KNOW IT UNTIL
5 LATER

6 Q AND DID THE COUNTY -- AND THE COUNTY ADMINISTRATOR
7 DID NOT TELL YOU THAT?

8 A NO

9 Q NOW DID YOU MEET WITH DUKE POWER?

10 A YES

11 Q JUST SO WE'RE CLEAR, I'M TALKING ABOUT BEFORE YOU
12 SIGNED THE SHAREHOLDERS AGREEMENT OR THE CONTRACT

13 A I DID NOT PERSONALLY MEET WITH DUKE POWER

14 Q DID YOU EVER TALK WITH THEM?

15 A I DID NOT PERSONALLY TALK WITH DUKE POWER

16 Q DO YOU KNOW IF EITHER RICK OR RICK MET WITH DUKE
17 POWER BEFORE YOU SIGNED THE CONTRACT?

18 A I THINK THERE WAS A PHONE CALL AND -- BUT I CAN'T BE
19 SPECIFIC I'M SORRY

20 Q WERE THE RESULTS OF THIS PHONE CALL REPORTED TO YOU?

21 A WELL, I'M THINKING THERE WAS A PHONE CALL AND I'M
22 THINKING THAT IT WAS, YOU KNOW, AGAIN, THAT THIS IS A
23 REAL PROJECT, IT'S NOT A SCAM AND DUKE'S BEHIND IT THAT
24 WAS THE AREA OF DUE DILIGENCE THAT WE WERE TRYING TO
25 UNDERSTAND

1 Q AND THAT INFORMATION CAME TO YOU FROM RICK, THE
2 FATHER, RICK, SR ?

3 A I'M SORRY, I DON'T KNOW YOU KNOW, I COULD HAVE
4 BEEN ON THE PHONE CALL OR I COULD HAVE JUST BEEN IN A
5 CONVERSATION FOLLOWING THE PHONE CALL I DON'T RECALL

6 Q DO YOU KNOW WHY YOU DIDN'T GO MEET WITH DUKE POWER?

7 A I HAVE NO IDEA

8 Q NOW BEFORE SIGNING THE AGREEMENT THAT'S AN ISSUE IN
9 THIS LAWSUIT, BEFORE SIGNING THAT AGREEMENT WHAT OTHER
10 DUE DILIGENCE DID YOU OR PICK, SR , OR RICK, HIS SON, DO?

11 A I DON'T -- I CAN ONLY SPEAK FOR MYSELF I DON'T
12 KNOW THAT I DID ANYTHING OTHER THAN WALKING THE PROPERTY
13 AND MEETING WITH MY PARTNERS ON PROFORMAS AND VIABILITY

14 Q SO YOU RELIED ON RICK, SR , AND HIS SON TO DO THE
15 OTHER DUE DILIGENCE?

16 A THAT'S RIGHT I'VE PARTNERED WITH DEVELOPERS I
17 DON'T CONSIDER MYSELF A DEVELOPER

18 Q NOW BEFORE SIGNING THE AGREEMENT DID YOU CONSULT
19 WITH OR HIRE ANY ENVIRONMENTAL CONSULTANTS OR ENGINEERS
20 TO ADVISE YOU CONCERNING PERMITS OR PERMITTING NEEDS?

21 A I DID NOT PERSONALLY

22 Q NOW I BELIEVE IN CONNECTION WITH THE AGREEMENT MR
23 BALLARD WAS PAID A MILLION DOLLARS FOR SOME OF HIS STOCK
24 IN WARPATH, CORRECT?

25 A UH-HUH

1 Q FOR TWENTY THOUSAND SHARES, IS THAT RIGHT?

2 A UH-HUH

3 Q SO IS IT CORRECT THAT MR BALLARD WAS PAID A MILLION
4 DOLLARS FOR TWENTY THOUSAND OF HIS SHARES OF WARPATH?

5 A YES

6 Q OKAY NOW WHERE DID THE MILLION DOLLARS COME FROM?

7 A IT CAME FROM ME

8 Q ALL RIGHT SO BEFORE YOU PAID, YOU PROVIDED A
9 MILLION DOLLARS FOR THAT, YOU DIDN'T CONSULT WITH ANY
10 EXPERTS OF ANY KIND CONCERNING THIS DEVELOPMENT?

11 A I CONSIDERED MY PARTNERS EXPERTS

12 Q DO YOU -- DID YOU CONSIDER RICK AND RICK TO BE
13 EXPERTS IN PERMITTING?

14 A YES

15 Q AND IN ENVIRONMENTAL PERMITTING?

16 A IN ANY KIND OF DEVELOPMENT AND PERMITTING IS A BIG
17 PART OF THAT, YES

18 Q SO YOU CONSIDERED RICK AND RICK TO BE EXPERTS IN
19 ENVIRONMENT PERMITTING FOR A MARINA?

20 A LET ME SAY I WOULD CONSIDER THEM VERY MUCH EXPERTS
21 ON PERMITTING I DON'T THINK THEY'VE EVER DONE A MARINA

22 Q BUT PERMITTING IN GENERAL IN CONNECTION WITH
23 DEVELOPMENTS YOU CONSIDER THEM TO BE AN EXPERT IN THAT
24 FIELD?

25 A YES

1 Q NOW LET ME SHOW YOU WHAT'S BEEN MARKED DEPOSITION
2 EXHIBIT 14 AND ASK YOU IF THAT'S AN EMAIL DATED MAY 2ND,
3 2007 FROM RICK, SR , TO YOU AND COPIED TO HIS SON?

4 A TRUE YES, IT IS

5 MR HOLLEMAN AND I DON'T THINK THAT'S BEEN MARKED
6 AS AN EXHIBIT WE WOULD OFFER IT AS AN EXHIBIT -- TRIAL
7 EXHIBIT 16

8 MR HOWARD NO OBJECTION

9 THE COURT: ALL RIGHT WITHOUT OBJECTION

10 (WHEREUPON PLAINTIFF'S EXHIBIT 16 WAS MARKED AND
11 ADMITTED INTO EVIDENCE)

12 Q ALL RIGHT THEN IF YOU'D LOOK AT ITEM 1 ON THIS
13 LIST CONCERNING ANDY, IT SAYS ONE MILLION DOLLARS PAID
14 FOR TWENTY THOUSAND SHARES WHEN WE ARE SATISFIED DOCK
15 PERMITS, SEWER PERMITS, WATER PERMITS AND PERMITS FOR
16 BUILDINGS WILL BE ISSUED DO YOU SEE THAT?

17 A UH-HUH

18 Q NOW BEFORE YOU ENTERED INTO THIS AGREEMENT WERE RICK
19 AND RICK, DID THEY TELL YOU THEY WERE SATISFIED THAT THE
20 DOCK PERMITS, SEWER PERMITS, WATER PERMITS AND PERMITS
21 FOR BUILDINGS WOULD BE ISSUED?

22 A I WOULD SAY THAT THEY WERE SATISFIED THAT THEY WOULD
23 BE, YES

24 Q OKAY ITEM 2 SAYS THAT ANDY RETAINS TWENTY PERCENT
25 OF THE CORPORATION, IS THAT RIGHT?

1 A YES

2 Q ITEM 5 -- OKAY ---

3 A THAT'S CORRECT

4 Q ITEM 5 SAYS I HOPE HE, THAT'S ANDY, UNDERSTANDS THE
5 THRESHOLD FOR US TO KNOW WE CAN GET PERMITS IS FAIRLY
6 HIGH, IS THAT RIGHT?

7 A THAT'S WHAT IT SAYS

8 Q AND WAS IT YOUR UNDERSTANDING FROM RICK AND RICK
9 BEFORE YOU SIGNED THE AGREEMENT THAT THEY HAD A FAIRLY
10 HIGH CONFIDENCE LEVEL THAT THEY COULD GET THE PERMITS FOR
11 THIS MARINA?

12 A WAS IT MY UNDERSTANDING THAT ---

13 Q RICK AND RICK

14 A --- HAD A HIGH CONFIDENCE LEVEL THAT THEY COULD GET
15 THE PERMITS?

16 Q YES

17 A YES

18 Q ALL RIGHT NOW LET ME SHOW YOU ANOTHER EMAIL THAT'S
19 MARKED DEPOSITION EXHIBIT 16 IT'S AN EMAIL DATED MARCH
20 9TH FROM RICK, SR , TO AMANDA THIS ONE THOUGH IS COPIED
21 TO YOU DO YOU SEE THAT?

22 A UH-HUH

23 MR HOLLEMAN AND THAT WE OFFER AS EXHIBIT -- TRIAL
24 EXHIBIT 17, YOUR HONOR

25 MR HOWARD NO OBJECTION

1 THE COURT OKAY

2 (WHEREUPON PLAINTIFF'S EXHIBIT 17 WAS MARKED AND
3 ADMITTED INTO EVIDENCE)

4 Q WHO IS T BROWN?

5 A I DON'T KNOW LET'S SEE

6 Q IT BEGINS WITH CPAs I WONDER IF THAT'S AN
7 ACCOUNTANT

8 A PROBABLY I DON'T KNOW SORRY

9 Q OKAY WELL, IT'S DISCUSSING A CPA OKAY I SAY
10 OKAY AND YOU SAY ---

11 A WELL, IT'S DISCUSSING A CPA SO THAT'S PROBABLY IT,
12 YES

13 Q ALL RIGHT IF YOU LOOK IN THE MIDDLE OF THAT EMAIL
14 IT SAYS AFTER CLOSING TOM BROWN, OUR CPA SO THAT
15 APPARENTLY REFERS TO HIM

16 A YES

17 Q AND SO TOM BROWN IS RICK'S CPA, NOT YOUR CPA, IS
18 THAT RIGHT?

19 A THAT'S CORRECT

20 Q DID YOU CONSULT WITH TOM BROWN OR DID THEY DO THAT?

21 A THEY DID THAT

22 Q AND YOU SEE IN THE MIDDLE RIGHT AFTER REFERRING TO
23 TOM BROWN IT SAYS WOULD YOU PLEASE ASSURE US THAT WE END
24 UP WITH EIGHTY PERCENT AND ANDY BALLARD ENDS UP WITH
25 TWENTY PERCENT? IS THAT RIGHT?

1 A CORRECT

2 Q AND THEN AT THE END, JUST ABOVE WHEW, W-H-E-W, IT

3 SAYS TIM IS TO PROVIDE NECESSARY CAPITAL IN ORDER TO

4 SECURE A LONG-TERM LOAN DO YOU SEE THAT?

5 A THAT'S CORRECT

6 Q AND WAS THAT ACCURATE?

7 A THAT IS CORRECT

8 Q GO TO PAGE 64 LET ME SHOW YOU WHAT'S BEEN MARKED

9 DEPOSITION EXHIBIT 18 DOES THAT BEGIN WITH AN EMAIL

10 FROM RICK, SR , TO YOU AND ANDY BALLARD?

11 A UH-HUH

12 MR HOLLEMAN AND THAT IS TRIAL EXHIBIT 18 WE

13 WOULD OFFER THAT

14 MR HOWARD NO OBJECTION

15 THE COURT: NO OBJECTION

16 (WHEREUPON PLAINTIFF'S EXHIBIT 18 WAS MARKED AND

17 ADMITTED INTO EVIDENCE)

18 Q AND THEN IF YOU LOOK AT THE BOTTOM OF THAT THERE'S

19 AN EMAIL FROM RICK TO AMANDA TURNER, IS THAT RIGHT?

20 A UH-HUH YES

21 Q OKAY AND THEN IF YOU KEEP GOING ON TO THE PAGE 3,

22 DO YOU SEE THAT PARAGRAPH 3?

23 A YES

24 Q IT SAYS I DON'T THINK ANDY HOLDS THE NECESSARY

25 PERMITS, BUT CONVERSATIONS FROM REGULATORY AUTHORITIES

1 INDICATE THAT PERMITS WILL BE ISSUED, IS THAT RIGHT?

2 A THAT'S RIGHT

3 Q SO WHEN YOU ENTERED INTO THE AGREEMENT YOU KNEW ANDY
4 DID NOT HOLD THE NECESSARY PERMITS, IS THAT CORRECT?

5 A ABSOLUTELY

6 Q BUT YOU ALL HAD HAD CONVERSATIONS WITH REGULATORY
7 AUTHORITIES, IS THAT RIGHT?

8 A YES

9 Q AND THOSE CONVERSATIONS HAS INDICATED TO YOU THAT
10 PERMITS WILL BE ISSUED, IS THAT RIGHT?

11 A AS FAR AS I KNOW AGAIN, NOT MY PARTICULAR AREA OF
12 EXPERTISE

13 Q ALL RIGHT THEN GO TO PAGE 66 AND LET ME SHOW YOU
14 WHAT'S BEEN MARKED AS, THE NEXT EXHIBIT 2 TO THE TRIAL,
15 AND ASK YOU IF THAT IS THE STOCK PURCHASE AGREEMENT?

16 A IT APPEARS TO BE

17 Q NOW IF YOU LOOK AT THE THIRD WHEREAS CLAUSE IT SAYS
18 THAT YOU AND RICK AND RICK ARE IN THE BUSINESS OF
19 PROPERTY DEVELOPMENT AND ARE DESIROUS OF BEING INVOLVED
20 IN THE DEVELOPMENT OF THE PROJECT WITH BALLARD AND
21 WARPATH, IS THAT CORRECT?

22 A THAT'S CORRECT

23 Q AND IF YOU LOOK AT PARAGRAPH 1 THE FIRST SENTENCE
24 SAYS THAT YOU'RE PAYING MR BALLARD A MILLION DOLLARS FOR
25 TWENTY THOUSAND SHARES OF HIS STOCK, IS THAT RIGHT?

1 A CORRECT

2 Q OKAY NOW TURN OVER, IF YOU COULD, ON THE NEXT PAGE
3 AND YOU CAN LOOK AT PARAGRAPH 6 IT SAYS YOU AGREE TO
4 PROVIDE THE NECESSARY CAPITAL TO OBTAIN LONG-TERM
5 FINANCING ON THE PROJECT HAVE YOU DONE THAT?

6 A NO

7 Q DO YOU HAVE ANY PLANS TO DO THAT?

8 A YES

9 Q AND WHAT ARE YOUR PLANS TO DO THAT?

10 A IT'S HARD TO GET CAPITAL UNTIL YOU HAVE IT PERMITTED
11 FOR CONSTRUCTION THAT'S, YOU KNOW, I'VE BEEN
12 INVESTIGATING CAPITAL OPPORTUNITIES FROM THE VERY
13 BEGINNING AND STILL CONTINUE TO DO SO, BUT

14 Q WHEN DO YOU ANTICIPATE OBTAINING THE PERMITS TO
15 ALLOW YOU TO GO FORWARD?

16 A LAST YEAR

17 Q WHEN DO YOU NOW ANTICIPATE RECEIVING THE PERMITS?

18 A I QUIT GUESSING

19 Q OKAY WELL, WHAT ARE YOUR PLANS FOR OBTAINING THE
20 NECESSARY CAPITAL ONCE YOU GET THE PERMITS?

21 A TO CONTINUE THE PROCESS OF TALKING WITH CAPITAL
22 PROVIDERS

23 Q DO YOU HAVE ANY MORE DEFINITE PLANS THAN THAT?

24 A NO

25 Q NOW, YOU UNDERSTAND, IS THAT CORRECT, THAT MR

1 BALLARD WOULD NOT BE REQUIRED TO PROVIDE ANY NECESSARY
2 CAPITAL, THAT WOULD BE YOUR RESPONSIBILITY?

3 A I UNDERSTOOD THAT ON -- THAT HE WOULD NOT BE
4 REQUIRED TO BE ON ANY NOTES I NEVER -- I DIDN T EXPECT
5 OR I WASN'T THINKING THAT HE WOULD PROVIDE ANY MORE
6 CAPITAL UNLESS HE CHOSE TO, BUT IT WAS CERTAINLY NOT AN
7 EXPECTATION

8 Q AND NOWHERE IN THIS AGREEMENT DOES HE AGREE TO
9 PROVIDE ANY ADDITIONAL CAPITAL, IS THAT RIGHT? IS THAT
10 CORRECT?

11 A NO

12 Q PARAGRAPH 5 SAYS THAT RICK, SR , AND RICK, III, WILL
13 EXECUTE AN AGREEMENT WITH WARPATH DEFINING THEIR DUTIES
14 HAS THAT EVER HAPPENED?

15 A THERE IS A SCHEDULE THAT SHOWED OUR DUTIES AND IT
16 WAS -- THAT WAS AN EVOLVING DOCUMENT I THINK THAT'S WHY
17 I WAS -- A SPREADSHEET YOU SHOULD HAVE THAT SOMEWHERE

18 Q BUT THIS SAYS AN AGREEMENT, NOT A SPREADSHEET THIS
19 SAYS THEY WILL EXECUTE AN AGREEMENT HAS ANY AGREEMENT
20 BEEN EXECUTED BY THEM WITH WARPATH?

21 A WELL, I'M THEIR PARTNER AND IF THEY GIVE ME A
22 SPREADSHEET AND WE NOD, THAT'S AN AGREEMENT

23 Q DID THEY EXECUTE AN AGREEMENT WITH WARPATH?

24 A DEFINE EXECUTE AGREEMENT

25 Q SIGN AN AGREEMENT

1 A NO

2 Q OKAY NOW IF YOU LOOK AT PARAGRAPH 3 IT SAYS
3 BALLARD WARRANTS AND REPRESENTS THAT HE HOLDS A LEASE
4 WITH DUKE POWER AND THE NECESSARY APPROVALS FROM DUKE
5 POWER AND PICKENS COUNTY IN ORDER TO BUILD THE
6 DEVELOPMENT PER THE CONCEPTUAL PLANS WITH WARPATH
7 LANDING, CORRECT?

8 A YES

9 Q AND IT SAYS FINAL PERMITS MUST BE OBTAINED TO MOVE
10 FORWARD, CORRECT?

11 A YES

12 Q SO MR BALLARD DID NOT WARRANT AND REPRESENT THAT HE
13 HELD ANY PERMITS, IS THAT RIGHT?

14 A HE DIDN'T REPRESENT THAT HE HELD ALL PERMITS

15 Q WELL, NO PERMIT IS MENTIONED THERE, IS IT?

16 A WELL, FINAL PERMITS MUST BE OBTAINED TO MOVE
17 FORWARD I WOULDN'T HAVE KNOWN, TECHNICALLY AGAIN,
18 WHETHER HE ALREADY HAD PERMITS IN HIS POCKET OR NOT, BUT
19 I DID UNDERSTAND THAT FINAL PERMITS MUST BE OBTAINED
20 BECAUSE THAT WAS ON THE SCHEDULE AS PART OF HIS ROLE

21 Q NOW HE WARRANTED AND REPRESENTED THAT HE HELD THE
22 LEASE WITH DUKE POWER, AND YOU HAD A COPY OF THAT LEASE,
23 IS THAT CORRECT?

24 A THAT'S CORRECT

25 Q SO THAT WAS TRUE, IS THAT RIGHT?

1 A YES

2 Q AND THIS PARAGRAPH REFERS TO THE NECESSARY APPROVALS
3 FROM DUKE POWER AND YOU AND YOUR TWO PARTNERS HAD A
4 CHANCE TO CHECK THAT WITH DUKE POWER, DID YOU NOT?

5 A YES

6 Q OKAY AND THE NECESSARY APPROVALS FROM PICKENS
7 COUNTY IN ORDER TO BUILD THE DEVELOPMENT PER THE
8 CONCEPTUAL PLANS, YOU HAD A CHANCE TO MEET AND TALK TO
9 PICKENS COUNTY ABOUT THAT, IS THAT CORRECT?

10 A YES

11 Q TO YOUR KNOWLEDGE WERE YOU EVER REFUSED A MEETING OR
12 A PHONE CALL OR INFORMATION FROM DUKE POWER OR PICKENS
13 COUNTY?

14 A NOT TO MY KNOWLEDGE

15 Q NOW YOU UNDERSTAND THAT PERMITS ARE ISSUED BY
16 GOVERNMENTAL AUTHORITIES, CORRECT?

17 A I UNDERSTAND

18 Q AND IN YOUR DECADES OF CAREER AND BUSINESS IS IT
19 YOUR EXPERIENCE THAT GOVERNMENTAL AGENCIES MAKE DECISIONS
20 FOR THEMSELVES AS TO WHETHER TO ISSUE PERMITS AND MAKE
21 DECISIONS?

22 A THAT'S CORRECT

23 Q SO YOU KNEW THEN, DID YOU NOT, THAT THE GOVERNMENTAL
24 AGENCIES WOULD HAVE TO BE SATISFIED BEFORE A PERMIT COULD
25 BE ISSUED?

1 A THAT'S EXACTLY RIGHT

2 Q AND THAT THEY OPERATE ACCORDING TO REGULATIONS AND
3 STATUTES THAT REQUIRE PUBLIC COMMENT AND CERTAIN CRITERIA
4 TO BE SATISFIED AND CERTAIN LEVELS OF REVIEW, YOU KNEW
5 THAT, DID YOU NOT?

6 A IN A GENERAL SORT OF WAY I MAY HAVE KNOWN THAT

7 Q AND THIS AGREEMENT STATES FINAL PERMITS MUST BE
8 OBTAINED TO MOVE FORWARD, IS THAT CORRECT?

9 A THAT'S CORRECT

10 Q FROM YOUR EXPERIENCE IN BUSINESS YOU KNEW THEN,
11 DIDN'T YOU, THAT EXPECTATIONS ARE ONLY THAT,
12 EXPECTATIONS, AND SOMETIMES EVENTS OCCUR AND DELAYS
13 HAPPEN?

14 A YOU DON'T HAVE TO BE A BUSINESSMAN TO AGREE TO THAT

15 Q AND PARTICULARLY WHEN YOU'RE DEALING WITH GOVERNMENT
16 AGENCIES TO OBTAIN PERMITS, THAT COULD HAPPEN?

17 A CERTAINLY

18 Q NOW WOULD YOU AGREE THAT PARAGRAPH 3 OF THIS
19 AGREEMENT -- IF WE COULD GO BACK AND SHOW PARAGRAPH 3
20 NOW WOULD YOU AGREE THAT PARAGRAPH 3 OF THIS AGREEMENT
21 HAS NOT BEEN BREACHED BY MR BALLARD?

22 A I WOULD AGREE TO THAT

23 Q OKAY AND THAT THIS AGREEMENT DOES NOT CONTAIN ANY
24 TIME TABLE BY WHEN PERMITS HAVE TO BE ISSUED, IS THAT
25 CORRECT?

1 A THAT'S CORRECT

2 Q WHEN YOUR PARTNERS TALKED WITH DUKE POWER DID THEY
3 ASK THEM HOW MANY SLIPS DUKE POWER WOULD APPROVE?

4 A I DON'T KNOW

5 Q NOW BEFORE THE CONTRACT WAS SIGNED DID YOU DO
6 ANYTHING TO CHECK WITH DUKE POWER TO SEE IF THEY WOULD
7 APPROVE TWO HUNDRED SLIPS?

8 A I HAVE A LEASE I EXPECTED IT MEANT WHAT IT SAID

9 Q ALL RIGHT WELL, LET'S SEE WHAT IT SAYS AND THEN
10 I REFER TO THE CONCEPTUAL PLAN

11 A ONE HUNDRED TO TWO HUNDRED

12 Q AND IT SAYS ONE HUNDRED TO TWO HUNDRED?

13 A THAT'S CORRECT

14 Q YOU'RE AN EXPERIENCED BUSINESS PERSON WHAT AMOUNT
15 IS GUARANTEED BY A CLAUSE THAT SAYS YOU CAN HAVE ONE
16 HUNDRED TO TWO HUNDRED?

17 A A MINIMUM GUARANTEE IS ONE HUNDRED THAT WAS BACKED
18 UP BY ANDY'S INVOLVEMENT IN THIS PROCESS AND WORKING WITH
19 US ON THE PROFORMA AS RETURN ON INVESTMENT AND IT WAS
20 ALL BASED ON TWO HUNDRED

21 Q NOW DUKE POWER IS THE PARTY WHO SIGNED THIS LEASE
22 AND GIVES PERMISSION FOR HAVING THESE SLIPS, CORRECT?

23 A THAT'S CORRECT

24 Q ANDY BALLARD DOESN'T GIVE PERMISSION FOR HAVING THE
25 SLIPS, IS THAT RIGHT?

1 A YEAH

2 Q SO THAT WAS UP TO DUKE POWER?

3 A THAT'S CORRECT

4 Q AND WHAT DUKE POWER TOLD YOU IN WRITING WAS ONE

5 HUNDRED TO TWO HUNDRED, CORRECT?

6 A THAT'S EXACTLY WHAT THEY SAID

7 Q AND YOU KNEW THAT WHEN YOU SIGNED THIS AGREEMENT?

8 A I KNEW THAT IN CONJUNCTION WITH WHAT WAS REPRESENTED

9 TO US BY ANDY, YES

10 Q AND YOU HAD A CHANCE TO TALK WITH DUKE POWER, IS

11 THAT RIGHT, YOU AND YOUR COLLEAGUES?

12 A YES, WE DID

13 Q NOW IN THIS AGREEMENT, THE MAY 29 AGREEMENT THAT'S

14 BEFORE YOU, ANYWHERE IN HERE DOES MR BALLARD GUARANTEE

15 THAT YOU WILL BE ABLE TO GET TWO HUNDRED SLIPS FROM DUKE

16 POWER?

17 A NO

18 Q IN FACT, ALL HE WARRANTS IS APPROVAL PER THE

19 CONCEPTUAL PLAN, IS THAT CORRECT?

20 A THAT'S CORRECT

21 Q AND THE CONCEPTUAL PLAN ONLY ASSURED A HUNDRED

22 SLIPS, IS THAT RIGHT?

23 A THAT'S CORRECT

24 Q BUT THERE IS NO BREACH OF THIS WRITTEN AGREEMENT?

25 A THAT'S TRUE

1 Q NOW IN TERMS OF HIS REPRESENTATION DID YOU KNOW THAT

2 HE WAS SIMPLY PREDICTING TO YOU WHAT HE THOUGHT DUKE

3 POWER WOULD APPROVE?

4 A DID I THINK HE WAS PREDICTING WHAT THEY WOULD ---

5 Q YES

6 A YES

7 Q AND YOU KNEW AT THAT TIME DUKE POWER HAD NOT

8 APPROVED ANY NUMBER OTHER THAN A ONE HUNDRED MINIMUM?

9 A THAT'S CORRECT

10 Q NOW WAS IT YOUR UNDERSTANDING THAT WHEN THIS

11 DOCUMENT WAS SIGNED THAT WHEN EVERYTHING WAS OVER MR

12 BALLARD WOULD OWN TWO HUNDRED -- TWENTY THOUSAND SHARES,

13 AND THAT WOULD BE TWENTY PERCENT OF THE COMPANY?

14 A THAT'S CORRECT

15 Q AND DID YOU SAY ANYTHING TO MR BALLARD TO INDICATE

16 THAT HIS OWNERSHIP WOULD EVER BE DILUTED BELOW TWENTY

17 PERCENT BEFORE THE AGREEMENT WAS SIGNED?

18 A NO, I NEVER SAID ANYTHING ABOUT THAT

19 Q AND IS THERE ANYTHING IN THIS AGREEMENT THAT

20 INDICATES THAT HIS OWNERSHIP WOULD EVER BE DILUTED BELOW

21 TWENTY PERCENT?

22 A NO

23 Q NOW IN TERMS OF OBTAINING CAPITAL FOR THE PROJECT,

24 YOU AGREED TO PROVIDE THE NECESSARY CAPITAL, IS THAT

25 CORRECT?

1 A THAT'S CORRECT NOW, AGAIN, PROVIDE CAPITAL?
2 SECURE CAPITAL, I THINK, IS A BETTER TERM I DON'T THINK
3 ANYBODY WAS EXPECTING ME TO WRITE A CHECK FOR TWENTY-FIVE
4 MILLION DOLLARS

5 Q ALL RIGHT IF YOU WOULD LOOK AT PAGE 2 OF THE
6 AGREEMENT, LOOK AT PARAGRAPH 6 IT SAYS YOU AGREE TO
7 PROVIDE, NOT SECURE, PROVIDE THE NECESSARY CAPITAL,
8 CORRECT?

9 A THAT'S WHAT IT SAYS

10 Q NOW WERE YOU REPRESENTED BY COUNSEL WHEN THIS
11 AGREEMENT WAS PREPARED?

12 A YES

13 Q AND YOUR COUNSEL WAS WHOM?

14 A FAYSSOUX, JIM FAYSSOUX

15 Q AND DID HE DRAFT THIS AGREEMENT FOR YOU?

16 A I BELIEVE HE DID

17 Q AND DID HE REPRESENT YOU AND YOUR PARTNERS?

18 A YES

19 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 21
20 AND THIS IS A PRIOR EXHIBIT IT'S THE MINUTES OF THE
21 MEETING OF THE STOCKHOLDERS OF WARPATH DEVELOPMENT ON MAY
22 1, 2008 DO YOU SEE THAT?

23 A UH-HUH

24 Q DO YOU REMEMBER THIS MEETING?

25 A YES

1 Q AND THIS WAS A MEETING WHERE? IF YOU LOOK DOWN NEAR
2 THE BOTTOM, YOU MOVED AND SECONDED TO AUTHORIZE THE
3 CORPORATION TO ISSUE NINE HUNDRED THOUSAND ADDITIONAL
4 SHARES OF TREASURY STOCK IN ORDER TO RAISE CAPITAL, PAY
5 EXPENSES AND OFFER EMPLOYEE INCENTIVES DO YOU SEE THAT?

6 A YES

7 Q NOW THIS WAS A VOTE OF THE OFFICERS, CORRECT, NOT OF
8 THE SHAREHOLDERS? I KNOW WHAT THE DOCUMENT IS TITLED,
9 BUT JUST SO WE'RE CLEAR ON THIS, THIS IS A MEETING OF THE
10 DIRECTORS, RIGHT?

11 A DIRECTORS

12 Q AND IT WAS CARRIED UNANIMOUSLY BECAUSE AT THAT POINT
13 THE ONLY DIRECTORS WERE RICK, SR , RICK, HIS SON, AND
14 YOU, CORRECT?

15 A THAT'S CORRECT

16 Q NOW LET ME SHOW YOU ANOTHER EXHIBIT THIS IS CALLED
17 THE ANNUAL MEETING OF SHAREHOLDERS THIS IS ALSO A --
18 PREVIOUSLY BEEN ADMITTED AND IF YOU LOOK AT THE SECOND
19 PAGE IT SAYS AFTER THE BOARD WENT INTO SESSION THE BOARD
20 PROPOSED THAT THE CORPORATION ISSUE AN ADDITIONAL NINE
21 HUNDRED SHARES FOR THE PURPOSE OF RAISING CAPITAL, PAY
22 EXPENSES AND OFFERING EMPLOYEE INCENTIVES AND THEN IT
23 SAYS THIS MOTION WAS APPROVED UNANIMOUSLY, PRESENTED TO
24 THE STOCKHOLDERS WHERE THE ONLY DISSENTING VOTE WAS FROM
25 ANDY BALLARD, CORRECT?

1 A YES

2 Q SO MR BALLARD VOTED AGAINST ISSUING NINE HUNDRED
3 THOUSAND SHARES, IS THAT CORRECT?

4 A YES

5 Q NOW AS WE'VE SEEN, THE AGREEMENT PROVIDES THAT YOU
6 ARE TO PROVIDE THE NECESSARY CAPITAL TO OBTAIN LONG-TERM
7 FINANCING, BUT HERE THE CORPORATION HAS VOTED TO ISSUE
8 STOCK TO RAISE ADDITIONAL CAPITAL ISN'T THE ACTION OF
9 THE BOARD HERE INCONSISTENT WITH YOUR SHAREHOLDER --
10 INCONSISTENT WITH THE STOCKHOLDER AGREEMENT?

11 A IT'S NOT INCONSISTENT WITH THE BUSINESS PROBLEM THAT
12 WE HAD, THE MEETINGS THAT WERE CONVENED AND REPORTED IN
13 VARIOUS EMAILS IT'S NOT INCONSISTENT AT ALL

14 Q SO IS IT YOUR TESTIMONY THAT THE PROVISION IN THE
15 SHAREHOLDER AGREEMENT IS IRRELEVANT TO THE ACTION OF THE
16 STOCKHOLDERS IN APPROVING ISSUANCE OF STOCK?

17 A YES

18 Q AND ONE SOLUTION WOULD HAVE BEEN FOR YOU TO PROVIDE
19 THE FUNDING, CORRECT?

20 A WELL, YOU KNOW, AS I STATED IN ONE OF THOSE
21 DOCUMENTS, WHEN THE PROFORMAS FELL OFF FROM AS THEY WERE
22 ORIGINALLY PRESENTED THE BANK SAID WE WEREN'T VIABLE

23 Q SO?

24 A OUR BUSINESS MODEL DIDN'T WORK ANYMORE

25 Q BUT YOU COULD HAVE PROVIDED THE CASH YOU WOULDN T

1 HAVE TO BORROW MONEY YOU COULD HAVE DONE THAT, CORRECT?

2 A WHY WOULD I?

3 Q BECAUSE YOU AGREED TO, IN WRITING

4 A AGAIN, WE WERE BUYING A BUSINESS THAT WE EXPECTED TO

5 BE PROFITABLE BASED ON REPRESENTATION IF THERE A REASON

6 TO PUT -- IF THERE IS A REASON TO PUT MORE MONEY IN, YOU

7 DO IT IF IT DOESN'T QUITE MAKE SENSE YOU SOMETIMES

8 DECIDE YOU DON'T OR YOU GET HELP

9 Q AND THE REASON YOU DECIDED NOT TO IS YOU THOUGHT IT

10 WAS NO LONGER A GOOD DEAL TO DO IT THAT WAY, CORRECT?

11 A THE PROFORMAS FELL OFF DRASTICALLY

12 Q AND WHAT THAT MEANS IN LAYMAN'S TERMS IS EITHER LOSE

13 MONEY OR WOULDN'T MAKE AS MUCH AS YOU WANTED TO?

14 A THE RETURN ON INVESTMENT WAS NOT SUITABLE

15 Q WHICH MEANT IT WAS A MONEY LOSER INSTEAD OF A MONEY

16 MAKER, IS THAT CORRECT?

17 A MONEY LOSER OR NOT ENOUGH TO GET A BANK'S ATTENTION

18 Q ONE WAY TO GET A BANK'S ATTENTION, I GUESS, WOULD BE

19 TO PROVIDE A SIGNIFICANT AMOUNT OF THE MONEY FROM YOU

20 INSTEAD OF AS MUCH BEING BORROWED, CORRECT?

21 A YOU CAN ACTUALLY INVEST ENOUGH IN A BUSINESS OR A

22 VENTURE LIKE THAT SO THE BANK WOULDN'T EVEN CARE TO LOOK

23 AT YOUR PROFORMAS

24 Q SO THAT WAS AN OPTION, CORRECT?

25 A ALWAYS

1 Q BUT YOU CHOSE NOT TO DO THAT?

2 A THAT'S RIGHT

3 Q ONCE YOU GET PERMITTED DO YOU INTEND TO ISSUE THE
4 NINE HUNDRED THOUSAND SHARES?

5 A I CERTAINLY HAVE THAT AS AN OPTION AS I STATED,
6 THERE ARE POTENTIAL -- EITHER POTENTIALLY NEW INVESTORS
7 OR PARTICIPANTS IN THE PROJECT SUCH AS A HOTEL OR A
8 RESTAURANT THAT MAY TAKE AN EQUITY POSITION THE
9 COMBINATION OF DEBT AND EQUITY IS A NORMAL COURSE OF
10 BUSINESS TO CREATE AND GROW A BUSINESS AND THE
11 PERCENTAGE OF DEBT VERSUS EQUITY, THOSE RATIOS ARE ALWAYS
12 A JUDGMENT CALL, BUT IT'S A PRETTY COMMON PRACTICE

13 Q I BELIEVE ONE OF THE DOCUMENTS INDICATE YOU TALKED
14 TO PALMETTO BANK AND THEY WERE NOT INTERESTED, IS THAT
15 CORRECT?

16 A THEY INITIALLY WERE INTERESTED ON THE INITIAL
17 PROFORMAS THEY BECAME UNINTERESTED WHEN THE PROFORMAS
18 CHANGED

19 Q WHEN THEY BECAME UNINTERESTED DID YOU OFFER TO SIGN
20 PERSONAL GUARANTEES FOR ---

21 A THAT WAS NOT A DISCUSSION I HAD ASSUMED PERSONAL
22 GUARANTEES WOULD BE REQUIRED ANYWAY

23 Q WHEN THEY BECAME UNINTERESTED DID YOU OFFER TO
24 INCREASE THE AMOUNT OF CAPITAL YOU WOULD PUT IN?

25 A WE -- NO, WE DIDN'T DISCUSS THAT

1 Q IN YOUR INITIAL DISCUSSIONS WITH PALMETTO BANK HOW
2 MUCH CAPITAL WERE YOU GOING TO PROVIDE?

3 A TWENTY PERCENT OF WHATEVER WAS BORROWED

4 Q AND HOW MUCH CAPITAL WOULD THEY REQUIRE TO DO THE
5 FINANCING OF THE PROJECT AS IT NOW STANDS?

6 A I DON'T KNOW I LEFT THEM AND HIT EVERY BANK IN
7 TOWN AND WE WERE -- WE GOT NO TAKERS

8 Q DID YOU OFFER TO INCREASE THE CAPITAL YOU PROVIDED
9 BEYOND TWENTY PERCENT?

10 A NO I KNOW JUST FROM READING THE NEWSPAPERS YOU CAN
11 WALK IN AND PUT DOWN FIFTY PERCENT AND MOST BANKS WOULD
12 BE GLAD TO DO BUSINESS WITH YOU

13 Q HAVE YOU OFFERED TO DO THAT?

14 A NO

15 Q DO YOU INTEND TO DO THAT?

16 A ABSOLUTELY NOT

17 Q NOW HAVE YOU EVER PROVIDED AN AGREEMENT -- LOOK AT
18 PARAGRAPH 4, IF YOU WOULD, THE AGREEMENT, PLEASE, SIR
19 DO YOU SEE WHERE IT SAYS MR BALLARD AGREES TO EXECUTE A
20 SEPARATE AGREEMENT WITH WARPATH DEFINING HIS DUTIES IN
21 THE PROJECT DEVELOPMENT? DO YOU SEE THAT?

22 A YES

23 Q HAVE YOU ALL EVER PROVIDED THE AGREEMENT FOR HIM TO
24 EXECUTE?

25 A NO

1 Q HAVE YOU EVER ASKED HIM TO DO ANYTHING TO HELP WITH
2 THE PROJECT?

3 A YES

4 Q HAS HE EVER REFUSED TO DO ANYTHING?

5 A NO

6 Q ALL RIGHT LET'S START WITH THE TWO HUNDRED SLIPS
7 YOU HAD HIS CONCEPTUAL PLAN, CORRECT? THIS IS ON PAGE
8 97

9 A UH-HUH

10 Q YOU NEED TO SAY YES

11 A YES

12 Q AND YOU KNEW THAT DUKE POWER WAS SAYING ONE HUNDRED
13 TO TWO HUNDRED SLIPS? CORRECT?

14 A YES

15 Q AND YOU KNEW THAT DUKE POWER, NOT MR BALLARD, HAD
16 THE ABILITY TO MAKE THAT DECISION, CORRECT?

17 A THAT'S CORRECT

18 Q AND YOU AND YOUR PARTNERS HAD EVERY OPPORTUNITY TO
19 TALK WITH DUKE POWER AND QUESTION THEM?

20 A THAT'S CORRECT

21 Q AND THEN TO PAGE 100 WHAT HE PROVIDED YOU WAS A
22 CONCEPTUAL PLAN THAT DUKE POWER HAD SIGNED OFF ON,
23 CORRECT?

24 A YES

25 Q THAT WAS INCORPORATED INTO THE OFFICIAL LEASE WITH

1 DUKE POWER, CORRECT?

2 A YES

3 Q AND WOULD YOU NOT CONSIDER THAT TO BE THE
4 CONTROLLING DOCUMENT?

5 A YES

6 Q AND PAGE 105 WHAT ABOUT THE COUNTY ADMINISTRATOR,
7 DO YOU THINK HE LIED TO YOU?

8 A NO I DON'T THINK HE LIED TO US

9 Q I BELIEVE YOU SAID YOU CAME AWAY FROM A MEETING WITH
10 THE COUNTY ADMINISTRATOR, THAT YOU BELIEVED THE COUNTY
11 WAS ENTIRELY BEHIND IT, RIGHT?

12 A HE'S NOT ON THE COUNCIL

13 Q WAS MR BALLARD ON THE COUNCIL?

14 A OBVIOUSLY NOT

15 Q NO, OF COURSE NOT WOULD YOU EXPECT A COUNTY
16 ADMINISTRATOR TO HAVE MORE INTIMATE KNOWLEDGE OF COUNTY
17 COUNCIL AND PICKENS COUNTY THAN MR BALLARD?

18 A I WOULD THINK SO

19 Q DID THE COUNTY ADMINISTRATOR TELL YOU THAT THE
20 COUNTY WAS ENTIRELY BEHIND THIS PROJECT?

21 A I DON'T KNOW THAT HE USED THOSE WORDS, BUT WE CAME
22 AWAY BELIEVING THAT THIS WAS NOT NEWS TO THEM, THIS WAS
23 SOMETHING THEY LOOKED FORWARD TO HAVING AND THAT THEY
24 WERE BEHIND IT

25 Q ALL RIGHT LET ME SHOW YOU EXHIBIT 23 AND ASK YOU

1 IF THAT'S AN EMAIL FROM YOU TO RICK DATED JULY 24TH, 2007?

2 A YES

3 MR HOLLEMAN: AND THAT IS EXHIBIT 19 WE'D MOVE
4 ITS ADMISSION

5 MR HOWARD NO OBJECTION

6 THE COURT ALL RIGHT

7 (WHEREUPON PLAINTIFF'S EXHIBIT 19 WAS MARKED AND
8 ADMITTED INTO EVIDENCE)

9 Q AND IT SAYS ANDY IS FUSSING ABOUT THE LETTER HE
10 WANTS TO TALK TO SCOTT BEFORE WE SEND IT IS THIS A
11 REFERENCE TO SCOTT AT DUKE POWER?

12 A CORRECT

13 Q AND THAT'S A LETTER TO DUKE POWER YOU HAD PREPARED?

14 A YES

15 Q SO ANDY WAS TRYING TO, ON BEHALF OF WARPATH, HELP
16 WARPATH ARGUE THAT YOU SHOULD GET THE TWO HUNDRED SLIPS,
17 IS THAT RIGHT?

18 A HE WAS HE WOULD HAVE NO REASON NOT TO

19 Q LET ME SHOW YOU EXHIBIT 24 THAT IS AN EMAIL FROM
20 YOU TO SCOTT JOLLEY IS THAT THE LETTER WE'RE TALKING
21 ABOUT?

22 A I DON'T THINK SO THE ONE THAT I PREPARED FOR ANDY
23 WENT OUT UNDER HIS NAME

24 Q ALL RIGHT THAT'S ALREADY EXHIBIT 6 OKAY BUT
25 THIS IS AN EMAIL FROM YOU TO DUKE POWER, CORRECT?

1 A YES

2 Q OKAY AND THE LAST SENTENCE OF THAT EMAIL WHERE YOU
3 SAID THIS GIVES US A HUNDRED AND TWO RENTAL SLIPS AND
4 MEETS THE MINIMUM NUMBER STATED IN THE LEASE, CORRECT?

5 A THAT'S CORRECT

6 Q AND THAT NUMBER COMES OUT OF THE CONCEPTUAL PLANS,
7 CORRECT?

8 A THAT'S CORRECT

9 Q AND THAT'S WHAT MR BALLARD GUARANTEED IN THE STOCK
10 PURCHASE AGREEMENT, CORRECT, THE CONCEPTUAL PLANS?

11 A AS A MINIMUM THAT WAS WHAT WAS WRITTEN IN THE
12 DOCUMENTS

13 Q AND THAT'S WHAT MR BALLARD GUARANTEED WAS THE
14 CONCEPTUAL PLAN?

15 A THAT'S CORRECT

16 Q NOW UP IN THE SECOND SENTENCE THERE YOU SAY TO
17 SCOTT, REST ASSURED THAT WE UNDERSTAND YOU HAVE OUR BEST
18 INTEREST AT HEART AS YOU GUIDE US TOWARD AN ACCEPTABLE
19 SOLUTION, IS THAT CORRECT?

20 A YES I MEAN, WHERE IS THAT?

21 Q I'M SORRY THE SECOND SENTENCE WHERE YOU SAY I KNOW
22 WE MUST HAVE A ---

23 A OH, YEAH RIGHT

24 Q THEN ON 113 SO THE ANSWER TO MY QUESTION IS YES,
25 YOU DID WANT HIM OUT OF THE -- YOU WANTED HIM OUT OF THE

1 DEAL?

2 A YES

3 Q LET ME SHOW YOU AN EMAIL MARKED EXHIBIT 8 -- 28,
4 DATED DECEMBER 28, 2007 FROM YOU TO RICK, SR AND HERE
5 YOU HAVE SOME MORE THOUGHTS ABOUT ANDY AND THAT'S
6 PREVIOUSLY BEEN ADMITTED AS EXHIBIT 11 AT THE BOTTOM
7 PARAGRAPH YOU SAY WHEN AN INVESTOR REALIZES THAT AN
8 EXPECTED ROI IS NOT FORTHCOMING HIS ONLY VIABLE OPTION IS
9 TO ACQUIRE MORE EQUITY AT A REDUCED RATE, IS THAT RIGHT?

10 A THAT'S RIGHT

11 Q AND THEN YOU SUGGESTED TO REFINANCE THE PROJECT,
12 THAT WE INCREASE THE NUMBER OF OUTSTANDING SHARES TO FIVE
13 HUNDRED THOUSAND SHARES, CORRECT?

14 A UH-HUH YES

15 Q AND THEN YOU SAY AS LONG AS THESE SHARES REMAIN IN
16 THE TREASURY THERE IS NO DILUTION OF THE CURRENT
17 SHAREHOLDERS, CORRECT?

18 A THAT'S CORRECT

19 Q BUT THEN YOU SAY, HOWEVER, THOSE OUTSTANDING SHARES
20 COULD BE USED AS TENDER, SAME AS CASH, TO ACCOMPLISH THE
21 NEEDS OF THE CORPORATION, CORRECT?

22 A THAT'S CORRECT

23 Q AND THEN IN THAT INSTANCE IT WOULD BE POSSIBLE TO
24 ACQUIRE MORE EQUITY AT A REDUCED RATE, IS THAT CORRECT?

25 A YES

1 Q OKAY WHO IS KAREN LUCKTON?
2 A SHE IS THE -- SHE'S MY NIECE
3 Q DID SHE PLAY ANY ROLE IN THIS PROJECT OR IS SHE JUST
4 A RELATIVE?
5 A SHE WILL
6 Q WHAT IS HER ROLE IN THE PROJECT?
7 A HER HUSBAND AND HER WILL BE THE ON-SITE MANAGERS OF
8 THE PROPERTY
9 Q AND IS HER HUSBAND JOE?
10 A JOE
11 Q WHO IS JUDY DIERKES?
12 A SHE'S MY SISTER
13 Q YOU INCLUDED HER AS A RELATIVE OR DOES SHE HAVE SOME
14 ROLE IN THE PROJECT?
15 A IT'S NOT OFFICIAL, BUT ONE OF THESE DAYS WE ALL
16 THINK SHE COULD HAVE A ROLE WORKING IN THE STORE OR DOING
17 SOMETHING
18 Q WHO IS N R SMITH?
19 A MY OTHER SISTER
20 Q WHAT'S HER ROLE IN THE PROJECT?
21 A NOTHING OFFICIAL YET, BUT SOME DAY I WOULD LIKE FOR
22 HER TO MANAGE THE -- ANY CHILDREN'S EVENTS THAT WE HAVE
23 THERE SHE'S A SPECIAL ED TEACHER
24 Q ALL RIGHT NOW LET ME SHOW YOU WHAT'S BEEN MARKED
25 EXHIBIT 36 AT THE TOP IS AN EMAIL FROM YOU TO RICK,

1 SR , COPIED TO RICK, III, ON MARCH 11, 2008

2 A YES

3 MR HOLLEMAN AND WE WOULD MOVE ITS ADMISSION AS
4 EXHIBIT 20

5 MR HOWARD NO OBJECTION

6 THE COURT OKAY

7 (WHEREUPON PLAINTIFF'S EXHIBIT 20 WAS MARKED AND
8 ADMITTED INTO EVIDENCE)

9 Q BELOW THAT IS AN EMAIL FROM RICK, SR , TO YOU DATED
10 THE SAME DAY, IS THAT RIGHT?

11 A YES

12 Q AND IN THAT HE SAID DAVID TALKED TO A CONTACT AT THE
13 COUNTY ON STAFF, IS THAT RIGHT?

14 A THAT'S WHAT IT SAYS

15 Q WHO IS DAVID?

16 A DAVID ROCHESTER IS THE PROJECT MANAGER FOR GOLDIE
17 ENGINEERING FOR OUR PROJECT

18 Q HE SAYS HE WAS APPALLED THAT THE PLANNING COMMISSION
19 DID THIS AGAIN THEY ARE BOUND BY LAW TO PASS IT UNLESS
20 IT DOES NOT MEET REGS WE MEET REGS PUBLIC OPINION IS
21 NOT SUPPOSED TO DELAY OR KNOCK DOWN APPROVAL THEY HAVE
22 ALREADY BEEN SUED ABOUT DOING THIS SAME THING AND LOST
23 COUNTY COUNCIL HAS CHASTISED THEM BEFORE FOR DOING THE
24 SAME THING DO YOU SEE THAT?

25 A YES

1 Q DOES THAT INDICATE TO YOU THE PLANNING COMMISSION
2 WAS BEHAVING IMPROPERLY IN HOW THEY WERE HANDLING YOUR
3 PROPOSAL?

4 A NO THAT INDICATED TO ME THAT IT WAS HIS OPINION
5 THAT THEY WERE OPERATING IMPROPERLY

6 Q RIGHT AND IN OTHER WORDS, IT WAS DAVID'S OPINION
7 DAVID WAS REPORTING THE OPINION OF THE COUNTY STAFF
8 MEMBER THAT THE COUNTY PLANNING COMMISSION WAS BEHAVING
9 IMPROPERLY, IS THAT RIGHT?

10 A IT WOULD APPEAR THAT WAY, YES

11 Q AND WOULD YOU AGREE THAT YOU COULD NOT EXPECT MR
12 BALLARD TO PREDICT THAT THE COUNTY COMMISSION WOULD
13 BEHAVE IMPROPERLY?

14 A NO, I MEAN, I WOULDN'T EXPECT THAT

15 Q ALL RIGHT LET ME SHOW YOU EXHIBIT 39

16 MR HOLLEMAN AND WE MOVE ITS ADMISSION AS TRIAL
17 EXHIBIT 21

18 MR HOWARD NO OBJECTION

19 THE COURT OKAY

20 (WHEREUPON PLAINTIFF'S EXHIBIT 21 WAS MARKED AND
21 ADMITTED INTO EVIDENCE)

22 MR HOWARD LET ME BACK THAT UP, YOUR HONOR I
23 JUST WANTED -- WE TALKED EARLIER AT THE BENCH CONFERENCE
24 EARLIER ABOUT THIS EXHIBIT AND ---

25 THE COURT: SAME RULING

1 MR HOWARD --- THE TESTIMONY THAT'S GOING TO

2 FOLLOW I JUST WANTED MY OBJECTION PRESERVED ---

3 THE COURT RIGHT OKAY

4 Q AT THE TOP WAS THAT AN EMAIL FROM YOU TO RICK, SR ,

5 DATED MARCH 31?

6 A YES

7 Q IT SAYS I COPIED ANDY ON AN EMAIL AS I ALSO SEE THAT

8 THIS WAS SOMETHING HE SHOULD HAVE HAD A HEADS UP ON

9 CC'd THE LAWYER FOR ANDY'S BENEFIT WHAT DID YOU MEAN

10 YOU CC'd THE LAWYER FOR ANDY'S BENEFIT?

11 A LET ME SEE WHAT IT WAS REFERRING TO LET ME TAKE A

12 MINUTE HERE

13 Q WELL, IT SAYS HERE AT THE TOP THAT YOU CC'd THE

14 LAWYER FOR ANDY'S BENEFIT WHAT DID YOU MEAN BY THAT?

15 A I DON'T KNOW

16 Q WERE YOU TRYING TO SCARE ANDY BY COPYING A LAWYER?

17 A NO, I DON'T THINK SO IF I WANTED TO SCARE ANDY I'D

18 -- I WOULDN'T KNOW HOW, I DON'T GUESS HE'S A TOUGH GUY

19 Q WHAT DOES THAT MEAN, YOU CC'd THE LAWYER FOR ANDY'S

20 BENEFIT?

21 A FOR HIS -- BECAUSE I GUESS HE'S -- HE'S A PARTNER

22 HE SHOULD KNOW WHAT WE'RE TALKING ABOUT HERE

23 Q WELL, HE WOULD KNOW THAT IF YOU HADN'T COPIED THE

24 LAWYER

25 A HUH?

1 Q IF YOU'D SENT IT TO ANDY HE WOULD HAVE KNOWN WHAT

2 YOU WERE TALKING ABOUT WITHOUT COPYING A LAWYER

3 A OKAY I CAN'T SPEAK TO THAT

4 Q YOU SAID EARLIER OR YOU SUGGESTED THAT MR BALLARD

5 MIGHT BE RESPONSIBLE FOR SOME OF THE DELAY YOU SAY YOU'VE

6 EXPERIENCED DO YOU THINK HE HAS ANY RESPONSIBILITY FOR

7 THE PICKENS COUNTY PLANNING COMMISSION NOT FOLLOWING

8 THEIR REGULATIONS?

9 A I'LL GO BACK TO MY EARLIER STATEMENT HE WAS EITHER

10 NAIVE AFTER WORKING THROUGH THIS FOR FOUR OR FIVE YEARS,

11 FOUR YEARS, OR HE DIDN'T TELL US EVERYTHING HE KNEW

12 Q BUT MY QUESTION IS DO YOU THINK HE HAS A

13 RESPONSIBILITY FOR THE PLANNING COMMISSION NOT FOLLOWING

14 ITS REGULATIONS?

15 A NO

16 Q AND 150 DID YOU KNOW THAT TWO HUNDRED SLIPS WERE

17 THE MAXIMUM PERMITTED AT LAKE KEOWEE?

18 A YES

19 Q AT A MARINA? SO YOU KNEW THAT WAS THE ABSOLUTE

20 MAXIMUM?

21 A I READ IT IN THE LEASE I DIDN'T KNOW WHAT THE LAW

22 REQUIRED IN FACT, I HAD CONSIDERED THAT WAS A

23 NEGOTIATED POINT THAT ANDY HAD NEGOTIATED WITH DUKE I

24 DIDN'T KNOW THAT IT WAS A REGULATION I MEAN, HE -- LET

25 ME JUST ADD TO THAT HE TOLD US AS HE SAID EARLIER THAT

1 SOMEONE AT DUKE TOLD HIM TO USE THAT NUMBER, THE HIGH
2 NUMBER

3 Q HE TOLD YOU THAT BEFORE THE DEPOSITION TODAY?

4 A YEAH, FROM THE BEGINNING

5 Q HE TOLD YOU FROM THE BEGINNING?

6 A FROM THE BEGINNING

7 Q THAT SOMEONE AT DUKE POWER TOLD HIM TO USE THE
8 HIGHER NUMBER?

9 A TO USE THAT TWO HUNDRED AND THEY'RE THE PEOPLE
10 THAT HAD TO APPROVE IT SO

11 Q DID HE TELL YOU THAT THEY SAID TO PUT THE HIGHER
12 NUMBER IN THERE?

13 A GO FOR ALL YOU CAN THAT'S WHAT HE SAID

14 MR HOLLEMAN AND THAT'S ALL I HAVE

15 THE COURT ALL RIGHT MR HOWARD, HOW LONG ARE
16 YOUR DESIGNATIONS?

17 MR HOWARD THIS IS RELATIVELY SHORT, YOUR HONOR

18 THE COURT OKAY GOOD GO AHEAD

19 MR HOWARD LET ME FIND WHERE TO START

20 DESIGNATIONS BY MR HOWARD

21 Q PAGE 48 YOU THERE, HANNAH?

22 A UM-HUM (AFFIRMATIVE)

23 Q BUT I GUESS MY POINT IS IN THIS PROJECT THERE WERE A
24 LOT OF UNKNOWNNS, IS THAT A CORRECT STATEMENT?

25 A YES IN ANY PROJECT THERE ARE UNKNOWNNS

1 Q OKAY WHAT HAPPENED AFTER THIS EMAIL WITH RESPECT
2 TO THE PROJECT BECAUSE IN THIS EMAIL YOU'RE BASICALLY
3 SAYING YOU'RE NOT GOING FORWARD WITH IT, CORRECT?

4 A THAT'S CORRECT

5 Q SO WHAT HAPPENED NEXT?

6 A THE NEXT THING WAS A CALL FROM ANDY AND I'M SORRY,
7 I CAN'T TELL YOU EXACTLY, BUT POSSIBLY SIXTY DAYS LATER
8 MAYBE ASKING US TO REVISIT THE DISCUSSION AND THAT HE WAS
9 WILLING TO MAKE SOME CONCESSIONS

10 Q WHAT CONCESSIONS WAS HE WILLING TO MAKE?

11 A I CAN'T RECALL EXACTLY THE NUMBERS, BUT IT HAD TO DO
12 WITH THE DOLLARS HE WOULD TAKE LESS, BUT I DON'T
13 REMEMBER THE EXACT NUMBERS

14 Q SKIP OVER TO PAGE 57 WHAT DOES VIABILITY MEAN?

15 A VIABILITY MEANS IT'S A VIABLE OR A PROFITABLE
16 POTENTIAL WITH A REASONABLE BUSINESS MODEL

17 Q I GUESS MY QUESTION -- WHAT I MEANT TO ASK WAS WHAT
18 DID YOU DO TO DETERMINE VIABILITY?

19 A OTHER THAN WHAT I'VE STATED SO FAR, I TALKED TO MY
20 PARTNERS

21 Q PAGE 74 DID YOU ASK THEM, DID YOU ASK YOUR
22 PARTNERS, RICK AND RICK, WHAT DUKE POWER TOLD THEM ABOUT
23 SLIPS?

24 A I DON'T RECALL QUITE FRANKLY THE FIRST TIME THAT I
25 RECALL ANYTHING, ANY QUESTION OR ANYTHING NEGATIVE OR

1 SUSPECT ON THE TWO HUNDRED SLIPS WAS WHEN ANDY LOOKED AT
2 -- AT AN ARCHITECTURAL MEETING IN GREENVILLE WHEN ANDY
3 LOOKED AT THE DRAWINGS AND IMMEDIATELY SAID, THAT AIN'T
4 GOING TO FLY THEY'RE NEVER GOING TO ALLOW THAT MANY
5 DOCKS

6 Q AND THIS WAS AFTER THE CONTRACT WAS SIGNED?

7 A THAT'S CORRECT

8 Q LOOK AT 77 SO WOULD YOU AGREE THAT MR BALLARD HAS
9 NOT BREACHED THIS AGREEMENT DUE TO THE FACT THAT DUKE
10 POWER HAS NOT APPROVED TWO HUNDRED SLIPS?

11 A I BELIEVE THAT HE'S BREACHED THE REPRESENTATION,
12 WHICH INCLUDES THE AGREEMENT, BUT IT ALSO INCLUDES HIS
13 REPRESENTATION, HIS VERBAL REPRESENTATION

14 Q PAGE 78 AND DID YOU EVER SAY ANYTHING TO INDICATE
15 TO HIM THAT IT WAS A POSSIBILITY OR A PLAN BY YOU OR YOUR
16 PARTNERS THAT HIS OWNERSHIP -- THAT YOU WOULD
17 SUBSEQUENTLY REDUCE HIS OWNERSHIP BELOW TWENTY PERCENT?

18 A POSSIBLY CERTAINLY ON ONE OCCASION WHEN I MET WITH
19 HIM AT HIS RESTAURANT, BUT PRIOR TO THAT THERE WERE
20 DISCUSSIONS ABOUT BRINGING IN HOTEL CHAINS WE TALKED
21 ABOUT BRINGING IN A FELLOW BY THE NAME OF ANDY CHIKA TO
22 RUN THE HOSPITALITY PART AND THOSE DISCUSSIONS INCLUDED
23 EQUITY FOR THE INDIVIDUAL AS WELL AS COMPENSATION

24 Q NOW MY QUESTION NOW IS PRIOR TO SIGNING THE MAY 29TH
25 AGREEMENT, NOT AFTERWARDS?

1 A OH, PRIOR TO SIGNING THIS?

2 Q YES

3 A DID I HAVE ANY CONTEMPLATION OF DILUTION?

4 Q YES

5 A NO

6 Q PAGE 83 SO IT S YOUR TESTIMONY THAT THE ISSUANCE

7 AUTHORIZING THE ISSUANCE OF NEW STOCK IS CONSISTENT WITH

8 THE BUSINESS SOLUTION TO THE PROBLEM YOU FACE IS THAT

9 CORRECT?

10 A THAT'S CORRECT

11 Q BUT I'M ASKING NOW IN TERMS OF THIS AGREEMENT, NOT

12 IN TERMS OF YOUR PROPOSED BUSINESS SOLUTION BUT THE

13 AGREEMENT SAYS ROBERSON AGREES TO PROVIDE THE NECESSARY

14 CAPITAL TO OBTAIN LONG-TERM FINANCING BUT AT THE BOARD

15 MEETING AND THE SHAREHOLDER MEETING YOU ALL VOTED TO HAVE

16 THE CORPORATION ISSUE NINE HUNDRED THOUSAND SHARES FOR

17 THE PURPOSE OF RAISING CAPITAL ISN'T THE ACTION OF THE

18 BOARD AND THE SHAREHOLDERS INCONSISTENT WITH THE

19 PROVISION OF THE SHAREHOLDER AGREEMENT?

20 A I THINK IT WAS IRRELEVANT I THINK IT S A DIFFERENT

21 TIME, A DIFFERENT PROBLEM IN THE COMPANY I -- THE

22 LARGEST COMPANY I HAVE OWNED I HAVE OWNED FROM TEN

23 PERCENT TO SIXTY PERCENT TO FORTY PERCENT TO THIRTY

24 PERCENT BASED ON ACQUISITION, SHARE DILUTION,

25 REINVESTMENT

1 AND IT'S ALWAYS WITH THE BEST INTENTIONS OF THE
2 SHAREHOLDERS IN MIND THE THEORY BEING THAT A VALUABLE
3 PIECE -- A SMALLER PIECE OF A VALUABLE PIE IS WORTH MORE
4 THAN A LARGE PIECE OF A PIE THAT'S NOT WORTH ANYTHING

5 Q NOW WOULD YOU AGREE THAT WHEN THE CORPORATION VOTED
6 TO ISSUE THE NINE HUNDRED THOUSAND SHARES FOR THE PURPOSE
7 OF RAISING ADDITIONAL CAPITAL, THE CORPORATION WOULD BE
8 PROVIDING THE NECESSARY CAPITAL AND YOU PERSONALLY WOULD
9 NOT BE?

10 A NO MY INTENTIONS TO PROVIDE THE CAPITAL FOR THE
11 PROJECT AS PRESENTED TO US WOULD NOT CHANGE THE CAPITAL
12 REQUIREMENTS OF THAT PROJECT CHANGED BASED ON WHAT WE'VE
13 REPORTED THAT WE DID NOT GET DELIVERED WHAT WAS PRESENTED
14 TO US

15 AND THOSE MEETINGS WERE ASKING OUR PARTNERS TO
16 ADDRESS A WAY TO MAKE UP FOR THE SHORTFALL THE
17 SHORTFALL, FIFTY PERCENT OF THE FLOATING DOCKS WE'D ASKED
18 FOR OR EXPECTED TO HAVE AND WHAT WAS THEN NOW A YEAR AND
19 NOW TWO YEARS DELAY IN STARTING THE PROJECT AGAIN, ALL
20 REPRESENTATIVES OF EITHER NOT UNDERSTANDING OR FOR SOME
21 REASON NOT REVEALING THE TRUE NATURE OF THIS PROJECT

22 SO WE ASKED ALL THE SHAREHOLDERS TO COME UP WITH
23 SOLUTIONS AT THAT TIME ANDY REFUSED I ASKED FOR
24 ANOTHER TWO WEEKS FOR EVERYBODY TO COME UP WITH ANOTHER
25 SOLUTION, AND ANDY HAD NONE SO I ASKED FOR PERMISSION

1 TO BE ELECTED CHAIRMAN AND CEO IN ORDER TO PROVIDE AN
2 ALTERNATIVE PLAN TO SOLVE OUR PROBLEM

3 Q PAGE 87 HAVE YOU ACTUALLY ISSUED ANY OF THESE NINE
4 HUNDRED THOUSAND SHARES YET?

5 A NO

6 Q DO YOU HAVE PLANS TO DO -- PLANS TO?

7 A I HAVE PLANS TO DO NOTHING UNTIL WE GET PERMITTED

8 Q PAGE 88 NOW LET ME ASK YOU THIS DO YOU HAVE ANY
9 PURCHASERS LINED UP FOR THE ADDITIONAL NINE HUNDRED
10 THOUSAND SHARES?

11 A NO

12 Q PAGE 116 AND THEN WITH THE ISSUANCE OF MORE SHARES
13 YOU BELIEVE THAT WOULD PRODUCE AN APPROPRIATE -- OF
14 INVESTMENT? IS THAT WHAT -- IS THAT WHAT THAT MEANS,
15 ROI?

16 A RETURN ON INVESTMENT

17 Q RETURN ON INVESTMENT

18 A I BELIEVE THAT WOULD HAVE MADE UP FOR THE SHORTFALL
19 THAT WAS RELATED TO THE DOCK SHORTAGE AND THE TIME LAPSE
20 THAT WAS UNEXPECTED

21 Q SO YOU THOUGHT BY ISSUING THESE SHARES THAT WOULD
22 IMPROVE YOUR RETURN ON INVESTMENT, IS THAT CORRECT?

23 A ALL OF OUR RETURN ON INVESTMENT FOR EVERY
24 SHAREHOLDER EQUALLY

25 Q AND WHO IS GOING TO ACQUIRE MORE EQUITY AT A REDUCED

1 RATE? YOU SAY WHEN AN INVESTOR REALIZES THAT AN EXPECTED
2 RETURN ON INVESTMENT IS NOT FORTHCOMING, HIS ONLY VIABLE
3 OPTION IS TO ACQUIRE EQUITY AT A REDUCED RATE WHO ARE
4 YOU REFERRING TO?

5 A ANY INVESTOR WHO WOULD COME IN

6 Q WELL, SO FAR WHO HAD PROVIDED CASH IN THIS DEAL?

7 A ME

8 Q SO WERE YOU REFERRING TO YOURSELF IN THIS INSTANCE?

9 A NOT PARTICULARLY, NO I EXPECTED TO BE DILUTED
10 MYSELF IF WE TOOK THAT ACTION

11 Q WELL, YOU HAD EXPECTED THAT YOUR RETURN ON
12 INVESTMENT WAS NOT FORTHCOMING, CORRECT?

13 A BECAUSE OF THE REASONS STATED

14 Q WERE YOU EXPECTING TO ACQUIRE MORE EQUITY AT A
15 REDUCED RATE?

16 A PERSONALLY?

17 Q YES

18 A NO

19 Q WERE YOU EXPECTING TO GET ANY OF THESE AUTHORIZED
20 SHARES AS PAYMENT FOR OBTAINING CAPITAL OR LENDING MONEY
21 TO THE CORPORATION OR OBTAINING A LOAN FOR THE
22 CORPORATION?

23 A NO

24 Q PAGE 120 AND WHO IS C GARRISON?

25 A CHERYL GARRISON IS THE LADY THAT'S BEEN CONSULTING

1 WITH ME ON THE RESTAURANT

2 Q AND I SEE HER ADDRESS AS IRONDISORDERS ORG DOES

3 SHE WORK FOR THE IRON DISORDERS GROUP?

4 A SHE'S THE EXECUTIVE DIRECTOR OF THE IRON DISORDERS
5 GROUP

6 Q SHE'S CONSULTING WITH YOU TO RUN THE RESTAURANT?

7 A TO EITHER POTENTIALLY RUN IT OR TO HELP STAFF IT,
8 PLAY A MAJOR ROLE

9 Q PAGE 122 OKAY LET ME DIRECT YOUR ATTENTION BACK
10 TO EXHIBIT 4 THIS IS A DOCUMENT YOUR ATTORNEY USED
11 EARLIER IN THE DEPOSITION OF MR BALLARD IS THAT AN
12 EMAIL FROM YOU TO RICK?

13 A YES

14 Q QUESTION, APPARENTLY THIS IS A MEETING WHERE YOU
15 TALKED WITH ANDY AND YOU SAY OFFERED NO NEW IDEAS AND
16 SOLUTIONS?

17 A RIGHT

18 Q IN THERE, AS I UNDERSTAND IT, IN THE CONVERSATION HE
19 TOLD YOU THAT THE CONTRACT GUARANTEED THE SITE PLAN AND
20 THAT BY THE CONTRACT YOU AND YOUR COLLEAGUES WERE TO
21 COMPLETE THE PROJECT, IS THAT RIGHT?

22 A THAT'S CORRECT

23 Q AND YOU EXPLAINED YOU DIDN'T SEE THIS AS A LEGAL
24 QUESTION, IT WAS A BUSINESS QUESTION, IS THAT RIGHT?

25 A THAT'S THE WAY I SAW IT AND I SEE IT, YES

1 Q NOW AT THE END YOU SAID, I TOLD HIM THERE WOULD MORE
2 THAN LIKELY BE SOME DILUTION IF THAT HAPPENED DO YOU
3 SEE THAT SENTENCE?

4 A YES

5 Q WHAT ARE YOU TALKING ABOUT, ABOVE IS THE NEW FINANCE
6 PLAN TO BRING ADDITIONAL CAPITAL INVESTMENT SERVICES TO
7 IMPROVE THE RETURN ON INVESTMENT OF THE PROJECT, RIGHT?

8 A TRUE

9 Q WHAT DID HE SAY WHEN YOU BROUGHT UP DILUTION?

10 A I DON'T RECALL

11 Q DO YOU RECALL IF THAT CAME UP IN THE CONVERSATION,
12 THE PHRASE DILUTION?

13 A I'M SURE IF IT DID I -- IF I SAID THIS BECAUSE I
14 WOULD HAVE WRITTEN THIS RIGHT ON THE HEELS OF THAT

15 Q SO YOU DON'T HAVE ANY INDEPENDENT RECOLLECTION WHAT
16 YOU'RE RELYING ON IN THIS EMAIL, CORRECT?

17 A I THINK I SAID IT, BUT UH, YOU KNOW

18 Q BUT YOU DON'T HAVE ANY SEPARATE MEMORY OTHER THAN
19 THE SENTENCE IN THIS -- IN THE EMAIL, IS THAT CORRECT?

20 A NO

21 Q AND YOU DON'T REMEMBER WHAT HE SAID IN RESPONSE?

22 A UH, HE WOULDN'T HAVE SAID ANYTHING IN RESPONSE OR I
23 WOULD HAVE RECORDED IT IN THIS

24 Q BUT YOU DON'T REMEMBER ONE WAY OR THE OTHER?

25 A I REMEMBER THAT HE MADE NO RESPONSE NEGATIVE TO ---

1 Q DO YOU HAVE AN INDEPENDENT RECOLLECTION OF THAT PART
2 OF THE CONVERSATION?

3 A YEAH, I WOULD HAVE REMEMBERED IF HE HAD A QUESTION
4 OR RESPONDED NEGATIVELY TO ANYTHING

5 Q PAGE 136

6 A LET ME MAKE SURE I UNDERSTAND WHAT THIS WHOLE
7 SUBJECT IS ABOUT I'M NOT EVEN SURE WHAT I COPIED THE
8 LAWYER ON DOESN'T SAY

9 Q WELL, YOU CAN SEE, YES, YOU COPIED HIM ON THE --
10 WHERE YOU SAID, MORE SURPRISES REGARDING PERMITTING
11 PROCESS?

12 A RIGHT

13 Q AND THAT'S THE ONLY ONE YOU COPIED ANDY ON

14 A OKAY AGAIN, LETTING HIM KNOW WE WERE STUCK IN THE
15 MUD HERE

16 Q PAGE 140 IN YOUR INTERROGATORY ANSWERS YOU LISTED
17 A NUMBER OF BANKS THAT HAD BEEN CONTACTED AT BB&T YOU
18 SPOKE WITH BARRY MANUS, IS THAT RIGHT?

19 A YES

20 Q WHO DID YOU SPEAK WITH AT WACHOVIA?

21 A I CAN'T RECALL

22 Q DID YOU MAKE A WRITTEN PRESENTATION TO THEM AT
23 WACHOVIA OR JUST A PHONE CALL?

24 A NO, NO I VISIT ALL THESE PEOPLE PERSONALLY WITH A
25 BINDER SHOWING OUR PROFORMAS AND THE MORE RECENT

1 ARCHITECTURAL DESIGN

2 Q AND WHAT WAS THEIR RESPONSE? WACHOVIA?

3 A NOT INTERESTED

4 Q WHAT ABOUT NBSC? DID YOU SPEAK WITH WALTER GAYLE
5 THERE?

6 A YES

7 Q AND WHAT DID HE SAY?

8 A NOT INTERESTED

9 Q IN EVERY INSTANCE WAS YOUR PROPOSAL ONE WHERE YOU
10 WOULD PROVIDE TWENTY PERCENT OF THE CAPITAL AND YOU WERE
11 SEEKING TO OBTAIN THE OTHER EIGHTY PERCENT?

12 A ACTUALLY BY THAT TIME THEY WERE JUST LOOKING AT THE
13 PROFORMAS I NEVER HAD A BANK TELL ME THAT IF I PUT MORE
14 CAPITAL IN THAT THEY WOULD TAKE IT BUT I WAS HEARING
15 THAT AS BEING -- THAT AS BEING THE SAMPLES OF WHAT BANKS
16 WERE DOING I GAVE THEM THE BOOK, GAVE THEM THE
17 PROFORMAS, GAVE THEM THE STORY, AND THEY WOULD INDICATE
18 TO ME WHETHER THEY HAD ANY INTEREST OR NOT AND THERE
19 WAS NOT

20 Q IN YOUR PROFORMA DID YOU INDICATE OR IN ANY OTHER
21 MATERIAL DID YOU INDICATE HOW MUCH CAPITAL YOU WERE GOING
22 TO PUT IN?

23 A WELL, THEY HAD OUR -- I THINK SO

24 Q HOW MUCH WERE YOU INDICATING?

25 A TWENTY PERCENT

1 Q AND WHO DID YOU SPEAK WITH AT SUNTRUST BANK?

2 A I CAN'T RECALL HIS NAME

3 Q WHO IS BUSINESS LOAN SOLUTIONS?

4 A JOHN BICKLING

5 Q AND WHAT IS THAT?

6 A HE'S A BROKER THAT CAN GO TO VARIOUS BANKS IN THE

7 AREA AND OUTSIDE THE AREA FOR YOU

8 Q AND WHAT DID HE TELL YOU?

9 A HE'S BEEN TO THIS DAY STILL SHOPPING THE PROJECT FOR
10 US

11 Q PAGE 143 WHO WAS ATLANTIC CAPITAL PARTNERS?

12 A I THINK THAT WAS A GROUP OUT OF SPARTANBURG

13 Q WHAT WAS THEIR RESPONSE?

14 A NOT INTERESTED

15 Q AND JUST TO BE CLEAR, SO I'LL JUST ASK IT ONE MORE

16 TIME, FOR ALL THESE PROPOSALS, THE BOOK THAT YOU

17 PROVIDED, IT INDICATED A TWENTY PERCENT CAPITAL PROVISION
18 BY YOU?

19 A I PROVIDED IT IN THE SAME BOOK I DON'T KNOW WHAT

20 IT SHOWS AS BEING THE CAPITAL CONTRIBUTION HOWEVER, I

21 WAS NEVER TOLD THAT IT WAS -- THAT I WAS DECLINED BECAUSE
22 OF A ---

23 Q DID YOU EVER ---

24 A --- TWENTY PERCENT

25 Q DID YOU EVER ASK IF THEY WOULD PARTICIPATE -- IF

1 THEY WOULD PARTICIPATE IF YOU PROVIDED MORE THAN TWENTY
2 PERCENT?

3 A NO

4 Q WHO IS FRED GIBBS?

5 A THAT'S THE ONE IN SPARTANBURG THE OTHER ONE WAS
6 ALLIED

7 Q ATLANTIC CAPITAL PARTNERS AND THE NAME IS GORDON
8 WHITE IN YOUR MATERIALS

9 A A LEAD I GOT SOMEWHERE FROM SOMEBODY

10 Q WHO IS AUTUMN CAPITAL, JOHN BORLAIS (PHONETICS)?

11 A HE'S A BROKER HERE IN GREENVILLE GOT THE LEAD FROM
12 SOMEBODY, WENT DOWN AND SAT WITH THEM, IN MANY OF THESE
13 CASES MULTIPLE TIMES AND MULTIPLE VISITS HE'S A BROKER
14 SO HE WOULD HAVE -- SO HE WOULD BE TAKING THE BOOK AND
15 SHOPPING IT

16 Q HAVE YOU HEARD ANYTHING BACK FROM HIM?

17 A CAN'T DO IT

18 Q WHO IS WATERMARK ADVISORS, HAGEN ROGERS?

19 A SAME THING

20 Q WHERE ARE THEY LOCATED?

21 A IN GREENVILLE

22 Q MARCH USA, ALEXANDER MCNAIR, WHO IS THAT?

23 A THEY'RE DOWNTOWN IN THE WESTIN THEY HAVE
24 CONNECTIONS THEY WERE SHOPPING IT

25 Q AND HAVE THEY RESPONDED TO YOU?

1 A YEAH CAN'T DO IT

2 Q USAF11, WHAT IS THAT?

3 A THAT IS A GROUP OUT OF ATLANTA, AGAIN, -- WHO AGAIN
4 IS A BROKER WHO REPRESENTS INVESTORS AND THEY HAVE BEEN
5 SHOPPING IT NOW FOR A YEAR

6 Q AND THEY HAVEN'T FOUND ANYONE YET?

7 A UH-UH

8 Q HAVE THEY TOLD YOU DEFINITELY NO OR ARE THEY STILL
9 SHOPPING IT?

10 A THE LAST TIME I CALLED THEM THEY DIDN'T RESPOND

11 Q WHO IS USDA VIA JOHN BICKLEY?

12 A THAT'S THE U S DEPARTMENT OF AGRICULTURE

13 Q AND WHAT INTEREST WOULD THE U S DEPARTMENT OF
14 AGRICULTURE HAVE IN THIS MARINA?

15 A THEY HAVE A PROGRAM THAT WOULD GUARANTEE SEVENTY
16 PERCENT OF THE LOAN, WHICH MAKES THE BANKS MORE LIKELY
17 TO, YOU KNOW, DO THE DEAL

18 Q AND WHAT WAS THEIR RESPONSE?

19 A DEFINITELY

20 Q THEY WILL DO IT?

21 A THEY HAVE GIVEN ME ALL THE VERBAL COMMITMENTS THAT
22 THEY'LL DO IT AND THEY ARE WORKING THROUGH AN
23 ENVIRONMENTAL IMPACT STUDY RIGHT NOW THERE WERE SOME
24 DOCUMENTS THAT YOU PASSED ME EARLIER THAT SPOKE TO THAT
25 AND I HAVE EVERY INDICATION THAT THEY WILL DO IT

1 NOW THEY WILL -- A PART THEY WOULD PLAY WOULD BE IN
2 THE PERMANENT LOAN, THE BUSINESS LOAN THERE IS TWO
3 REQUIREMENTS FOR LENDING HERE ONE IS A CONSTRUCTION
4 LOAN, WHICH IS PRETTY NORMAL AND THEN YOU CONVERT THAT
5 EITHER WITH THE SAME INSTITUTE OR GO OUT TO A DIFFERENT
6 INSTITUTE AND GET A PERMANENT LOAN

7 Q OKAY AND APPALACHIAN COUNCIL OF GOVERNMENTS, DAVE
8 MULLER?

9 A DAVE MULLER

10 Q WHAT IS THE STORY WITH HIM?

11 A SAME THING EXCEPT ON A SMALLER SCALE THEY WILL
12 ACTUALLY GUARANTEE UP TO TWO MILLION DOLLARS AND WE HAD
13 LOTS OF DISCUSSIONS WITH THEM THEY ACTUALLY TAKE THE
14 ROLE -- UNLIKE USDA, THEY'LL TAKE IT AND ALSO TRY TO
15 BROKER IT FOR YOU

16 SO THEY'LL GO TO THEIR OWN SOURCES OF BANKERS, WHICH
17 MAY BE TENNESSEE OR ANYWHERE, AND THEY'LL TRY TO PACKAGE
18 IT UP FOR YOU ON YOUR -- ON YOUR BEHALF THEY'RE ALL
19 ABOUT JOB CREATION IN THE APPALACHIAN REGION THEY'VE
20 BEEN UNSUCCESSFUL

21 Q SO WOULD YOU SAY YOU'RE OPTIMISTIC ABOUT A LONG-TERM
22 LOAN ONCE YOU GET USDA APPROVAL?

23 A I'M OPTIMISTIC THAT WE CAN GET A LONG-TERM LOAN WHEN
24 THE BANKING WORLD CHANGES, I MEAN, RIGHT NOW
25 UNFORTUNATELY NO FAULT OF HIS OTHER THAN THE DELAY THAT

1 WE'VE EXPERIENCED I CERTAINLY HAVE HIGH HOPES THAT
2 BANKERS WILL START LENDING AGAIN I THINK THE USDA WILL
3 MAKE THAT VERY VIABLE

4 Q IF YOU GET THE USDA GUARANTEE WILL YOU GET -- WILL
5 YOU NEED TO ISSUE ADDITIONAL STOCK?

6 A THE PURPOSE FOR ISSUING OR CONTEMPLATING ISSUING
7 ADDITIONAL STOCK WAS TO MAKE UP FOR THE SHORTFALL IN THE
8 RETURN ON INVESTMENT AND IT REALLY DOESN'T RELATE TO, I
9 MEAN, IT INCREASES THE RETURN ON INVESTMENT, WHICH
10 INCREASES THE VIABILITY TO THE BANKS, BUT IT'S -- IF WE
11 HAD THAT FUNDING TOMORROW I WOULD STILL CONTEMPLATE THE
12 NEED FOR THAT TO MAKE UP FOR THE SHORTFALL ON OUR
13 PROFORMAS

14 Q AND YOUR RESOLUTION PART OF -- YOUR USE FOR THIS NEW
15 STOCK YOU WOULD ISSUE IT -- YOU WOULD ISSUE -- IT'S NOT
16 JUST FOR CAPITAL, BUT FOR EMPLOYEES?

17 A NO THE SUGGESTED POTENTIAL USE IS -- WAS FOR
18 ANYTHING TO LESSEN THE CASH AMOUNTS THERE'S X AMOUNT OF
19 CASH THAT'S NOT COMING IN BECAUSE OF WHAT WE THINK WAS A
20 MISHAP IN SOME FASHION WE'VE GOT TO SUPPLANT THAT

21 AND THE WAY YOU SUPPLANT IS BY -- THERE'S TWO OR
22 THREE WAYS YOU CAN BRING NEW CASH IN TO MAKE UP FOR
23 THAT SHORTFALL OR YOU CAN SPEND LESS OF YOUR CASH TO MAKE
24 UP FOR THAT SHORTFALL

25 Q I'M JUST SHOWING YOU UNDER STOCKHOLDERS MEETING

1 RESOLUTION IT SAYS, OFFER EMPLOYEE INCENTIVES

2 A DOES THAT NOT CONSERVE CASH? IF YOU GIVE A BONUS OF
3 CASH DOLLARS, THAT'S ONE WAY TO DO IT OR YOU CAN -- OR
4 I CAN GIVE YOU AN INCENTIVE WITH STOCK OPTIONS

5 Q I'M NOT ARGUING WITH YOU ABOUT THAT I'M JUST
6 SAYING THAT PART OF YOUR USE FOR THIS STOCK WAS FOR
7 EMPLOYEE INCENTIVES, CORRECT?

8 A THEY COULD BE USED FOR -- JUST AS I SAY THERE
9 THOSE ARE THINGS THAT THEY COULD COME UP WITH THAT WOULD
10 CONSERVE CASH

11 Q BUT EMPLOYEE INCENTIVES IS ONE OF THEM?

12 A SURE

13 Q WHICH EMPLOYEES WERE YOU CONTEMPLATING ON?

14 A NONE, I MEAN, ANY EMPLOYEE THAT WOULD BE IN A
15 MANAGEMENT ROLE WOULD HAVE BONUSES OR INCENTIVES BUILT
16 INTO HIS COMPENSATION PLAN AND THOSE ARE USUALLY CASH
17 MR HOWARD THAT'S ALL I HAVE

18 MR HOLLEMAN NOTHING FURTHER FROM ME, YOUR HONOR
19 THE COURT ALL RIGHT THANK YOU, HANNAH YOU CAN
20 STEP DOWN ALL RIGHT MR FOREMAN, LADIES AND GENTLEMEN
21 OF THE JURY, LET'S BREAK FOR LUNCH I'LL ASK YOU TO BE
22 BACK AT ABOUT 2 30 ALL RIGHT SEE YOU THEN DON'T
23 TALK ABOUT IT

24 (WHEREUPON THE JURY EXITED THE COURTROOM AT 1 03 PM)

25 THE COURT WHAT ELSE DO WE HAVE? WE GOT A -- ONE

FREDERICK THOENNES, III - DESIGNATED EXCERPTS BY MR HOLLEMAN 340

1 THE COURT REPORTER SAID I THINK ---

2 THE COURT ALL RIGHT ANY OBJECTION TO JUST

3 PUTTING THAT INTO EVIDENCE? NUMBER 6

4 MR HOLLEMAN IT WAS REFERRED TO

5 MR HOWARD YEAH, THAT'S FINE

6 THE COURT OKAY

7 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2 55

8 PM)

9 THE COURT ALL RIGHT

10 MR HOLLEMAN YOUR HONOR, AS PREVIOUSLY AGREED, WE

11 ACCIDENTALLY FORGOT TO INTRODUCE EXHIBIT 6 SO I'M DOING

12 THAT NOW

13 (WHEREUPON PLAINTIFF'S EXHIBIT 6 WAS MARKED AND

14 ADMITTED INTO EVIDENCE,

15 (WHEREUPON COURT'S EXHIBIT 4 WAS MARKED)

16 MR HOLLEMAN YOUR HONOR, THE FINAL WITNESS IS RICK

17 THOENNES, III, BY WAY OF PREVIOUS SWORN TESTIMONY BY

18 DEPOSITION YOU READY?

19 THE COURT YES, SIR

20 MR HOLLEMAN READY, HANNAH?

21 MS METCALFE YES, SIR

22 (WHEREUPON EXCERPTS OF THE DEPOSITION TESTIMONY OF

23 FREDERICK THOENNES, III, WAS READ INTO THE RECORD)

24 DESIGNATIONS BY MR HOLLEMAN

25 Q OKAY MR THOENNES, DO YOU HAVE ANY EDUCATION

1 BEYOND HIGH SCHOOL?

2 A YES

3 Q WHERE?

4 A CLEMSON UNIVERSITY

5 Q AND WHAT LEVEL DID YOU ACHIEVE AT CLEMSON?

6 A FOUR YEAR

7 Q I'M SORRY?

8 A BS IN MARKETING

9 Q OKAY WHAT DID YOU DO NEXT?

10 A I WENT TO WORK FOR A COMPANY CALLED COPAC

11 Q DID YOU HOLD THE SAME POSITION WITH THEM THE WHOLE
12 TIME YOU WERE THERE?

13 A YES

14 Q AND WHAT DID YOU DO FOR THEM?

15 A SALES

16 Q WHAT WAS YOUR TITLE?

17 A SALES EXECUTIVE

18 Q GO TO PAGE 12 WHY DID YOU LEAVE COPAC?

19 A STARTED A CONSTRUCTION COMPANY

20 Q WHAT WAS THE NAME OF THAT COMPANY?

21 A MARICK

22 Q IS THAT A CORPORATION?

23 A IT'S AN LLC

24 Q DID ANYONE START IT WITH YOU OR DID YOU START IT BY
25 YOURSELF?

1 A MY FATHER AND I

2 Q WHEN YOU STARTED MARICK WHAT WAS YOUR ROLE?

3 A I WAS A PARTNER I HANDLED MOST OF THE MARKETING,
4 SALES, FINANCE

5 Q PAGE 13 HAVE YOU HAD ANY OTHER EMPLOYMENT SINCE
6 1998 OTHER THAN WORKING WITH MARICK?

7 A I'M PARTNERS IN OTHER COMPANIES, BUT NOT AN
8 EMPLOYEE

9 Q PAGE 17 OKAY NOW WHAT OTHER BUSINESSES ARE YOU
10 OPERATING UNDER?

11 A M-GROUP CONSTRUCTION AND DEVELOPMENT

12 Q AND WHAT OTHER BUSINESSES HAVE YOU HAD AN INTEREST
13 IN SINCE 1998?

14 A ONE SOURCE

15 Q WHAT IS ONE SOURCE?

16 A IT'S A CUSTOM CABINET MANUFACTURER

17 Q PAGE 20 WHAT OTHER BUSINESSES SINCE 1998 HAVE YOU
18 BEEN A PARTICIPANT IN?

19 A MARICK MARKETING GROUP

20 Q WHAT IS MARICK MARKETING GROUP?

21 A WE MARKETED AND SOLD REAL ESTATE

22 Q DOES IT STILL OPERATE?

23 A NOT SO MUCH

24 Q THEN ON 21 HAVE YOU BEEN IN ANY OTHER BUSINESSES?

25 A YES, SOURCE IT

1 Q 22 A WHAT SOURCING?

2 A SOURCING WE SOURCE BUILDING MATERIALS

3 Q HAS IT HAD ANY BUSINESS?

4 A NOT REALLY

5 Q DOES IT HAVE ANY EMPLOYEES?

6 A NO

7 Q ANY OTHER BUSINESSES THAT YOU'VE HAD AN INTEREST IN

8 SINCE 1998?

9 A IMK, WHICH DID STONELEDGE, THE LAKE KEOWEE PROJECT

10 Q AND WHAT INTEREST DID YOU HAVE IN THAT?

11 A I HAD TWENTY-FIVE PERCENT

12 Q WAS YOUR FATHER IN THAT BUSINESS TOO?

13 A YES

14 Q PAGE 23 WAS MR ROBERSON IN THAT BUSINESS?

15 A YES

16 Q IS IMK STILL OPERATING?

17 A NO

18 Q 24, DOWN TO LINE 23 HAS MARICK EVER ENTERED INTO A

19 CONSENT JUDGMENT?

20 A YES

21 Q AND WHAT WAS THAT?

22 A A JUDGMENT FOR SOME CARPET THAT WAS PUT IN A HOME

23 Q HOW MUCH WAS THAT JUDGMENT FOR?

24 A I DON'T RECALL EXACTLY PROBABLY AROUND FOUR

25 THOUSAND DOLLARS, MAYBE FOUR OR FIVE THOUSAND DOLLARS

1 Q WHEN DID THAT HAPPEN?

2 A PROBABLY FOUR MONTHS AGO, FIVE MONTHS AGO

3 Q IS THAT JUDGMENT STILL OUTSTANDING?

4 A YEAH

5 Q WHERE IS IT ON FILE?

6 A GREENVILLE

7 Q AND WHO IS THE PARTY THAT HOLDS THE JUDGMENT?

8 A CARPET ONE

9 Q THEN SKIP OVER TO PAGE 35, LINE 4 I'M NOT ASKING
10 FOR -- 35, LINE 4 I'M NOT ASKING FOR EXACT NUMBERS
11 I'M JUST ASKING WHAT WERE THE MAJOR DEBTS THAT YOU WERE
12 CONCERNED ABOUT WHEN YOU EXPLORED BANKRUPTCY?

13 A WELL, WE HAD SOME HOMES, SPEC HOMES, THAT WERE
14 SITTING, YOU KNOW, SOME UNPAID BILLS AS FAR AS MAJOR
15 ONES, IT'S PROBABLY JUST THE HOMES THAT WE HAD WE HAD
16 LARGE SPEC HOMES SITTING

17 Q WHO WERE THE MAJOR CREDITORS YOU WERE CONCERNED
18 ABOUT?

19 A THE BANKS

20 Q WHICH BANKS?

21 A GREENVILLE FIRST, PEOPLES AND BB&T

22 Q AND THEN WE SKIP OVER TO PAGE 37, LINE 9 I'M
23 SORRY I'M WRONG ABOUT THAT SKIP OVER TO PAGE 36, LINE
24 5 HAVE YOU HAD A DISPUTE WITH CHAD ODOM?

25 A YEAH

1 Q AND WHAT'S THE NATURE OF THAT DISPUTE?

2 A THERE'S -- YOU PROBABLY NEED TO ASK MY FATHER ABOUT

3 THAT HE'S BEEN DEALING WITH IT MORE THAN I HAVE I

4 DON'T -- I COULDN'T -- I DON'T WANT TO SPECULATE

5 Q WHAT DOES IT INVOLVE?

6 A SOME UNPAID BILLS

7 Q RELATED TO?

8 A ON HIS HOME

9 Q SO MARICK BUILT HIS HOME?

10 A YES

11 Q AND DOES THAT MEAN THERE ARE SUBS TO MARICK OR

12 SUPPLIERS TO MARICK WHO HAVE NOT BEEN PAID?

13 A UH, YES

14 Q ARE ANY OF THE JUDGMENTS YOU'VE LISTED RELATED TO

15 CHAD ODOM?

16 A NO

17 Q WHAT PROJECTS WERE THOSE JUDGMENTS ON?

18 A IT WAS A HOME IN COBBLESTONE

19 Q WHO OWNS THE HOUSE?

20 A I DON'T KNOW PEOPLES NATIONALS -- PEOPLES NATIONAL

21 BANK TOOK A DEED IN LIEU ON THAT HOME

22 Q A DEED IN LIEU OF FORECLOSURE ON MARICK?

23 A YES

24 Q HAS MARICK GIVEN ANY OTHER DEEDS IN LIEU OF

25 FORECLOSURE OTHER THAN THAT ONE?

1 A YES

2 Q HOW MANY?

3 A THREE

4 Q THIS ONE WAS TO PEOPLES NATIONAL WHO WERE THE

5 OTHER TWO TO?

6 A BB&T, GREENVILLE FIRST AND I'M TRYING TO REMEMBER

7 THE BANK

8 Q OKAY SO THERE ARE A TOTAL OF FOUR DEEDS IN LIEU OF

9 FORECLOSURE?

10 A I THINK SO

11 Q NOW PAGE 39, LINE 20 LET ME DIRECT YOUR ATTENTION

12 TO EXHIBIT 20, WHICH IS EXHIBIT 2 IN THE TRIAL

13 (WHEREUPON THE ATTORNEYS WERE CONSULTING)

14 Q OH, YOU'RE RIGHT THAT'S CORRECT EXHIBIT 1

15 SORRY THIS IS A STOCK PURCHASE AGREEMENT DATED MAY 29,

16 2007 HAVE YOU SEEN THAT BEFORE?

17 A YES

18 Q AND IS THAT YOUR SIGNATURE ON THE LAST PAGE?

19 A YES

20 Q PAGE 40 DID YOU READ THE DOCUMENT AT THE TIME

21 BEFORE YOU SIGNED IT?

22 A YES

23 Q ALL RIGHT LET ME DIRECT YOU TO PARAGRAPH 5 OF THE

24 AGREEMENT IT SAYS THAT YOU AND YOUR FATHER WILL EXECUTE

25 AN AGREEMENT WITH WARPATH DEFINING YOUR DUTIES AND THEN

1 IT DESCRIBES WHAT THEY ARE HAVE YOU ALL EXECUTED AN
2 AGREEMENT WITH WARPATH?

3 A I DON'T THINK SO

4 Q GO TO PAGE 45, LINE 2 I GUESS YOU'VE NOT EXECUTED
5 ANY LOAN DOCUMENTS, IS THAT RIGHT?

6 A NO

7 Q AND HAVE YOU DONE ANY DEVELOPMENT WORK WITH RESPECT
8 TO WARPATH?

9 A I HAVE NOT

10 Q GO TO PAGE 46 DO YOU REMEMBER THAT AT THE
11 SHAREHOLDERS MEETING IN 2008 THERE WAS A RESOLUTION TO
12 APPROVE THE ISSUANCE OF NINE HUNDRED THOUSAND ---

13 A YES

14 Q --- MORE SHARES OF WARPATH?

15 A YES

16 Q AND THEN THE SAME PAGE HAVE YOU SEEN THE ARTICLES
17 OF INCORPORATION OF WARPATH?

18 A I'M SURE I HAVE

19 Q LET ME SHOW YOU A DOCUMENT MARKED EXHIBIT 48, WHICH
20 I THINK IS EXHIBIT 3 HERE AND THE FIRST TWO PAGES OF
21 THAT ARE THE ARTICLES OF INCORPORATION OF WARPATH HAVE
22 YOU EVER SEEN THOSE TWO PAGES?

23 A I'M SURE I PROBABLY HAVE

24 Q DO YOU SEE UNDER 3A ON THE FIRST PAGE?

25 A ON THE FIRST PAGE

1 Q PAGE ONE, 3A?

2 A UH-HUH

3 Q IT SAYS THE CORPORATION IS AUTHORIZED TO ISSUE A
4 SINGLE CLASS OF SHARES THE TOTAL NUMBER OF SHARES
5 AUTHORIZED IS ONE HUNDRED THOUSAND

6 A OKAY

7 Q DO YOU KNOW HAVE THE ARTICLES OF INCORPORATION OF
8 WARPETH EVER BEEN CHANGED TO AUTHORIZE THE ISSUANCE OF
9 MORE THAN A HUNDRED THOUSAND SHARES?

10 A I DON'T KNOW

11 Q PAGE 49 AT THE SHAREHOLDERS MEETING OF MAY 2008
12 MR BALLARD WAS NOT ELECTED A DIRECTOR, IS THAT CORRECT?

13 A I GUESS SO

14 Q DO YOU REMEMBER THAT? DO YOU REMEMBER WHO WAS
15 ELECTED DIRECTORS AT THAT MEETING?

16 A I THINK SO I GUESS IT WAS ME, AND MY FATHER AND
17 TIM ROBERSON

18 Q OKAY WHY WAS MR BALLARD NOT ELECTED A DIRECTOR?

19 A I DON'T RECALL

20 Q YOU DON'T HAVE ANY MEMORY OF THAT?

21 A NO

22 Q YOU DON'T REMEMBER ANY DISCUSSION OF THAT BETWEEN
23 YOU OR YOUR FATHER OR MR ROBERSON?

24 A NO

25 Q BEFORE OR SINCE?

1 A NO

2 Q ON PAGE 53 OKAY AND OTHER THAN STONELEDGE AND
3 WARPATH HAVE YOU HAD ANY OTHER BUSINESS DEALINGS WITH TIM
4 ROBERSON?

5 A WELL, THE CLUBHOUSE

6 Q AND THE CLUBHOUSE

7 A WE'RE PARTNERS IN THE GATEWAY PROJECT

8 Q WHAT ROLE DO YOU PLAN TO HAVE IN GATEWAY?

9 A SAME ROLE THAT I HAVE IN WARPATH, WHICH IS DESIGN,
10 SALES AND MARKETING

11 Q PAGE 54 BEFORE THE AGREEMENT WAS SIGNED DID YOU
12 TALK WITH DUKE POWER ABOUT THE PROJECT?

13 A ME, PERSONALLY?

14 Q YES

15 A NO

16 Q DID YOUR FATHER TALK TO THEM?

17 A I DON'T REMEMBER

18 Q DID YOU GO TO ANY MEETING TO ANYONE WITH DUKE POWER?

19 A BEFORE WE SIGNED THE ---

20 Q YES

21 A NOT THAT I RECALL

22 Q AND DO YOU KNOW IF YOUR FATHER DID?

23 A I DON'T KNOW

24 Q DID YOU MEET WITH ANYONE FROM PICKENS COUNTY BEFORE
25 YOU SIGNED THE AGREEMENT?

1 A I DID NOT

2 Q DO YOU KNOW IF YOUR FATHER DID?

3 A I DON'T KNOW

4 Q DID YOU TALK WITH ANYONE FROM PICKENS COUNTY BEFORE
5 YOU SIGNED THE AGREEMENT?

6 A I DID NOT

7 Q DO YOU KNOW IF YOUR FATHER DID?

8 A I DON'T KNOW

9 Q SO YOU HAVE NEVER DISCUSSED WITH YOUR FATHER ANY
10 DISCUSSIONS HE MAY HAVE HAD WITH DUKE POWER OR PICKENS
11 COUNTY?

12 A I'M PRETTY SURE HE DID, BUT I DON'T KNOW FOR
13 CERTAIN I CAN'T REMEMBER EXACTLY WHAT HE DID

14 Q 56 DID YOU MEET WITH ANYONE ABOUT THIS PROJECT
15 OTHER THAN YOUR FATHER AND MR ROBERSON AND MR BALLARD
16 PRIOR TO SIGNING THE AGREEMENT?

17 A I WOULD GUESS THAT WE MET WITH OUR ATTORNEY, BUT I
18 DON'T RECALL

19 Q AND YOUR ATTORNEY WAS JIM FAYSSOUX?

20 A YES

21 Q ARE YOU FAMILIAR WITH THE CONCEPT IN CORPORATE
22 TRANSACTIONS OF DUE DILIGENCE?

23 A YES

24 Q AND TELL ME WHAT YOU UNDERSTAND THAT PHRASE TO MEAN

25 A DUE DILIGENCE IS FINDING OUT ANY PERTINENT

1 INFORMATION THAT WE NEED IN ORDER TO MAKE A DECISION ON

2 MAKING A PURCHASE

3 Q DID YOU PARTICIPATE IN DOING ANY DUE DILIGENCE

4 BEFORE YOU SIGNED THE AGREEMENT?

5 A NO

6 Q DID YOUR FATHER DO THAT DUE DILIGENCE?

7 A YES

8 Q AND DID MR ROBERSON DO THAT DUE DILIGENCE?

9 A I BELIEVE SO, YES

10 Q BUT YOU DID NOT PARTICIPATE IN THAT?

11 A THAT'S CORRECT

12 Q NOW HAS YOUR FATHER EVER DEALT WITH PERMITTING?

13 A YES

14 Q HAS HE EVER DEALT WITH DHEC?

15 A YES

16 Q HAS HE EVER DEALT WITH THE CORP OF ENGINEERS?

17 A I THINK SO

18 Q DO YOU CONSIDER HIM AN EXPERT IN PERMITTING?

19 A SURE

20 Q WHAT DUE DILIGENCE DID YOU CONSIDER WAS NECESSARY

21 BEFORE YOU ALL ENTERED INTO A STOCK PURCHASE AGREEMENT?

22 A I LET DAD AND TIM HANDLE THAT

23 Q AND THEN SKIP OVER TO PAGE 63 WELL, IF YOU LOOK AT

24 PARAGRAPH 3 OF THE AGREEMENT, DO YOU SEE THAT?

25 A YES

1 Q YOU SEE THE LAST SENTENCE THAT SAYS FINAL PERMITS
2 MUST BE OBTAINED TO MOVE FORWARD?

3 A YES

4 Q YOU SEE THAT?

5 A UH-HUH

6 Q SO THE AGREEMENT INDICATED THAT FINAL PERMITS HAD
7 NOT YET BEEN OBTAINED, IS THAT CORRECT?

8 A CORRECT

9 Q 64 BUT YOU KNEW FROM THE AGREEMENT ANYWAY THAT ---

10 A I SEE THAT, YES

11 Q --- FINAL PERMITS HAD NOT BEEN OBTAINED, CORRECT?

12 A YES, I SEE THAT

13 Q AND I GUESS IF YOU LOOK AT THAT PORTION OF THE
14 AGREEMENT AGAIN, THE SAME PARAGRAPH, IT DOES NOT CONTAIN
15 ANY TIME-LINE AS TO WHEN THE AGREEMENT SAYS THE PERMITS
16 WILL BE OBTAINED, IS THAT CORRECT?

17 A I DON'T SEE A TIME-LINE, NO

18 Q AND THEN 65 WELL, PARAGRAPH 3 -- YOU DO NOT HAVE
19 THE FINAL PERMITS YET, IS THAT RIGHT?

20 A THAT'S CORRECT

21 Q AND PARAGRAPH 3 SAYS FINAL PERMITS MUST BE OBTAINED,
22 CORRECT?

23 A THAT'S CORRECT

24 Q AND, IN FACT, IF YOU LOOK AT PARAGRAPH 4 DOES
25 PARAGRAPH 4 INDICATE THAT IF THE MARINA DOCK PERMITS PER

1 THE CONCEPTUAL PLAN CAN'T BE OBTAINED A PAYMENT WILL BE
2 REFUNDED? AT THE END OF PARAGRAPH 4

3 A UH-HUH

4 Q SO THE AGREEMENT CONTEMPLATED THAT IT WAS POSSIBLE
5 THAT PERMITS MIGHT NOT BE OBTAINED, IS THAT RIGHT?

6 A I GUESS YOU COULD INTERPRET IT AS THAT, YES

7 Q AND THEN 67 DID YOU EVER READ THE LEASE WITH DUKE
8 POWER?

9 A YEAH, I'M SURE I DID

10 Q OKAY DID YOU EVER READ THE CONCEPTUAL PLAN THAT
11 WAS ATTACHED TO THE LEASE?

12 A YES

13 Q ARE YOU AWARE THAT THE CONCEPTUAL PLAN ATTACHED TO
14 THE LEASE SAYS ONE HUNDRED TO TWO HUNDRED BOAT SLIPS?

15 A IT DOES SAY THAT, BUT, YOU KNOW, IT ALSO STATES THAT
16 THE ONE HUNDRED TO TWO HUNDRED SLIPS AS DEMAND INDICATES

17 Q DOES THE CONCEPTUAL PLAN SAY THAT YOU CAN HAVE TWO
18 HUNDRED SLIPS?

19 A I'D HAVE TO LOOK AT IT

20 Q YOU DON'T REMEMBER ONE WAY OR THE OTHER RIGHT NOW?

21 A AS FAR AS I RECALL IT SAID A HUNDRED TO TWO HUNDRED
22 SLIPS AS DEMAND INDICATES

23 Q PAGE 69 LET ME SHOW YOU WHAT'S BEEN MARKED EXHIBIT
24 6 BEFORE AND THAT'S PART OF EXHIBIT 2, THE LEASE IS
25 THAT THE CONCEPTUAL PLAN YOU WERE REFERRING TO EARLIER?

1 A APPEARS TO BE

2 Q LOOK AT PAGE 15 OF THE CONCEPTUAL PLAN

3 A OKAY

4 Q AND DOES THAT INDICATE THAT THERE WOULD BE DRY-DOCK

5 BOAT STORAGE WITH ONE HUNDRED TO TWO HUNDRED BOATS IN

6 PARAGRAPH B?

7 A YES

8 Q AND IF YOU'LL LOOK AT PARAGRAPH 16, I'M SORRY, PAGE

9 16, PARAGRAPH E DOES IT SAY THAT THERE WILL BE SLIPS ON

10 EACH SIDE TO BE DEVELOPED AS DEMAND INDICATES, BUT NOT TO

11 EXCEED SPACE FOR ONE HUNDRED TO TWO HUNDRED BOATS?

12 A YES

13 Q AND IS THAT THE PHRASE YOU WERE REFERRING TO

14 EARLIER?

15 A UH-HUH

16 Q AND SO THE CONCEPTUAL PLAN DID NOT GUARANTEE TWO

17 HUNDRED BOATS, IS THAT CORRECT?

18 A I TAKE IT AS IT SAYS, WE COULD HAVE TWO HUNDRED

19 BOATS

20 Q IT SAYS ONE HUNDRED TO TWO HUNDRED, DOES IT NOT?

21 A IT DOES BUT WE DETERMINED THAT THE DEMAND WOULD BE

22 THERE FOR TWO HUNDRED BOATS

23 Q DID DUKE POWER AGREE WITH YOU?

24 A NOPE

25 Q AND THIS LEASE IS BETWEEN WARPATH AND DUKE POWER,

1 CORRECT?

2 A YES BUT THIS IS A CONCEPTUAL PLAN, THIS ISN'T A
3 LEASE

4 Q WELL, THE CONCEPTUAL PLAN IS ATTACHED TO THE LEASE,
5 IS IT NOT?

6 A WELL, IT COULD BE

7 Q AND, IN FACT, IT'S INCORPORATED IN THE LEASE, ISN'T
8 IT?

9 A YES

10 Q OKAY AND THEN IF YOU LOOK AT PAGE 23 OF THAT SAME
11 DOCUMENT

12 A OKAY

13 Q AND DOES THAT INDICATE UNDER BOAT SLIPS ONE HUNDRED
14 TO TWO HUNDRED BOATS ON PAGE 23 OF THE LEASE?

15 A YES

16 Q DUKE POWER HAS TAKEN THE POSITION SINCE THE
17 AGREEMENT WAS SIGNED THAT THEY WILL APPROVE ONLY ONE
18 HUNDRED AND TWO SLIPS, IS THAT CORRECT?

19 A CORRECT

20 Q HAVE YOU DISPUTED THAT WITH DUKE POWER?

21 A WE'VE TRIED, YES

22 Q AND WHAT DID YOU DO TO TRY TO DISPUTE IT WITH DUKE
23 POWER?

24 A WELL, WE TOOK OUR DESIGN UP AND MET WITH THEM AND
25 TRIED TO GET THEM TO APPROVE IT

1 Q AND WHO MET WITH DUKE POWER?

2 A THE MEETING I WENT TO?

3 Q YES

4 A THERE WERE A BUNCH OF DUKE POWER PEOPLE THERE

5 Q WHO FROM WARPATH?

6 A ANDY, MYSELF AND TIM ROBERSON

7 Q AND WAS THIS MEETING IN CHARLOTTE?

8 A YES

9 Q AND WHO SPOKE AT THAT MEETING FROM WARPATH?

10 A I THINK ALL OF US SPOKE

11 Q DID ANDY SPEAK?

12 A I BELIEVE SO

13 Q DO YOU REMEMBER THE SUBSTANCE OF WHAT YOU SAID?

14 A I KNOW WE WEREN'T HAPPY ABOUT THE FACT THAT THEY

15 WOULDN'T APPROVE THE -- THEY BASICALLY SHOT DOWN THE

16 DESIGN WE BROUGHT UP THERE WITH US PRETTY IMMEDIATELY

17 WHEN WE PRESENTED IT

18 Q HAVE YOU CONSIDERED FILING SUIT AGAINST DUKE POWER

19 ALLEGING THAT THEY HAD BREACHED THIS LEASE?

20 A I DON'T THINK SO

21 Q THE LEASE IS BETWEEN WARPATH AND DUKE POWER,

22 CORRECT?

23 A YES

24 Q PAGE 74 OKAY YOU HAD A CHANCE TO READ THE

25 CONCEPTUAL PLAN AND THE LEASE BEFORE YOU SIGNED THE

1 AGREEMENT, CORRECT?

2 A YES

3 Q AND THE AGREEMENT SPECIFICALLY REFERENCES THE
4 CONCEPTUAL PLAN, CORRECT?

5 A I BELIEVE SO

6 Q PAGE 76 DO YOU THINK THE POSITION DUKE POWER IS
7 TAKING IS INCONSISTENT WITH WHAT IS IN THE CONCEPTUAL
8 PLAN?

9 A YES BECAUSE IN THE CONCEPTUAL PLAN ON PAGE 16E IT
10 SAYS THAT WE COULD GET A HUNDRED TO TWO HUNDRED BOATS AS
11 DEMAND INDICATES AND DUKE POWER IS NOT ALLOWING THAT

12 Q LET ME SHOW YOU WHAT WAS PREVIOUSLY MARKED AS
13 EXHIBIT 9 AND YOU SEE ON THE FRONT OF IT THAT'S THE
14 LEASE AGREEMENT DATED JANUARY 3RD, 2007 BETWEEN DUKE
15 ENERGY AND WARPATH DEVELOPMENT? AND THAT'S EXHIBIT 2 TO
16 THE TRIAL

17 A YES

18 Q AND IF YOU LOOK AT PARAGRAPH 4, WHICH IS ON THE
19 SECOND PAGE OF THE LEASE

20 A OKAY

21 Q DO YOU SEE IT SAYS THE LEASED PREMISES SHALL BE USED
22 BY LESSEE FOR DEVELOPMENT, OPERATION AND MAINTENANCE OF A
23 PUBLIC PARK AND/OR PUBLIC RECREATIONAL AREA AS SHOWN AND
24 DESCRIBED IN THE CONCEPTUAL PLAN SUBMITTED BY LESSEE,
25 WHICH IS ATTACHED HERETO AS EXHIBIT B AND INCORPORATED

1 HEREIN BY REFERENCE?

2 A OKAY

3 Q AND THEN IF YOU LOOK AT WHAT'S ATTACHED AND IF YOU
4 LOOK AT IT, IT'S BATE STAMP NUMBERED SO LOOK AT APB99
5 THE STAMP NUMBER IS AT THE BOTTOM OF THE PAGE

6 A OKAY

7 Q DO YOU SEE THAT IS THE CONCEPTUAL PLAN YOU WERE
8 LOOKING AT EARLIER?

9 A YES

10 Q AND IF YOU WILL LOOK AGAIN AT PAGE 16 OF THAT
11 DOCUMENT

12 A OKAY

13 Q AND DO YOU SEE IT'S THE SAME DOCUMENT YOU WERE
14 LOOKING AT BEFORE?

15 A YES

16 Q AND IT HAS THE SAME REFERENCE, NOT TO EXCEED SPACE
17 FOR A HUNDRED TO TWO HUNDRED BOATS

18 A CORRECT

19 Q SO I GUESS MY QUESTION IS IS IT YOUR POSITION THAT
20 THE POSITION DUKE POWER IS TAKING IS INCONSISTENT WITH
21 THE LEASE AND THE CONCEPTUAL PLAN ATTACHED TO THE LEASE?

22 A I SAY IT'S INCONSISTENT WITH THE CONCEPTUAL PLAN
23 ATTACHED TO THE LEASE

24 Q ALL RIGHT NOW LOOK AT EXHIBIT 8 DID YOU SEE THIS
25 EMAIL? OH, IT'S PREVIOUSLY BEEN MARKED AS EXHIBIT 11 TO

1 THE TRIAL DID YOU SEE THIS EMAIL?

2 A IT'S ADDRESSED TO ME SO I'M SURE I DID

3 Q AND DO YOU REMEMBER IT?

4 A NO

5 Q IF YOU LOOK AT THE THIRD PARAGRAPH WHICH BEGINS I'M
6 AT A LOSS AS TO WHAT WE NEED TO OFFER ANDY DO YOU SEE
7 THAT?

8 A UH-HUH

9 Q I DON'T THINK HE CAN CONTROL THIS ALL INDICATIONS
10 ARE HE IS IN OVER HIS HEAD DO YOU SEE THAT PHRASE?

11 A UH-HUH

12 Q DO YOU THINK ANDY WAS IN OVER HIS HEAD?

13 A OH, I DON'T KNOW IF HE WAS OR NOT

14 Q SO THIS WAS -- IT'S YOUR FATHER'S OPINION, BUT YOU
15 DIDN'T HAVE AN OPINION ON THAT?

16 A NO IT APPEARS AS THOUGH THAT'S MY FATHER'S
17 OPINION

18 Q AND DO YOU SEE HE SAYS BELOW THERE, WE NEED A
19 MINIMUM OF THIRTY DAYS TO SATISFY, AND HE LISTS THE DUKE
20 DOCKS, AND THE FERC DOCKS AND PICKENS COUNTY ON THE
21 THINGS THAT NEED TO BE SATISFIED?

22 A YES

23 Q AS WELL AS SEWER AND WATER?

24 A YES

25 Q SO IS IT CORRECT TO SAY THAT BEFORE YOU ENTERED INTO

1 THE SHAREHOLDER AGREEMENT YOU KNEW THAT YOU ALL HAD TO
2 SATISFY THE ISSUE OF THE DUKE DOCKS BEFORE YOU ENTERED
3 INTO THE AGREEMENT?

4 A I DON'T KNOW WHAT HE WAS TRYING TO SATISFY WITH DUKE
5 AS FAR AS THE DOCKS GO I DON'T KNOW WHAT HE WAS
6 REFERENCING I DON'T KNOW IF IT WAS PERMITS OR WHAT

7 Q BUT YOU KNEW THERE WAS SOMETHING TO DO WITH THE DUKE
8 DOCKS?

9 A APPEARS SO, UH-HUH

10 Q THAT HAD TO BE SATISFIED BEFORE YOU ENTERED INTO THE
11 AGREEMENT, IS THAT CORRECT?

12 A CORRECT

13 Q PAGE 80 LET ME SHOW YOU WHAT WAS PREVIOUSLY MARKED
14 AS EXHIBIT 10 AND IT'S PREVIOUSLY BEEN MARKED AS
15 EXHIBIT 8 HAVE YOU EVER SEEN THIS STRING OF EMAILS?

16 A I'M SURE I SAW IT, BUT I CAN'T RECALL READING IT

17 Q ALL RIGHT IF YOU COULD LOOK AT THE FIRST EMAIL IN
18 THAT STRING AT THE BOTTOM

19 A UH-HUH

20 Q I'M SORRY IT'S ON PAGE 2 OF 2 IT'S ON THE SECOND
21 PAGE CAN YOU SEE -- I GUESS THAT'S YOUR FATHER SENDING
22 THE EMAIL TO TIM ROBERSON AND IT'S COPIED TO YOU

23 A YES

24 Q AND THEN ON PAGE 81 IF YOU LOOK AT THE -- LOOK --
25 THEN IF YOU LOOK, THE NEXT EMAIL IS BACK FROM MR

1 ROBERSON TO RICK IS THAT YOUR FATHER OR TO YOU?

2 A MUST BE TO MY FATHER

3 Q OKAY DO YOU REMEMBER SEEING THAT EMAIL?

4 A THE ONE THAT SAYS -- ARE WE LOOKING AT THE ONE ON
5 THE FIRST PAGE?

6 Q IT SAYS THE NUMBERS LOOK GOOD AS IS

7 A YEAH

8 Q OKAY DO YOU REMEMBER SEEING THAT?

9 A I DON'T RECALL I MEAN, I'M SURE I SAW THIS, BUT I
10 DON'T RECALL

11 Q IT SAYS THE REALITY IS THE LOAN MIGHT BE SIXTY
12 PERCENT EQUITY REQUIRED DO YOU SEE THAT?

13 A YES

14 Q PAGE 82 AND IF YOU LOOK AT THE TOP EMAIL I GUESS
15 IT'S FROM YOUR FATHER TO YOU AND MR ROBERSON DO YOU
16 SEE THAT?

17 A UH-HUH

18 Q AND IT SAYS I DON'T BELIEVE WE CAN GIVE ANDY MUCH
19 UNTIL ALL PERMITS AND APPROVALS PROVE TO BE REAL DO YOU
20 SEE THAT PHRASE?

21 A YES

22 Q SO DO YOU REMEMBER REALIZING BEFORE YOU SIGNED THE
23 AGREEMENT THAT YOU ALL DID NOT KNOW WHETHER ALL THE
24 PERMITS AND APPROVALS WOULD END UP PROVING TO BE REAL OR
25 NOT?

1 A THAT'S WHAT APPEARS TO BE IN THIS EMAIL

2 Q DID YOU PUT ANY CASH INTO THE DEAL?

3 A NO

4 Q SO YOUR INTEREST IN THE DEAL WAS BASED ON THE FACT
5 THAT YOU WOULD WORK ON IT AFTER YOU ENTERED INTO THE
6 SHAREHOLDERS AGREEMENT?

7 A CORRECT

8 Q DO YOU REMEMBER THINKING IT WAS A GOOD DEAL, THAT
9 YOU ALL COULD SELL AFTER A COUPLE OF YEARS FOR A GOOD
10 PROFIT?

11 A I WAS HOPING

12 Q 83 LET ME SHOW YOU EXHIBIT 12 AND THAT'S OUR
13 EXHIBIT 14 THAT EXHIBIT IS AN EMAIL FROM MR ROBERSON
14 TO MR BALLARD AND I BELIEVE IT'S COPIED TO YOU, IS
15 THAT CORRECT?

16 A YES

17 Q DO YOU REMEMBER THIS EMAIL?

18 A NOT REALLY, NO

19 Q AT THE BEGINNING HE SAYS TO MR BALLARD THAT YOU
20 HAVE DONE A WONDERFUL JOB OF SECURING A STRONG LEASE FOR
21 THE PROPOSED PROJECT DO YOU AGREE WITH THAT STATEMENT?

22 A YES

23 Q AND HE SAYS IT'S OBVIOUS THAT FOR THE LAST FEW YEARS
24 THAT MR BALLARD HAS POURED HIMSELF INTO TURNING HIS
25 VISION INTO A FEASIBLE BUSINESS VENTURE DO YOU AGREE

1 WITH THAT STATEMENT?

2 A SURE YES

3 Q 84 LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT

4 13 AND THAT'S OUR EXHIBIT 15 IN THE TRIAL THIS IS AN

5 EMAIL FROM MR BALLARD TO YOU, I GUESS, YOUR FATHER --

6 TO, I GUESS, YOUR FATHER DID YOU EVER SEE THIS?

7 A HE ADDRESSED THIS TO RICK, RICK AND TIM

8 Q THAT'S ME AND THEN ---

9 A SORRY

10 Q --- YOUR ANSWER IS?

11 A I PROBABLY DID SEE THIS

12 Q OKAY THE SECOND PAGE IS A PROPOSAL FROM MR

13 BALLARD IN MAY OF 2007 PRIOR TO THE SHAREHOLDER

14 AGREEMENT, IS THAT RIGHT?

15 A THAT'S WHAT IT APPEARS

16 Q OKAY ITEM 1 REFERENCES A MEETING WITH DUKE POWER,

17 SENECA AND PICKENS COUNTIES TO REASSURE YOU THAT MY

18 ASSESSMENTS ARE CORRECT, WAS THAT RIGHT?

19 A CAN YOU SAY THAT AGAIN? I'M SORRY

20 Q IF YOU LOOK AT ITEM 1 ON MR BALLARD'S LIST HE SAYS

21 WE MEET WITH DUKE POWER AND SENECA AND PICKENS COUNTIES

22 TO REASSURE YOU THAT MY ASSESSMENTS ARE CORRECT, IS THAT

23 RIGHT?

24 A YES, IT SAYS THAT

25 Q SO IS IT TRUE THAT PRIOR TO SIGNING THE SHAREHOLDER

1 AGREEMENT YOU KNEW THAT YOU SHOULD MEET WITH DUKE POWER
2 AND PICKENS COUNTY TO REASSURE YOU CONCERNING MR
3 BALLARD'S ASSESSMENTS?

4 A I DON'T KNOW THAT WAS, AGAIN, DAD'S ROLE

5 Q 86 IF YOU LOOK AT PARAGRAPH 1 OF THE STOCK
6 PURCHASE AGREEMENT IT SAYS THE GROUP WILL PAY TO BALLARD
7 UPON CLOSING THE SUM OF ONE MILLION DOLLARS IN EXCHANGE
8 FOR TWENTY THOUSAND SHARES OF BALLARD'S FORTY THOUSAND
9 SHARES, IS THAT CORRECT?

10 A YES

11 Q AND THEN IT SAYS AND WILL RECEIVE FROM THE
12 CORPORATION ADDITIONAL SHARES, IS THAT CORRECT?

13 A YES

14 Q LET ME SHOW YOU EXHIBIT 14 DO YOU REMEMBER THIS
15 EMAIL DATED MARCH 2ND, 2007 FROM YOUR FATHER TO MR
16 ROBERSON, AND IT APPEARS COPIED TO YOU? AND THAT'S OUR
17 EXHIBIT 16 PREVIOUSLY ENTERED

18 A I DON'T REMEMBER THE EMAIL, BUT I'M SURE I SAW IT

19 Q ALL RIGHT AND UNDER ITEM 5 HE SAYS I HOPE HE,
20 BEING MR BALLARD, UNDERSTANDS THE THRESHOLD FOR US TO
21 KNOW WE CAN GET PERMITS IS FAIRLY HIGH DO YOU SEE THAT
22 STATEMENT?

23 A YES

24 Q AND WERE YOU AND MR ROBERSON RELYING ON YOUR FATHER
25 TO EVALUATE THE PERMITS?

1 A YES

2 Q PAGE 88 LET ME SHOW YOU WHAT'S PREVIOUSLY BEEN
3 MARKED EXHIBIT 17 THIS IS AN EMAIL FROM TIM ROBERSON,
4 MAY 24, 2007 SENT BEFORE THE AGREEMENT DO YOU KNOW IF
5 YOU'VE EVER SEEN THIS ONE?

6 A I DON'T RECALL SEEING IT

7 MR HOLLEMAN WE WOULD MOVE THIS INTO ADMISSION --
8 EVIDENCE AS EXHIBIT 22, YOUR HONOR

9 THE COURT ANY OBJECTION?

10 MR HOWARD I DON'T THINK SO I'M TRYING TO READ
11 IT

12 MR HOLLEMAN IT WAS DEPOSITION EXHIBIT 17
13 (WHEREUPON THE ATTORNEYS WERE CONSULTING)

14 MR HOWARD THAT'S FINE NO OBJECTION
15 (WHEREUPON PLAINTIFF'S EXHIBIT 22 WAS MARKED AND
16 ADMITTED INTO EVIDENCE)

17 Q AND IT SAYS AT THE BEGINNING, WE NEED WORDING TO
18 INCLUDE THE REVERSAL OF AGREEMENT, RE THE FACT THAT IF
19 PERMITS ARE NOT RECEIVED DO YOU SEE THAT?

20 A UH-HUH

21 Q SO IS IT CORRECT TO SAY THAT YOU ALL KNEW BEFORE YOU
22 ENTERED INTO THE AGREEMENT THAT PERMITS MIGHT NOT BE
23 RECEIVED?

24 A I GUESS YOU COULD SAY THAT, YES

25 Q NOW LET ME SHOW YOU WHAT'S BEEN MARKED EXHIBIT 18

1 AND THAT IS OUR 18 TOO THIS IS A STRING OF EMAILS, I
2 GUESS, ON THE DAY THE AGREEMENT WAS SIGNED, THE MORNING
3 BEFORE IT WAS SIGNED DO YOU REMEMBER SEEING THESE
4 EMAILS?

5 A I DON'T RECALL I'M SURE I DID SEE THEM

6 Q AND THEY'RE COPIED TO YOU, IS THAT RIGHT?

7 A YES

8 Q IF YOU LOOK AT PAGE 3 THERE ARE COMMENTS FROM TIM
9 ROBERSON WELL, LOOK AT THE SECOND PAGE AND IT'S DATE
10 STAMPED ---

11 A OKAY

12 Q DOES THAT INDICATE THAT MESSAGE WAS FORWARDED FROM
13 TIM ROBERSON TO YOU OR IS THAT TO YOUR FATHER? I GUESS
14 IT'S TO YOUR FATHER AND TO YOU

15 A WHICH ONE ARE WE LOOKING AT?

16 Q AT THE BOTTOM OF PAGE 539

17 A WHERE IT SAYS FORWARDED MESSAGE FROM TIM ROBERSON

18 Q YEAH, IS THAT FORWARDED TO ---

19 A IT APPEARS AS THOUGH THAT WAS FORWARDED TO ME AS
20 WELL

21 Q AND IF YOU LOOK ON THE NEXT PAGE MR ROBERSON SAYS,
22 QUOTE, PARAGRAPH 3, I DON'T THINK ANDY HOLDS NECESSARY
23 PERMITS, BUT CONVERSATIONS FROM REGULATORY AUTHORITIES
24 INDICATE THAT PERMITS WILL BE ISSUED

25 A UH-HUH

1 Q PAGE 90 SO DOES THIS INDICATE YOU ALL KNEW MR

2 BALLARD DID NOT HAVE THE NECESSARY PERMITS?

3 A APPEARS AS SO

4 Q I'LL SHOW YOU EXHIBIT 24 AND WE WOULD -- THAT'S

5 ALREADY BEEN ADMITTED AS EXHIBIT 6 HAVE YOU SEEN THAT

6 BEFORE? THAT'S AN EMAIL FROM MR ROBERSON TO DUKE POWER

7 I THINK IT'S COPIED TO YOU

8 A OKAY

9 Q DO YOU REMEMBER THIS EMAIL?

10 A I DON'T RECALL I'M SURE I SAW IT

11 Q DO YOU -- ALL RIGHT DO YOU SEE IN THE SECOND

12 SENTENCE HE SAYS TO SCOTT JOLLEY AT DUKE POWER, WE

13 UNDERSTAND YOU HAVE OUR BEST INTEREST AT HEART AS YOU

14 GUIDE US TOWARD AN ACCEPTABLE SOLUTION, IS THAT CORRECT?

15 A UH-HUH, YES

16 Q AND THEN HE SAYS, I BELIEVE WE HAVE ADDRESSED YOUR

17 CONCERNS, IS THAT RIGHT?

18 A YES

19 Q AND LET'S LOOK AT THE FOURTH BULLET

20 A OKAY

21 Q HE SAYS WITH SOME REWORKING OF DRY-STACK DOCKS WE

22 HAVE BEEN ABLE TO ADD AN ADDITIONAL TEN SLIPS THIS

23 GIVES US ONE HUNDRED AND TWO RENTAL SLIPS AND MEETS THE

24 MINIMUM NUMBER STATED IN THE LEASE, IS THAT CORRECT?

25 A YES

FREDERICK THOENNES, III - DESIGNATED EXCERPTS BY MR HOLLEMAN 368

1 Q SO MR ROBERSON IS INDICATING THERE THAT ONE HUNDRED
2 AND TWO IS THE MINIMUM NUMBER GUARANTEED IN THE LEASE, IS
3 THAT RIGHT?

4 A OKAY I'M JUST READING IT AGAIN YES

5 Q ALL RIGHT LET'S LOOK AT PAGE 92 LET ME SHOW YOU
6 WHAT'S BEEN MARKED AS EXHIBIT 25 AND THE DEFENDANTS PUT
7 THAT IN AS DEFENDANT'S EXHIBIT 3 THIS IS AN EMAIL FROM
8 TIM ROBERSON TO YOU AND YOUR FATHER DATED OCTOBER 28,
9 2007, IS THAT CORRECT?

10 A YES

11 Q IS IT CORRECT TO SAY THAT BY THIS POINT YOU ALL
12 WANTED ANDY BALLARD OUT OF THIS DEAL?

13 A UH, AT THIS POINT WHERE DID -- THERE DID BECOME A
14 POINT WHERE I DID, YEAH

15 Q AND IF YOU LOOK AT THE EMAIL IN THE MIDDLE, IS THAT
16 FROM YOU TO YOUR FATHER AND A COPY TO MR ROBERSON?

17 A YES

18 Q AND IN THE MIDDLE OF THE SECOND PARAGRAPH YOU ASK
19 THE QUESTION, DON'T WE WANT TO GET HIM OUT OF THE DEAL,
20 IS THAT CORRECT?

21 A YES

22 Q THEN ON PAGE 94 AT THE BOTTOM DID YOU AGREE WITH
23 MR ROBERSON'S STATEMENT THAT I THINK HE WILL TAKE HIS
24 ONE MILLION DOLLARS AND RUN AFTER A LITTLE THREATENING,
25 POSTURING AND WHINING?

1 A WELL, I COULDN'T SAY WHETHER I THOUGHT HE WOULD OR
2 NOT I DIDN'T KNOW THAT THAT WOULD JUST BE
3 SPECULATION I DIDN'T KNOW

4 Q THEN ON PAGE 105, LINE 16 NOW HAVE YOU EVER ASKED
5 MR BALLARD TO DO ANYTHING WITH RESPECT TO THIS PROJECT,
6 WARPATH?

7 A I HAVE NOT

8 MR HOLLEMAN THAT'S ALL, YOUR HONOR

9 THE COURT OKAY

10 MR HOWARD JUST A SECOND, YOUR HONOR

11 MR HOLLEMAN IF I COULD JUST CORRECT ONE THING I
12 REFERRED TO DEPOSITION EXHIBIT 8 AS TRIAL EXHIBIT 11 IT
13 WAS REALLY TRIAL EXHIBIT 13 FOR THE RECORD

14 THE COURT ALL RIGHT

15 DESIGNATIONS BY MR. HOWARD

16 Q OKAY GOING BACK TO PAGE 31 QUESTION, BEFORE I
17 SHOWED YOU THIS DOCUMENT DID YOU KNOW THERE WAS GOING TO
18 BE A SHAREHOLDERS MEETING AT THE END OF SEPTEMBER?

19 A THERE WAS SOME DISCUSSION ABOUT HAVING A
20 SHAREHOLDERS MEETING, BUT THAT'S ALL I HEARD

21 Q AND WHO WAS THE DISCUSSION WITH?

22 A TIM ROBERSON HAD MENTIONED THAT WE NEEDED TO HAVE
23 ONE

24 Q AND FOR WHAT PURPOSE?

25 A DIDN'T SAY JUST TO HAVE OUR ANNUAL SHAREHOLDERS

1 MEETING

2 Q THAT'S ALL HE SAID TO YOU?

3 A YES

4 Q HAVE YOU DISCUSSED IT WITH ANYONE OTHER THAN TIM?

5 A I DON'T THINK SO

6 Q HAVE YOU DISCUSSED IT WITH YOUR FATHER?

7 A I DON'T THINK SO

8 Q HAVE YOU DISCUSSED IT WITH YOUR ATTORNEY?

9 A NO

10 Q AND WHAT, DID TIM CALL YOU UP? EXCUSE ME AND WHAT

11 -- DID TIM CALL YOU UP? HOW DID YOU HEAR THIS FROM HIM?

12 A I DON'T REMEMBER HE MIGHT HAVE MADE A PHONE CALL

13 TO ME I JUST REMEMBER HEARING ABOUT IT

14 Q AND DID HE INDICATE TO YOU WHAT WAS GOING TO HAPPEN?

15 A NO

16 Q IF YOU LOOK AT THE FRONT OF 47 NOW, LET ME JUST

17 ASK THIS AGAIN YOU DON'T THINK YOU RECEIVED A COPY OF

18 EXHIBIT 47?

19 A I DON'T RECALL SEEING IT

20 Q OKAY IF YOU'LL LOOK AT THE BOTTOM OF THE FIRST

21 PAGE OF 47

22 (WHEREUPON THE ATTORNEYS WERE CONSULTING)

23 A 7

24 MR HOLLEMAN IT'S EXHIBIT 7

25 MR HOWARD EXHIBIT 7 I APOLOGIZE JUST FOR THE

1 RECORD, 47 IN THE DEPOSITION IS EXHIBIT 7 IN THIS TRIAL

2 THE COURT OKAY

3 Q OKAY IF YOU'LL LOOK AT THE BOTTOM OF THE FIRST
4 PAGE OF EXHIBIT 7 TO THIS TRIAL, IT SAYS A SLATE OF
5 DIRECTORS CONSISTING OF TIM ROBERSON, RICK THOENNES, RICK
6 THOENNES, III, AND ANDREW BALLARD WILL BE PRESENTED TO
7 THE STOCKHOLDERS FOR CONSIDERATION HAVE YOU DISCUSSED
8 WITH MR ROBERSON OR ANYONE ELSE WHO WOULD BE ELECTED A
9 DIRECTOR AT THIS MEETING?

10 A NO

11 Q HAVE YOU DISCUSSED WITH ANYONE ELECTING MR BALLARD
12 A DIRECTOR?

13 A NO

14 Q SO THIS WAS THE FIRST TIME YOU'VE SEEN THAT, NOW
15 THAT I'VE POINTED IT OUT TO YOU?

16 A YES

17 Q DO YOU PLAN TO ATTEND THE MEETING?

18 A YEAH

19 Q TURN TO PAGE 41 HAVE YOU DONE ANYTHING TO ASSIST
20 WITH OBTAINING PERMANENT FINANCING FOR THIS PROJECT?

21 A ME, PERSONALLY?

22 Q YES

23 A I MEAN, WE'VE BEEN TRYING TO FIND FINANCING, YES

24 Q WHAT HAVE YOU DONE?

25 A WE'VE TALKED TO DIFFERENT PRIVATE INVESTMENT GROUPS

1 Q PAGE 45 DO YOU CONTEMPLATE THAT MARICK WILL PLAY
2 ANY ROLE IN WARPATH?

3 A NO

4 Q HAS MARICK PLAYED ANY ROLE IN WARPATH?

5 A I DON'T THINK SO

6 Q HAVE ANY OF YOUR OTHER COMPANIES THAT YOU'VE
7 DESCRIBED IN THIS DEPOSITION, HAVE ANY OF THEM PLAYED ANY
8 ROLE IN WARPATH?

9 A NO

10 Q DO YOU CONTEMPLATE THAT ANY OF THEM WILL?

11 A NO

12 Q PAGE 47 QUESTION, HAS WARPATH, TO YOUR KNOWLEDGE,
13 DONE ANYTHING TO ISSUE THOSE SHARES?

14 A NO

15 Q IS IT PLANNING TO DO ANYTHING TO ISSUE THOSE SHARES?

16 A NO PLANS

17 Q HAS IT CONTACTED ANYONE ABOUT BUYING OR RECEIVING
18 ANY OF THOSE SHARES?

19 A NOT THAT I'M AWARE OF

20 Q PAGE 66 WERE YOU EVER IN A MEETING -- EXCUSE ME
21 WERE YOU EVER IN A MEETING WHERE THERE WAS ANY DISCUSSION
22 OF WHETHER THERE WOULD BE A HUNDRED BOAT SLIPS OR TWO
23 HUNDRED BOAT SLIPS OR ANY OTHER NUMBER OF BOAT SLIPS
24 BEFORE THE AGREEMENT WAS SIGNED?

25 A YES

1 Q AND WHEN WAS THAT?

2 A I DON'T KNOW THE EXACT DATE

3 Q TELL ME WHAT YOU REMEMBER ABOUT THE MEETING WHERE

4 WAS IT? WHERE IT WAS

5 A I THINK WE HAD MORE THAN ONE MEETING I CAN'T

6 REMEMBER EVEN WHERE IT WAS

7 Q AND DO YOU KNOW WHO WAS AT THE MEETING?

8 A NO I WOULD ASSUME IT WAS ANDY, MY FATHER, TIM AND

9 MYSELF

10 Q AND WHAT WAS THE DISCUSSION?

11 A ABOUT THE BOAT SLIPS?

12 Q YES

13 A THAT WE COULD GET TWO HUNDRED BOAT SLIPS

14 Q PAGE 73 QUESTION, NOW DO YOU THINK ANDY BALLARD

15 MADE ANY MISREPRESENTATIONS TO YOU IN CONNECTION WITH

16 THIS ISSUE OF SLIPS?

17 A YES

18 Q PAGE 74 WHAT MISREPRESENTATION DO YOU THINK HE

19 MADE?

20 A I THOUGHT HE REPRESENTED TO US THAT WE COULD GET TWO

21 HUNDRED SLIPS

22 Q WHY DO YOU SAY THAT?

23 A BECAUSE IN ALL THE DISCUSSIONS AND MEETINGS WE HAD,

24 AND PROFORMAS, AND ARCHITECTURAL DESIGNS, EVERYTHING WAS

25 ALWAYS TWO HUNDRED SLIPS

1 Q PAGE 85 ITEM 2 SAYS ONE MILLION (FOR TWENTY
2 THOUSAND SHARES OF STOCK) DO YOU SEE THAT?

3 A UH-HUH

4 Q AND WAS THAT WHAT ENDED UP BEING THE DEAL IN THE
5 SHAREHOLDERS MEETING?

6 A I DON'T KNOW I'D HAVE TO LOOK AT THE SHAREHOLDERS
7 AGREEMENT I THOUGHT WE BOUGHT EIGHTY THOUSAND SHARES OF
8 STOCK I THOUGHT WE BOUGHT EIGHTY PERCENT OF THE
9 BUSINESS IT APPEARS TO ME AS WE BOUGHT EIGHTY PERCENT
10 FOR EIGHTY THOUSAND SHARES, FORTY THOUSAND FOR ROBERSON,
11 TWENTY FOR ME AND TWENTY FOR MY DAD

12 MR HOWARD THIS IS SOMETHING THAT'S NOT IN FRONT
13 OF YOU, BUT I'LL READ THIS ONE

14 Q WAS THE SHAREHOLDERS MEETING WHERE YOU ALL DID NOT
15 ELECT HIM AS A DIRECTOR AND WHERE YOU VOTED TO ISSUE
16 ADDITIONAL STOCK, WAS THAT PART OF THE EFFORT TO GET HIM
17 OUT OF THE DEAL? I DON'T THINK SO NO

18 PAGE 95 NOW, TO YOUR UNDERSTANDING, DOES THAT
19 SENTENCE SAY THAT MR ROBERSON EXPECTS THAT MR BALLARD
20 WILL ENGAGE IN A LITTLE THREATENING, POSTURING AND
21 WHINING?

22 A NO, I DIDN'T EXPECT THAT

23 Q WELL, WHAT DO YOU THINK HE'S SAYING THERE?

24 A NOW I SEE THE QUESTION YOU'RE ASKING YEAH, I WAS
25 TAKING IT THE OTHER WAY SO DID WE THINK THAT MR

1 BALLARD WOULD ENGAGE IN THREATENING, POSTURING AND
2 WHINING?

3 Q YES

4 A OH, I DIDN'T -- THIS IS TIM'S STATEMENT

5 Q ALL RIGHT DID YOU THINK TIM WAS GOING TO ENGAGE IN
6 THREATENING, POSTURING AND WHINING?

7 A NO

8 Q WHY DID YOU WANT TO GET MR BALLARD OUT OF THE DEAL?

9 A BECAUSE I FELT LIKE WE'D BEEN TAKEN ADVANTAGE OF AND
10 THEN SOLD SOMETHING THAT WAS NOT WHAT I FELT WE WERE
11 SOLD

12 Q BECAUSE IT TOOK LONGER TO GET PERMITS?

13 A THAT AND IN ADDITION MAINLY THE TWO HUNDRED BOAT
14 SLIPS I THOUGHT IT MIGHT BE A WAY FOR US TO POSSIBLY
15 RECOVER SOME OF THAT

16 Q NOW WHY DID YOU FEEL THAT WAY SINCE YOU HAD
17 PURCHASED IN THE SHAREHOLDERS AGREEMENT WAS STOCK IN A
18 COMPANY THAT OWNED -- THAT WAS PARTY TO THIS LEASE FROM
19 DUKE POWER AND YOU KNEW WHAT THE LEASE SAID AND YOU
20 BOUGHT IT?

21 A THAT'S RIGHT YOU KEEP REFERENCING BACK TO THE
22 LEASE I KEEP REFERENCING THE CONCEPTUAL PLAN AND I
23 KEEP REFERENCING WHAT ANDY BALLARD TOLD US AND ALL THE
24 NUMBERS WE HAD PUT TOGETHER THAT HE'D SEEN, ALL THE
25 CONCEPTUAL DRAWINGS WE HAD DONE EVERYTHING WE HAD

1 TALKED ABOUT WAS TWO HUNDRED SLIPS FROM DAY ONE

2 Q BUT YOU KNEW WHAT YOU HAD WAS WHAT DUKE POWER HAD
3 AGREED TO, RIGHT?

4 A THAT'S RIGHT

5 Q AND THAT WAS SET OUT IN WRITING, CORRECT?

6 A IN THE LEASE

7 Q AND YOU HAD A CHANCE TO READ THAT?

8 A THAT'S CORRECT

9 Q AND IF YOU DISAGREED WITH DUKE POWER'S
10 INTERPRETATION OF THAT LEASE, THAT WAS REALLY BETWEEN
11 WARPATH AND DUKE POWER, CORRECT?

12 A WE WERE BUYING WHAT ANDY WAS SELLING

13 Q AND THAT WAS SHARES IN A CORPORATION THAT HAD A
14 LEASE WITH DUKE POWER, RIGHT?

15 A THAT HAD A CONCEPTUAL PLAN THAT SAID TWO HUNDRED
16 SLIPS

17 Q SO DO YOU THINK YOUR DISPUTE REALLY IS WITH DUKE
18 POWER AND NOT WITH ANDY BALLARD?

19 A NO, I THINK IT'S WITH ANDY

20 MR HOLLEMAN I JUST HAD ONE QUICK RESPONSE

21 DESIGNATIONS BY MR HOLLEMAN

22 Q THE QUESTION IS, WELL, WHO SET UP THE PROFORMAS?
23 AND THE ANSWER FROM MR THOENNES WAS WE DID

24 THE COURT ALL RIGHT

25 MR HOLLEMAN YOUR HONOR, THAT IS THE PLAINTIFF'S

1 RECORD, YOU ARE PROTECTED YOU HAVE MADE THE MOTIONS
2 APPROPRIATELY IN CAMERA AND SO FOR -- IN THE INTEREST
3 OF JUDICIAL ECONOMY WE'LL JUST WAIT AND ARGUE THEM IN THE
4 MORNING FULLY ON THE RECORD, I SHOULD SAY OKAY

5 MR HOWARD THANK YOU, YOUR HONOR

6 THE COURT ALL RIGHT

7 (WHEREUPON COURT WAS IN RECESS AT 3 40 PM)

8 THE COURT WELL, LET'S GO AHEAD AND DO WHAT WE CAN
9 DO AND BE MINDFUL OF THE TIME SO YOU PICK YOUR SPOT
10 THAT, YOU KNOW, IF IT LOOKS LIKE YOU'RE GOING TO DRAG,
11 IT'S GOING TO, NOT DRAG, BUT GO PAST AN HOUR, PAST FIVE,
12 YOU PICK YOUR SPOT THAT'LL BE A GOOD STOPPING POINT,
13 OKAY?

14 MR HOWARD GOOD CHOICE OF WORDS YES, YOUR HONOR

15 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3 50
16 PM)

17 THE COURT: ALL RIGHT MR HOWARD

18 MR HOWARD DEFENSE CALLS TIM ROBERSON

19 TIMOTHY ROBERSON,

20 BEING DULY SWORN TESTIFIES AS FOLLOWS

21 MADAME CLERK STATE YOUR NAME, PLEASE

22 MR ROBERSON TIM ROBERSON

23 MADAME CLERK THANK YOU PLEASE BE SEATED

24 MR HOWARD BEFORE WE GET STARTED LET ME GRAB
25 THESE

1 DIRECT EXAMINATION BY MR HOWARD

2 Q GOOD AFTERNOON, MR ROBERSON

3 A GOOD AFTERNOON

4 Q NOW AS I UNDERSTAND, YOU'RE HAVING A LITTLE BIT OF
5 ALLERGY PROBLEMS TODAY, IS THAT RIGHT?

6 A IT COMES AND GOES RIGHT NOW IT'S COMING

7 Q OKAY WELL, AS I UNDERSTAND IT WE DON'T HAVE TOO
8 LONG TODAY SO MAYBE THAT'LL CLEAR UP HOPEFULLY WE'LL
9 GET YOU DONE TODAY, BUT IF WE DON'T MAYBE THAT'LL BE
10 CLEARED UP BY THE MORNING GO AHEAD JUST FOR THE RECORD,
11 FOR THE BENEFIT OF THE JURY, IF YOU COULD JUST STATE YOUR
12 FULL NAME, PLEASE

13 A TIMOTHY WALTER ROBERSON

14 Q AND CAN YOU GIVE US YOUR ADDRESS, PLEASE?

15 A 335 BLUE WATER WAY, SENECA, SOUTH CAROLINA

16 Q MR ROBERSON, HAVE YOU EVER TESTIFIED IN COURT
17 BEFORE?

18 A NO

19 Q OKAY SO THIS IS SOMETHING NEW FOR YOU?

20 A YES

21 Q NOW THE JURY HEARD A LITTLE BIT ABOUT YOUR
22 BACKGROUND AND, OF COURSE, HEARING MS METCALFE READ
23 PORTIONS OF YOUR DEPOSITION, BUT I WANT TO GO THROUGH A
24 LITTLE BIT OF BACKGROUND JUST A LITTLE BIT FURTHER WHY
25 DON'T YOU TELL US, WHERE DID YOU GROW UP?

1 A NEWPORT NEWS, VIRGINIA

2 Q AND YOU GRADUATED HIGH SCHOOL?

3 A IN NEWPORT NEWS, CORRECT

4 Q OKAY AND OUR UNDERSTANDING FROM YOUR DEPOSITION IS

5 THAT YOU -- YOU WENT ON TO COLLEGE AND YOU GOT A DEGREE

6 NOW WHERE DID YOU GO TO SCHOOL AT?

7 A TWO SCHOOLS THE JUNIOR COLLEGE WAS CHOWAN,

8 UNIVERSITY NOW, MURFREESBORO, NORTH CAROLINA AND I

9 FINISHED UP AT ATLANTIC CHRISTIAN COLLEGE IT'S NOW

10 CALLED MARTIN COLLEGE THAT'S IN WILSON, NORTH CAROLINA

11 Q OKAY NOW, SIR, ARE YOU MARRIED?

12 A YES

13 Q OKAY DO YOU HAVE ANY CHILDREN?

14 A TWO DAUGHTERS, THREE GRANDCHILDREN

15 Q OKAY WONDERFUL, WONDERFUL FOLLOWING COLLEGE, OUR

16 UNDERSTANDING, GENERALLY TOOK US THROUGH YOUR WORK

17 HISTORY, DO YOU RECALL THAT FROM THE DEPOSITION

18 TESTIMONY? WAS WHAT YOU RECALL GENERALLY THE -- KIND OF

19 THE EXTENT OF YOUR WORK HISTORY? IT MAY BE EASIER IF YOU

20 JUST SORT OF JUST BRIEFLY, VERY BRIEFLY SUMMARIZE THAT

21 AGAIN FOR US

22 A I STARTED WITH NCR RIGHT OUT OF COLLEGE AFTER

23 SEVEN YEARS I HAD BEEN TRANSFERRED FROM NORFOLK TO EAST

24 TENNESSEE I LEFT THE COMPANY AT THAT TIME AND STARTED A

25 SMALL START-UP COMPANY WITH TWO FORMER NCR PEOPLE AND

1 IT GREW

2 WE HAD AN OFFICE IN KINGSPORT AND FINALLY GOT ONE IN
3 KNOXVILLE, ONE IN ASHEVILLE AND THEN WE HAD THE
4 OPPORTUNITY TO BUY ONE IN GREENVILLE AND IN 1981 I
5 MOVED TO GREENVILLE TO ASSUME THE PRESIDENCY OF THAT
6 OFFICE

7 Q OKAY

8 A IT WAS TEN PEOPLE ON WADE HAMPTON BOULEVARD SELLING
9 CASH REGISTERS

10 Q AND WHAT YEAR WAS THAT AGAIN?

11 A THAT WAS 1981

12 Q OKAY SO HAVE YOU -- HAVE YOU BEEN IN THE UPSTATE
13 SINCE 1981?

14 A YES

15 Q FOLLOWING ASSUMING THE PRESIDENCY OF THAT
16 ORGANIZATION IN 1981 MY UNDERSTANDING IS THAT THAT
17 ORGANIZATION CONTINUED TO GROW, IS THAT CORRECT?

18 A IT DID WE WERE VERY SUCCESSFUL OVER A NUMBER OF
19 YEARS FROM -- LIKE I SAY WITH TEN FOLKS JUST KNOCKING
20 ON DOORS UP AND DOWN THE HIGHWAY TRYING TO SELL CASH
21 REGISTERS TO RESTAURANTS, OR HOTELS, GROCERY STORES WE
22 EVENTUALLY BECAME IBM BUSINESS PARTNERS AND HAD REALLY A
23 NATIONWIDE BUSINESS

24 Q OKAY NOW FROM THE STORY YOU TOLD ME SELLING CASH
25 REGISTERS CAN BE A LITTLE BIT PERILOUS, A LITTLE PERILOUS

1 SOMETIMES, ISN'T IT?

2 A YOU MUST BE REFERRING TO THE TIME THAT -- I'D JUST
3 BEEN IN GREENVILLE FOR MAYBE THREE MONTHS AND THE
4 COMPANY HAD SOLD, BEFORE I CAME, THE COMPANY HAD SOLD A
5 CASH REGISTER TO A FAST FOOD PLACE OVER ON PLEASANTBURG
6 AND IT WAS MY RESPONSIBILITY -- AND THEY HADN'T PAID
7 FOR IT AND IT WAS WAY PAST DUE MY PREDECESSOR HAD
8 DUNNED THEM SO IT WAS MY RESPONSIBILITY TO GO REPOSSESS
9 THE REGISTER AND I WAS WELCOMED TO GREENVILLE WITH A
10 NICKLE PLATED PISTOL OF SOME KIND ABOUT THAT LONG IT
11 LOOKED LIKE IN MY RIBS

12 Q BUT EVENTUALLY CHANGED THE NAME OF THE COMPANY, MY
13 UNDERSTANDING, TO KYRUS?

14 A WE CHANGED AS WE GREW

15 Q OKAY

16 A WE INITIALLY WERE -- IN TENNESSEE WE WERE MIDSOUTH
17 DATA SYSTEMS OR MIDSOUTH CASH REGISTER SALES, ACTUALLY
18 AND WHEN WE CAME HERE WE BOUGHT A COMPANY CALLED CHECK-
19 OUT SYSTEMS

20 EVENTUALLY WE MOVED OUT OF JUST CASH REGISTERS IN TO
21 MORE STORE SYSTEMS SO WE CHANGED THE NAME TO MIDSOUTH
22 DATA SYSTEMS AND THEN WHEN WE BECAME NATIONAL WE
23 CHANGED AGAIN TO A NAME THAT WE COULD BUILD OUR OWN BRAND
24 AROUND THAT WASN'T JUST SOUTH SO -- AND THAT WAS KYRUS

25 Q NOW KYRUS CARRIED ON BUSINESS FOR A NUMBER OF YEARS

1 AND YOU EVENTUALLY -- MY UNDERSTANDING IS THAT IT WAS

2 SOLD

3 A 2003, OCTOBER

4 Q AND AT THAT POINT YOU WERE DONE WITH THE, I SUPPOSE,

5 THE CASH REGISTER BUSINESS

6 A PART OF THE ARRANGEMENT WHEN I SOLD THE COMPANY WAS

7 I HAD A FIVE YEAR RESTRICTION FROM BEING IN RETAIL

8 SYSTEMS

9 Q FOLLOWING THE SALE OF KYRUS IS IT FAIR TO SAY YOU, I

10 GUESS, RETIRED FOR A PERIOD?

11 A MAYBE ABOUT SIX MONTHS

12 Q YOU COULDN'T STAY OUT TOO LONG?

13 A YEAH I'D NEVER REALLY HAD INTENTIONS TO RETIRE

14 IT WAS A TRANSITION

15 Q OKAY

16 A I DON'T THINK I EVER WILL

17 Q AND WHAT DID YOU TRANSITION TO AT THAT POINT?

18 A I PARTNERED UP WITH AN INDIVIDUAL AND WE HAD AN

19 LLC CALLED INTEGRYS HOLDINGS AND IN THAT COMPANY WE

20 LOOKED FOR OPPORTUNITIES TO BUY SMALL COMPANIES, TRY TO

21 GROW THEM, MAYBE FIND A HOME FOR THEM LATER WHEN THEY

22 NEEDED TO GO TO THE NEXT LEVEL WE ALSO DID SOME

23 DEVELOPMENT AND THAT WAS PRETTY MUCH IT WE EVENTUALLY

24 PARTNERED AND DID THE STONELEDGE DEVELOPMENT

25 Q AND WERE YOU IN PARTNERSHIP WITH THE GENTLEMAN THAT

1 YOU'RE IN PARTNERSHIP NOW ---

2 A YES

3 Q --- ALSO WITH THE THOENNESES?

4 A YES

5 Q AND IT'S MY UNDERSTANDING YOU'VE KNOWN THE
6 THOENNESES FOR A NUMBER OF YEARS, IS THAT RIGHT?

7 A I MET RICK, SR , IN CHURCH TWENTY-FIVE YEARS AGO AT
8 SOUTHSIDE BAPTIST OVER ON AUGUSTA ROAD AND HIS -- HIS
9 SON AND MY DAUGHTERS WERE PRETTY CLOSE TO THE SAME AGE
10 SO WE WATCHED THEM GROW UP BUT WE BECAME FRIENDS OVER
11 THE YEARS UNTIL HE MOVED TO FLORIDA AND THEN WE RENEWED
12 THAT FRIENDSHIP WHEN HE CAME BACK

13 Q I'M GLAD YOU MENTIONED THE CHURCH THERE WAS ONE
14 THING I FORGOT TO ASK YOU IS THAT ARE YOU A MEMBER OF A
15 CHURCH LOCALLY?

16 A WELL, I'VE BEEN A MEMBER OF SOUTHSIDE BAPTIST SINCE
17 '81 AND THERE WAS A PERIOD THAT I WAS A MEMBER OF
18 MITCHELL ROAD PRESBYTERIAN, BUT THEN BACK TO SOUTHSIDE
19 FELLOWSHIP, WE CALL IT

20 BUT I'VE RECENTLY MOVED -- JUST SOLD MY HOUSE IN
21 GREENVILLE LAST YEAR AND I'VE MOVED TO THE LAKE FULL-
22 TIME AND SO NOW WE'RE MEMBERS OF FOOTHILLS COMMUNITY
23 CHURCH IN SENECA

24 Q OKAY NOW YOU MENTIONED JUST A MINUTE AGO ABOUT
25 STONELEDGE ARE YOU STILL INVOLVED -- AND THAT WAS, YOU

1 SAID, A PARTNERSHIP, I SUPPOSE, BETWEEN INTEGRYS AND THE
2 THOENNESES AND MARICK, IS THAT RIGHT?

3 A THAT'S CORRECT

4 Q OKAY ARE YOU STILL INVOLVED IN INTEGRYS AT THIS
5 POINT?

6 A YES NO I SOLD OUT OF INTEGRYS IN, I BELIEVE,
7 '08 WE HAD SOLD -- WE HAD ABOUT THREE HOLDINGS ONE
8 WAS A LARGER TECHNOLOGY COMPANY WE SOLD THAT THAT
9 LEFT TWO SMALL COMPANIES AND I TOOK ONE TO OPERATE AND
10 CONTINUE WITH AND MY PARTNER TOOK THE OTHER SO WE
11 DOWNSIZED AND HE KIND OF WENT HIS WAY AND I WENT THE
12 OTHER

13 Q OKAY

14 A THAT'S PART OF -- BUT PART OF INTEGRYS WAS IK, WHICH
15 WAS THE INTEGRYS KEOWEE, WHICH WAS THE DEVELOPMENT
16 COMPANY FOR STONELEDGE WITHIN IMK

17 Q WHAT IS THE SMALLER PIECE THAT YOU TOOK WITH YOU?

18 A IT'S CALLED PRIMASOURCE IT'S A -- IT'S REALLY A
19 TWO PERSON COMPANY WE SELL ITEMS, GIFT ITEMS TO
20 CHRISTIAN BOOK STORES AROUND THE COUNTRY

21 Q IS THAT STILL IN OPERATION?

22 A YES

23 Q MY UNDERSTANDING IS THERE HAVE ALSO BEEN SOME OTHER
24 INSTANCES OUTSIDE OF STONELEDGE THAT YOU'VE PAIRED UP
25 WITH THE THOENNESES ON ARE Y'ALL INVOLVED IN THE

1 GATEWAY PROJECT?

2 A YES

3 Q WHAT'S THE STATUS OF THAT PROJECT?

4 A WE ACTUALLY HAVE TWO POSSIBILITIES RIGHT NOW THAT
5 WE'RE INVESTIGATING WE HAVE A LETTER OF INTENT THAT
6 SOMEONE HAS OFFERED TO BUY IT FROM US BUT WE'RE ALSO
7 PARALLEL WITH THAT WORKING WITH -- WE WORK WITH THE CITY
8 AND WORKING WITH TRYING TO GET A HUD LOAN TO BUILD
9 APARTMENTS ON THAT PROJECT

10 Q AND JUST TO BE SURE EVERYBODY UNDERSTANDS WHEN I SAY
11 THE GATEWAY PROJECT, WE'RE TALKING ABOUT THE OLD PIECE OF
12 PROPERTY THAT THE AUDITORIUM WAS ON, IS THAT RIGHT?

13 A THAT'S CORRECT

14 Q OKAY JUST -- I'M NOT ORIENTED, BUT ---

15 A OVER THERE SOMEWHERE

16 Q NOW OBVIOUSLY WE'RE HERE TODAY BECAUSE YOU AND THE
17 THOENNESES AND MR BALLARD GOT TOGETHER FOR THE WARPAT
18 H PROJECT

19 A THAT S CORRECT

20 Q JUST VERY GENERALLY, JUST WHAT IS THE WARPAT
21 H PROJECT?

22 A ANDY BALLARD HAD STARTED THREE OR PROBABLY FOUR,
23 GOING ON FIVE YEARS AGO NOW, AS I UNDERSTAND IT,
24 ANSWERING A ARTICLE IN THE PAPER WHERE THERE WAS THE
25 ABILITY OR THE OPPORTUNITY TO DEVELOP ON BEHALF OF

1 PICKENS COUNTY AND/OR DUKE ENERGY A SIXTY-THREE ACRE
2 PIECE OF LAND ON 183 ON THE LAKE THAT IS CONSIDERED
3 PUBLIC ACCESS

4 PART OF THE FERC OR FEDERAL ENERGY REGULATORY
5 COMMISSION REQUIREMENTS IS THAT DUKE ENERGY HAVE A
6 CERTAIN AMOUNT OF PUBLIC ACCESS ON THE LAKE FOR THEM TO
7 GET RENEWALS OF THEIR LICENSE TO CREATE POWER AND TO DAM
8 UP THE LAKE, SO TO SPEAK AND SO ANDY HAD RECEIVED AND
9 WORKED OUT WITH DUKE OVER THOSE YEARS THE OPPORTUNITY TO
10 DEVELOP THAT

11 AND WE LEARNED ABOUT IT THROUGH A MUTUAL FRIEND OR A
12 MUTUAL INDIVIDUAL WHO BROUGHT US TO A MEETING AND RIGHT
13 NOW IT'S WHAT IT IS WE'RE TRYING TO GET PERMITS, TRYING
14 TO GET EVERYTHING READY TO GO SO WE CAN CREATE A LODGE,
15 CONFERENCE CENTER, CABINS, COTTAGES, RESTAURANTS, MARINA,
16 ALL FOR PUBLIC ACCESS

17 Q OKAY

18 A NOT FOR RESALE NOT FOR -- IT'S NOT A DEVELOPMENT
19 AS SUCH

20 Q WELL, YOU'RE NOT GOING TO OWN THE PROPERTY, RIGHT?
21 WARPATH ---

22 A NO

23 Q --- IS GOING ---

24 A NO, IT'S A LEASE

25 Q IT'S ALWAYS GOING TO BE OWNED BY DUKE POWER ---

1 A THAT'S CORRECT

2 Q SOME ENTITY OF DUKE POWER WHO'S LEASING IT TO YOU,
3 TO WARPATH, IS THAT CORRECT?

4 A THAT'S CORRECT

5 Q WE'LL TALK ABOUT IN A LITTLE BIT ABOUT THE LEAD UP
6 TO -- AND SOME OF THE NEGOTIATIONS BUT I DO WANT TO GO
7 AHEAD AND LET'S -- LET'S GO AHEAD AND TALK ABOUT THE
8 AGREEMENT Y'ALL ENTERED INTO NOW EVENTUALLY AFTER SOME
9 NEGOTIATIONS YOU ENTERED INTO A STOCK PURCHASE AGREEMENT
10 WITH ANDY BALLARD, IS THAT CORRECT?

11 A THAT'S CORRECT

12 Q AND I BELIEVE -- I THINK IT'S IN FRONT OF YOU AND I
13 THINK IT'S NUMBER -- PLAINTIFF'S EXHIBIT 1 YOU SEE IT
14 RIGHT THERE ON TOP? NOW THIS AGREEMENT WAS ENTERED INTO
15 BY ALL PARTIES ON MAY 29TH OF 2007, IS THAT RIGHT?

16 A THAT'S CORRECT

17 Q NOW THIS AGREEMENT WAS -- WAS THIS AGREEMENT DRAFTED
18 BY JIM FAYSSOUX?

19 A YES

20 Q AND JIM FAYSSOUX IS AN ATTORNEY HERE IN GREENVILLE?

21 A THAT'S CORRECT

22 Q AND FOLLOWING THE EXECUTION OF THE STOCK PURCHASE
23 AGREEMENT HAS JIM FAYSSOUX SERVED AS THE CORPORATE
24 ATTORNEY FOR WARPATH?

25 A YES

1 Q AND ON PAGE -- ON THE LAST PAGE IT APPEARS TO BE THE
2 SIGNATURE PAGE IS THAT YOUR SIGNATURE THERE AT THE
3 BOTTOM?

4 A YES, IT IS

5 Q AND NOW PRIOR TO EXECUTING THIS AGREEMENT WAS -- WAS
6 THIS AGREEMENT, A DRAFT OF THIS AGREEMENT PRESENTED TO
7 ANDY BALLARD?

8 A YES

9 Q AND WAS MR BALLARD GIVEN AN OPPORTUNITY TO LOOK
10 OVER THIS AGREEMENT?

11 A CERTAINLY

12 Q AND WAS MR BALLARD GIVEN AN OPPORTUNITY TO HAVE AN
13 ATTORNEY REVIEW THIS AGREEMENT?

14 A YES

15 Q AND, IN FACT, I BELIEVE I RECALL -- DID MR BALLARD
16 ACTUALLY SUGGEST A COUPLE OF CHANGES TO THE AGREEMENT?

17 A I'M A LITTLE FUZZY ON THAT IT SEEMS LIKE THERE WAS
18 SOMETHING ON THE DAY OF CLOSING BECAUSE WE HAD TO LIKE GO
19 INTO ANOTHER ROOM FOR A WHILE AND TALK ABOUT SOMETHING
20 I'M NOT SURE OF JUST WHAT THAT WAS

21 Q OKAY TO YOUR KNOWLEDGE WERE ANY SUGGESTIONS MADE
22 BY MR BALLARD, WERE THEY EVER REJECTED OR REFUSED THAT
23 YOU CAN THINK OF?

24 A NO

25 Q OKAY DO YOU RECALL MR BALLARD -- THIS MAY HELP

1 YOU OUT DO YOU RECALL MR BALLARD -- IF YOU'LL LOOK AT
2 PARAGRAPH 3 DO YOU RECALL MR BALLARD MAKING SOME
3 CHANGES TO PARAGRAPH 3?

4 A I'M SORRY, I DON'T

5 Q OKAY I'LL GO AHEAD AND REPRESENT TO YOU THAT I
6 BELIEVE, AND I DON'T THINK THEY'RE GOING TO QUARREL WITH
7 ME, THAT ORIGINALLY Y'ALL ---

8 MR HOLLEMAN I DO -- I DO HAVE TO OBJECT TO THE
9 LAWYER TESTIFYING ABOUT THIS AGREEMENT FRANKLY, I DON'T
10 REMEMBER ALL THIS ---

11 THE COURT YEAH, YOU CAN SHOW IT TO HIM TO SEE IF
12 IT REFRESHES HIS RECOLLECTION, BUT YOU CAN'T ---

13 MR HOWARD THAT'S FINE, YOUR HONOR THIS IS --
14 THIS IS REALLY NOT ALL THAT IMPORTANT, BUT OKAY WE CAN
15 MOVE ALONG

16 Q LET ME PUT IT TO YOU THIS WAY DOES THIS AGREEMENT
17 -- AT ANYWHERE IN THIS AGREEMENT DOES IT CONTAIN ANY
18 PROVISION THAT SAYS NON-DILUTION AND ANTI-DILUTION, DOES
19 IT HAVE ANYTHING THAT ADDRESSES DILUTION?

20 A NO

21 Q AT ANY POINT LEADING UP TO ENTERING INTO THIS
22 AGREEMENT DID ANDY BALLARD EVER ASK THAT Y'ALL ENCLOSE OR
23 INCORPORATE A PROVISION ADDRESSING DILUTION OR ANTI-
24 DILUTION?

25 A NO

1 Q ARE YOU FAMILIAR WITH THE TERM DILUTION?

2 A OH, YEAH

3 Q HOW ARE YOU FAMILIAR WITH THE TERM DILUTION?

4 A JUST IN MY CORPORATE EXPERIENCE THERE HAVE BEEN
5 TIMES WHEN SOMEONE, YOU KNOW, WHEN YOU'RE BUYING A
6 SMALLER COMPANY OR YOU'RE BRINGING SOMEONE IN AS A
7 SHAREHOLDER SOMEONE MAY ASK FOR AN ANTI-DILUTION CLAUSE
8 I'VE NEVER GIVEN ONE IT SEEMS TO HAMSTRING A COMPANY IF
9 YOU DO THAT BUT IT'S BEEN ASKED -- ASKED FOR

10 Q OKAY

11 A AND IT SIMPLY MEANS THAT IF -- LIKE IF I WERE BUYING
12 INTO GENERAL MOTORS AND I ASKED THEM TO -- NOT DILUTE ME
13 AND THEN THEY WOUND UP BUYING A BUNCH OF COMPANIES OR
14 HAVING STOCK ISSUANCES OR WHATEVER, EVERYBODY WOULD GO
15 DOWN BUT ME AND IT JUST -- IT'S NOT SOMETHING WE'VE
16 EVER DONE

17 Q IN THE COURSE OF YOUR BUSINESS EXPERIENCE HAVE YOU
18 EVER BEEN INVOLVED WITH A CORPORATION THAT ISSUED
19 ADDITIONAL STOCK?

20 A YES

21 Q HAVE YOU EVER BEEN INVOLVED IN A CORPORATION THAT
22 REDEEMED STOCK?

23 A YES

24 Q IN YOUR COURSE OF YOUR PERIOD OF TIME AND THE
25 BUSINESSES YOU'VE BEEN INVOLVED IN IS THAT A PRETTY

1 COMMON OCCURRENCE?

2 A VERY COMMON

3 Q AND NEEDLESS TO SAY I THINK AT ANY POINT DID YOU
4 EVER HEAR OR DID ANDY BALLARD EVER LOOK AT YOU AND ASK
5 FOR AN ANTI-DILUTION PROVISION?

6 A NO NOT EVEN THOUGHT OF

7 Q THIS IS GETTING A LITTLE OUT OF ORDER, BUT I WANT TO
8 -- I THINK IT'S IMPORTANT TO GO AHEAD AND GO HERE TOO
9 ON MAY 1, 2008 OR SOMETIME PRIOR TO THEN YOU HAD CALLED A
10 SHAREHOLDERS MEETING, IS THAT CORRECT?

11 A THAT'S CORRECT

12 Q AND WAS THAT THE FIRST SHAREHOLDERS MEETING FOR
13 WARPATH SINCE Y'ALL HAD BEEN INVOLVED?

14 A IT WAS MAY 1, 2008 THAT WOULD HAVE BEEN THE FIRST
15 ANNUAL SHAREHOLDERS MEETING, YEAH

16 Q NOW TELL US WHAT HAPPENED AT THAT MEETING

17 A WE -- IT WAS PRETTY SIMPLE WE ELECTED OFFICERS
18 AND THE OFFICERS HAD A MEETING AND ELECTED -- LET'S SEE
19 WE ELECTED DIRECTOR, EXCUSE ME AND THEN THE DIRECTOR
20 SET A MEETING AND ELECTED OFFICERS

21 Q YOU SAY YOU ELECTED DIRECTORS AND THAT WAS DONE --
22 WAS THAT DONE AS A GROUP AS ALL FOUR OF Y'ALL AS
23 SHAREHOLDERS?

24 A YES

25 Q OKAY AND THAT WAS -- THAT WAS PART OF THE

1 SHAREHOLDERS PART OF THE MEETING, IS THAT FAIR TO SAY?

2 A THAT'S CORRECT

3 Q AT ANY POINT DURING THAT SHAREHOLDERS MEETING DO YOU
4 RECALL MR BALLARD EVER EXPRESSING AN INTEREST IN BEING A
5 DIRECTOR?

6 A I DON'T RECALL THAT HE DID HE DID VOTE AGAINST IT
7 WHEN WE WERE VOTING FOR OURSELVES AND HE WASN'T ONE OF
8 THE ONES LISTED BUT I DON'T THINK HE SPECIFICALLY ASKED
9 TO BE NAMED A DIRECTOR

10 Q NOW IN A MEETING OF THE BOARD OF DIRECTORS -- TELL
11 US WHAT HAPPENED IN THE MEETING OF THE BOARD OF
12 DIRECTORS

13 A WE -- I RECOMMENDED THAT WE ISSUE NINE HUNDRED
14 THOUSAND SHARES OF TREASURY STOCK FOR CONTINGENCY
15 PURPOSES THIS WAS A CULMINATION OF REALLY A NUMBER OF
16 DISCUSSIONS, EMAILS AND MEETINGS ABOUT THE BUSINESS
17 PROBLEM WE WERE TRYING TO SOLVE

18 Q AND WE'LL GO -- WE'LL GO OVER THOSE, BUT GO AHEAD

19 A SO WE ISSUED NINE HUNDRED [SIC] SHARES OF TREASURY
20 STOCK BUT WE DIDN'T -- WE DIDN'T ISSUE THEM TO
21 INDIVIDUALS, BUT THEY WENT INTO THE TREASURY

22 Q OKAY

23 A AUTHORIZED, EXCUSE ME THAT'S THE WORD I WAS
24 LOOKING FOR WE AUTHORIZED NINE HUNDRED [SIC] ADDITIONAL
25 SHARES, NINE HUNDRED THOUSAND

1 Q OKAY NOW AT THE TIME, IS IT YOUR RECALL, THAT THE
2 ARTICLES OF INCORPORATION THAT WERE ON FILE WITH THE
3 SECRETARY OF STATE, AT THE TIME THOSE HAD A LIMIT OF A
4 HUNDRED THOUSAND SHARES, ---

5 A THAT'S CORRECT

6 Q OKAY AND SO WERE Y'ALL SEEKING TO AMEND THOSE
7 ARTICLES?

8 A I BELIEVE THERE WAS A MOTION ON THE FLOOR TO AMEND
9 THOSE

10 Q OKAY AND THAT WAS TO AMEND THE ARTICLES THAT NINE
11 HUNDRED THOUSAND MORE SHARES ON TOP TO EQUAL A MILLION,
12 IS THAT CORRECT?

13 A THAT'S CORRECT

14 Q OKAY NOW IS THERE ANYTHING SIGNIFICANT ABOUT THE
15 USE OF OR PICKING A MILLION SHARES?

16 A YEAH FOR ME IT'S SIMPLE I LOOK AT ROUND NUMBERS
17 I LOOK AT PERCENTAGES I'M NOT A -- NECESSARILY A
18 NUMBERS GUY AND TEN PERCENT OF A HUNDRED IS ONE THING
19 TEN PERCENT OF A HUNDRED THOUSAND IS SOMETHING TEN
20 PERCENT OF A MILLION IS SOMETHING SO IT WAS THE NEXT
21 ROUND NUMBER WITHOUT HAVING TO SAY THAT SOMEONE OWNED,
22 YOU KNOW, SOME ODDBALL PERCENTAGE OR SOME ODDBALL NUMBER
23 OF SHARES

24 Q NOW AFTER IT WAS -- THE INCREASE WAS RECOMMENDED BY
25 THE BOARD OF DIRECTORS WAS THAT PUT TO A VOTE WITH THE

1 SHAREHOLDERS?

2 A YES

3 Q OKAY DO YOU RECALL THE -- HOW THAT VOTE ENDED UP?

4 A I BELIEVE ANDY DISSENTED THE REST WERE IN FAVOR

5 Q NOW TELL ME, MR ROBERSON, THERE HAD BEEN SOME TALKS

6 AND DISCUSSIONS AND EVERYTHING LEADING UP TO THAT TELL

7 US RIGHT NOW, WHAT -- WHAT WAS THE PURPOSE BEHIND

8 INCREASING THE NUMBER OF SHARES, THE AUTHORIZED SHARES?

9 A WELL, LIKE I MENTIONED A WHILE AGO, IT REALLY GOES

10 BACK TO A PROBLEM THAT BEGAN TO EVOLVE SOON AFTER WE

11 STARTED WORK ON THE PROJECT WE'VE HEARD A LOT TODAY

12 ABOUT DOCKS NOT BEING WHAT WE EXPECTED THE NUMBER OF

13 DOCKS, THAT EQUATES TO THE FACT THAT THE REVENUE WAS NOT

14 WHAT WE EXPECTED

15 WE'VE ALSO HEARD A LOT ABOUT UNEXPECTED DELAYS

16 WE'RE NOW IN OUR THIRD YEAR, IT WAS TWO YEARS THEN, OF

17 ZERO REVENUES WHERE WHEN WE PUT THIS DEAL TOGETHER WE

18 WERE TALKING ABOUT FLOATING DOCKS THAT VERY SUMMER AND

19 HAVING A GRAND OPENING THE NEXT YEAR

20 SO THOSE REVENUES JUST WOULD NOT EXIST I SHARED

21 WITH MY PARTNERS IN MEETINGS AND IN EMAILS THAT THIS

22 REPRESENTED A BUSINESS PROBLEM, AND WE HAD TO FIND A

23 BUSINESS SOLUTION TO IT IT'S JUST A -- IT'S A LACK OF

24 OPERATIONAL REVENUE IT RELATES MORE TO -- IT RELATES TO

25 THAT IT DOES NOT RELATE TO CAPITAL

1 SO LET'S SAY IN OUR FIRST YEAR WE WERE GOING TO
2 BRING IN X, WELL, THERE IS NO FIRST YEAR OR IT'S NOT
3 THEN, IT'S A YEAR OR TWO DOWN THE ROAD, BUT THEN ONGOING
4 FOREVER IF THE REVENUES ARE CUT BY, YOU KNOW, TWENTY-FIVE
5 PERCENT, WE'LL SAY, -- WELL, LET ME BACK UP

6 FIRST OF ALL I'D ASKED ALL OF MY PARTNERS TO HELP
7 SOLVE THE ISSUE BECAUSE OF THE SHORTAGE IN PROFORMA
8 REVENUES YEAR AFTER YEAR AFTER YEAR

9 Q LET ME STOP YOU THERE REAL FAST AND WE'LL COME TO
10 THAT IN JUST A MINUTE

11 A OKAY

12 Q BUT LET ME JUST STOP YOU THERE AND LET ME ASK YOU
13 THIS YOU MENTIONED THAT THERE WAS A PROBLEM WITH
14 REVENUES AND OPERATIONAL COSTS, IS THAT RIGHT?

15 A OPERATIONAL REVENUES, YES

16 Q OPERATIONAL REVENUES AND BY THAT -- TELL US WHAT
17 YOU MEAN BY OPERATIONAL REVENUES

18 A YOU'RE OPEN FOR BUSINESS, PEOPLE COME IN AND SPEND
19 MONEY WITH YOU YOU SUBTRACT THE EXPENSES FROM YOUR
20 REVENUE, AND WHAT YOU HAVE IS PROFIT

21 Q OKAY

22 A AND SO IF THE EXPENSES ARE WAY UP OR IF THE PROFIT'S
23 WAY DOWN, IT'S DIFFERENT FROM WHAT YOU ANTICIPATED, WHICH
24 YOU'VE BUILT YOUR PROFORMAS ON, WHICH YOU BASED YOUR
25 INVESTMENT ON IT'S DIFFERENT WHEN YOU GO TO GET IT

1 FINANCED EVERYTHING CHANGES

2 Q NOW IS IT -- IS IT A LOSS OF OPERATIONAL REVENUE --

3 IS THAT ALSO A -- IS THAT A PRACTICAL MATTER ALSO OF JUST

4 RUNNING THE COMPANY?

5 A WELL, IT'S CERTAINLY NOT PHILOSOPHICAL YOU'VE GOT

6 TO PAY YOUR PEOPLE THEY'RE, YOU KNOW, WAITERS AND

7 WAITRESSES AND RESTAURANT, HOTEL PEOPLE, AND CHECK-IN

8 CLERKS AND DOCK HANDS

9 Q AND WHEN YOU TALK ABOUT OPERATIONAL REVENUE BEING

10 DOWN, WE'RE TALKING ABOUT JUST YEAR BY YEAR, DAY BY DAY,

11 MONTH BY MONTH, WHAT'S GOING TO COME IN IS THAT ---

12 A THAT'S CORRECT

13 Q --- WHAT WE'RE TALKING ABOUT?

14 A RIGHT

15 Q IT'S WHAT YOUR PATRONS ARE GOING TO COME AND PAY YOU

16 FOR, THE DOCK LEASES, WHAT THEY'RE GOING TO PAY FOR THE

17 RESTAURANT, IS THAT RIGHT?

18 A THAT'S CORRECT

19 Q WHAT THEY'RE GOING TO PAY FOR LODGING, IS THAT

20 RIGHT?

21 A THAT'S CORRECT

22 Q ALL THAT COMBINED?

23 A (AFFIRMATIVE NOD)

24 Q AND WAS ALL THAT FACTORED IN WHEN Y ALL WERE

25 EVALUATING THIS BUSINESS?

1 A WELL, WE, YOU KNOW, ACTUALLY WE HAD FACTORED ALL
2 THOSE THINGS INTO OUR PROFORMA, BUILT THE PROFORMA ON
3 WHAT WE UNDERSTOOD WAS THE OPPORTUNITY AND WE EVEN
4 BUILT IN A CONTINGENCY NUMBER FOR THINGS THAT WOULD BE
5 UNEXPECTED YOU CAN BUILD IN A CONTINGENCY NUMBER OF A
6 CERTAIN PERCENTAGE

7 AND THERE'S, YOU KNOW, THERE ARE PERCENTAGES THAT A
8 BUILDER, A DEVELOPER, A BUSINESS PERSON OR RESTAURANTEUR,
9 ANYONE WOULD BUILD IN THOSE CONTINGENCIES BUT IT'S A --
10 IT'S A PERCENTAGE BASED ON KIND OF NORMAL UNEXPECTED
11 THINGS, NOT A MAJOR SHIFT IN THE BUSINESS MODEL

12 Q ONE THING LET'S DISCUSS REAL FAST GOING BACK TO
13 THE STOCK PURCHASE AGREEMENT, WHICH IS PLAINTIFF'S
14 EXHIBIT 1, ALL OF Y'ALL, AND WHEN I SAY ALL OF Y'ALL, I
15 MEAN YOU, AND MR BALLARD, AND RICK, SR , AND RICK, III,
16 YOU ALL HAD OBLIGATIONS THAT YOU HAD MADE TO ONE ANOTHER
17 AS PART OF THIS FOR FUTURE -- FUTURE OBLIGATIONS GOING
18 FORWARD, IS THAT RIGHT?

19 A THAT'S CORRECT

20 Q OKAY AND YOUR DISCUSSION OF YOURS IS PARAGRAPH 6,
21 WHICH TALKS ABOUT PROVIDING THE CAPITAL TO OBTAIN LONG-
22 TERM FINANCING ON THE PROJECT, IS THAT RIGHT?

23 A THAT'S CORRECT

24 Q AND THAT'S A -- THAT'S AN OBLIGATION THAT YOU
25 ACKNOWLEDGE THAT YOU TOOK ON?

1 A I TOOK IT ON, EXACTLY RIGHT AND I STILL HAVE IT

2 Q YEAH AND THAT'S -- AND AT THIS POINT IT'S NOT BEEN
3 DISCHARGED, BUT, OF COURSE, WE DON'T HAVE PERMITS ON THE
4 PROJECT, DO WE?

5 A NO

6 Q OKAY NOW THE NINE HUNDRED THOUSAND SHARES THAT WE
7 WERE TALKING ABOUT, DOES THAT IN ANY WAY -- ARE YOU
8 TALKING ABOUT THAT OBLIGATION AT ALL?

9 A NO I MEAN, MY -- THE AMOUNT OF MONEY THAT I HAD TO
10 PUT INTO THE PROJECT DIDN'T CHANGE BECAUSE WE GOT LESS
11 DOCKS THAT DIDN'T -- IT DIDN'T AFFECT MY BANK ACCOUNT
12 OR MY ABILITY TO PUT X AMOUNT OF MONEY IN THE PROJECT
13 THE SHORTFALL IN REVENUES BASED ON LESS DOCKS AND DELAYED
14 OPENING AFFECTED OPERATIONAL REVENUES YEAR IN AND YEAR
15 OUT, THE THINGS THAT YOU PAY YOUR EMPLOYEES WITH AND
16 HOPEFULLY HAVE SOME LEFT OVER

17 SO IN THE STATEMENT SOMEWHERE THERE I GIVE EXAMPLES
18 OF HOW THAT COULD BE USED TO CONSERVE CASH IF YOU THINK
19 YOU'RE GOING TO HAVE THIS MUCH CASH, LET'S SAY, NEXT YEAR
20 TO DISPERSE WITH EMPLOYEES AND YOU ONLY HAVE THIS MUCH
21 CASH, YOU GOT A BUSINESS PROBLEM WHAT DO WE DO TO SOLVE
22 IT?

23 MY SUGGESTION WAS THAT WE HAVE AS AN OPTION THE
24 OPPORTUNITY TO REPLACE SOME CASH EXPENDITURES WITH STOCK
25 OPTIONS AS AN EXAMPLE GENERALLY ANY CORPORATION THAT

1 HAS CASH IN THE BANK AND HAS STOCK IN THE BANK, SO TO
2 SPEAK, OR IN THE DRAWER, THEY'RE BOTH VALUABLE THEY'LL
3 USE WHICHEVER ONE HAS THE MOST VALUE OR ACTUALLY THE
4 LEAST VALUE AT THE TIME TO DO SOMETHING

5 SO, FOR EXAMPLE, IF I HIRED YOU FOR A HUNDRED
6 THOUSAND DOLLARS, AND I GAVE YOU CASH FOR A HUNDRED
7 THOUSAND DOLLARS, I COULD HIRE YOU MAYBE FOR SEVENTY
8 THOUSAND DOLLARS AND GIVE YOU A STOCK OPTION IF YOU
9 WORKED HARD AND PROVED YOURSELF AND EARNED IT

10 SO IT JUST GAVE US THE OPPORTUNITY TO -- AND SAY
11 THEY WERE THE HOTELS, IF A HOTEL WERE TO COME IN OR IF
12 THERE WERE CASH REQUIREMENTS, THAT STOCK COULD HAVE BEEN
13 AVAILABLE TO ACCOMMODATE SOMETHING OF THAT NATURE BUT A
14 COMBINATION OF CASH AND STOCK VERY OFTEN, IF IT'S
15 AVAILABLE, IS THE TENDER THAT A CORPORATION WOULD USE TO
16 MAKE TRANSACTIONS OR HIRE SIGNIFICANT PEOPLE

17 Q AND JUST TO MAKE SURE THE JURY FULLY UNDERSTANDS
18 THIS, THE VOTE AND THE MOTION TO INCREASE THE NUMBER OF
19 SHARES FROM A HUNDRED THOUSAND TO A MILLION, THAT WAS NOT
20 ANY ATTEMPT BY YOU TO AVOID YOUR OBLIGATION TO PROVIDE
21 CAPITAL TO GET FINANCING TO BUILD THIS PROJECT?

22 A NO

23 Q NOW, MR ROBERSON, YOU'VE MENTIONED -- I THINK I
24 JUST HEARD YOU MENTION ANDY CHIKA AND THE QUESTION I'VE
25 GOT ABOUT ANDY CHIKA IS PRIOR TO THIS MAY 1, 2008 MEETING

1 HAD THERE BEEN ANY DISCUSSIONS BETWEEN YOU AND YOUR OTHER
2 PARTNERS, INCLUDING MR BALLARD, ABOUT POTENTIAL NEED FOR
3 DILUTION?

4 A WELL, WE DISCUSSED THE -- NOT THE POTENTIAL NEED FOR
5 IT, BUT THE OPTION TO DO SO WE HAD A PROPOSAL FROM ANDY
6 CHIKA, WHO IS A PRINCIPAL IN -- I THINK IT'S CALLED
7 SOUTHERN HOSPITALITY, BUT THEY RUN SOME RESTAURANTS HERE
8 IN TOWN HE USED TO RUN THE HYATT SO HE'S VERY
9 KNOWLEDGEABLE ABOUT HOTEL, MOTEL, RESTAURANT OPERATIONS

10 WE HAD A PROPOSAL FROM HIM THAT HAD DOLLARS AND
11 EQUITY ATTACHED TO WHAT HE WOULD DO FOR US TO HELP US RUN
12 THE OPERATION WHEN I SAY EQUITY, I'M TALKING ABOUT
13 STOCK, OKAY? AND EVERYONE KNEW THAT MR BALLARD KNEW
14 IT RICK AND RICK KNEW IT IN FACT, ANDY CAME TO SOME
15 OF THE MEETINGS

16 Q OKAY AND SO IT'S FAIR TO SAY THAT ANDY BALLARD WAS
17 AWARE THAT AT LEAST AT SOME POINT THERE HAD BEEN
18 CONTEMPLATION OF PROVIDING SOMEBODY OTHER THAN YOU FOR
19 EQUITY IN THIS CORPORATION?

20 A I DON'T REALLY -- I CAN'T SAY THAT HE KNEW EXACTLY
21 WHAT WAS THE -- THE CONTRACT OR THE PROPOSAL THAT ANDY
22 CHIKA HAD MADE I LATER LEARNED THAT HE HAD ALSO SECURED
23 A PROPOSAL FROM HIM BEFORE HE EVEN MET US SO WHETHER
24 THAT HAD EQUITY IN IT, I DON'T KNOW I WAS NOT PRIVY TO
25 THAT

1 THE ONLY THING ANDY SAID WHEN WE WALKED OUT OF THE
2 MEETING WAS THAT WE COULD NOT AFFORD -- WE -- YOU BOYS
3 CAN'T AFFORD ANDY CHIKA AND SO HE HAD SOME PREVIOUS
4 EXPERIENCE WITH HIM

5 MR HOLLEMAN NO OBJECTION

6 THE COURT ALL RIGHT

7 MR HOWARD JUST FOR THE RECORD, YOUR HONOR, WE'RE
8 ADMITTING DEFENDANT'S EXHIBIT 6, I SUPPOSE, WITHOUT
9 OBJECTION

10 (WHEREUPON DEFENDANT'S EXHIBIT 6 WAS MARKED AND
11 ADMITTED INTO EVIDENCE)

12 Q TIM, ARE YOU FAMILIAR -- I'D ASKED YOU JUST A MOMENT
13 AGO IF YOU HAD -- THERE'D BEEN PRIOR DISCUSSIONS OF
14 DILUTION ARE YOU FAMILIAR WITH THIS EMAIL IN FRONT OF
15 YOU THAT'S MARKED AS DEFENDANT'S ---

16 A YES

17 Q --- EXHIBIT 6?

18 A YES

19 Q OKAY NOW THIS EMAIL WAS SENT FROM YOU TO, I
20 BELIEVE THAT'S MR THOENNES, III AND YOU GOT THAT
21 WRITTEN THERE

22 A I THINK THAT CAME OFF OF HIS SON'S EMAIL AND
23 SOMEHOW I GOT IT ON MY COMPUTER HE'S NOT MY DADDY I
24 KNOW MY DADDY

25 Q THE SUBJECT IS A DISCUSSION THAT YOU HAD WITH ANDY

1 BALLARD, IS THAT RIGHT?

2 A YEAH

3 Q OKAY DO YOU RECALL WHEN -- IT'S LISTED AS TUESDAY,
4 JANUARY 2008 DO YOU RECALL THE DISCUSSION THAT WAS
5 IDENTIFIED IN THIS EMAIL?

6 A YES

7 Q NOW THIS WAS -- MY UNDERSTANDING THIS WAS -- WE'LL
8 BUILD THIS TIME-LINE SHORTLY, BUT THIS WAS FOUND IN THE
9 MIDDLE OF SOME OF THE ISSUES Y'ALL WERE HAVING WITH MR
10 BALLARD, IS THAT RIGHT?

11 A YES IN FACT, THIS WAS AFTER WE HAD A FACE-TO-FACE
12 MEETING AND WE'D ASKED FOR SOME IDEAS AND NONE WERE
13 FORTHCOMING FROM ANDY SO I ASKED FOR A COUPLE OF WEEKS
14 TO THINK ABOUT IT AND THEN I WENT TO VISIT HIM TO SEE
15 IF HE HAD SOME OTHER IDEAS OR I MAY HAVE CALLED HIM I
16 DON'T RECALL

17 Q IN THE SECOND PARAGRAPH -- AND I'LL GO AHEAD AND
18 PUBLISH THIS YOU HAD STATED THAT THE CONVERSATION WAS
19 CIVIL, BUT I EXPLAINED THAT FOR EVERY BUSINESS PROBLEM
20 THERE IS A BUSINESS SOLUTION

21 I TOLD HIM THAT I WAS GOING TO ASK THAT WE ELECT ME
22 CHAIRMAN, CEO AND/OR PRESIDENT WITH THE TASK OF PUTTING
23 TOGETHER A NEW FINANCE PLAN TO BRING IN ADDITIONAL
24 CAPITAL OR SERVICES TO IMPROVE THE ROI OF THE PROJECT
25 HE SAID THAT HE HAD NO PROBLEM WITH THAT

1 I THEN TOLD HIM THAT THERE WOULD BE MORE THAN LIKELY
2 BE SOME DILUTION IF THAT HAPPENED AT THAT POINT DO YOU
3 RECALL MR BALLARD SAYING ANYTHING OR OBJECTING OR SAYING
4 ANYTHING ABOUT THE DILUTION?

5 A NO

6 Q YOU'D ALSO IN THE FIRST PARAGRAPH -- AND YOU HAD
7 INDICATED THAT Y'ALL -- IS IT TRUE -- AND WE'LL GET TO
8 THAT, BUT YOU HAD ASKED HIM ABOUT -- WHEN Y'ALL HAD MET
9 YOU HAD ASKED EVERYBODY TO SUPPLY SOME -- I BELIEVE YOU
10 JUST SAID IT YOU HAD ASKED EVERYBODY TO SUPPLY SOME
11 RECOMMENDATIONS, I SUPPOSE, OF MOVING FORWARD AND THEN
12 IS THIS ANOTHER CONVERSATION OR DETAILS ANOTHER
13 CONVERSATION YOU HAD WITH ANDY ABOUT THAT?

14 A THIS WAS TWO WEEKS LATER

15 Q OKAY

16 A APPROXIMATELY TWO WEEKS LATER

17 Q WAS HE ABLE TO OFFER ANY FURTHER ASSISTANCE OR
18 RECOMMENDATIONS?

19 A HE RESISTED BUT FINALLY I PRESSED, AND HE SAID,
20 JUST BUILD IT CHEAPER

21 Q WHAT DID HE MEAN BY BUILD IT CHEAPER?

22 A THEY WERE HIS WORDS

23 Q OKAY DID HE EVER MAKE ANY SUGGESTIONS FOR HOW TO
24 BUILD IT CHEAPER?

25 A WELL, FROM THE BEGINNING ANDY WAS -- I WOULDN'T

1 CHARACTERIZE IT BRAGGING, BUT HE WAS TALKING ABOUT JUST
2 HOW CHEAP WE COULD BUILD THE CABINS, LIKE ALMOST FOR
3 NOTHING AND HE MADE THE COMMENT THAT, YOU KNOW, WE
4 COULD BUILD THIS THING CHEAP AND THEN FLIP IT, AND THAT'S
5 WHERE THE REAL MONEY WAS AND SELLING IT

6 Q THIS MAY BE A GOOD TIME TO ASK YOU ABOUT THIS WAS
7 THAT THE INTENT THAT YOU THREE HAD WITH THIS PROJECT?

8 A WELL, YOU MAY REMEMBER HEARING RICK, III, EARLIER
9 SAYING THAT HE WAS HOPING SO I WAS AMBIVALENCE AT THE
10 BEGINNING AS FAR AS WHETHER WE WOULD BUILD IT AND
11 EVENTUALLY IF THE OPPORTUNITY CAME WHETHER WE WOULD SELL
12 IT

13 I CANNOT SAY THAT WAS MY PLAN FROM THE BEGINNING
14 BUT I WAS AWARE OF -- CERTAINLY ANYONE THAT HAS A
15 BUSINESS KNOWS THAT IF SOMEONE COMES ALONG AND OFFERS YOU
16 ENOUGH, THERE'S AN OPPORTUNITY TO SELL IT

17 THAT CHANGED OVER THE COURSE OF THE TIME PART OF
18 TRYING TO SOLVE THIS BUSINESS PROBLEM WAS WHEN -- YOU
19 DIDN'T ASK ME THIS QUESTION, BUT IT KIND OF LEADS TO
20 THIS

21 WHEN I MADE THE PERSONAL DECISION I ANNOUNCED TO MY
22 PARTNERS THAT, YOU KNOW, ANDY MIGHT HAVE BEEN RIGHT WE
23 COULD NOT AFFORD SOUTHERN HOSPITALITY OR ANYBODY TO COME
24 IN AND RUN THIS THING FOR US

25 THEN I THOUGHT IN ORDER TO PRESERVE CASH I'D RUN IT

1 MYSELF I HAD NOT PLANNED TO DO THAT I'D PLANNED TO
2 BE, YOU KNOW, COMING IN AND ENJOYING THE PROPERTY AND,
3 YOU KNOW, TAKING PRIDE OF OWNERSHIP

4 BUT I, FROM THE BEGINNING, WAS NEVER PLANNING ON
5 RUNNING IT AND AS PART AND PARCEL TO TRYING TO SOLVE
6 THE BUSINESS REVENUE PROBLEMS, NOT CAPITAL, BUT THE
7 REVENUE PROBLEMS, I DECIDED I WOULD RUN IT

8 AND I INFORMED ANDY CHIKA THAT WE WEREN'T GOING TO
9 ACCEPT HIS PROPOSAL, THAT I WOULD RUN IT MYSELF I SET
10 OUT THEN TO TRY TO FIGURE OUT HOW I WAS GOING TO RUN IT

11 Q NOW THEY BROUGHT UP INFORMATION OR SOME SUGGESTIONS
12 ABOUT YOU BRINGING YOUR FAMILY MEMBERS INTO THIS, AND TO
13 HELP YOU WITH THIS WHAT WAS YOUR -- THE CONCEPT OF
14 BRINGING YOUR FAMILY MEMBERS IN?

15 A WELL, THE -- ONCE I'D MADE THE DECISION THAT I WAS
16 PERSONALLY GOING TO RUN THE OPERATION, I -- AND RICK WAS
17 HELPING ME, WE WERE THINKING ABOUT DIFFERENT FOLKS,
18 LOOKING AT DIFFERENT FOLKS I INTERVIEWED AND TALKED TO
19 A NUMBER OF FOLKS

20 AND QUITE A WHILE WENT BY DURING THIS PROCESS AND
21 IT BECAME MORE EVIDENT EVERY DAY THAT I WASN'T GOING TO
22 NEED THEM TOMORROW BUT TO TRY TO THINK ABOUT HOW TO
23 MANAGE IT, WHICH I FELT COMFORTABLE WITH BECAUSE, YOU
24 KNOW, I'VE -- I'M NOT REAL SMART WHAT I DO IS GET
25 TEAMS AND THAT'S WHAT I'VE ALWAYS DONE, IS JUST PUT A

1 TEAM AROUND ME

2 AND SO I FIGURED I COULD DO THAT AGAIN AND I KNOW
3 ENOUGH RESTAURANT PEOPLE AND BEEN INVOLVED IN HOTELS
4 SELLING THEM SYSTEMS AND I UNDERSTAND RETAIL AND CASH
5 ACCOUNTING WELL ENOUGH THAT I FELT LIKE I COULD PUT
6 TOGETHER A TEAM

7 I HAD NOT PICKED OUT THAT TEAM UNTIL ONE DAY WHEN MY
8 NIECE AND NEPHEW WERE VISITING IT JUST HAPPENED IN A
9 MOMENT'S TIME ACTUALLY

10 WE WERE IN THE LAKE AND THIS IS, YOU KNOW,
11 PROBABLY -- YOU'VE NEVER HEARD THIS AND IT HAS NO
12 BEARING, BUT THIS, YOU KNOW, STRONG WELL KEPT NEPHEW-IN-
13 LAW TERM, BUT MY NIECE'S HUSBAND PICKED UP HIS LITTLE BOY
14 IN THE WATER, LITTLE FOUR YEAR OLD, AND KISSED HIM ON THE
15 LIPS AND JUST TOLD HIM HOW MUCH HE LOVED HIM AND I
16 SAID, THAT'S THE GUY I WANT RUNNING THIS THING FOR ME

17 SO I DID A LITTLE DUE DILIGENCE ON HIM HE HAD ALL
18 THE QUALIFICATIONS I THOUGHT THAT I NEEDED HE HAD THE
19 -- HE WAS, YOU KNOW, A PEOPLE PERSON HE KNEW MONEY
20 HE'D GET HIS HANDS DIRTY HE WORKED IN REFRIGERATION AND
21 IN CONCRETE WORK AND, YOU KNOW, IN MANAGEMENT LEVELS
22 AND HIS WIFE HAD BEEN A -- MY NIECE HAD BEEN A TELLER IN
23 A BANK

24 SO AFTER SOME THOUGHT I ASKED THEM IF THEY WOULD
25 CONSIDER THE JOB AS ON-SITE RESIDENT MANAGERS I DIDN'T

1 REALIZE IT AT THE TIME, BUT THAT ATTRACTED A -- MY WHOLE
2 FAMILY BASICALLY MY EIGHTY-NINE YEAR OLD MOM AND MY
3 OLDER SISTER -- MY YOUNGER SISTER IN THE PROCESS MOVED
4 HERE TO BE PART OF WHAT'S HAPPENING, WHAT'S EVOLVING
5 SO THAT WAS NOT PLANNED OUT FROM THE BEGINNING IT
6 JUST HAPPENED AND IT HAPPENED BECAUSE I WAS TRYING TO
7 SOLVE A BUSINESS ISSUE BUT FRANKLY, I LOVE IT I LIKE
8 THE WAY IT TURNED OUT

9 Q AND ULTIMATELY DO YOU BELIEVE THAT THAT'S GOING TO
10 HELP Y'ALL WITH SOME OF THAT OPERATING REVENUE THAT
11 YOU'VE TALKED ABOUT?

12 A SURE INSTEAD OF PAYING A THIRD PARTY WE'RE JUST
13 GETTING IN THERE AND GRINDING IT OUT OURSELVES

14 Q NOW EVEN BEFORE THIS JANUARY 2008 EMAIL THERE HAD
15 BEEN -- YOU HAD SUGGESTED A PRIOR MEETING BETWEEN ALL
16 FOUR OF Y'ALL, IS THAT CORRECT?

17 A YEAH

18 Q WHAT YOU HAVE IN FRONT OF YOU IS PLAINTIFF'S EXHIBIT
19 11, CORRECT?

20 A YES

21 Q NOW THIS EMAIL WAS DRAFTED ON FRIDAY, DECEMBER 28,
22 2007, CORRECT?

23 A YES

24 Q AND IT LOOKS LIKE IT'S FROM YOU TO RICK, SR , IS
25 THAT RIGHT?

1 A YES

2 Q IS THIS -- DID YOU DRAFT THIS EMAIL AFTER YOUR --
3 THE MEETING WITH THE FOUR SHAREHOLDERS?

4 A YES

5 Q AND LOOKING AT THE FIRST PARAGRAPH, IT APPEARS
6 YOU'RE SUGGESTING -- WELL, TELL ME WHAT YOU MEAN BY THE
7 FIRST PARAGRAPH

8 A I JUST WANTED TO SHARE MY THOUGHTS WITH YOU
9 CONCERNING THE ISSUE WE HAVE NOW THAT IT'S CLEAR ANDY DID
10 NOT DELIVER WHAT WE THOUGHT WE WERE BUYING AS WE'VE
11 DISCUSSED, WE ARE IN A REAL DILEMMA REGARDING BOTH ROI
12 FROM LACK OF EXPECTED REVENUES AND WHETHER WE SHOULD PUSH
13 TO MAKE UP TIME OR HOLD BACK ANOTHER YEAR FOR OPENING
14 JUST WHAT IT SAYS, WE WERE EXPERIENCING DELAYS AND SHORT
15 ON THE PROFORMAS

16 Q THIS IS WHERE YOU'RE DISCUSSING THE REVENUE PROBLEM
17 AGAIN?

18 A UM-HUM (AFFIRMATIVE)

19 Q AND JUST SO WE'RE ALL CLEAR, THE REVENUE PROBLEM
20 YOU'RE REFERENCING, WAS THAT THE -- IS THAT THE PROBLEMS
21 ASSOCIATED WITH THE LOSS OF THE WET SLIPS, ---

22 A CORRECT

23 Q --- TIME PROBLEMS?

24 A CORRECT

25 Q OKAY AND THESE WERE ALL PROBLEMS THAT HAD BEEN

1 CULMINATING SINCE, I GUESS, ABOUT THE SUMMER OF 2007? IS

2 THAT ABOUT RIGHT?

3 A YES

4 Q IN THE NEXT PARAGRAPH -- WELL, LET'S BACK UP

5 ACTUALLY REAL FAST WE'LL COME BACK TO THIS ONE IN JUST

6 A MOMENT I'VE PUT BEFORE YOU DEFENDANT'S EXHIBIT 5,

7 CORRECT?

8 A YES

9 Q AND IT'S GOT A COVER PAGE THAT LOOKS LIKE THIS UP ON

10 THE FRONT?

11 A YES

12 Q AND THIS IS AN EMAIL FROM RICK THOENNES, SR , TO

13 ANDY BALLARD AND CC'd YOU AND RICK, III, CORRECT?

14 A THAT'S CORRECT

15 Q NOW UNDERNEATH THAT COVER EMAIL IS THIS MEMORANDUM,

16 IS THAT RIGHT?

17 A YES

18 Q NOW LOOKING ON THE FRONT PAGE, WAS THIS EMAIL SENT

19 ON SATURDAY, DECEMBER 15TH, 2007?

20 A YES

21 Q NOW WAS THIS SENT IN ADVANCE OF YOUR MEETING WITH

22 ANDY BALLARD?

23 A I THINK SO

24 Q OKAY AND PUTTING THIS TOGETHER WAS THIS -- WAS

25 THIS MEMORANDUM PUT TOGETHER BETWEEN DISCUSSIONS BETWEEN

1 YOU, AND RICK AND RICK, III?

2 A YES

3 Q THE FIRST PARAGRAPH, Y'ALL ARE LETTING ANDY KNOW
4 HERE, CORRECT, THAT THE APPROVALS FROM DUKE DID NOT COME
5 AS FAST OR IN THE WAY THAT WE HAD TALKED ABOUT AS YOU
6 KNOW, ALL OF OUR PROFORMAS WERE BASED ON THE TWO HUNDRED
7 PAID SLIPS BY CUTTING THOSE IN HALF AND BY DELAYING
8 THIS PAST NEXT SPRING, THE NUMBERS HAVE CHANGED
9 DRASTICALLY DID I READ THAT RIGHT?

10 A THAT'S CORRECT

11 Q GOING DOWN TO THE FOURTH PARAGRAPH YOU'RE LETTING
12 MR BALLARD KNOW HERE, CORRECT, THAT WE DID ALL OF OUR
13 DUE DILIGENCE BASED UPON THE FACT THAT WE WOULD GET TWO
14 HUNDRED SLIPS, BE ABLE TO GET APPROVAL FROM THE COUNTY ON
15 YOUR CONCEPTUAL SITE PLAN AND BE ABLE TO OPEN IN SPRING
16 OF 2008, ---

17 A YES

18 Q --- IS THAT RIGHT? AND WERE THOSE THINGS THAT MR
19 BALLARD WAS AWARE OF?

20 A YES

21 Q AND AT THIS POINT HAVE THOSE ITEMS BEEN MET?

22 A YOU MEAN OUR REQUEST TO HIM IS OPTIONS OR THE ---

23 Q NO I MEAN HAVE THEY?

24 A OH

25 Q I MEAN, ---

1 A NO

2 Q --- YOU'RE TELLING HIM THAT NONE OF THAT HAS BEEN
3 MET, IS THAT RIGHT?

4 A DO WE HAVE PERMITS? NO ARE WE COMING UP ON OUR
5 THIRD YEAR? YEAH

6 Q LOOKING DOWN, IT APPEARS Y'ALL PRESENTED HIM WITH
7 SOME OPTIONS, CORRECT?

8 A YES, WE DID

9 Q AND AT THIS POINT YOU WERE LOOKING TO GET HIM BACK
10 HIS MILLION DOLLARS, IS THAT RIGHT?

11 A THAT'S CORRECT

12 Q DID HE ULTIMATELY SAY THAT HE WOULD TAKE BACK HIS
13 MILLION DOLLARS AND GIVE YOU BACK AND Y'ALL -- GIVE YOU
14 BACK YOUR MILLION AND TAKE BACK HIS STOCK AND MOVE
15 FORWARD?

16 A NO

17 Q YOU'RE ALSO ASKING THAT HE JUST MAYBE RETURN SOME
18 PORTION OF IT AND EVERYBODY CONTINUING, IS THAT RIGHT?

19 A THAT'S CORRECT

20 Q DID HE AGREE WITH THAT?

21 A NO

22 Q WAS THERE AT ANY POINT THAT Y'ALL DIDN'T LET -- THAT
23 Y'ALL WERE -- LET ME START OVER BEFORE THIS, AND THIS
24 HAS BEEN A MUCH DISCUSSED EMAIL SO FAR WHAT I PUT IN
25 FRONT OF YOU IS PLAINTIFF'S EXHIBIT 10 LOOKING ON THE

1 SECOND PAGE OF THAT -- LET'S GO -- AT THE TOP OF THIS ONE
2 IS A EMAIL, APPEARS TO BE AN EMAIL STRING, BUT IT ENDS
3 WITH YOU WRITING A EMAIL TO RICK, SR , AND RICK, III, IS
4 THAT RIGHT?

5 A THAT'S CORRECT

6 Q LOOKING ON THE SECOND PAGE DOES THAT EMAIL APPEAR TO
7 BE THE BEGINNING OF THAT STRING?

8 A YES

9 Q OKAY AND DOES THAT APPEAR TO BE THE MEMORANDUM
10 THAT Y'ALL EVENTUALLY SENT TO ANDY BALLARD?

11 A YES

12 Q NOW AT THE TOP OF THAT EMAIL AND THE LAST ONE IS THE
13 ONE THAT YOU SENT, IS THAT CORRECT? GO BACK TO THE FIRST
14 PAGE

15 A YES

16 Q AND IT LOOKS LIKE IT'S IN RESPONSE TO A COUPLE OF
17 OTHER EMAILS BY RICK, III, AND RICK, SR , IS THAT RIGHT?

18 A YES

19 Q AND I THINK WE SHOWED THIS TO THE JURY IN OPENING
20 STATEMENT AND -- BUT I WANT YOU TO -- LET'S TALK ABOUT
21 IT RIGHT NOW PLAINTIFFS HAVE MADE A BIG DEAL OUT OF THE
22 LAST SENTENCE, WHICH SAYS I THINK HE WILL TAKE HIS ONE
23 MILLION AND RUN AFTER A LITTLE THREATENING, POSTURING AND
24 WHINING

25 A WELL, IN THAT PARAGRAPH I WAS WORD-SMITHING WHAT WE

1 WERE GOING TO EVENTUALLY SEND TO HIM I WAS ALSO
2 OFFERING AN OPINION I WAS WRONG, BUT I THOUGHT AT THAT
3 TIME HE'D FUSS ABOUT IT, BUT HE WOULD BE GLAD TO KEEP HIS
4 MILLION DOLLARS AND JUST DISAPPEAR BECAUSE IT'D BEEN A
5 YEAR ALMOST THAT HE HAD JUST NOT BEEN AROUND

6 Q WELL, TELL ME, I MEAN, HOW WERE Y'ALL FEELING AT
7 THAT TIME? I MEAN, WERE YOU -- WHAT WAS GOING ON AT THAT
8 TIME?

9 A I WOULD SAY WE WERE UPSET MAD'S NOT THE WORD
10 JUST, YOU KNOW, WHEN YOU HAVE ISSUES THAT YOU'RE TRYING
11 TO SOLVE AND YOU'RE TRYING TO GET PARTNERS TO HELP YOU
12 FIGURE OUT A PLAN, IT DOESN'T TAKE TOO LONG TO FIGURE OUT
13 WHO'S WORKING WITH YOU AND WHO'S WORKING AGAINST YOU OR
14 WHO'S NOT WORKING AT ALL

15 Q WHAT HAD -- UP UNTIL THAT POINT -- AND THIS WAS --
16 THIS EMAIL WE SHOWED BEFORE SENT OCTOBER 28TH, 2007, WHAT
17 HAD ANDY BALLARD DONE UP UNTIL THAT POINT SINCE Y'ALL
18 BECAME INVOLVED?

19 A WELL, WE DID GO TO DUKE POWER TOGETHER YOU'VE
20 HEARD ABOUT THAT ANDY CAME TO A FEW, AND I'M NOT SURE
21 HOW MANY, ARCHITECTURAL MEETINGS, FRANKLY, AS POSTURE IN
22 THOSE ARCHITECTURAL MEETINGS AND THIS IS JUST YOU
23 KNOW, THE WAY I SAW IT IT JUST SEEMED LIKE HE, QUITE
24 FRANKLY, HAD A CHIP ON HIS SHOULDER HE DIDN'T LIKE THE
25 WAY WE WERE DOING ANYTHING

1 I KNEW HE WAS BUSY AT THE TIME BUILDING A
2 RESTAURANT SO WHEN HE BEGAN TO DISAPPEAR IT BECAME, YOU
3 KNOW, NOT TOTALLY UNEXPECTED ACTUALLY, I COULD SAY TO
4 SOME DEGREE I WAS GRATEFUL

5 BASED ON THE NEXT -- THE FIRST MEETING WE EVER WENT
6 TO WITH THE PICKENS COUNTY PLANNING SESSION I SAT IN THE
7 BACK UNANNOUNCED IT WAS MY FIRST OPPORTUNITY TO BE IN
8 SUCH A VENUE AND ANDY WAS FRONT AND CENTER BEHIND THE
9 PODIUM AND, FRANKLY, THAT MEETING WAS A DISASTER

10 I THINK HE SAID EARLIER THAT THEY GAVE US THE
11 PERMIT THEY DID NOT GIVE US THE PERMIT THAT EVENING
12 AFTER I FELT THAT THE CROWD GOT INSULTED TALKING ABOUT
13 RICH FOLKS OVER HIS SHOULDER AND HOW PEOPLE WANTED TO,
14 YOU KNOW, GET THEIR LITTLE PIECE OF THE LAKE AND THEN
15 CLOSE THE DOOR ON EVERYONE ELSE AND THAT'S WITH A ROOM
16 FULL OF FOLKS LINING THE WALLS

17 IT JUST GOT -- THEY TABLED IT AND IT WENT BACK
18 PROBABLY FORTY-FIVE DAYS LATER WHEN THEY BROUGHT IT BACK
19 UP AT THE NEXT MEETING ANDY WAS NOT AT THAT MEETING
20 HE HAD TOLD ME THAT HE HAD TO BE AT THE BEACH AND,
21 FRANKLY, I WAS GRATEFUL BECAUSE I TOOK THE PODIUM, AND I
22 WAS FRONT AND CENTER

23 AND FROM THAT POINT ON WHEN THERE'S BEEN ANY PUBLIC
24 RELATIONS OR ANY DISCUSSIONS WITH THE WASTE WATER
25 TREATMENT PLANT OR ANYTHING OF THAT NATURE AND EVEN

1 WORKING WITH DUKE ENERGY I'VE BEEN FRONT AND CENTER AND
2 ANDY HAD JUST REALLY DRIFTED AWAY CALLED SEVERAL MONTHS
3 LATER WANTING TO KNOW WHAT WAS GOING ON

4 Q MR ROBERSON, MR BALLARD HAS SUGGESTED THAT THIS IS
5 EVIDENCE THAT Y'ALL WERE TRYING TO GET RID OF HIM AT
6 ANY POINT HAVE Y'ALL EVER TRIED TO GET RID OF MR
7 BALLARD?

8 A NO IN FACT, I'VE OFFERED -- AND I'VE TOLD HIM ON
9 MORE THAN ONE OCCASION THAT WHEN WE GET OPERATIONAL AND
10 HAVE THE REVENUES THAT WE'LL BE GLAD TO BUY HIM OUT AT A
11 FAIR PRICE OR HE CAN STAY IN FOREVER AND GET IN THE
12 PARTY, YOU KNOW, JUST GET BUSY, BE A PARTNER THAT WAS
13 EXACTLY WHAT I TOLD HIM

14 MR HOWARD YOUR HONOR, THIS MAY BE A GOOD PLACE TO
15 STOP

16 THE COURT ALL RIGHT LADIES AND GENTLEMEN, IT IS
17 A BIT UNUSUAL TO BREAK A WITNESS' TESTIMONY IN THE
18 MIDDLE, BUT WE DO HAVE A CONFLICT THAT REQUIRES US TO TRY
19 AND END AT THIS TIME SO WE WILL ADJOURN FOR THE
20 EVENING

21 AND, OF COURSE, Y'ALL GO HOME, BUT REMEMBER, DON'T
22 TALK ABOUT IT DON'T DO ANY RESEARCH AND DON'T VISIT
23 THE SCENE AND WE'LL SEE YOU IN THE MORNING AT 9 30,
24 OKAY THANK YOU VERY MUCH

25 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4 53 PM)

1 THING I'M GOING TO LET HIM PUT IT IN OVER YOUR

2 OBJECTION, MR HOLLEMAN AND ---

3 MR HOLLEMAN THANK YOU, YOUR HONOR

4 THE COURT --- ALL THIS WILL BE SORTED OUT AT A --

5 BY SOMEBODY OKAY Y'ALL READY?

6 MR HOWARD READY, YOUR HONOR

7 THE COURT ALL RIGHT HOT SEAT COME ON BACK UP

8 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 10 09

9 AM)

10 THE COURT ALL RIGHT, LADIES AND GENTLEMEN, WELCOME

11 BACK AGAIN, THANK YOU FOR YOUR PATIENCE WE'VE BEEN

12 TAKING CARE OF SOME BUSINESS OUT HERE AND SORRY TO MAKE

13 YOU WAIT WHILE WE DID THAT, BUT WE'RE READY TO RESUME

14 EXAMINATION MR HOWARD

15 MR HOWARD MAY IT PLEASE THE COURT?

16 THE COURT YES, SIR

17 DIRECT EXAMINATION BY MR HOWARD CONTINUED

18 Q GOOD MORNING, MR ROBERSON

19 A GOOD MORNING

20 Q LET'S SEE IF WE CAN COME TO A CONCLUSION WITH YOUR

21 TESTIMONY, HOPEFULLY SHORTLY SIR, THE -- DURING THE

22 OPENING OF THIS CASE, IN THE PLAINTIFF'S OPENING, THERE

23 WAS SOME MENTION OF A FAILED OTHER KEOWEE DEVELOPMENT

24 THAT YOU HAD BEEN INVOLVED IN HAVE YOU BEEN INVOLVED IN

25 ANY OTHER KEOWEE DEVELOPMENT?

1 A YES, STONELEDGE TOWNHOMES IT'S IN SENECA ON THE
2 LAKE

3 Q WAS STONELEDGE A FAILURE?

4 A NO, SIR ACTUALLY, STONELEDGE WAS A VERY GOOD
5 SUCCESS MY PARTNER BUILDERS BUILT IT ON TIME AND UNDER
6 BUDGET

7 WE SOLD ALL BUT TWENTY-FOUR UNITS IN THE FIRST TWO
8 YEARS WE -- I ACTUALLY LIVE THERE NOW IT'S A GREAT
9 NEIGHBORHOOD AND THERE ARE ONLY SEVEN UNITS LEFT OUT OF
10 EIGHTY-FOUR OR SOMETHING LIKE THAT A FINANCIAL SUCCESS
11 AND A -- JUST A PLACE I'M PROUD TO LIVE IN

12 Q I'M GOING TO JUMP AROUND A COUPLE OF DIFFERENT
13 TOPICS RIGHT NOW EARLIER -- WELL, LATE 2009 YOU CALLED
14 A SHAREHOLDERS MEETING, IS THAT RIGHT?

15 A YES

16 Q WHY DID YOU CALL THAT SHAREHOLDERS MEETING?

17 A WELL, IT WAS TIME FOR ONE YOU HAVE TO HAVE ONE
18 EVERY YEAR AND WE ALSO AT THAT TIME HAD BEEN SUED BY
19 ONE OUR PARTNERS IT WAS TIME TO -- JUST TO ADDRESS
20 WHATEVER WAS ON THE TABLE

21 Q OKAY DID YOUR TIMING OR DID THIS SHAREHOLDERS
22 MEETING -- DID IT COME AS A RESULT OF BALLARD'S AMENDED
23 COMPLAINT AS THEY'VE SUGGESTED?

24 A NO IT WAS TIME -- YOU HAVE TO HAVE ONE EVERY YEAR

25 Q THEY'VE SUGGESTED THAT -- LET ME BACK UP WAS MR

1 BALLARD INCLUDED IN THE SLATE OF DIRECTORS THAT WAS VOTED
2 ON?

3 A YES

4 Q THAT WOULD INCLUDE ALL THREE OF Y'ALL PLUS MR
5 BALLARD?

6 A THAT'S CORRECT

7 Q THEY HAVE SUGGESTED IN THEIR OPENING THAT THAT WAS A
8 LITIGATION STUNT WAS THAT A LITIGATION STUNT?

9 A WELL, NO ACTUALLY, I'VE EXPLAINED IT VERY CLEARLY
10 TO MY PARTNERS AND, I THINK, TO MR BALLARD AT THE TIME
11 HE'D BEEN REALLY MISSING IN ACTION FOR MOST OF THE YEAR
12 OR ALMOST A YEAR AND ONCE HE FILED THE LAWSUIT IT CAME
13 TO OUR KNOWLEDGE THAT HE WAS BACK INVOLVED, CALLING
14 REGULATORY AUTHORITIES, GETTING RE-ENGAGED IN THE
15 PERMITTING PROCESS

16 AND I SAID VERY CLEARLY ON MORE THAN ONE OCCASION
17 WHEN I RECOMMENDED THAT WE DO IT THAT IF HE WAS GOING TO
18 GET BACK INVOLVED I WOULD RATHER HE WOULD BE WORKING WITH
19 US THAN AGAINST US AND THAT WAS IT

20 Q OKAY NOW YOU HAD MENTIONED -- WE'RE OBVIOUSLY HERE
21 IN LITIGATION AND Y'ALL ARE SHAREHOLDERS, AND THEN MR
22 BALLARD HAS SUED YOU HAS THIS LITIGATION, HAS IT MADE
23 COMMUNICATION WITH BALLARD A LITTLE MORE DIFFICULT?

24 A WELL, YEAH, FOR A COUPLE OF REASONS ONE, IF
25 SOMEBODY SUES YOU IT'S KIND OF HARD TO NOT NOTICE, RIGHT?

1 AND SO THAT WOULD HAVE SOME SORT OF EFFECT ON JUST NORMAL
2 COMMUNICATIONS BUT IT WAS MORE DIFFICULT BECAUSE OUR
3 COUNSEL ADVISED US TO GO THROUGH COUNSEL WITH ANY
4 DISCUSSIONS WITH ANDY

5 Q NOW THERE WAS ALSO AN ALLEGATION MADE OF Y'ALL THAT
6 A RECENT PERMITTING DECISION BY DHEC HAD NOT BEEN
7 COMMUNICATED TO MR BALLARD WERE YOU OTHERWISE AWARE
8 THAT THOSE HAD BEEN COMMUNICATED TO MR BALLARD?

9 A CERTAINLY WE -- AGAIN, SINCE HE GOT BACK INVOLVED
10 AND STARTED MAKING PHONE CALLS TO DUKE AND OTHER FOLKS
11 THAT MIGHT HAVE SOME INPUT INTO THIS PROCESS, ACTUALLY I
12 HAD A CONVERSATION WITH -- MULTIPLE CONVERSATIONS WITH
13 THE DUKE EXECUTIVES AND AT ONE POINT THEY'D ASKED --
14 THEY TOLD ME THEY'D ASKED ANDY NOT TO -- NOT TO GET ---

15 MR HOLLEMAN OBJECTION TO HEARSAY

16 A EXCUSE ME OKAY

17 THE COURT THAT'S HEARSAY

18 A OKAY SO, YEAH THEY TOLD ME SPECIFICALLY THAT ---

19 MR HOLLEMAN OBJECTION ---

20 THE COURT SUSTAINED

21 Q LET ME ASK IT THIS WAY, ---

22 A HOW DO I DO THIS?

23 Q --- MR ROBERSON HAS IT COME TO YOUR ATTENTION
24 THAT MR BALLARD HAS BEEN CONTACTED BY DUKE?

25 MR HOLLEMAN OBJECTION IT IS BASED ON HEARSAY

1 IT'S STILL HEARSAY

2 THE COURT: WELL, HE CAN -- HE CAN STATE HIS STATE
3 OF MIND AS TO WHAT HE UNDERSTANDS HE CANNOT TALK ABOUT
4 WHAT SOMEBODY'S TOLD HIM OKAY

5 MR HOWARD AND I CAN ASK IT A DIFFERENT WAY IF WE
6 WANT TO

7 Q DID YOU FEEL THE NEED TO CONTACT MR BALLARD
8 REGARDING DHEC COMMUNICATIONS?

9 A NO, I DIDN'T BECAUSE THEY WERE INFORMING BOTH OF US

10 Q OKAY NOW, SIR, THERE WAS -- DURING THE COURSE OF
11 THEM READING YOUR DEPOSITION THERE WAS THIS TESTIMONY
12 THAT WAS READ TO THE JURY DO YOU RECALL THIS TESTIMONY
13 BEING READ TO THE JURY? TAKE A LOOK AT IT

14 A YES

15 Q THAT'S PAGE 89 OKAY AND JUST FOR THE RECORD WE
16 ARE ON PAGE 89 OF THE DEPOSITION OF TIM ROBERSON NOW,
17 MR ROBERSON, DO YOU SEE ON LINE 17 WHERE IT STARTS DID
18 YOU OFFER TO INCREASE THE CAPITAL YOU PROVIDED BEYOND
19 TWENTY PERCENT?

20 A I SEE THAT

21 Q AND YOU SAID NO I KNOW JUST FROM READING THE
22 NEWSPAPER YOU CAN WALK IN AND PUT DOWN FIFTY PERCENT AND
23 MOST BANKS WOULD BE GLAD TO DO BUSINESS WITH YOU
24 QUESTION, HAVE YOU OFFERED TO DO THAT? NO DO YOU
25 INTEND TO DO THAT? ABSOLUTELY NOT

1 WHEN YOU SAID ABSOLUTELY NOT WERE YOU SAYING THAT
2 YOU WOULD ABSOLUTELY NOT GO ABOVE TWENTY PERCENT?

3 A ABSOLUTELY NOT ACTUALLY, I WAS PROBABLY A LITTLE
4 PERTURBED AT THAT I'VE NEVER BEEN ASKED BY ANY BANK OR
5 ANY FINANCIAL INSTITUTION TO PUT IN MORE THAN TWENTY
6 PERCENT THE ORIGINAL DEAL I HAD WITH PALMETTO WHEN WE
7 THOUGHT THIS WAS JUST MONTHS AWAY WAS TWENTY PERCENT

8 AS I SHOPPED THESE DEALS I BELIEVE IT HAD MORE TO
9 DO, THIS DEAL, I BELIEVE IT HAD MORE TO DO WITH THE
10 DECLINE IN OUR REVENUES, AND OUR PROFORMAS AND THE STATE
11 OF THE BANKING AS IT WAS PRETTY MUCH GOING DOWNHILL EVERY
12 DAY

13 IN NO CIRCUMSTANCE HAS ANYONE ASKED ME OR EVEN
14 INDICATED THAT SOMETHING COULD BE DONE IF I PUT IN MORE
15 CAPITAL IF THEY HAD OF, I WOULD HAVE CERTAINLY
16 ENTERTAINED AND TRIED TO FIGURE OUT HOW WE NEED TO DO
17 THAT, BUT THAT'S NOT BEEN -- TO THIS DAY THAT'S NOT BEEN
18 A REQUIREMENT OR A REQUEST

19 Q AND LET ME ASK YOU THIS JUST TO MAKE SURE, ARE YOU
20 JUST GOING TO -- ARE YOU JUST GOING TO WALK INTO A BANK
21 AND JUST OFFER FIFTY PERCENT? IS THAT SOMETHING YOU'D
22 WANT TO DO?

23 A I DON'T THINK SO

24 Q YEAH IS IT FAIR TO SAY YOU'RE PROBABLY NOT GOING
25 TO GET A BETTER DEAL IF YOU GO IN AND OFFER FIFTY

1 PERCENT?

2 A YEAH

3 Q IS THAT A YES?

4 A YEAH, YES I MEAN, IT JUST WOULDN'T MAKE SENSE

5 Q NOW, MR ROBERSON, LET ME ASK YOU THIS WE'VE
6 TALKED ABOUT SOME OF YOUR -- SOME OF THE OTHER PROMISES
7 YOU MADE IN THIS STOCK PURCHASE AGREEMENT AND YESTERDAY
8 PART OF YOUR DEPOSITION WAS READ AND IT LISTED OUT, IF
9 YOU RECALL, IT LISTED OUT VARIOUS THINGS YOU'VE DONE TO
10 ADVANCE FINANCING DO YOU RECALL THAT?

11 A YES

12 Q NOW WHAT DID THAT RUN THROUGH? THOSE WERE THE
13 THINGS YOU'VE DONE THROUGH WHEN?

14 A WELL THAT WAS THROUGH THE TIME THAT WE TOOK THE
15 DEPOSITIONS, WHICH WAS PROBABLY FAIRLY SOON AFTER THE
16 LAWSUIT WAS PLACED THAT WAS A NUMBER OF MONTHS AGO,
17 MAYBE -- THAT WAS LAST YEAR SOMETIME

18 Q MARCH 4, 2009 SEEM ABOUT RIGHT?

19 A YEP, I'D SAY SO

20 Q NOW TELL ME, SINCE MARCH -- ACTUALLY AT ANY POINT OF
21 YOU BECOMING A SHAREHOLDER IN THIS HAVE YOU EVER STOPPED
22 WORKING TO DRIVE THIS DEVELOPMENT FORWARD?

23 A NOT FOR A MINUTE I MEAN, THAT'S AN OVERSTATEMENT
24 OBVIOUSLY BUT EVERY SINGLE DAY THIS PROJECT HAS BEEN ON
25 MY AGENDA AS WELL AS MY PARTNERS AT NO TIME HAS IT BEEN

1 PUT ON HOLD AT NO TIME HAVE WE STOPPED DOING SOMETHING
2 THERE ARE A LOT OF PARALLEL ISSUES GOING ON AT ALL TIMES
3 RIGHT UP THROUGH THIS MORNING AN EMAIL REGARDING FINANCES
4 FROM THE USDA

5 THE -- BEEN VERY HEAVILY, MORE THAN I EVER EXPECTED,
6 BUT VERY HEAVILY INVOLVED IN THE PERMITTING PROCESS
7 BEEN INVOLVED WITH DUKE POWER, DHEC, DNR, DEPARTMENT OF
8 NATURAL RESOURCES, FISH AND WILDLIFE, I MEAN, THE CORP OF
9 ENGINEERS I'VE MET AND TALKED TO ALL OF THESE PEOPLE
10 HAVE BEEN VERY ENGAGED IN THE PROCESS

11 Q NOW YOU MENTIONED JUST A MOMENT AGO THAT YOU'D HEARD
12 RECENTLY FROM THE USDA WAS THAT A POSITIVE EMAIL?

13 A YES ACTUALLY, JUST READ IT ON MY BLACKBERRY COMING
14 IN THAT GAIL CLINE OF THE USDA OFFICE IN ---

15 MR HOLLEMAN YOUR HONOR, I HAVE TO OBJECT TO THIS
16 THEY'VE HAD A REQUIREMENT TO PRODUCE THESE MATERIALS TO
17 US AND WE'VE RECEIVED NONE OF THESE WE DON'T KNOW
18 THAT THEY EXIST AND HE CERTAINLY CAN'T REPEAT HEARSAY
19 FROM DOCUMENTS THAT THEY SHOULD HAVE PRODUCED TO US
20 MONTHS AGO WE'VE ---

21 THE COURT YEAH, MOVE ON

22 MR HOLLEMAN: --- NOT SEEN ONE ---

23 MR HOWARD I'LL JUST MOVE ---

24 MR HOLLEMAN --- PIECE OF PAPER FROM THEM ABOUT
25 THESE ---

1 THE COURT OKAY MOVE ON

2 MR. HOWARD I'LL JUST -- I'LL MOVE ON

3 Q LET ME ASK YOU THIS AS FAR AS SINCE MARCH 4, 2009

4 HAVE YOU CONTINUED TO WORK ON FINANCING THIS PROJECT?

5 A VERY MUCH SO

6 Q OKAY HAVE -- AS WE'VE SEEN THERE ARE OBLIGATIONS

7 IN THE AGREEMENT THAT ALSO THE THOENNESES ASSIST WITH

8 FINANCING HAVE THEY ASSISTED WITH FINANCING ON THIS

9 AGREEMENT?

10 A THEY'VE BEEN VERY INSTRUMENTAL I HAVE CERTAIN

11 RELATIONSHIPS WITH SOME BANKS AND FINANCIAL INSTITUTIONS

12 THEY HAVE ANOTHER WHOLE WORLD OF RELATIONSHIPS IN THIS

13 DEVELOPMENT WORLD AND AROUND THE COUNTRY THAT I DON'T

14 NECESSARILY HAVE SO WE'VE BEEN WORKING REALLY TOGETHER

15 DILIGENTLY AND HAVE MOVED THIS BALL FORWARD EVERY, YOU

16 KNOW, EVERY FEW DAYS OVER THE LAST FEW YEARS NOW IT SEEMS

17 LIKE

18 Q LET ME JUST ASK IT TO YOU JUST SIMPLY HAVE YOU AND

19 ARE YOU PERFORMING YOUR OBLIGATIONS UNDER THE AGREEMENT?

20 A YES, I AM

21 Q TELL ME -- WELL, MR. BALLARD MENTIONED, AND I THINK

22 THEY PUT AN EXHIBIT IN ABOUT DHEC'S PERMITTING COMING IN

23 HAS THAT, TO YOUR KNOWLEDGE, HAS THAT PERMIT COME IN YET?

24 A NO, IT HASN'T IT'S ACTUALLY BEING STALLED RIGHT

25 NOW AGAIN, JUST RECEIVED NOTICE THAT IT'S NOT READY YET

1 AND NO NEWS OF WHEN IT WILL BE READY

2 Q SO JUST VERY BRIEFLY, JUST WHAT IS THE STATE OF THE
3 DEVELOPMENT RIGHT NOW?

4 A WELL, THE TERM DEVELOPMENT, A LOT OF PEOPLE THINK
5 ABOUT, YOU KNOW, MOVING DIRT AND BUILDING STUFF, BUT
6 THERE'S A WHOLE LOT THAT HAS TO GO ON BEFORE THAT
7 ACTUALLY IT STARTED WITH ANDY'S WORK WAY BACK WHEN BUT
8 THE PERMITTING PROCESS AND THINGS THAT STARTED WITH US
9 JUST SHORT OF THREE YEARS AGO IS -- IT'S AS NEAR SHOVEL
10 READY AS CAN BE

11 WHEN WE GET THE PERMITS, WE'LL THEN TAKE THE PERMITS
12 BEFORE OUR FINANCIAL PEOPLE AND WE'LL EXPECT THAT TO BE
13 -- THOSE LOANS TO GO INTO PLACE AND WE'LL START --
14 WE'LL START CONSTRUCTION IMMEDIATELY

15 Q OKAY THAT IS ACTUALLY A PRETTY GOOD BRIDGE BACK
16 INTO -- I WANT TO GO BACK TO THE -- CAUSE YOU HAVEN'T
17 DISCUSSED IT YET BUT VERY QUICKLY BACK TO THE BEGINNING
18 OF THE NEGOTIATIONS THAT YOU HAD WITH MR. BALLARD HOW
19 DID YOU COME IN CONTACT WITH MR. BALLARD?

20 A I RECEIVED A PHONE CALL FROM AN INDIVIDUAL WHO ASKED
21 IF I WOULD BE INTERESTED IN A PROJECT ON THE LAKE AND I
22 WENT TO A MEETING, AND ANDY WAS THERE I TOOK RICK AND
23 RICK THERE WERE ANOTHER COUPLE OF FOLKS THERE THAT HAD
24 PROPERTY AND A BUSINESS ON THE LAKE NEXT TO WARPATH AND
25 ANDY LAID IT OUT, SHOWED US WHAT THE PROJECT WAS ALL

1 ABOUT

2 Q WHAT DID HE TELL YOU ABOUT THE PROJECT?

3 A WELL, EVERYTHING I WOULD THINK THAT HE COULD TELL
4 US DESCRIBED THE PROJECT, DESCRIBED HOW IT CAME INTO
5 BEING, THE HISTORY ON IT, THE LEASE, THE TYPES OF
6 PROPERTIES OR PROJECTS OR BUILDINGS OR BUSINESSES THAT
7 COULD BE PUT ON THE PROPERTY

8 AND, OF COURSE, THE THING THAT STANDS OUT NOW IS
9 THAT THE DESCRIPTION WAS THAT IT WAS READY TO GO AND THAT
10 NOW THAT IT WAS TIME TO START SPENDING CASH THAT'S WHAT
11 HE NEEDED, INVESTORS

12 Q WERE YOU PROVIDED A COPY OF THE CONCEPTUAL PLAN?

13 A YES

14 Q WHAT WERE YOU LED TO BELIEVE REGARDING THE WET SLIPS
15 THAT WERE GOING TO BE PLACED IN THIS PROJECT?

16 A WELL, THE CONCEPTUAL PLAN AND THE LEASE STATES ONE
17 HUNDRED TO TWO HUNDRED IF DEMAND INDICATES IT AND FROM
18 THE VERY BEGINNING ANDY TOLD US THAT HE WAS ENCOURAGED TO
19 USE THE TWO HUNDRED NUMBER, WHICH IS, YOU KNOW, WE USED
20 HE APPARENTLY HAD USED ALL THE HIGHER NUMBERS ON
21 EVERYTHING THAT WAS POSSIBLE

22 AND WE THEN INITIALLY RIGHT OFF THE BAT STARTED TO
23 PUT TOGETHER PROFORMAS OR BUDGETS TO SEE HOW IT'D WORK,
24 YOU KNOW, WAS IT FEASIBLE AND FROM THE VERY FIRST DAY
25 ALL THE WAY THROUGH THE NUMBERS HAVE BEEN TWO HUNDRED FOR

1 WET SLIPS, TWO HUNDRED FOR DRY SLIPS, YOU KNOW, SO MANY
2 -- THERE'S TWENTY CAMP SITES ON THERE, FIFTEEN RV SITES,
3 NINETEEN COTTAGES AND CABINS AND A HUNDRED AND TWENTY
4 ROOMS WITH TWO DINING FACILITIES

5 ALL THESE THINGS, YOU BASICALLY GO TO THE BOOK, A
6 BOOK OR SOME CONSULTANT AND YOU GET SOME NUMBERS BASED ON
7 WHAT SORT OF REVENUES YOU CAN PROJECT YOU DO MARKETING
8 STUDIES AND YOU DETERMINE WHAT THE COST MIGHT BE AND
9 THEN WHAT THE PROFITS MIGHT BE AND THAT'S BASICALLY WHY
10 YOU DO PROFORMAS OR PUT TOGETHER A BUDGET

11 Q NOW DO YOU FEEL THAT YOU WERE LED TO BELIEVE THAT
12 TWO HUNDRED WET SLIPS WERE POSSIBLE?

13 A FROM DAY ONE ALL THE WAY THROUGH UNTIL I WAS --
14 UNTIL I HEARD ANDY SAY THAT THERE WAS AN ISSUE WITH THAT
15 AND THEN I HEARD IT AGAIN FROM DUKE POWER

16 Q WAS MR BALLARD AWARE THAT Y'ALL WERE EVALUATING THE
17 PROJECT BASED UPON TWO HUNDRED WET SLIPS?

18 A COMPLETELY

19 Q DID HE EVER AT ANY POINT TRY TO DISPEL YOU OF THE
20 NOTION THAT TWO HUNDRED WET BOAT SLIPS WEREN'T POSSIBLE?

21 A NOT ONCE

22 Q BEFORE YOU ENTERED INTO THE STOCK PURCHASE AGREEMENT
23 DID Y'ALL PERFORM DUE DILIGENCE?

24 A YES

25 Q WHAT SORT OF DUE DILIGENCE DID Y'ALL PERFORM?

1 A WE MADE CONTACT AND DIFFERENT PEOPLE DID DIFFERENT
2 THINGS I WASN'T ENGAGED IN EVERY ELEMENT OF IT, BUT
3 PART OF THE DUE DILIGENCE WAS TO PUT TOGETHER NUMBERS
4 PART OF THE DUE DILIGENCE WAS TO TALK TO DUKE ENERGY TO
5 SEE THAT, IN FACT, THIS WAS REAL

6 PART OF THE DUE DILIGENCE WAS TO FOLLOW UP WITH
7 PICKENS COUNTY TO SEE IF, IN FACT, IT HAD GONE THROUGH
8 SOME LEVEL OF DISCUSSION WITH THEM AND IF IT WAS A
9 PROJECT THAT THEY WERE AWARE OF

10 PART OF THE DUE DILIGENCE WAS, AGAIN, OBTAINING
11 MARKET DATA AND SOME EMPIRICAL KNOWLEDGE OF JUST, YOU
12 KNOW, WAS THERE COMPETITION ON THE LAKE, WOULD FAMILIES
13 COME AND HAVE VACATION THERE, WHY WOULD THEY WANT TO,
14 JUST TRYING TO SORT THE WHOLE THING OUT TO SEE IF IT WAS
15 A PROJECT THAT WOULD MAKE SENSE

16 Q DID YOU FEEL THAT THE DUE DILIGENCE YOU DID WAS
17 ADEQUATE?

18 A AT THE TIME, YES, I DID I THINK I'VE -- YOU HEARD
19 YESTERDAY I'VE BEEN IN SOME SMALL COMPANIES WHERE I HAVE
20 DONE THINGS ON THE BACK OF A NAPKIN AND I'VE BEEN INTO
21 SOME LARGE COMPANIES WHERE I HAD TO HAVE A TEAM OF
22 LAWYERS TELL ME WHAT TO DO OR HELP ME GET THROUGH IT

23 AND THIS, YOU KNOW, THIS WAS FOUR GUYS TALKING AND
24 IT SEEMED LIKE IT WAS -- THIS WASN'T SOME DEAL OUT OF NEW
25 YORK THAT I WASN'T FAMILIAR WITH IT WAS A HOME BASED

1 OPPORTUNITY FOR A HOME BASED GUY AND I THINK WE -- I
2 THINK WE COVERED OUR BASES
3 I DIDN'T TRY TO PUT MY FUTURE PARTNER ON THE STAND
4 AND QUESTION WHETHER HE WAS TELLING ME EVERYTHING HE
5 KNEW I MEAN, BUT WOULD I KNOW TO DO THAT? PROBABLY
6 NOT

7 Q DID YOU FEEL THAT YOU ASKED ALL THE QUESTIONS YOU
8 KNEW TO ASK?

9 A I FEEL LIKE I DID, YES

10 Q NOW IS IT YOUR UNDERSTANDING THAT MR BALLARD HAD
11 BEEN INVOLVED AND BEEN WITH THIS PROJECT FOR THREE TO
12 FOUR YEARS?

13 A YES

14 Q AND HE WAS SOLELY THE PROJECT FOR THREE TO FOUR
15 YEARS, I SUPPOSE, IS THAT RIGHT?

16 A THAT'S CORRECT

17 Q NOW WAS IT YOUR UNDERSTANDING THAT OVER THAT THREE
18 TO FOUR YEARS ANDY, MR BALLARD, HAD BEEN INVOLVED WITH
19 AND MET WITH DUKE POWER?

20 A YES

21 Q WAS IT YOUR UNDERSTANDING THAT HE HAD BEEN INVOLVED
22 WITH AND MET WITH PICKENS COUNTY?

23 A YES

24 Q WAS IT YOUR UNDERSTANDING HE HAD CLOSE WORKING
25 RELATIONSHIPS WITH DUKE AND WITH PICKENS?

1 A YES

2 Q WAS IT YOUR BELIEF THAT MR BALLARD KNEW MORE ABOUT
3 THIS PROJECT THAN YOU DID?

4 A CERTAINLY

5 Q WHY DID YOU BELIEVE THAT?

6 A IT WAS HIS -- HIS SOLE BUSINESS OR OPPORTUNITY OR
7 DEVELOPMENT UP UNTIL WE ENTERED INTO THE SCENE I
8 COULDN'T IMAGINE ANYONE KNOWING MORE ABOUT IT THAN ANDY

9 Q AT LEAST IN PART DID Y'ALL RELY ON MR BALLARD?

10 A CERTAINLY

11 Q NOW YOU EVENTUALLY ENTERED INTO A STOCK PURCHASE
12 AGREEMENT WITH MR BALLARD WHAT DID -- WE TALKED ABOUT
13 IT YESTERDAY I JUST WANT TO ASK YOU THIS WHAT DID YOU
14 PURCHASE FROM MR BALLARD?

15 A EIGHTY PERCENT OF THIS COMPANY

16 Q AND WHAT DID YOU -- WHAT ARE YOU -- WHAT DID YOU AND
17 WHAT ARE YOU GOING TO PAY MR BALLARD FOR THAT?

18 A WE'VE PAID HIM A MILLION DOLLARS AT THE CLOSE HE'S
19 DUE -- HE IS DUE ONE HUNDRED THOUSAND DOLLARS ON THE
20 GRAND OPENING OF THE MARINA AND HE'S DUE FIFTY THOUSAND
21 DOLLARS ONE YEAR AFTER THAT

22 Q NOW WE'VE HEARD MENTION AND THERE'S BEEN SOME
23 TESTIMONY ABOUT A MEETING WITH YOUR OR A MEETING WITH THE
24 ARCHITECTS DO YOU RECALL MEETING WITH THE ARCHITECTS?

25 A MORE THAN ONE, YES

1 Q DO YOU RECALL ONE IN PARTICULAR WHERE IT WAS ALL --

2 I GUESS IT WAS ALL FOUR OF YOU AND THE ARCHITECT?

3 INCLUDING MR BALLARD?

4 A YES

5 Q OKAY AND CAN YOU -- TELL US ABOUT THAT MEETING

6 A WELL, THERE WERE ACTUALLY MAYBE MORE THAN JUST ONE

7 WITH ALL FOUR OF US IN, BUT THAT -- THE ONE THAT YOU MAY

8 BE REFERRING TO, THE ONE THAT SEEMS TO HAVE THE MOST

9 BEARING IS WHEN HE SAW FOR THE FIRST TIME THE DOCK

10 LAYOUT

11 THEN HIS IMMEDIATE COMMENT WAS THAT'S NOT GOING TO

12 FLY DUKE'S NOT GOING TO ACCEPT THAT AND, OF COURSE,

13 WE'RE SAYING, IT WON'T? YOU KNOW, WHY NOT? AND HE JUST

14 WAS BASICALLY SAYING THEY'RE NOT GOING TO LET DOCKS OVER

15 HERE

16 Q WOULD YOU SAY THAT MR BALLARD -- WELL, LET ME ASK

17 YOU THIS WAS THE REACTION THAT OF SURPRISE FROM MR

18 BALLARD?

19 A HE WAS SURPRISED WHEN HE WAS LOOKING AT THE DOCK

20 LAYOUT FOR THE FIRST TIME I'M ASSUMING HE WOULD HAVE

21 HAD TO HAVE BEEN SURPRISED I'M NOT SURE WHAT HE -- I

22 DON'T -- I REALLY DON'T KNOW IF HE NEVER TRIED TO WRITE

23 IN DOCKS OR DRAW THEM IN OR TRY TO FIGURE OUT THE NUMBER

24 BEFORE BUT I ONLY -- I DON'T KNOW THAT IT WAS SURPRISE

25 OR NOT IT WAS JUST PRETTY MUCH IMMEDIATE, THAT AIN'T

1 GOING TO FLY

2 Q ANSWER ME THIS, WAS MR BALLARD'S REACTION A
3 SURPRISE TO YOU?

4 A ABSOLUTELY DID NOT EXPECT THAT AT ALL WE'D GONE
5 TO A LOT OF WORK TO LAY THOSE OUT AND IT COSTS MONEY
6 EVERY TIME THE ARCHITECT PICKS UP HIS PENCIL HAD NO
7 REASON TO BELIEVE THAT WE WERE DOING SOMETHING THAT WAS
8 GOING TO WASTE ANYBODY'S TIME

9 MR HOWARD YOUR HONOR, CAN MR ROBERSON STEP DOWN
10 WITH ME REAL FAST?

11 THE COURT CERTAINLY YOU HAVE TO KEEP YOUR VOICE
12 UP SO WE CAN HEAR IT

13 Q MR ROBERSON, IF YOU'LL TRY TO JUST STAND OVER
14 THERE AND CAN YOU POINT OUT -- WHEN YOU MENTIONED
15 BEFORE THAT MR BALLARD -- AND WHAT WE'RE SHOWING YOU
16 HERE IS DEFENDANT'S EXHIBIT 1 WHEN YOU STATED BEFORE
17 THAT MR BALLARD TOLD YOU THAT THERE WAS POINTS AT WHICH
18 DUKE WAS NOT GOING TO ACCEPT THE DOCKS, CAN YOU POINT OUT
19 THOSE AREAS ON THAT MAP, ON THAT LAYOUT?

20 A YEAH THIS SIDE AND OVER HERE ON THIS SIDE

21 Q OKAY AND I KNOW YOU CAN'T REACH UP THERE YOU'RE
22 TALKING ABOUT ALL THE WAY UP THROUGH HERE?

23 A YEAH

24 Q AND SO BASICALLY JUST THIS PORTION RIGHT HERE?

25 A YEAH IT CAME TO OUR ATTENTION THAT DAY THAT THIS

1 WAS THE MARINA POINT I'D NEVER HEARD THAT TERM I
2 THOUGHT THIS WAS THE MARINA COVE THIS WAS APPARENTLY A
3 MARINA POINT SO

4 Q OKAY YOU CAN TAKE YOUR SEAT DID YOU EVENTUALLY
5 GO TO DUKE POWER WITH THIS SITE PLAN?

6 A YES

7 Q WHAT WAS DUKE POWER'S REACTION?

8 A THE SAME AS ANDY'S, SHAKING THEIR HEAD NO RIGHT OFF
9 THE BAT

10 Q EXACT SAME? DID THEY DRAW BASICALLY LINES EXACTLY
11 WHERE YOU SAID -- WHERE ANDY SAID THEY WOULD?

12 A I THINK SO, YES

13 Q OKAY NOW WHEN YOU CAME BACK FROM DUKE POWER DID
14 YOU HAVE TO DEVELOP ANOTHER SITE PLAN?

15 A WE DID WE DREW AT LEAST TWO, MAYBE THREE TRYING TO
16 SQUEEZE IT IN TIGHTER AND ACTUALLY -- ACTUALLY DUKE
17 EVEN HELPED US WITH THAT THERE WAS NO QUESTION THAT
18 THEY WANTED THIS TO BE SUCCESSFUL AS WELL BUT BETWEEN
19 THEIR EFFORTS AND OUR EFFORTS WE WERE ABLE TO GET IN A
20 HUNDRED AND TWO INTO THE AREA THAT WAS CONSIDERED MARINA
21 POINT

22 Q HAD YOU BEEN INFORMED BY MR BALLARD ABOUT THAT
23 GEOGRAPHICAL RESTRICTION BEFORE YOU ENTERED INTO THIS
24 CONTRACT?

25 A NO

1 Q AND IF YOU COULD FIT TWO HUNDRED -- HAS DUKE POWER
2 EVER TOLD YOU YOU CAN'T HAVE TWO HUNDRED BOAT SLIPS?

3 A NO

4 Q IS IT -- WHY CAN'T YOU HAVE TWO HUNDRED BOAT SLIPS?

5 A THERE'S A GEOGRAPHICAL RESTRICTION, NOT A NUMBER OF
6 BOATS RESTRICTION

7 Q SO IS IT YOUR BELIEF THAT IF TWO HUNDRED BOAT SLIPS
8 COULD FIT INTO THIS SPOT DUKE POWER WOULD HAVE -- WOULD
9 DUKE POWER HAVE QUESTIONED YOU ON THAT?

10 A NO QUESTION ABOUT IT THEY GAVE US TWO HUNDRED IN A
11 DRY-STACK 'CAUSE IT GOES UP IN THE AIR AND THERE ARE NO
12 RESTRICTIONS

13 Q THE ISSUE WITH DUKE POWER, IS IT FAIR TO SAY, IT'S
14 NOT ABOUT THE NUMBER OF SLIPS, IS IT?

15 A NO

16 Q IT'S ABOUT THE LOCATION OF THE SLIPS?

17 A IT'S ABOUT THE LIMITATIONS OF THE GEOGRAPHY THAT'S
18 EXACTLY RIGHT

19 Q OKAY AND YOU JUST CAN'T PHYSICALLY SQUEEZE ANY
20 MORE SLIPS INTO THAT GEOGRAPHY, IS THAT RIGHT?

21 A NO THAT'S CORRECT, YOU CANNOT

22 Q I JUST WANT TO SHOW YOU SOMETHING REAL FAST

23 A ACTUALLY, I THINK IT WAS SAID YESTERDAY, TO EVEN GET
24 OVER A HUNDRED WE HAD TO USE SOME WATER THAT THE DEPTHS
25 ARE NOT GOING TO BE SUFFICIENT IF WE HAVE ANY KIND OF

1 DROUGHT

2 Q BEAR WITH ME ONE MOMENT LET ME CHECK MR

3 ROBERSON, I'M SHOWING YOU PLAINTIFF'S EXHIBIT 13 WE

4 HAVE -- WE'VE TALKED QUITE A BIT ABOUT PROFORMAS I

5 DON'T THINK -- FOR THE BENEFIT OF THE JURY I WANT THEM TO

6 SEE WHAT A PROFORMA IS, WHAT WE'VE TALKED ABOUT AND IS

7 THERE A PROFORMA ATTACHED TO THIS EMAIL?

8 A YES

9 Q WHAT'S THE FIRST PAGE OF THIS PROFORMA?

10 A WELL, IT'S INPUT INFORMATION IT'S THE -- THE

11 PROJECTED REVENUE SOURCES AND THE PROJECTED REVENUES THAT

12 WOULD GO INTO THE WHOLE BUDGET

13 Q OKAY AND THESE WERE NUMBERS AND THESE PROFORMAS

14 WAS SHARED WITH MR BALLARD?

15 A YES

16 Q OKAY AND AS YOU SEE THERE, THE FIRST LINE'S RIGHT

17 BELOW KEOWEE MARINA YACHT CLUB WE SEE TERMS, TWENTY-

18 FIVE WET, THIRTY WET, FORTY WET, A HUNDRED WET AND WE

19 SEE JUST TO THE RIGHT OF THAT, SIXTY, SIXTY-FOUR AND

20 FORTY?

21 A YES

22 Q DOES THAT TOTAL TWO HUNDRED?

23 A YES

24 Q AND WERE THESE THE -- WERE THESE PROFORMAS AND THE

25 NUMBERS YOU GENERATED FROM THIS -- AND I'M JUST GOING TO

1 FLIP THROUGH A FEW PAGES HERE JUST SO THE JURY CAN SEE
2 THIS APPEARS -- THIS PAGE APPEARS TO BE THE NEXT PAGE IN
3 LINE AND THIS EXHIBIT APPEARS TO BE TOTAL CONSTRUCTION
4 BUDGET NUMBERS, IS THAT RIGHT?

5 A THAT'S CORRECT

6 Q AND THEN DOES THE NEXT PAGE APPEAR TO BE A BREAKOUT
7 IN THE BUDGET?

8 A YES

9 Q NEXT PAGE APPEAR TO BE A CONTINUATION?

10 A THAT'S CORRECT

11 Q AND THEN EVALUATION OF THE SALE OF THE PROJECT ON
12 THE NEXT PAGE?

13 A YES

14 Q IF IT WAS TO BE SOLD?

15 A CORRECT

16 Q THE NEXT PAGE THE DEVELOPMENT BUDGET?

17 A YES

18 Q THE NEXT PAGE IS THE -- LOOKS TO BE SOME SORT OF
19 SUMMARY, IS THAT RIGHT?

20 A YES

21 Q WE CAN SKIP THROUGH -- LET'S JUST GET TO THE LAST
22 PAGE AND ONCE AGAIN WE SEE IN THE SLIP PROFILE UP
23 THERE, DO YOU SEE AGAIN WE'RE REPRESENTING TWO HUNDRED
24 WET SLIPS?

25 A YES

1 Q WERE THESE -- WAS THIS PROFORMA AND THESE PROFORMAS
2 AND WHAT Y'ALL WENT THROUGH, WERE THESE USED TO EVALUATE
3 WHAT MR BALLARD WAS TELLING Y'ALL?

4 A YES

5 Q HE WASN'T SELLING YOU LAND, WAS HE?

6 A NO HE WAS SELLING US A BUSINESS OPPORTUNITY

7 Q AND THIS BUSINESS OPPORTUNITY IS DEPENDENT UPON
8 REVENUE THAT IT CAN PRODUCE, IS THAT RIGHT?

9 A THAT'S CORRECT

10 Q AND SO IS IT FAIR TO SAY THAT THE VALUE OF THIS
11 BUSINESS OPPORTUNITY IS DIRECTLY RELATED TO THE AMOUNT OF
12 REVENUE IT COULD PRODUCE?

13 A ABSOLUTELY

14 Q AND YOU BASED YOUR DECISION TO PAY MR BALLARD A
15 MILLION DOLLARS AND WHAT Y'ALL PAID HIM FOR THIS
16 INVESTMENT BASED UPON WHAT YOU BELIEVE YOU COULD -- WHAT
17 IT WAS POSSIBLE TO GENERATE REVENUE IS THAT RIGHT?

18 A THAT'S RIGHT THERE WAS A CORRELATION

19 Q NOW IN THIS INVESTMENT THAT YOU WERE EVALUATING,
20 WHAT WAS THE LARGEST INCOME PRODUCER FOR THIS INVESTMENT?

21 A THE MARINA SLIPS, BOTH DRY AND WET

22 Q OKAY BETWEEN THE DRY AND THE WET WHICH IS -- WHICH
23 WAS GOING TO COMMAND MORE MONEY?

24 A I BELIEVE IT WOULD BE THE WET SLIPS

25 Q THIS IS IN ESSENCE MORE SO THAN ANYTHING A MARINA, IS

1 IT NOT?

2 A THAT'S TRUE THAT'S THE HEART OF THE MARINA

3 Q HAS THE -- THE FACT THAT YOU WERE ONLY ABLE TO GET A
4 HUNDRED AND TWO BOAT SLIPS INTO THIS -- WET SLIPS INTO
5 THIS MARINA, HAS THAT AFFECTED THE PROFORMAS?

6 A YES

7 Q OKAY WAS THIS A -- LET ME ASK IT THIS WAY WAS
8 THIS A REAL AND PHYSICAL LOSS OF SOMETHING IN THESE
9 PROFORMAS?

10 A I THINK I'VE HEARD IT SAID ALREADY THAT YOU CAN'T
11 LOSE SOMETHING YOU DON'T HAVE THIS WAS THE LOSS OF AN
12 EXPECTATION

13 Q AND WHAT I MEAN BY THAT IS THIS WAS NOT JUST A LOSS
14 OR A REDUCTION IN WHAT YOU THOUGHT MAYBE YOU COULD EARN
15 ON THIS? WHAT I MEAN, ON A SLIP?

16 A IT WOULD BE LIKE IF SOMEBODY HIRED YOU AND THEY SAID
17 THEY WERE GOING TO PAY YOU FIFTY THOUSAND DOLLARS A YEAR
18 BUT WHEN YOU GOT -- WHEN YOU SHOWED UP FOR WORK YOU WERE
19 ONLY GETTING PAID THIRTY THOUSAND DOLLARS A YEAR SO
20 YOU'D SCRATCH YOUR HEAD AND THINK, THAT'S NOT WHAT I
21 THOUGHT

22 Q OKAY IS THE REDUCTION IN THESE NUMBER OF SLIPS, IS
23 THIS ONE OF THE CAUSES OF THE LOSS OF OPERATING REVENUE
24 THAT YOU WERE DISCUSSING YESTERDAY?

25 A THAT'S ONE OF THE CAUSES IT'S THE ONGOING CAUSE

1 THERE WAS A -- OBVIOUSLY THE DELAYS HAVE BEEN A CAUSE,
2 BUT THAT'S LOSS FOREVER BUT AN ONGOING CAUSE WOULD BE
3 THE REDUCTION IN SLIPS

4 Q AND WAS THE LOSS -- AND I BELIEVE YOU TESTIFIED
5 YESTERDAY, IT WAS THE LOSS OF THIS OPERATING REVENUE
6 WHICH CAUSED THE ACTIONS AND WHICH CAUSED YOU TO HAVE TO
7 TAKE THE ACTIONS THAT Y'ALL TOOK AT THE MAY 1, 2008 BOARD
8 MEETING, IS THAT RIGHT?

9 A SOLELY AND I THINK THE COMMUNICATIONS INDICATE
10 THAT

11 Q MR. ROBERSON, DO YOU -- DO YOU BELIEVE THAT MR.
12 BALLARD MISLED Y'ALL?

13 A I CAN'T LOOK INTO SOMEBODY'S HEART I'M JUST NOT
14 QUALIFIED TO -- I SAID IT BEFORE, AND I'LL SAY IT AGAIN
15 IF HE DIDN'T MISLEAD US, HE WAS NAIVE AND THAT'S ABOUT
16 ALL I CAN SAY I DON'T KNOW

17 Q AS A RESULT OF WHAT HAS OCCURRED DO YOU BELIEVE THAT
18 YOU OVERPAID MR. BALLARD FOR THIS INVESTMENT?

19 A YES IF WE'D OPERATED OFF OF THE OTHER PROFORMAS
20 OUR CALCULATION OR NEGOTIATIONS WOULD HAVE -- WOULD HAVE
21 BEEN DIFFERENT WE WOULD HAVE PROBABLY RESULTED IN A
22 LOWER NUMBER

23 MR. HOLLEMAN: NO OBJECTION

24 THE COURT TO WHAT?

25 MR. HOWARD I'M GETTING READY TO SHOW IT TO YOU,

1 YOUR HONOR YOUR HONOR, I SUPPOSE WITH NO OBJECTION,
2 DEFENDANTS MOVE TO ADMIT DEFENDANT'S EXHIBIT 7

3 THE COURT OKAY

4 (WHEREUPON DEFENDANT'S EXHIBIT 7 WAS MARKED AND
5 ADMITTED INTO EVIDENCE)

6 Q MR ROBERSON, DO YOU RECOGNIZE DEFENDANT'S EXHIBIT
7 7?

8 A YES

9 Q IT APPEARS TO BE AN EMAIL FROM YOU TO RICK, SR , TO
10 RICK, III, AND TO ANDY BALLARD, IS THAT RIGHT?

11 A THAT'S RIGHT

12 Q AND THAT WAS SENT ON MARCH 12, 2008 AT 3 03 AM

13 A YES

14 Q THAT WAS A TOUGH NIGHT

15 A IT WAS

16 Q THIS WAS APPROXIMATELY A MONTH AND A HALF BEFORE THE
17 SHAREHOLDERS MEETING THAT YOU HELD ON MAY 1?

18 A YES

19 Q TELL US ABOUT THIS LETTER WE DON'T HAVE TO GO
20 THROUGH THE WHOLE THING JUST

21 A NO, THIS WAS ONE OF THOSE EVENINGS THAT I JUST HAD
22 THIS BUSINESS PROBLEM ON MY MIND, AND I COULDN'T GO TO
23 SLEEP I HAD A LOT OF THOUGHTS THAT I JUST FELT LIKE I
24 NEEDED TO GET TO PAPER AND SO I GOT OUT OF BED AND WENT
25 TO MY COMPUTER AND JUST STARTED TYPING

1 I CAN READ IT OR, I MEAN, I, YOU KNOW, IT'S BEEN A
2 WHILE SINCE I'VE READ IT BUT I JUST REMEMBER THAT IT
3 WAS -- IT WAS JUST SOMETHING I FELT LIKE NEEDED TO BE
4 SAID AND SHARED

5 Q LET'S JUST TALK -- JUST START THERE WITH PARAGRAPH
6 ONE, JUST LOOKING AT IT

7 A THIS HAS -- THIS HAS NOT BEEN A GOOD WEEK FOR US

8 Q OKAY WE DON'T HAVE TO READ THE WHOLE THING, BUT I
9 WANT TO JUST POINT OUT ---

10 A OKAY

11 Q THE NEXT SENTENCE YOU'RE -- WHAT HAPPENED WITH THE
12 PLANNING COMMISSION?

13 A THEY DENIED US OR TABLED US

14 Q OKAY WAS THAT AN ONGOING PROBLEM?

15 A WELL, IT WAS A LITTLE DISCONCERTING AT THE TIME
16 BECAUSE I ENTERED INTO THE PROJECT FEELING LIKE ALL THE
17 WHEELS WERE GREASED, SO TO SPEAK, AND THAT WE WERE JUST
18 GOING TO BE GOING THROUGH SOME PERFUNCTORY ISSUES TO GET
19 THINGS MOVING I FOUND OUT THAT A NUMBER OF COUNCIL
20 PEOPLE WERE ADAMANTLY OPPOSED TO THE PROJECT AND THAT
21 WAS -- THAT WAS REALLY BOTHERSOME, TOTALLY UNEXPECTED

22 Q A FEW SENTENCES DOWN IT SAYS I CANNOT -- IT SAYS I
23 CANNOT JUSTIFY THE EXPENDITURE OF NEARLY FIVE HUNDRED
24 THOUSAND TO PURCHASE A PIECE OF LAND THAT WE HAVE NO
25 GUARANTEE WILL BE OF USE TO US

1 A YEAH

2 Q WHAT PIECE OF LAND ARE YOU REFERRING TO THERE?

3 A OKAY WHEN WE FOUND OUT THAT WE WERE GOING TO HAVE
4 TO PURCHASE ADDITIONAL PROPERTY TO PUT A WASTE WATER
5 TREATMENT PLANT ON, YOU KNOW, SPENT A FEW MONTHS LOOKING
6 FOR THAT PROPERTY AND FINALLY FOUND A PARCEL BETWEEN
7 THREE AND FOUR MILES AWAY AND IT WAS FOR SALE IT WAS
8 ADEQUATE TO PUT THE PLANT ON

9 THE PRICE WAS CLOSE TO HALF A MILLION DOLLARS AND
10 I WAS -- THE OFFER WAS GOING TO BE RESCINDED AT A CERTAIN
11 TIME AT ONE POINT I THOUGHT WE HAD TIME TO GET THE
12 PLANNING COMMISSION'S APPROVAL FOR THE WASTE WATER SITE
13 AND THEN WE COULD BUY THE LAND, BECAUSE AGAIN, ALL OF THE
14 EXPENDITURES THAT ARE FROM DAY ONE HAVE BEEN COMING FROM
15 ME SO I HAD TO WRITE A CHECK

16 AND THE THOUGHT OF OWNING FORTY-FOUR ACRES OUT IN
17 SIX-MILE, SOUTH CAROLINA THAT WAS OF NO VALUE TO ME WAS
18 NOT VERY PLEASANT BUT YET I WAS GOING TO HAVE TO MAKE A
19 DECISION REAL QUICK

20 AND, YOU KNOW, I HAVEN'T TAKEN THE TIME TO READ BACK
21 THROUGH THIS RECENTLY, BUT THAT WAS PART OF MY REASON FOR
22 NOT BEING ABLE TO SLEEP THAT NIGHT WAS THAT I HAD TO MAKE
23 A DECISION ON WHETHER TO BUY THAT PROPERTY OR NOT AND
24 AT THAT TIME IT APPEARED THAT OUR PROJECT WAS IN REAL
25 JEOPARDY

1 Q YOU ULTIMATELY BOUGHT THE PIECE OF PROPERTY, IS THAT
2 RIGHT?

3 A I DID

4 Q APPROXIMATELY HOW MUCH DO YOU HAVE INVESTED IN
5 WARPATH?

6 A MAYBE A MILLION AND A HALF I'M NOT SURE

7 Q OKAY WELL, YOU'VE GOT A MILLION NOW THAT YOU'VE
8 PAID TO MR BALLARD, IS THAT RIGHT?

9 A YEAH

10 Q AND YOU'VE GOT A PIECE OF PROPERTY THAT'S WORTH
11 CLOSE TO FIVE HUNDRED THOUSAND?

12 A YEAH PLUS WE'VE BEEN PAYING ARCHITECTURAL AND
13 ENGINEERING FEES FOR THREE YEARS NOW SO IT'S ON UP
14 THERE SOMEWHERE

15 Q ANY IDEA HOW MUCH THAT COSTS?

16 A NO, NOT REALLY

17 Q OKAY SO MORE THAN LIKELY IN EXCESS OF A MILLION
18 AND A HALF DOLLARS?

19 A YES

20 Q LOOK AT THE LAST SENTENCE OF THAT PARAGRAPH IT
21 SAYS THE ICING ON THE CAKE CAME THIS MORNING WHEN
22 PALMETTO BANK INFORMED ME THEIR COMMITTEE HAS CONCLUDED
23 OUR BUSINESS PLAN IS NOT VIABLE AND HAVE DECLINED TO
24 PARTICIPATE IN FINANCING OF THE PROJECT WHY DID THEY
25 TELL YOU NO?

1 A WELL, MY UNDERSTANDING WAS THE PROFORMAS DIDN'T WORK
2 FOR THEM AND I WOULD -- I THINK IT'S SAFE TO SAY TOO
3 THAT THIS WAS THE BEGINNING OF THE DECLINE AND MAYBE THEY
4 WERE LESS COMFORTABLE WITH IT THEN -- THAN THEY WERE A
5 YEAR EARLIER WHEN WE FIRST TOOK IT TO THEM OR SEVERAL
6 MONTHS EARLIER

7 Q LOOK AT THE NEXT PARAGRAPH A SENTENCE DOWN IT SAYS
8 -- IT STARTS WITH THE POTENTIAL REVENUE IS OFF
9 CONSIDERABLY FROM THE PROFORMAS YOU WORKED WITH US ON
10 AND WHEN YOU'RE SAYING YOU, ARE YOU REFERRING TO ANDY?

11 A YES

12 Q THEN IT STATES, YOU GAVE US THE -- A CLEAR INTENTION
13 THAT THE TWO HUNDRED WET SLIPS WERE ACHIEVABLE YOU
14 REPRESENTED THAT THE PERMITTING PROCESS WAS ALL BUT DONE
15 AND THE PROJECT WAS READY TO GO DID I READ THAT
16 CORRECTLY?

17 A THAT'S CORRECT

18 Q AND THOSE ARE THE -- THOSE ARE EXACTLY WHAT YOU'RE
19 SAYING TODAY, IS THAT RIGHT?

20 A THAT'S CORRECT

21 Q THERE'S PLENTY MORE HERE, BUT THE MATTER OF JUST
22 MOVING ON, WAS THIS JUST -- WHAT WERE YOU FEELING AT THIS
23 TIME?

24 A I WAS FEELING LIKE SOMEBODY WITH A BIG PROBLEM THAT
25 I HAD TO FIGURE OUT WHAT TO DO ABOUT IT AND SO THE

1 FIRST PLACE I TURNED TO WAS MY PARTNERS

2 Q NOW EVEN GIVEN ALL THESE PROBLEMS THAT Y'ALL WERE
3 EXPERIENCING WERE YOU LOOKING TO DRAG MR BALLARD INTO
4 COURT?

5 A NO WE NEVER HAD ANY INTENTIONS OF -- EVEN WITH
6 THIS SITUATION DEVELOPING, WE'VE HAD NO DISCUSSIONS, WE
7 HAD NO DISCUSSIONS THAT WERE -- THERE WAS NO INTENTION OF
8 SUING HIM IT WAS JUST LET'S DEAL WITH THIS THING AND
9 MOVE ON

10 Q BUT MR BALLARD SUED YOU?

11 A THAT'S CORRECT

12 Q AND SO NOW WE'RE HERE, CORRECT?

13 A YES

14 Q BUT YOU HAD A BUSINESS PROBLEM AND WERE YOU
15 LOOKING FOR A BUSINESS SOLUTION?

16 A I WAS LOOKING FOR A BUSINESS SOLUTION

17 Q NOT A LEGAL SOLUTION?

18 A I ACTUALLY STATED THAT IN ONE OF THE EMAILS WITH, I
19 THINK, MAYBE AFTER WE GOT SUED OR WHEN HE WAS THREATENING
20 TO SUE I SAID THIS IS NOT A LEGAL ISSUE, THIS IS A
21 BUSINESS ISSUE AND LET'S JUST SCRATCH OUR HEADS AND
22 FIGURE IT OUT

23 Q MR ROBERSON, BY THE BOARD OF DIRECTORS TAKING
24 ACTION TO TRY TO AMEND THE ARTICLES OF INCORPORATION TO
25 INCREASE THE AUTHORIZED SHARES FROM A HUNDRED THOUSAND TO

1 A MILLION, HAVE YOU OR THE BOARD BREACHED THE AGREEMENT
2 BETWEEN YOU AND MR BALLARD?

3 MR HOLLEMAN I HAVE TO OBJECT TO THE FORM THAT'S
4 A LEADING QUESTION AND ASSUMES A FACT WHICH ISN'T IN
5 EVIDENCE IN FACT, THE MINUTES CONTAIN NO MENTION OF
6 AMENDING THE ARTICLES ---

7 THE COURT OKAY

8 MR HOLLEMAN --- OF INCORPORATION

9 THE COURT: SUSTAINED

10 Q LET ME JUST ASK IT THIS WAY HAVE YOU BREACHED THE
11 CONTRACT BETWEEN YOURSELF AND MR BALLARD?

12 A NO

13 Q HAVE YOU FAILED TO FULFILL ANY OF YOUR OBLIGATIONS
14 UNDER THE CONTRACT?

15 A NO

16 Q ARE YOU CURRENTLY PURSUING FINANCING?

17 A YES

18 Q HAVE YOU ALWAYS PURSUED FINANCING?

19 A ALWAYS

20 Q IS THE ECONOMY MAKING THAT A BIT MORE DIFFICULT?

21 A CERTAINLY

22 Q HAVE YOU REPUDIATED THE CONTRACT OR IN ANY WAY
23 STATED THAT YOU WILL NOT PERFORM THE CONTRACT?

24 A NO

25 Q DO YOU INTEND TO PERFORM UNDER THE CONTRACT?

1 A ABSOLUTELY

2 Q HAVE YOU IN ANY WAY OPPRESSED OR MADE ANY ATTEMPT TO
3 FREEZE-OUT ANDY BALLARD?

4 A NO

5 Q THANK YOU, MR ROBERSON

6 MR HOWARD THAT'S THE WITNESS

7 THE COURT ALL RIGHT I SUSPECT THE CROSS EXAM MAY
8 TAKE SOME TIME?

9 MR HOLLEMAN (AFFIRMATIVE NOD)

10 THE COURT MR FOREMAN, LADIES AND GENTLEMEN, LET'S
11 TAKE A MORNING BREAK PLEASE REMEMBER NOT TO DISCUSS THE
12 CASE AND WE'LL GET BACK TO YOU VERY SHORTLY MR
13 ROBERSON, PLEASE REMAIN SEATED UNTIL THEY -- THE JURY
14 EXITS THE COURTROOM

15 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11 00
16 AM)

17 THE COURT OKAY WE'LL BE AT EASE REMEMBER NOT
18 TO TALK ABOUT YOUR TESTIMONY, MR ROBERSON

19 MR ROBERSON YES, SIR

20 THE COURT THANK YOU

21 (WHEREUPON COURT WAS IN RECESS AT 11 00 AM)

22 THE COURT OKAY Y'ALL READY?

23 MR HOLLEMAN YES, YOUR HONOR

24 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11 34
25 AM)

1 THE COURT OKAY MR HOLLEMAN

2 MR HOLLEMAN READY, YOUR HONOR

3 CROSS EXAMINATION BY MR HOLLEMAN

4 Q MR ROBERSON, DID I UNDERSTAND YOU TO SAY YESTERDAY
5 THAT WHEN YOU ALL AUTHORIZED THE ISSUANCE OF NINE HUNDRED
6 SHARES IN ADDITIONAL STOCK IN MAY OF 2008 YOU INTENDED
7 THAT STOCK TO BE AVAILABLE TO BE USED TO PAY EXPENSES AND
8 NOT TO RAISE CAPITAL, IS THAT CORRECT?

9 A WE DIDN'T AUTHORIZE THE ISSUANCE, WE AUTHORIZED --
10 WE DIDN'T ISSUE IT WE AUTHORIZED IT FOR ---

11 Q THAT'S WHAT I SAID

12 A --- A NUMBER OF PURPOSES IT, AS I STATED EARLIER,
13 COULD BE USED FOR OFFSETTING REVENUES WITH VARIOUS
14 EXPENSE ITEMS IF THAT WAS EVER DEEMED APPROPRIATE IT
15 COULD BE USED IN THE FORM OF SOME CAPITAL IN THE SECOND,
16 THIRD PHASE OF THE PROJECT

17 FOR EXAMPLE, IF A HOTEL OR A RESTAURANT WERE TO COME
18 IN, THE DISCUSSION FROM THE BEGINNING -- I BELIEVE, IT
19 WAS ACTUALLY ANDY WHO RECOMMENDED THAT WE COULD PROBABLY
20 GET THREE MILLION DOLLARS FROM A HOTEL AND A MILLION
21 DOLLARS FROM A RESTAURANT AND I DON'T THINK THOSE FOLKS
22 WOULD JUST WRITE YOU A CHECK I EXPECT THEY WOULD EXPECT
23 EQUITY FOR THAT

24 Q WELL, LET ME JUST ASK MY QUESTION MORE DIRECTLY IS
25 IT NOT TRUE THAT WHEN YOU AUTHORIZED THE ISSUANCE OF THE

1 NINE HUNDRED THOUSAND SHARES YOUR FIRST PURPOSE WAS TO
2 RAISE CAPITAL?

3 A NO, THAT'S NOT TRUE

4 Q LET'S PUT UP THE MINUTES FROM THAT MEETING OKAY
5 IF WE COULD GO TO -- I THINK IT'S ON THE SECOND PAGE
6 WHERE THE RESOLUTION IS IT SAYS AFTER THE BOARD WENT
7 INTO SESSION THE BOARD PROPOSED THE CORPORATION ISSUE AN
8 ADDITIONAL, ADDITIONAL NINE HUNDRED THOUSAND SHARES FOR
9 THE PURPOSE OF RAISING ADDITIONAL CAPITAL THAT'S THE
10 FIRST REASON GIVEN IN YOUR MINUTES, ISN'T IT?

11 A IT'S ONE OF THE REASONS GIVEN

12 Q WELL, IT'S THE FIRST REASON GIVEN, IS IT NOT?

13 A WELL, IT CERTAINLY IS

14 Q AND IT'S IN THE OFFICIAL MINUTES OF THE CORPORATION,
15 CORRECT?

16 A THAT'S CORRECT

17 Q AND YOU'RE THE -- YOU'RE THE PRESIDENT OF THE
18 CORPORATION, IS THAT RIGHT?

19 A THAT'S CORRECT

20 Q OKAY

21 A MAYBE ---

22 Q NOW ---

23 A --- I CAN EXPLAIN THAT A LITTLE MORE?

24 Q NO YOU ANSWER MY QUESTIONS, ---

25 A OKAY

1 Q --- PLEASE

2 A SURE

3 Q AND THEN ALSO ANOTHER PURPOSE YOU HAD IS OFFERING
4 EMPLOYEE INCENTIVES, IS THAT CORRECT?

5 A THAT WAS A POTENTIAL, YES

6 Q YES AND I BELIEVE THAT YOU HAD TESTIFIED YOUR
7 INTENT WAS THAT YOU WOULD MANAGE THE SITE, CORRECT?
8 YOU'D MANAGE THE MARINA, IS THAT RIGHT?

9 A I WAS GOING TO TAKE THE ROLE THAT SOUTHERN
10 HOSPITALITY WOULD HAVE TAKEN, WHICH WOULD NOT HAVE BEEN A
11 DAY-TO-DAY MANAGEMENT, BUT WOULD HAVE BEEN AN OVERSIGHT
12 MANAGEMENT, YES

13 Q AND YOU WERE GOING TO HIRE YOUR NIECE?

14 A AFTER THAT AT SOME POINT I OFFERED THAT OPPORTUNITY
15 TO MY NIECE AND HER HUSBAND

16 Q AND YOU WERE GOING TO HIRE YOUR NIECE'S HUSBAND?

17 A THAT'S CORRECT

18 Q AND YOU WERE GOING TO HIRE YOUR SISTER?

19 A NO OFFER'S BEEN MADE, JUST DISCUSSIONS ABOUT HER
20 WORKING IN THE STORE

21 Q AND YOU WERE GOING TO HIRE YOUR OTHER SISTER?

22 A NO OFFERS MADE, JUST THE DISCUSSION OF HER WORKING
23 IN THE DAY CAMP OR WORKING WITH CHILDREN

24 Q NOW HAVE YOU ALL -- HAVE YOU -- I BELIEVE YOU SAID
25 YOU PICKED YOUR NIECE'S NEPHEW TO BE THE ONSITE MANAGER

1 YOU PICKED -- NOW DID YOU CONSIDER HAVING INTERVIEWS OF
2 POTENTIAL CANDIDATES WITH THE BOARD MEMBERS WHILE ANDY
3 WAS A BOARD MEMBER OR EVEN WHEN HE WASN'T?

4 A WE TALKED ABOUT ALL SORTS OF OPPORTUNITIES THERE
5 WE HAD DISCUSSIONS ABOUT POTENTIALLY RETIRED DUKE ENERGY
6 PERSONNEL, MAYBE A RETIRED COUPLE WE TALKED ABOUT THE
7 SKILL SETS THAT SOMEONE WOULD NEED TO BE ABLE TO GET
8 THEIR HANDS DIRTY, BUT YET HAVE THE RESPONSIBILITY OF
9 BUDGETS AND MANAGING MONEY AND HAVE A -- BE A PEOPLE
10 PERSON

11 Q ALL RIGHT MY QUESTION IS DID YOU HAVE A DIRECTORS
12 MEETING OR CONSIDER HAVING A DIRECTORS MEETING WHERE
13 PEOPLE CAME FOR INTERVIEWS?

14 A THOSE ARE NOT DIRECTOR -- IN MY OPINION AND IN MY
15 EXPERIENCE THOSE ARE NOT DIRECTOR MEETING CONVERSATIONS

16 Q DID YOU CONSIDER POSTING THE POSITION AND SOLICITING
17 APPLICATIONS FROM QUALIFIED PEOPLE RATHER THAN PICKING
18 YOUR NIECE'S HUSBAND?

19 A WELL, I WOULD DO THAT WITH CERTAIN JOBS, BUT, NO, I
20 DIDN'T -- I DIDN'T DO THAT

21 Q AND AFTER YOU DECIDED TO HIRE YOUR NIECE AND YOUR
22 NIECE'S HUSBAND, I BELIEVE, YOU HAD YOUR ARCHITECT ADD A
23 RESIDENCE ON THE SITE WHERE THEY WOULD LIVE, IS THAT
24 RIGHT?

25 A NO, SIR THAT RESIDENCE WAS ADDED ON THE SITE FROM

1 THE BEGINNING IT CALLS -- WELL, THE LEASE CALLS FOR US
2 TO HAVE THE OPPORTUNITY TO HAVE AN ONSITE RESIDENT
3 MANAGER'S COTTAGE HOUSE ON ---

4 Q AND YOUR ARCHITECT ADDED THAT TO THE PLAN, IS THAT
5 CORRECT?

6 A CERTAINLY

7 Q ALL RIGHT NOW LET'S TALK A MINUTE ABOUT THIS
8 MEETING IN 2009 AUGUST 27TH, 2009, I THINK, IS WHEN THE
9 NOTICE WENT OUT DO YOU RECALL THAT?

10 A CAN I BACK UP? THAT ONSITE RESIDENT MANAGER'S HOUSE
11 WAS PART OF THE PLAN LONG BEFORE I EVEN THOUGHT THAT I
12 WOULD RUN THIS OPERATION OR THAT I'D BE HIRING MY NIECE
13 AND HER HUSBAND

14 Q AND YOUR ARCHITECT PUT IT IN THE PLANS, CORRECT?

15 A HE DID, YES

16 Q ALL RIGHT LET'S PUT IT UP, PLEASE, THE NOTICE OF
17 THE 2009 MEETING THAT NOTICE IS DATED AUGUST 27, 2009,
18 CORRECT?

19 A YES

20 Q AND YOUR TESTIMONY TO THE JURY IS THAT IT IS A MERE
21 COINCIDENCE THAT THAT NOTICE WAS ISSUED TWO DAYS AFTER
22 MR BALLARD FILED HIS AMENDED COMPLAINT BASED ON WHAT
23 HE'D DISCOVERED THAT YOU ALL HAD OPPRESSED HIM, INCLUDING
24 REMOVING HIM AS A DIRECTOR? YOU'RE SAYING THAT'S A MERE
25 COINCIDENCE THAT TWO DAYS -- THAT YOU ISSUED THIS NOTICE

1 TWO DAYS LATER?

2 A I WOULD SAY IT IS A COINCIDENCE

3 Q ALL RIGHT

4 A IT WAS TIME FOR ONE IF THAT HAD BEARING ON IT, IT
5 CERTAINLY DOESN'T STAND OUT IN MY MIND

6 Q ALL RIGHT SIR, I BELIEVE YOU SAID YOU HAVE TO HAVE
7 ONE EVERY YEAR SO THIS JUST HAPPENED TO BE THE DATE IT
8 HAPPENED, CORRECT?

9 A WITHIN THE RANGE I DON'T KNOW THE DATE

10 Q WELL, ISN'T IT TRUE THE PRIOR MEETING WAS MAY 1,
11 2008? THE LAST MEETING BEFORE ---

12 A YEAH

13 Q --- THIS?

14 A OKAY

15 Q AND SO IF YOU WERE GOING TO DO IT WITHIN A YEAR YOU
16 SHOULD HAVE HAD ONE BY MAY 1, 2009 CORRECT?

17 A I GUESS WE WERE LATE THEN

18 Q WELL, YOU DIDN'T HAVE ONE IN MAY YOU DIDN'T HAVE
19 ONE IN JUNE YOU DIDN'T HAVE ONE IN JULY AND YOU
20 DIDN'T HAVE ONE EARLIER IN AUGUST YOU JUST HAD ONE TWO
21 -- YOU NOTICED ONE TWO DAYS AFTER MR BALLARD'S AMENDED
22 COMPLAINT AND I JUST WANT TO ASK YOU IS IT YOUR
23 TESTIMONY TO THIS JURY THAT HIS AMENDED COMPLAINT HAD
24 NOTHING TO DO WITH YOU ISSUING A NOTICE OF A MEETING TO
25 ELECT HIM AS A DIRECTOR?

1 A ABSOLUTELY, IT HAD NOTHING TO DO WITH IT IF
2 ANYTHING WOULD HAVE CAUSED ME TO THINK ABOUT A CALENDAR,
3 IT WOULD HAVE BEEN THE ORIGINAL LAWSUIT, NOT THE AMENDED
4 COMPLAINT I'M NOT EVEN SURE WHEN HE AMENDED IT AND WHAT
5 IT SAID I JUST HAVE THE BIG PICTURE THAT HE SUED US

6 NOW I KNOW AT SOME POINT AND SOME DATE THERE HE
7 AMENDED IT AND UPPED THE ANNIE BUT, NO, THAT DIDN'T
8 HAVE ANYTHING TO DO WITH THAT DATE

9 Q NOW, MR ROBERSON, ISN'T IT TRUE THAT DUKE'S
10 DECISION TO LIMIT THE MARINA IN A WAY THAT YOU COULD ONLY
11 PUT A HUNDRED AND TWO SLIPS THERE WAS FULLY CONSISTENT
12 WITH BOTH THE LEASE AND THE CONCEPTUAL PLAN THAT IS
13 INCORPORATED IN THE LEASE?

14 A YES

15 Q SO IT'S YOUR POSITION THAT DUKE'S DECISION WAS
16 CONSISTENT WITH BOTH THE LEASE AND WITH THE CONCEPTUAL
17 PLAN?

18 A YES

19 Q AND, IN FACT, YOU'VE TOLD DUKE THAT IN WRITING, HAVE
20 YOU NOT?

21 A I DID

22 Q AND THAT LEASE AND THAT CONCEPTUAL PLAN ARE WHAT ARE
23 REFERRED TO IN THE AGREEMENT THAT YOU SIGNED WITH ANDY
24 BALLARD, CORRECT?

25 A THAT'S CORRECT THERE WAS NO MENTION OF THE

1 GEOGRAPHICAL RESTRICTION

2 Q IN THE AGREEMENT AND THERE'S NO MENTION OF A
3 NUMBER OF SLIPS EITHER

4 A NO WELL, THERE IS ---

5 Q NOW ---

6 A --- A NUMBER OF SLIPS, YES, ONE HUNDRED TO TWO
7 HUNDRED

8 Q NOT IN THE AGREEMENT THAT'S IN THE CONCEPTUAL PLAN
9 AND THE LEASE, CORRECT?

10 A THAT'S CORPECT YES

11 Q ALL RIGHT NOW AS TO THE MAXIMUM NUMBER THAT'S IN
12 THE CONCEPTUAL PLAN, THAT IS ONE HUNDRED TO TWO HUNDRED,
13 IS IT NOT TRUE THAT ANDY BALLARD TOLD YOU BEFORE YOU
14 SIGNED THE AGREEMENT THAT DUKE POWER HAD TOLD HIM TO GO
15 FOR THE MAXIMUM FOR EVERYTHING AND TO PUT THAT IN THE
16 LEASE?

17 A THAT'S CORRECT

18 Q AND IS IT NOT TRUE THAT AS TO HOW THE MARINA WOULD
19 BE CONFIGURED AND HOW MANY SLIPS THAT WOULD RESULT IN,
20 THAT WAS DUKE POWER'S DECISION, NOT ANDY BALLARD'S?

21 A THAT'S CORRECT

22 Q AND ISN'T IT TRUE THAT YOU RELIED ON MR THOENNES,
23 SR , TO TALK WITH DUKE POWER? YOU NEVER TALKED WITH DUKE
24 POWER BEFORE THE AGREEMENT WAS SIGNED, CORRECT?

25 A I BELIEVE THAT'S TRUE

1 Q AND YOU HAVE HEARD MR THOENNES TESTIFY THAT WHAT
2 ANDY BALLARD TOLD YOU ALL BEFORE THE AGREEMENT WAS SIGNED
3 WAS EXACTLY WHAT DUKE POWER TOLD HIM AT THE MEETING, IS
4 THAT CORRECT?

5 A THAT'S CORRECT

6 Q NOW DESPITE THE FACT THAT DUKE POWER'S DECISION IS
7 CONSISTENT WITH THE LEASE AND THE CONCEPTUAL PLAN,
8 DESPITE THE FACT THAT ANDY BALLARD TOLD YOU THAT DUKE
9 POWER TOLD HIM TO GO FOR THE MAX, DESPITE THE FACT THAT
10 MR THOENNES HAD REPORTED TO YOU WHAT ANDY TOLD YOU WAS
11 EXACTLY WHAT DUKE POWER SAID, YOU HAVE SUED ANDY BALLARD
12 FOR FRAUD, IS THAT CORRECT? HAVE YOU NOT SUED HIM FOR
13 FRAUD?

14 A WE WERE ADVISED TO COUNTER-SUE AND ALL THE
15 LEGALITIES OF THAT ---

16 Q WELL, NOW YOU ---

17 A I THINK ---

18 Q LET'S LOOK AT THAT CLOSELY NOW YOU WERE THE FORMER
19 CEO OF A TWO HUNDRED MILLION DOLLAR CORPORATION, IS THAT
20 CORRECT?

21 A THAT'S RIGHT

22 Q AND, I BELIEVE, YOU HAVE EXPLAINED TO THE JURY YOU
23 HAVE FORMED NUMEROUS LIMITED LIABILITY CORPORATIONS,
24 CORRECT?

25 A JUST HAVEN'T SUED ANYONE

1 Q NO, BUT YOU'VE WORKED WITH A LOT OF LAWYERS OVER

2 YOUR CAREER, HAVEN'T YOU?

3 A SURE

4 Q AND YOU KNOW AS THE DECISION-MAKER YOU DECIDE WHO

5 YOU'RE GOING TO SUE FOR FRAUD YOU CAN'T JUST LEAVE THAT

6 -- LEAVE THAT RESPONSIBILITY TO THE LAWYER THAT'S YOUR

7 DECISION, CORRECT?

8 A WELL, CERTAINLY IT IS BUT ACTUALLY I WASN'T REALLY

9 EXCITED ABOUT SUING HIM

10 Q BUT YOU DID SUE HIM FOR FRAUD

11 A IT'S -- IT WAS RECOMMENDED THAT THIS IS -- THIS IS

12 HOW WE SHOULD DO IT SO I PAID MY ATTORNEY TO TELL ME

13 WHAT TO DO, AND I DO IT

14 Q AND YOU JUST DID IT AND YOU SAY -- DO YOU SAY --

15 DO YOU TELL THE JURY YOU HAVE RESPONSIBILITY FOR WHAT YOU

16 SAID ON PUBLIC RECORD AS TO ANDY BALLARD OR NOT?

17 A SURE

18 Q OKAY AND BUT EARLIER I THINK YOU TESTIFIED IN

19 RESPONSE TO YOUR LAWYER'S QUESTION YOU DON'T EVEN THINK

20 HE MISLED YOU

21 A I DID?

22 Q DIDN'T YOU SAY THAT, THAT HE DID NOT MISLEAD YOU?

23 HE MAY HAVE BEEN NAIVE

24 A THAT'S MISLEADING

25 Q TO BE NAIVE IS MISLEADING?

1 A I SAID -- I SAID HE WAS EITHER NAIVE OR HE DIDN'T

2 TELL US EVERYTHING HE KNOWS

3 Q BUT YOU DON'T KNOW WHETHER HE MISLED YOU, CORRECT?

4 A I CANNOT TELL YOU

5 Q AND YET IN OPEN COURT ON PUBLIC RECORD AS TO THIS
6 MAN'S REPUTATION, AND IT'S ON FILE IN THE CLERK'S OFFICE,
7 ANYBODY CAN GO GET IT, YOU HAVE SAID HE COMMITTED FRAUD
8 DO YOU THINK THAT'S RIGHT?

9 A I CAN'T TELL YOU I WOULD NOT HAVE SUED HIM FOR
10 FRAUD I HAD ONE INTENTION AND THAT WAS TO MOVE ON
11 EITHER WITH HIM OR, YOU KNOW, IF HE WANTED US TO BUY HIM
12 OUT, WE'D BUY HIM OUT

13 Q NOW YOU HAVE TESTIFIED ABOUT A SERIES YOU SAY OF
14 FINANCIAL EFFORTS YOU MADE AND YOUR LATEST ONE IS TO
15 ASK THE FEDERAL GOVERNMENT, THAT IS THE UNITED STATES
16 DEPARTMENT OF AGRICULTURE TO FINANCE A MARINA FOR YOU, IS
17 THAT RIGHT?

18 A NO, IT'S NOT THE LATEST ONE I'VE ACTUALLY BEEN
19 WORKING ON THAT FOR PROBABLY TWO YEARS

20 Q NOW ARE YOU AWARE THAT BACK IN 2008 WE SERVED ON
21 YOUR COMPANY AND YOU AND YOUR LAWYER AN OFFICIAL LEGAL
22 BINDING DOCUMENT THAT REQUIRED YOU TO PRODUCE ALL
23 DOCUMENTS RELATED TO ANY LONG-TERM FINANCING OR ATTEMPTS
24 TO ACQUIRE LONG-TERM FINANCING FOR THE PROJECT?

25 A YES

1 Q AND WE HAVE A LOT OF DOCUMENTS HERE FOR THE JURY AND
2 EVIDENCE FOR THE COURT RECORD, DO WE NOT?

3 A YES

4 Q I HAVEN'T SEEN YOU INTRODUCE A SINGLE PIECE OF
5 PAPER, ANY WRITTEN COMMITMENT, ANY LETTER OF INTENT, ANY
6 WRITTEN PROPOSAL FROM THE U S DEPARTMENT OF AGRICULTURE

7 A I DON'T HAVE A LETTER OF INTENT I DON'T HAVE A
8 CONTRACT I FILLED OUT AN APPLICATION AND HAVE HAD
9 NUMEROUS CONVERSATIONS AND EMAILS WITH THE USDA AND
10 IT S NOT FOR FINANCING, IT WAS TO ASSIST IN GUARANTEES
11 TOWARD FINANCING

12 Q SO GOVERNMENT GUARANTEES OF THE LOANS THAT YOU WOULD
13 GET, IS THAT WHAT YOU'RE LOOKING FOR?

14 A THEY COULD IF WE QUALIFY, THAT'S CORRECT

15 Q AND BY THE WAY, I THINK YOU'VE MENTIONED YOU'RE ALSO
16 IN THIS GATEWAY PROJECT, WHICH IS THE VACANT LOT OVER
17 HERE WHERE THE MEMORIAL AUDITORIUM WAS, RIGHT?

18 A YES, SIR, I AM

19 Q AND IT'S BOARDED UP, CORRECT?

20 A IT WAS BOARDED UP FOR TEN YEARS WE BOUGHT IT TWO
21 AND A HALF YEARS AGO

22 Q OKAY AND NOTHING'S HAPPENED THERE EITHER, CORRECT?

23 A ABSOLUTELY, YES WE ORIGINALLY HAD A -- SPENT ABOUT
24 FIVE HUNDRED THOUSAND DOLLARS ACTUALLY CREATING
25 ENGINEERING AND ARCHITECTURAL PLANS TO PUT A HOTEL,

1 RESTAURANT AND CONDOS ON THE PROPERTY

2 YOU CAN READ IN TODAY'S PAPER THAT THE HOTEL

3 INDUSTRY IS FALLING OFF CONSIDERABLY IN SOUTH CAROLINA

4 WE KNEW THAT BEFORE IT WAS PRINTED, WITH THE INDUSTRY,

5 THE ECONOMY WHERE THEY'VE TAKEN A SLIDE WE HAVE HELD

6 THE PROPERTY WAITING FOR BETTER IDEAS TO COME ALONG

7 WE'VE, IN THE MEANTIME, RECEIVED AN OFFER TO BUY IT, BUT

8 THAT'S NOT UNDER CONTRACT YET THAT'S JUST A LETTER OF

9 INTENT WE ALSO IN THE MEANTIME HAVE MET WITH THE CITY

10 AND HAVE OTHER EFFORTS UNDERWAY TO DEVELOP AN APARTMENT

11 COMPLEX

12 Q SO IS THE ANSWER TO MY QUESTION, YES, NOTHING IS

13 HAPPENING ON THE REAL ESTATE ITSELF?

14 A THAT'S NOT TRUE

15 Q THERE'S NO CONSTRUCTION GOING ON, IS THERE?

16 A I BELIEVE DEVELOPMENT STARTS LONG BEFORE THE HAMMER

17 SWINGS

18 Q WELL, NO HAMMER HAS SWUNG AND NO SHOVEL HAS DUG, IS

19 THAT CORRECT?

20 A THAT IS ABSOLUTELY CORRECT

21 Q ALL RIGHT

22 A IT TAKES ---

23 Q NOW ---

24 A --- PERMITS TOO, BY THE WAY

25 Q --- ISN'T IT -- IS IT CORRECT THAT ANDY BALLARD

1 NEVER PROMISED YOU ANY RETURN ON INVESTMENT?

2 A SURE NO -- NO PROMISE

3 Q AND ISN'T IT TRUE THAT WHEN YOU CAME UP WITH THE
4 IDEA TO ISSUE ADDITIONAL STOCK PART OF WHAT YOU WERE
5 TRYING TO DO IS IMPROVE YOUR RETURN ON INVESTMENT?

6 A OUR RETURN ON INVESTMENT THAT WOULD INCLUDE ANDY,
7 AND WOULD INCLUDE RICK, RICK OR ANY OTHER INVESTOR IN THE
8 PROJECT

9 Q DO YOU REMEMBER WE SHOWED YOU EARLIER, THERE IT IS,
10 AN EMAIL DATED DECEMBER 28, 2007 THAT YOU WROTE TO MR
11 THOENNES? DO YOU REMEMBER THAT EMAIL THAT YOU WROTE?

12 A WELL, MAYBE -- I'M SURE IT'S UP THERE, BUT LET'S SEE
13 WHAT IT SAYS

14 Q I'LL HAND YOU A HARD COPY SO YOU CAN LOOK AT IT IF
15 YOU LOOK AT THE LAST PARAGRAPH WHAT YOU WROTE IS WHEN AN
16 INVESTOR REALIZES THAT AN EXPECTED ROI, AND THAT'S RATE
17 OF RETURN ON INVESTMENT, IS THAT CORRECT?

18 A THAT'S CORRECT

19 Q IS NOT FORTHCOMING, HIS ONLY VIABLE OPTION IS TO
20 ACQUIRE MORE EQUITY AT A REDUCED RATE, CORRECT?

21 A THAT'S RIGHT

22 Q AND AT THAT POINT IN TIME YOU WERE THE ONLY PERSON
23 WHO HAD INVESTED CASH FOR PURCHASE OF STOCK, IS THAT
24 CORRECT?

25 A WELL, THIS DOESN'T SAY ANYTHING ABOUT CASH IT SAYS

1 WHEN AN INVESTOR ANDY HAD INVESTED FOUR YEARS MY
2 PARTNERS HAD COMMITMENTS TO INVEST IN THE BUILDING OF THE
3 PROJECT MY INVESTMENT WAS CASH BUT AN INVESTOR, SWEAT
4 EQUITY, I MEAN, THERE'S ALL SORTS OF WAYS TO ---

5 Q LETS BE CLEAR ABOUT THIS THIS WAS NOT WRITTEN TO
6 ANDY, CORRECT?

7 A NO, THIS WAS WRITTEN ---

8 Q NO THIS WAS AT A TIME WHEN YOU WERE UPSET WITH
9 ANDY AND YOU WERE TRYING TO FIND WHAT YOU CALL A BUSINESS
10 SOLUTION TO THE SITUATION, CORRECT?

11 A THAT'S CORRECT

12 Q ALL RIGHT AND THE THOENNESES AT THAT TIME HAD NOT
13 REALLY DONE ANY WORK ON THIS PROJECT? NO -- AS OF THIS
14 DATE NO DIRT HAS BEEN SHOVELED, CORRECT?

15 A THEY DO A LOT OF WORK THAT'S NOT TURNING DIRT IT'S
16 ---

17 Q BUT THIS IS -- THIS IS FOUR MONTHS AFTER, WELL, FIVE
18 MONTHS, SIX, SEVEN MONTHS AFTER YOU SIGNED THE AGREEMENT,
19 DECEMBER 28TH, 2007

20 A THEY'D BEEN HEAVILY INVOLVED WITH THE PERMITTING
21 PROCESS, AND ENGINEERING AND ARCHITECTURALLY, YES

22 Q AND THEN IT SAYS IN ORDER TO PROPERLY REFINANCE THE
23 PROJECT I WOULD SUGGEST THAT WE INCREASE THE NUMBER OF
24 OUTSTANDING SHARES TO FIVE HUNDRED THOUSAND, CORRECT?

25 A YES

1 Q SO IS IT YOUR TESTIMONY TO THIS JURY WHEN YOU WROTE
2 THIS YOU WERE NOT THINKING ABOUT ACQUIRING MORE EQUITY AT
3 A REDUCED RATE TO IMPROVE YOUR RETURN ON INVESTMENT?

4 A THAT WOULD BE MY STATEMENT, YES AND LET ME
5 EXPLAIN?

6 Q NO I'M JUST WANTING -- I WANT TO GET YOUR ANSWER
7 TO MY QUESTION

8 THE COURT HE CAN EXPLAIN HIS ANSWER

9 Q GO AHEAD

10 A ANDY HAD SHOWN US THIS PROJECT IN TWO PHASES WE
11 WERE CONTEMPLATING BEGINNING PHASE ONE AND THERE WAS NO
12 REAL DECISION OR DEADLINE HOW WELL PHASE TWO WOULD COME
13 PHASE TWO INCLUDED THE HOTEL, BY THE WAY HAD SOME
14 PRETTY HIGH -- MUCH HIGHER EXPENSES

15 THE FACT THAT THE -- THAT AN ENTIRE DEVELOPMENT SUCH
16 AS THIS MAKES MORE SENSE THAN A PIECE OF A DEVELOPMENT, I
17 CONCLUDED, AT A CONVERSATION WITH PARTNERS, CONCLUDED
18 THAT IF WE COULD GET THE WHOLE THING DEVELOPED WITH THE
19 HOTEL OR WHATEVER THERE'D BE MORE SYNERGY AND IT JUST
20 MADE MORE SENSE

21 SO IF A SECOND INVESTOR LIKE A HOTEL CHAIN WERE TO
22 COME IN OR JUST AN INDIVIDUAL WHO WANTED TO WRITE A
23 CHECK, IF HE SEES THAT, OKAY, YOU INVESTED A DOLLAR AND
24 YOU EXPECTED THIS RETURN, BUT NOW YOUR NUMBERS SHOW THAT
25 YOU'RE GOING TO ONLY GET THIS RETURN WELL, I'M NOT

1 GOING TO PUT IN THE SAME DOLLAR FOR THE SAME SHARE I'M
2 GOING TO PUT IN SEVENTY-FIVE CENTS 'CAUSE YOUR RETURN IS
3 NOT AS MUCH

4 SO THE WHOLE CONVERSATION WAS ABOUT HOW TO SOLVE THE
5 PROBLEM AND NOW TO SOLVE THE PROBLEM WAS TO GET MORE
6 SYNERGY, GET THE WHOLE THING DONE, BRING IN INVESTMENT
7 WHETHER IT WAS A RESTAURANT, HOTEL OR EVEN AN INDIVIDUAL
8 AND PULL THE SYNERGIES TOGETHER

9 THAT WAS THE THINKING BEHIND THIS AND THAT'S WHY
10 INVESTMENT IS JUST ONE OF THE ITEMS THAT ARE LISTED ON
11 THERE AS HOW TO ---

12 Q WELL, WHEN YOU TALK ABOUT THESE THIRD PARTIES,
13 RESTAURANTS AND INVESTORS AND OTHER PEOPLE WHO MIGHT
14 COME, THEY WERE NOT THEN INVESTORS IN THIS CORPORATION,
15 CORRECT? THEY DIDN'T OWN ANY STOCK

16 A NO

17 Q WHAT THIS SENTENCE SAYS, HIS ONLY VIABLE OPTION IS
18 TO ACQUIRE MORE EQUITY SO BY DEFINITION THE WAY THIS IS
19 WRITTEN WHEN YOU WROTE IT, IT HAD TO BE REFERRING TO
20 SOMEBODY WHO THEN OWNED STOCK SOMEBODY WHO DIDN'T OWN
21 ANY COULDN'T ACQUIRE MORE EQUITY, ISN'T THAT CORRECT?

22 A WELL, IT WAS POORLY WRITTEN

23 Q LET'S LOOK AT THE SECOND PAGE ALL RIGHT I
24 BELIEVE YOU SAID YOU WERE LOOKING FOR ONLY A BUSINESS
25 SOLUTION, YOU WEREN'T IN TO LAWYERS BUT WHEN YOU

1 CONSIDERED THIS YOU KNEW YOU WERE GOING TO HAVE A LAWYER,
2 RIGHT? YOU SAID, I BELIEVE, WITH LEGAL REVIEW AND PROPER
3 PLANNING WE SHOULD BE ABLE TO ACCOMPLISH THE NEEDS OF A
4 VIABLE BUSINESS, CORRECT?

5 A THAT'S CORRECT

6 Q NOW I BELIEVE YOU MADE A POINT EARLIER THAT SO FAR
7 YOU ALL HAD NOT ISSUED THE ADDITIONAL STOCK THAT WAS
8 AUTHORIZED, CORRECT?

9 A THAT'S RIGHT

10 Q WELL ISN'T IT A FACT THAT SOON AFTER THIS MEETING
11 ANDY FILED THE LAWSUIT TO SEEK TO STOP YOU FROM ISSUING
12 THE STOCK, CORRECT?

13 A THAT'S CORRECT

14 Q AND ISN'T IT TRUE THAT IN THE FALL OF LAST YEAR THE
15 COURT ISSUED AN ORDER THAT IS BINDING THROUGH THIS TRIAL
16 AND THE JUDGMENT IN THIS CASE THAT PREVENTS YOU FROM
17 ISSUING ANYMORE STOCK?

18 A THAT WAS AGREED TO, YES

19 Q AND SO ISN'T IT TRUE THAT THE FACT THAT MORE -- THAT
20 ADDITIONAL STOCK HAS NOT YET BEEN ISSUED ISN'T JUST A
21 MATTER OF YOUR DECISION, IT WAS A MATTER OF THEIR LAWSUIT
22 BEING PENDING AND A COURT ORDERING YOU NOT TO?

23 A NO ACTUALLY IT WAS EASY TO AGREE TO THAT BECAUSE
24 THERE WERE NO PLANS, NO ISSUES OF ISSUANCE AND NO --
25 NOTHING ON THE HORIZON SO IT WAS THE SLEEVES OUT OF

1 YOUR VEST, SO TO SPEAK IT DIDN'T COST US ANYTHING TO
2 AGREE TO THAT

3 Q NOW LET ME -- ALSO THERE WAS A LOT OF TALK ABOUT,
4 WELL, WE WANT -- WE NEEDED THE STOCK, BAD EXPENSES, FOR
5 EMPLOYEES, AND IF YOU DON'T HAVE REVENUES, YOU HAVE TO
6 PAY EMPLOYEES, AND IT'S EXPENSIVE JUST TO BE CLEAR,
7 THERE ARE CURRENTLY NO EMPLOYEES OF WARPATH DEVELOPMENT,
8 CORRECT?

9 A THAT'S CORRECT

10 Q AS WE'VE SAID, NO DEVELOPMENT HAS TAKEN PLACE ON THE
11 GROUND ON THAT SITE YET?

12 A WE'VE NOT TURNED DIRT YET WE DON'T HAVE PERMITS

13 Q LET'S -- IF WE COULD LOOK AT THE EMAIL ABOUT GETTING
14 OUT OF THE COMPANY LET ME ASK YOU WHILE SHE'S CALLING
15 THAT UP NOW AS TO PERMITTING, ISN'T IT TRUE THAT YOU
16 CONSIDER MR. THOENNES, SR., TO BE AN EXPERT IN
17 PERMITTING?

18 A YES, I DO

19 Q AND, OF COURSE, YOU, AS AN EXPERIENCED BUSINESSMAN,
20 YOU KNEW THAT ANDY BALLARD DID NOT CONTROL WHETHER, WHEN
21 OR IF A REGULATORY AGENCY ISSUES A PERMIT, CORRECT?

22 A THAT'S TRUE

23 Q AND, IN FACT, THE AGREEMENT EXPRESSLY TOLD YOU FINAL
24 PERMITS HAD NOT BEEN OBTAINED, CORRECT?

25 A WE UNDERSTOOD THAT

1 Q AND YOU KNEW THAT GOING IN?

2 A YES

3 Q AND YOU KNEW THAT DHEC AND THE CORP OF ENGINEERS AND
4 OTHER STATE AGENCIES WOULD YET HAVE TO SIGN OFF ON THIS,
5 CORRECT?

6 A AT THAT TIME I DIDN'T KNOW WHO HAD TO SIGN OFF ON
7 IT I WASN'T VERY KNOWLEDGEABLE OF PERMITTING AT THAT
8 TIME

9 Q BUT YOU MUST HAVE KNOWN AS AN EXPERIENCED BUSINESS
10 PERSON THAT IF YOU'RE GOING TO PUT A MARINA ON LAKE
11 KEOWEE THAT THE STATE DEPARTMENT OF HEALTH AND
12 ENVIRONMENTAL CONTROL WOULD HAVE TO SIGN OFF ON
13 SOMETHING? YOU WERE AWARE OF THAT ---

14 A I WAS -- I WAS TOLD ALL THAT WAS LINED UP AND READY
15 TO GO

16 Q DID MR THOENNES TELL YOU ALL THAT WAS LINED UP AND
17 READY TO GO?

18 A MR BALLARD TOLD ME THAT

19 Q WELL, NOW MR THOENNES WAS YOUR FELLOW INVESTOR AND
20 HE WAS ON YOUR SIDE OF THE DEAL, CORRECT?

21 A WE'RE ALL ON THE SAME SIDE OF THE DEAL ---

22 Q BUT YOU AND HE HAD THE SAME LAWYER, CORRECT? JIM
23 FAYSSOUX?

24 A YES HE WAS ---

25 Q ALL RIGHT

1 A --- OUR CORPORATE LAWYER

2 Q AND YOU CONSIDERED MR THOENNES AN EXPERT IN
3 PERMITTING, CORRECT?

4 A I DID

5 Q AND SO DID HE TELL YOU ALL THE PERMITS WERE LINED UP
6 AND READY TO GO?

7 A NO

8 Q DID YOU ASK HIM?

9 A NO

10 Q DID HE GIVE YOU ANY REPORT ON WHERE THE PERMITS
11 STOOD?

12 A NO

13 Q YOU DIDN'T INQUIRE INTO THAT IN ANY WAY WITH HIM AS
14 YOUR EXPERT ON PERMITTING BEFORE YOU SIGNED THE
15 AGREEMENT?

16 A WELL, I HAD JUST DONE A DEVELOPMENT, STONELEDGE, WE
17 TALKED ABOUT IT EARLIER AND WE HAD TO HAVE PERMITS FOR
18 ALMOST EVERYTHING, BUILDING PERMITS, AND SEWER, AND DHEC
19 AND DOCKS I NEVER ASKED HIM ABOUT ANY OF THOSE THEY
20 JUST HAPPENED THAT'S HIS AREA OF EXPERTISE

21 Q MR THOENNES'?

22 A YES

23 Q ALL RIGHT NOW HAVE YOU ASKED HIM WHY HE DIDN'T
24 TELL YOU ABOUT DELAYS IF YOU FIND IT A SURPRISE THAT
25 THERE ARE DELAYS IN THE DHEC PERMIT? HAVE YOU ASKED HIM

1 THAT QUESTION?

2 A WELL, THE QUESTION IS OBVIOUS NOW I KNOW BECAUSE
3 IT WASN'T -- I WAS NOT AT A STAGE WHERE IT WAS READY JUST
4 TO GET PASSED THROUGH

5 Q AND, IN FACT, THE AGREEMENT TOLD YOU FINAL PERMITS
6 MUST BE OBTAINED, CORRECT?

7 A THAT'S RIGHT

8 Q AND ANDY BALLARD DID NOT GUARANTEE YOU THAT A STATE
9 AGENCY WOULD GIVE YOU A PERMIT, DID HE?

10 A NO, HE DIDN'T

11 Q NOW AND YET YOU ARE SUING HIM FOR FRAUD BECAUSE YOU
12 DIDN'T GET THE PERMITS AS QUICKLY AS YOU WANTED THEM?

13 A I'M NOT SUING HIM WITH MY HEART OR MY MIND

14 Q WELL, LET ME ASK YOU THIS DO YOU THINK YOU HAD ANY
15 CLAIM AGAINST ANDY BALLARD BECAUSE THE PERMITS HAVEN'T
16 COME OUT AS QUICKLY AS YOU WANTED THEM TO?

17 A I SIMPLY SAY HE WAS EITHER NAIVE OR HE DIDN'T TELL
18 US EVERYTHING HE KNEW

19 Q NOW WHAT COULD ANDY BALLARD TELL YOU ABOUT WHAT DHEC
20 WOULD DO? HOW CAN HE PREDICT WHAT A STATE AGENCY IN
21 COLUMBIA WOULD DO AFTER PUBLIC HEARINGS, PUBLIC NOTICE,
22 POSSIBLE PROTESTS? HOW COULD HE DO THAT?

23 A HE PROBABLY COULDN'T I THINK HE WAS AS HOPEFUL AS
24 WE WERE THAT WE COULD BE PRODUCING REVENUES AS SOON AS
25 POSSIBLE THE ISSUE WAS HE HAD LED US TO BELIEVE THAT IT

1 WAS, YOU KNOW, DONE ALL THE BACKGROUND WORK, TALKED TO
2 ALL THE PEOPLE AND IT WAS A MATTER OF SLIDING IT THROUGH

3 Q BUT YOU HAD AN OPPORTUNITY TO TALK TO DUKE POWER,
4 ALTHOUGH YOU DIDN'T DO IT, MR THOENNES DID IT, CORRECT?

5 A CORRECT

6 Q AND YOU SAT DOWN WITH THE COUNTY ADMINISTRATOR OF
7 PICKENS COUNTY, CORRECT?

8 A THAT'S RIGHT

9 Q AND WOULD YOU NOT EXPECT THE COUNTY ADMINISTRATOR OF
10 PICKENS COUNTY, WHICH CONTROLLED THIS PROPERTY, WOULD
11 KNOW ABOUT AS MUCH AS ANYONE WOULD ABOUT WHAT PERMITTING
12 -- HOW PERMITTING MIGHT GO?

13 A YES

14 Q AND YOU SAT THERE AND LISTENED TO HIM, AND YOU GOT
15 TO ASK HIM ANY QUESTIONS YOU WANTED TO, CORRECT?

16 A THAT'S CORRECT

17 Q AND MR BALLARD WAS THERE TOO

18 A UM-HUM (AFFIRMATIVE)

19 Q AND THIS WAS BEFORE YOU SIGNED THE AGREEMENT AND
20 WHAT ---

21 A I BELIEVE SO

22 Q WHAT THE PICKENS COUNTY ADMINISTRATOR TOLD YOU, WAS
23 IT CONSISTENT WITH WHAT MR BALLARD HAD BEEN TELLING YOU?

24 A THAT'S CORRECT

25 Q SO, I MEAN, TELL THE JURY, DO YOU THINK YOU HAVE ANY

1 CLAIM AGAINST MR BALLARD BECAUSE OF THE DELAY IN THE
2 PERMITS?

3 A IF IT WAS UP TO ME, WE WOULD EITHER MOVE ON AS
4 PARTNERS OR I'D BUY HIM OUT WHEN WE CAN

5 Q WELL, I'M TALKING ABOUT WHERE WE ARE TODAY AND WHAT
6 YOU'VE FILED WITH THE COURT ON PUBLIC RECORD SO MY
7 QUESTION IS TO -- IF YOU COULD TELL THE JURY, DO YOU
8 BELIEVE SITTING HERE TODAY UNDER OATH THAT YOU HAVE A
9 CLAIM AGAINST MR BALLARD, ANDY BALLARD, FOR ANY DELAY IN
10 DHEC ISSUING THE PERMITS?

11 A I THINK HE BEARS A RESPONSIBILITY WOULD I WANT TO
12 GO SCRATCH IT OUT OF HIS POCKET? NO

13 Q WELL, DO YOU THINK HE'S COMMITTED FRAUD IN
14 CONNECTION WITH THAT IN ANY WAY?

15 A I DON'T THINK SO I MEAN, I DON'T KNOW I DON'T --
16 I CERTAINLY DON'T KNOW THAT HE DID SO THAT MEANS I
17 DON'T THINK SO

18 Q AND ---

19 A I CAN'T READ HIS HEART

20 Q OKAY HERE IT IS IT'S EXHIBIT 25 TO THE
21 DEPOSITION, EXHIBIT 10 TO THE TRIAL NOW WHILE WE'RE
22 FINDING THAT LET ME BRING UP ONE OTHER THING YOU'VE
23 TALKED ABOUT THE PICKENS COUNTY PLANNING COMMISSION AT
24 FIRST OBJECTING TO THE PROJECT AFTER THE PICKENS COUNTY
25 COUNCIL HAD APPROVED IT, CORRECT?

1 A YES

2 Q AND YOU SAID THAT MR BALLARD ATTENDED THE FIRST
3 MEETING OF THE PLANNING COMMISSION, BUT NOT THE SECOND
4 ONE BECAUSE HE WAS AT THE BEACH

5 A THAT'S CORRECT

6 Q ALL RIGHT NOW FIRST OF ALL, ISN'T IT TRUE THAT MR
7 BALLARD WAS NOT AT THE BEACH, HE WAS OUT OF THE COUNTRY?
8 AND HE TOLD YOU HE HAD A PRE-PLANNED, LONG PLANNED TRIP
9 OUT OF THE COUNTRY THAT COULD NOT BE CHANGED?

10 A I ---

11 Q HE WASN'T AT THE BEACH, HE WAS OUT OF THE COUNTRY

12 A I DON'T REMEMBER THAT MY -- TO ME THAT'S NOT
13 IMPORTANT I JUST REMEMBER HE WENT TO THE WATER, TO THE
14 BEACH THAT'S WHAT I THOUGHT, WHAT I REMEMBERED IF IT
15 WAS OVERSEES, ---

16 Q NOW BEFORE THAT ---

17 A --- DOESN'T MATTER

18 Q --- MEETING THOUGH, AFTER THE FIRST MEETING AND
19 BEFORE THE MEETING WHILE HE WAS OUT OF THE COUNTRY ISN'T
20 IT TRUE THAT MR BALLARD WENT AND MET WITH THE CHAIRMAN
21 OF THE PICKENS COUNTY PLANNING COMMISSION?

22 A HE MAY HAVE I CAN'T -- I DON'T HAVE ANY
23 INDEPENDENT MEMORY OF THAT BUT I -- THAT SOUNDS
24 REASONABLE

25 Q AND ISN'T IT TRUE YOU MISSED THAT MEETING BECAUSE

1 YOU WERE AT THE BEACH?

2 A THAT'S CERTAINLY POSSIBLE

3 Q AND YOU WERE AT YOUR CONDO AT WILD DUNES?

4 A THAT'S CORRECT

5 Q AND ISN'T IT TRUE AT THAT MEETING THE PICKENS COUNTY

6 -- CHAIRMAN OF THE PICKENS COUNTY PLANNING COMMISSION

7 ASSURED MR BALLARD THAT THE PLANNING COMMISSION WOULD

8 APPROVE THIS PROJECT AT ITS NEXT MEETING?

9 A I DON'T KNOW THAT

10 Q AND ISN'T IT A FACT THE PLANNING COMMISSION DID

11 APPROVE IT AT THE NEXT MEETING?

12 A YES

13 Q AND ISN'T IT TRUE THAT YOUR CONSULTANT HAS TOLD YOU

14 HE THOUGHT THAT THE PLANNING COMMISSION VIOLATED ITS OWN

15 RULES, LAWS AND REGULATIONS BY DENYING IT THE FIRST TIME?

16 A I'M TRYING TO REMEMBER WHO THAT CONSULTANT WAS

17 Q GOLDIE & ASSOCIATES

18 A OH, YEAH OKAY YES

19 Q NOW DO YOU THINK YOU CAN PLACE ANY BLAME ON MR

20 BALLARD FOR THE PICKENS COUNTY PLANNING COMMISSION ACTING

21 WRONGFULLY?

22 A NO

23 Q ALL RIGHT NOW LET'S GO TO THIS OCTOBER 28, 2007

24 EMAIL FROM YOU TO MR THOENNES, BOTH OF THE MR

25 THOENNESES THIS IS THE ONE WHERE YOUNG MR THOENNES

1 SAYS, DON'T WE WANT HIM TO GET OUT OF THE DEAL? AND THEN
2 YOUR RESPONSE AT THE TOP IS -- YOU SAY I THINK HE WILL
3 TAKE HIS ONE MILLION AND RUN AFTER A LITTLE THREATENING,
4 POSTURING AND WHINING DO YOU SEE THAT?

5 A YES

6 Q AND I BELIEVE YOU TESTIFIED EARLIER THOUGH YOU
7 REALLY DIDN'T WANT HIM OUT OF THE DEAL

8 A I DIDN'T SAY I DIDN'T WANT HIM I SAID I COULD TAKE
9 HIM OR LEAVE HIM DEPENDING ON WHETHER HE WAS GOING TO
10 PARTNER BUT IF HE WANTED TO LEAVE, WE'D BUY HIM OUT

11 Q ALL RIGHT AND THEN WE DIDN'T FOCUS ON THIS, BUT I
12 JUST WANTED TO POINT THIS OUT YOU ALSO SUGGEST IN
13 EDITING THIS DOCUMENT TO BE SENT TO MR BALLARD, I
14 SUGGEST THAT YOU SAY, "UNTIL SPRING OF 2011 WHEN
15 DISCUSSING PHASE TWO THAT WILL SOUND LIKE A LONG, LONG
16 TIME FROM NOW YOU MIGHT SAY SOMETHING THAT AS IT NOW
17 SHOWS IT COULD BE YEARS BEFORE THERE ARE ANY OWNER CASH
18 DISBURSEMENTS," CORRECT?

19 A THAT'S EXACTLY RIGHT

20 Q AND YOU WERE SUGGESTING THAT THIS DOCUMENT BE SPUN
21 AT A WAY THAT WOULD DISCOURAGE MR BALLARD AND ENCOURAGE
22 HIM TO LEAVE THE COMPANY, ISN'T THAT CORRECT?

23 A THAT'S NOT A SPIN ACTUALLY IT'S WORSE THAN THAT
24 NOW

25 Q BUT THAT'S WHAT YOU WERE SUGGESTING AT THE TIME,

1 CORRECT?

2 A THAT WAS NOT A SPIN, THAT WAS ACCURATE

3 Q WELL, IS IT CORRECT TO SAY READING THIS ENTIRE

4 DOCUMENT THAT AT THIS POINT IN TIME YOU ALL DID, IT

5 WASN'T JUST TAKE HIM OR LEAVE HIM, YOU WANTED HIM OUT OF

6 THE COMPANY?

7 A I PERSONALLY DIDN'T CARE

8 Q I BELIEVE YOU SAID IN YOUR OPINION MR BALLARD

9 DIDN'T DO A GOOD JOB AT THE PICKENS COUNTY COMMISSION AND

10 FROM THEN ON YOU HAVE BEEN FRONT AND CENTER AND NOT HIM,

11 CORRECT?

12 A THAT'S CORRECT

13 Q ALL RIGHT LET'S LOOK AT THE PERIOD OF TIME WHEN

14 MR BALLARD WAS FRONT AND CENTER WHEN MR BALLARD WAS

15 FRONT AND CENTER HE GOT APPROVAL FROM PICKENS COUNTY FOR

16 WARPATH TO LEASE THIS PROPERTY, CORRECT, FROM THE PICKENS

17 COUNTY COUNCIL?

18 A APPARENTLY

19 Q AND THE PICKENS COUNTY ADMINISTRATOR?

20 A APPARENTLY I DON'T KNOW

21 Q AND HE GOT APPROVAL FROM DUKE POWER CORPORATION FOR

22 A LEASE, IS THAT CORRECT?

23 A YES

24 Q AND BEFORE THAT THEY GOT APPROVAL FROM THE FEDERAL

25 ENERGY REGULATORY COMMISSION FOR THE LEASE, CORRECT?

1 A FOR A PORTION OF IT

2 Q AND THAT -- THAT AGENCY IS THE NATIONAL FEDERAL
3 AGENCY THAT LICENSES ALL HYDROELECTRIC POWER IN AMERICA,
4 CORRECT?

5 A YEAH ACTUALLY THEY JUST APPROVED WITHIN THE LAST
6 SIX MONTHS A VERY KEY ELEMENT OF IT THAT I WAS UNAWARE OF
7 THAT HAD NOT BEEN APPROVED, BUT IT WAS THE SITE THAT THE
8 HOTEL SITS ON THEY HAD TO CUT THAT OUT OF THE PROPERTY
9 BECAUSE THEY'RE NOT -- SOMEBODY ALONG THE WAY IN THE
10 FEDERAL GOVERNMENT IS NOT AUTHORIZED TO RUN A HOTEL LIKE
11 THAT SO THERE WAS AN APPROVAL THERE THAT I HAD NO
12 KNOWLEDGE OF THAT FERC HAD TO APPROVE ON AND HAS JUST
13 COME IN WITHIN THE LAST SIX MONTHS

14 Q WELL, ---

15 A SO EVEN AT THAT WE HAD NO DEAL UNTIL THAT CAME
16 THROUGH

17 Q WELL, LET ME GO ---

18 A WE DIDN'T EVEN KNOW IT

19 Q LET ME GO BACK TO MY QUESTION BEFORE DUKE POWER
20 SIGNED THE LEASE THE FEDERAL ENERGY REGULATORY COMMISSION
21 APPROVED IT, CORRECT?

22 A YES

23 Q ALL RIGHT

24 A THE SITE PLAN AND THE LEASE

25 Q WHILE MR BALLARD WAS FRONT AND CENTER THE CHAIR OF

1 THE PICKENS COUNTY PLANNING COMMISSION ASSURED YOU ALL
2 THAT THIS WOULD BE APPROVED, CORRECT?

3 A YES OH, ASSURED? THEY GAVE US ASSURANCE THAT THEY
4 WERE FOR IT

5 Q ALL RIGHT AND THEN -- BUT NOW SINCE YOU HAVE BEEN
6 FRONT AND CENTER WE HAVE YET TO GET THE FINAL PERMIT, IS
7 THAT CORRECT?

8 A YES MY FAULT

9 Q NOW AS WE STAND HERE TODAY IN COURT IS IT NOT TRUE
10 THAT THE ARTICLES OF INCORPORATION OF WARPATH HAVE NOT
11 BEEN CHANGED?

12 A I BELIEVE THAT'S TRUE

13 Q AND SO THE ARTICLES OF INCORPORATION OF WARPATH
14 PROVIDE FOR ONE HUNDRED THOUSAND SHARES, CORRECT?

15 A THAT'S TRUE

16 Q YOU MENTIONED STONELEDGE TOWNHOMES AND I THINK YOU
17 TESTIFIED THAT YOU CONSIDER THE THOENNESES CAPABLE OF
18 DOING THIS DEVELOPMENT, IS THAT CORRECT?

19 A ABSOLUTELY

20 Q ALL RIGHT ARE YOU AWARE THAT THE THOENNESES HAVE
21 JUDGMENTS AGAINST THEIR ---

22 MR HOWARD OBJECTION, YOUR HONOR

23 Q --- DEVELOPMENT?

24 THE COURT WAIT A MINUTE BASIS?

25 MR HOWARD RELEVANCE, YOUR HONOR THIS IS A --

1 HE'S NOT THE THOENNESES THEY HAVE TESTIFIED TO THIS

2 THE COURT WELL, HE'S TESTIFIED TO HIS STATE OF

3 MIND SO THIS GOES TO HIS STATE OF MIND

4 Q ARE YOU AWARE THAT THE THOENNESES OPERATED UNDER A
5 DEVELOPMENT COMPANY CALLED MARICK UNTIL RECENTLY?

6 A YES

7 Q ARE YOU AWARE THAT IT HAS HAD JUDGMENTS ENTERED
8 AGAINST IT FOR NON-PAYMENT OF BILLS FOR FLOORING?

9 A I HEARD THAT TODAY

10 Q FOR APPLIANCES?

11 A NO, I'M NOT AWARE OF THAT

12 Q WELL, YOU SAT THROUGH THE DEPOSITION, DID YOU NOT,
13 OF MR THOENNES WHERE HE TESTIFIED TO THIS?

14 A I JUST DON'T HAVE ANY INDEPENDENT MEMORY OF THAT

15 Q FOR WORKERS' COMPENSATION INSURANCE BY THEIR INSURER
16 HAS A JUDGMENT AGAINST THEM?

17 A IF YOU SAY SO I DON'T KNOW

18 Q AND, I BELIEVE, YOU SAID YOU HAD A HOUSE IN THE
19 STONELEDGE DEVELOPMENT ARE YOU AWARE THAT MR THOENNES'
20 PERSONAL RESIDENCE WAS PUT UP FOR TAX SALE BY OCONEE
21 COUNTY AUTHORITIES?

22 A NO

23 Q FOR FAILURE TO PAY TAXES?

24 A WELL, I THINK I'VE HEARD THAT THERE WAS A DELAY IN
25 HIM PAYING TAXES, BUT IT WASN'T SOLD OR I DON'T KNOW

1 WHERE THAT STANDS

2 Q ARE YOU AWARE THAT ---

3 A THAT'S RICK, JR , RIGHT, III?

4 Q THE ELDER?

5 A OH, THE ELDER? NO, I'M NOT AWARE OF THAT

6 Q I DON'T KNOW, IT MAY BE III ONE OF THEM ARE YOU
7 AWARE THAT ONE OF THEM HAD THEIR HOUSE PUT UP FOR TAX
8 SALE?

9 A YES

10 Q ALL RIGHT THEN ARE YOU AWARE THAT THEY CONFESSED
11 TO A JUDGMENT OF TWO MILLION DOLLARS?

12 A YES, I AM

13 Q AND THAT IN ORDER TO DEAL WITH THAT JUDGMENT THEY
14 CONVEYED UNITS AT STONELEDGE, WHICH YOU HAD TALKED TO, TO
15 TRY TO DEAL WITH THAT JUDGMENT?

16 A OH, NO, THAT'S NOT RIGHT AT ALL MY PARTNER IN
17 INTEGRYS AND I PUT THE CASH INTO STONELEDGE TO DEVELOP
18 IT THEY BUILT IT THERE WERE COMMISSIONS COMING DUE TO
19 OUR GROUP AS THESE UNITS WOULD GET SOLD

20 IT'S MY UNDERSTANDING THAT THEY HAD ANOTHER
21 DEVELOPMENT IN EASTERN NORTH CAROLINA THAT HAD NOT PANNED
22 OUT WELL AND HAD -- AND OWED AN INDIVIDUAL SOME MONEY
23 AND SO THEY ASSIGNED THEIR COMMISSIONS, NOT OURS, NOT THE
24 UNITS, THEY ASSIGNED THEIR FUTURE REVENUES TO SETTLE THAT
25 ISSUE

1 Q AND WHO DID THEY ASSIGN THEM TO?

2 A I DON'T KNOW

3 Q WHO WAS THE LENDER?

4 MR HOWARD OBJECTION, YOUR HONOR

5 THE COURT HE DOESN'T KNOW -- HE DOESN'T KNOW THE

6 ANSWER HE JUST SAID HE DOESN'T KNOW

7 MR HOLLEMAN WELL, LET ME SEE IF HE

8 Q WHO WAS THE INDIVIDUAL OR COMPANY INVOLVED IN

9 LENDING THE MONEY?

10 A THERE'S -- COULD BE WRONG 'CAUSE THERE'S, YOU KNOW,

11 CORPORATIONS WITHIN CORPORATIONS I BELIEVE THAT'S SDI

12 LENDING IS A TERM I'VE HEARD

13 Q AND WHO'S THE OWNER OF SDI?

14 MR HOWARD YOUR HONOR, CAN WE APPROACH?

15 THE COURT YEAH, COME ON UP

16 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE

17 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR

18 HEARING)

19 Q NOW ARE YOU AWARE THAT THE THOENNESES TOOK MONEY

20 THAT ONE CLIENT PAID THEM TO BUILD THIS HOUSE AND PAY HIS

21 SUPPLIERS AND SUBCONTRACTORS AND USED IT TO PAY OTHER

22 BILLS THEY OWED UNRELATED TO THAT HOUSE?

23 A I LEARNED JUST IN THE DEPOSITION OR IN THESE

24 HEARINGS THAT BASED ON AN ACCRUAL ACCOUNTING SYSTEM IT'S

25 BEEN ALLEGED THAT MONEY WENT TO ONE WHERE IT SHOULD GO TO

1 ANOTHER YOU'RE FAMILIAR WITH THE ACCRUAL ACCOUNTING

2 SYSTEM VERSUS THE CASH ACCOUNTING SYSTEM

3 Q NOW YOU DON'T REALLY THINK YOU CAN BLAME THE

4 ACCOUNTANTS OR ACCOUNTING ---

5 A I'M NOT BLAMING ANYBODY

6 Q --- FOR TAKING MONEY FROM ONE CLIENT AND USING IT

7 FOR ANOTHER ---

8 A YOU ASKED ME WAS I AWARE -- I'M AWARE OF SOME

9 ALLEGATIONS

10 Q WELL, AND ARE YOU AWARE THAT RESULTED IN LIENS BEING

11 PLACED ON THAT CLIENT'S HOUSE ---

12 A NO

13 Q --- FOR NON-PAYMENT OF BILLS?

14 A NO

15 Q ARE YOU AWARE THAT THE THOENNESES CONSULTED A

16 BANKRUPTCY ATTORNEY FOR MARICK?

17 A YES, I AM

18 Q NOW IN LIGHT OF ALL THESE FACTS DO YOU STILL TELL

19 THE JURY THAT THEY ARE CAPABLE OF ASSISTING WITH

20 FINANCING ON THIS PROJECT AND ALSO OF CONSTRUCTING A

21 FIRST CLASS MARINA ON THIS UNIQUE SITE IN PICKENS COUNTY?

22 A THEY'RE MY ABSOLUTE FIRST CHOICE IF I WAS GOING TO

23 BUILD A HOUSE OR A HOTEL TOMORROW, THEY WOULD BE --

24 THEY'D BE MY CHOICE

25 Q ALL RIGHT AND WHILE WE GET THAT ONE UP, SINCE YOU

1 ELECTED MR BALLARD A DIRECTOR IN SEPTEMBER 2009 HAVE YOU
2 HAD ANY OTHER DIRECTORS MEETINGS?

3 A NO WE'VE BEEN BUSY IN COURT OR COMING TO COURT OR
4 PREPARING

5 Q WELL, NOW ACTUALLY NOW LET'S BE CLEAR ON THAT
6 THAT'S BEEN SINCE SEPTEMBER THIS ---

7 A YEAH, WE ---

8 Q --- CASE HAS NOT ---

9 A WE'VE HAD NO REASON ---

10 Q --- OCCUPYING ---

11 A WE'VE HAD NO REASON ---

12 THE COURT WELL, WAIT A MINUTE LET ME -- DO NOT
13 INTERRUPT EACH OTHER SHE'S GOT TO TAKE EVERYTHING DOWN

14 A I'M SORRY

15 THE COURT SHE CAN ONLY TAKE ONE PERSON AT A TIME

16 Q ALL RIGHT SO HAVE YOU HELD A DIRECTORS MEETING
17 SINCE YOU ELECTED MR BALLARD A DIRECTOR?

18 A NO

19 Q HAVE YOU SENT HIM ANY MATERIALS, DIRECTORS MATERIALS
20 OR UPDATES ON THE STATUS OF THE CORPORATION?

21 A I BELIEVE WE HAVE EITHER THROUGH THE ATTORNEY OR
22 COPIED WITH THE ATTORNEY -- KEPT HIM APPRIZED OF ANYTHING
23 THAT'S PERTINENT

24 Q WELL, DID YOU -- I BELIEVE YOU JUST TESTIFIED
25 EARLIER YOU DIDN'T EVEN TELL HIM THE INITIAL PERMIT

1 NOTICE HAD BEEN ISSUED, CORRECT? YOU THOUGHT SOMEBODY
2 ELSE WOULD TELL HIM

3 A NO, I DIDN'T THINK SOMEBODY DUKE POWER TOLD ME
4 THEY INFORMED HIM

5 Q BUT DIDN'T YOU THINK AS PRESIDENT OF THE CORPORATION
6 YOU SHOULD INFORM THE OTHER DIRECTORS OF SUCH AN
7 IMPORTANT EVENT?

8 A I'VE BEEN TOLD BY COUNSEL NOT TO TALK, YOU KNOW,
9 JUST GO THROUGH HIM ON EVERYTHING I DIDN'T MAKE THESE
10 RULES

11 Q WELL, YOU'RE THE PRESIDENT OF THE CORPORATION,
12 CORRECT?

13 A HE'S THE JUDGE AND HE'S THE LAWYER

14 Q ARE YOU SAYING THERE'S SOME LEGAL PROHIBITION FROM
15 YOU AS A DIRECTOR COMMUNICATING WITH OTHER DIRECTORS?

16 A AS FAR AS I KNOW I DON'T KNOW TO TELL YOU THE
17 TRUTH

18 Q ALL RIGHT LET'S LOOK AT THIS EXHIBIT THAT HAS JUST
19 PREVIOUSLY BEEN INTRODUCED A FEW MINUTES AGO BY YOUR
20 LAWYER AND IF WE COULD GO BACK -- OH, FIRST OF ALL,
21 LET'S JUST -- THAT'S NOT REALLY THE ONE I WANT, HANNAH
22 I'M SORRY OH, FIRST OF ALL, THIS EMAIL THAT YOU WERE
23 ASKED ABOUT THAT HAS THE PROFORMAS ATTACHED TO IT, THAT
24 IS NOT ADDRESSED TO ANDY BALLARD, CORRECT?

25 A APPARENTLY NOT

1 Q OKAY SO HE DID NOT RECEIVE THIS EMAIL THAT HAS THE
2 PROFORMAS ATTACHED TO IT, CORRECT?

3 A I DON'T KNOW IF HE DID OR NOT

4 MR HOWARD YOUR HONOR, I DON'T BELIEVE THIS IS THE
5 ONE I ACTUALLY SHOWED HIM THIS IS NOT THE EXHIBIT THAT
6 I SHOWED

7 MR HOLLEMAN: LET ME JUST -- LET'S JUST USE THE
8 HARD COPY

9 Q OKAY HERE IT IS THERE IT IS, MARCH 29 AS YOU
10 CAN SEE THAT IS NOT ADDRESSED TO MR BALLARD, CORRECT?

11 A THAT'S CORRECT

12 Q AND IF WE COULD SCROLL THROUGH TO THE NEXT PAGE
13 THAT HAS THE PROFORMA, CORRECT, THAT YOU WERE REFERRING
14 TO?

15 A THAT'S CORRECT

16 Q NOW I BELIEVE YOU TESTIFIED EARLIER YOU NEVER HAD --
17 YOU DIDN'T HAVE IN MIND SELLING THIS MARINA WHEN YOU
18 ENTERED INTO THIS INVESTMENT, IS THAT CORRECT?

19 A I PERSONALLY DID NOT HAVE THAT AS A KEY OBJECTIVE

20 Q ALL RIGHT LET'S SCROLL ON THROUGH NEXT PAGE,
21 PLEASE BUT IN THIS EMAIL, WHICH IS RIGHT BEFORE YOU
22 ENTERED INTO THE CONTRACT, YOU HAVE IN YOUR PROFORMA A
23 SALE OF PROJECT PROJECTION IF YOU LOOK AT THIS PAGE,
24 WHICH HANNAH DID PUT UP ON THE BOARD, BY THE WAY, IT
25 SHOWS A PROJECTED SALE OF THE PROJECT, CORRECT?

1 A THAT'S CORRECT

2 Q AND A PROFIT OF ALMOST FOUR MILLION DOLLARS, IS THAT
3 CORRECT?

4 A JUST SHORT OF FOUR MILLION, YES

5 Q OKAY NOW IF YOU'D LOOK AT THAT, I BELIEVE YOU
6 POINTED TO, THAT YOU DID A PROJECTION BASED ON TWO
7 HUNDRED WET SLIPS, CORRECT?

8 A THAT'S CORRECT

9 Q AND YOU KNEW THE CONCEPTUAL PLAN SAID ONE HUNDRED TO
10 TWO HUNDRED, CORRECT?

11 A YES, SIR

12 Q WOULDN'T IT -- AS A PRUDENT BUSINESS PERSON DID YOU
13 CONSIDER DOING PROFORMAS TO SAY A HUNDRED, HUNDRED AND
14 FIFTY, TWO HUNDRED AND DOING THE RANGE AND SEEING WHAT
15 WOULD HAPPEN IF YOU GOT THE LOWER END OF THE RANGE?

16 A NOT BASED ON OUR MARKET DATA WE COULD HAVE DONE A
17 PROFORMA SHOWING TEN CAMP SITES, BUT WE KNEW WE COULD DO
18 TWENTY WE FELT THAT WE COULD FILL TWENTY CAMP SITES
19 THE SAME THING WITH ROOMS, RESTAURANTS, WHATEVER AND
20 THE CONTRACT WAS AS MARKET DEMANDS WE FELT CONFIDENT
21 AND STILL DO THE MARKET WOULD DEFINITELY DEMAND TWO
22 HUNDRED

23 Q NOW AS TO THE DRY SLIPS, DRY STACK, THE DRY SLIPS,
24 THE CONCEPTUAL PLAN ALSO SAID ONE HUNDRED TO TWO HUNDRED
25 FOR THOSE, CORRECT?

1 A RIGHT

2 Q NOW ON THIS PROFORMA YOU HAVE PUT IN FIFTY-FIVE,
3 SIXTY, NINETY DRY SLIPS, IS THAT CORRECT?

4 A LET'S SEE WHERE IS THAT?

5 Q IT'S RIGHT UNDER THE WET SLIPS

6 A OH, OKAY SIXTY-FIVE, SEVENTY-FIVE, EIGHTY-FIVE,
7 NINETY, THAT'S CORRECT

8 Q IT'S NINETY?

9 A YES

10 Q OKAY

11 A YOU WANT TO KNOW WHY?

12 Q NO, I JUST WANTED TO SEE IF YOU HAD DONE IT FOR ONE
13 EXAMPLE

14 A OKAY THERE'S A GOOD REASON

15 Q OH, I BELIEVE TODAY FOR THE FIRST TIME IN YOUR
16 TESTIMONY YOU SAID THE PERMIT WAS BEING HELD UP AGAIN,
17 CORRECT?

18 A YES

19 Q HAVE YOU INFORMED ANDY BALLARD AS A DIRECTOR OF
20 THAT?

21 A I LEARNED ON IT -- YOU DIDN'T WANT TO HEAR ABOUT IT
22 A WHILE AGO, BUT THAT'S WHAT I LEARNED ON MY BLACKBERRY
23 COMING IN

24 Q OKAY THAT'S THE FIRST TIME YOU HEARD IT WAS ON
25 YOUR BLACKBERRY?

1 A THE FIRST TIME I HEARD OF IT WAS -- WELL, IT
2 ACTUALLY COMES IN STAGES THE FIRST TIME I SAW THAT IT
3 WAS -- COULD BE HELD UP WAS YESTERDAY PROBABLY AND THEN
4 I READ AN EMAIL THIS MORNING FROM OUR BUILDING ENGINEER
5 WHERE THEY HAVE INQUIRED AS TO WHAT WAS THE HOLD-UP AND
6 WHY AND HOW LONG AND IT JUST SIMPLY SAID THEY'D LET
7 THEM KNOW WHEN THEY MADE A DECISION

8 Q WELL, ONE FINAL QUESTION, MR ROBERSON IT'S THE
9 LAST TIME I HAVE TO ASK YOU THIS WOULD YOU LIKE TO
10 WITHDRAW YOUR COUNTER-CLAIMS AGAINST MR BALLARD NOW
11 GIVEN YOUR TESTIMONY?

12 A I'D HAVE TO LET MY COUNSEL AND MY PARTNERS CONFER
13 OVER THAT

14 Q NO FURTHER QUESTIONS
15 THE COURT ALL RIGHT ANY REDIRECT?
16 MR HOWARD VERY QUICKLY, YOUR HONOR

17 **REDIRECT EXAMINATION BY MR HOWARD**

18 Q MR ROBERSON, YOU WERE ASKED QUESTIONS ABOUT YOUR --
19 IN YOUR CROSS EXAMINATION ABOUT THE USDA LOANS ---

20 A YES

21 Q --- OR THE USDA -- PLEASE TELL ME WHAT THAT IS
22 AGAIN

23 A USDA GUARANTEES

24 Q GUARANTEES WE'VE READ PORTIONS OF YOUR DEPOSITION
25 YESTERDAY I'LL JUST BRING IT UP THERE'S NO NEED TO

1 SHOW IT THIS LOOKS LIKE PAGE 145 OF YOUR DEPOSITION
2 COULD YOU PLEASE JUST -- AND HOLD ON, LET ME ASK YOU A
3 QUESTION WAS IT MR HOLLEMAN WHO WAS TAKING YOUR
4 DEPOSITION?

5 A YES

6 Q AND WAS HE THE ONE ASKING YOU THE QUESTIONS?

7 A YES

8 Q CAN YOU READ THE ORANGE PORTION PLEASE?

9 A QUESTION, WHO IS USDA VIA JOHN BICKLEY? ANSWER,
10 THE U S DEPARTMENT OF AGRICULTURE QUESTION, AND WHAT
11 INTEREST WOULD THE U S DEPARTMENT OF AGRICULTURE HAVE IN
12 THIS MARINA? ANSWER, THEY HAVE A PROGRAM THAT WOULD
13 GUARANTEE SEVENTY PERCENT OF THE LOAN, WHICH MAKES THE
14 BANK MORE LIKELY TO, YOU KNOW, DO THE DEAL QUESTION,
15 AND WHAT WAS THEIR RESPONSE? ANSWER, DEFINITELY
16 Q SO AS OF THE DATE OF THIS DEPOSITION WAS MR
17 HOLLEMAN AWARE OF THE USDA?

18 A YES

19 Q YOU WERE ASKED QUESTIONS ABOUT -- I DON'T NEED TO
20 PUT IT UP YOU WERE ASKED QUESTIONS ABOUT THE PROFORMAS
21 AND THE FACT THAT THERE'S A, I GUESS, SOME -- WELL, YOU
22 WERE TECHNICALLY ASKED ABOUT THIS YOU WERE ASKED ABOUT
23 THE PAGE THAT REPRESENTS THE SALE OF THE PROJECT?

24 A YES

25 Q IS THAT SOMETHING THAT'S STANDARD IN A PROFORMA?

1 A WELL, IT MUST BE I'M GLAD YOU ASKED AND I'M
2 SORRY HE DIDN'T ASK ME TO EXPLAIN THAT
3 I'D LOOKED AT THESE PROFORMAS I'M NOT AN EXCEL
4 SPREADSHEET GUY RICK THOENNES IS OFTEN THESE
5 PROFORMAS HAVE ALL SORTS OF DATA BAKED INTO THEM TO MAKE
6 SOME SORT OF ANALYSIS I GENERALLY JUST GO TO THE BOTTOM
7 LINE, AND I TRY TO LOOK AT REVENUES AND EXPENSES AND
8 SIMPLIFY IT

9 IT WAS MY, IN FACT, FRANKLY, I WAS -- I DON'T KNOW
10 THAT I'VE EVER SHARED THIS WITH RICK OR ANYBODY, BUT I
11 DIDN'T EVEN KNOW WHY THAT WAS IN THERE SO THEN I BACKED
12 UP TO THINKING, WELL, MAYBE IT'S JUST SO YOU COULD HAVE
13 SOME VALUATION OF YOUR PROJECT

14 BUT IT'S NOTHING I'VE LOOKED AT, STUDIED,
15 CONTEMPLATED IT WAS, YOU KNOW, WHEN I GO TO A FIVE PAGE
16 PROFORMA A LOT OF THE DATA IS JUST BUILDING TO WHAT IS
17 GENERALLY WHAT I SEE AS A PROFIT/LOSS STATEMENT

18 Q OKAY ONE LAST QUESTION YOU WERE ALSO SHOWN THIS
19 CAN YOU ZOOM IN TO THE WHOLE WET/DRY RIGHT THERE AT THE
20 TOP? NOW THAT IT'S ZOOMED IN, YOU WERE ASKED ABOUT THE
21 DRY STACKS YOU SEE WHERE IT SAYS TWENTY-FIVE FOOT DRY
22 STACK RIGHT THERE?

23 A YES

24 Q AND THAT SAYS A HUNDRED AND FIFTEEN DRY?

25 A YEAH, SOMETHING LIKE THAT

1 Q AND THIRTY FOOT DRY IS SIXTY-FIVE ---

2 A YEAH

3 Q --- QUANTITY

4 A YEAH

5 Q AND THEN THIRTY-FIVE FOOT DRY IS TWENTY HUNDRED
6 AND FIFTEEN, PLUS SIXTY-FIVE, PLUS TWENTY EQUALS?

7 A TWO HUNDRED

8 Q TWO HUNDRED THANK YOU THAT'S ALL I HAVE

9 MR HOLLEMAN TWO FOLLOW-UP QUESTIONS

10 RECROSS EXAMINATION BY MR HOLLEMAN

11 Q MR ROBERSON, UNDER THE SHAREHOLDERS AGREEMENT YOU
12 HAVE AN OBLIGATION TO PROVIDE THE CAPITAL, NECESSARY
13 CAPITAL REQUIRED TO OBTAIN LONG-TERM FINANCING WITHOUT
14 ASKING THE FEDERAL GOVERNMENT TO DO IT FOR YOU, DON'T
15 YOU?

16 A SURE

17 Q AND THEN THERE HE SHOWED YOU ONE PAGE, BUT I SHOWED
18 YOU ANOTHER PAGE OF THE PROFORMA WHERE YOU HAD ONLY
19 ASSUMED NINETY DRY STACKS, CORRECT? YOU DID THE
20 ADDITION

21 A THAT'S CORRECT

22 Q SO YOU CAN -- THERE WITH THE DRY -- WHERE YOU HAD
23 ONE HUNDRED TO TWO HUNDRED DRY DOCKS OR DRY STACKS YOU
24 DID ONE PROFORMA WITH NINETY AND ONE WITH TWO HUNDRED,

1 CORRECT?

2 A WELL, LET ME ASK YOU AGAIN, DO YOU WANT TO KNOW WHY?

3 Q I'M ASKING YOU IS IT ---

4 THE COURT: YOU HAVE TO ANSWER THE QUESTION AND THEN
5 YOU MAY EXPLAIN YOUR ANSWER

6 A YES

7 Q ONE WITH THE LOW NUMBER AND ONE WITH THE HIGH
8 NUMBER?

9 A YES, SIR UH ---

10 MR HOLLEMAN THAT'S ALL I HAVE, YOUR HONOR

11 THE COURT: WELL, WAIT HE GETS TO EXPLAIN HIS
12 ANSWER

13 MR HOLLEMAN SURE GO AHEAD

14 A THE PROFORMAS ACTUALLY PROFORM OVER MULTIPLE YEARS
15 IT'D BE KIND OF SILLY JUST TO LOOK AT WHAT ONE YEAR WOULD
16 DO OUR MARKETING DATA SHOWS US THAT THE WET SLIPS WOULD
17 FILL UP ALMOST IMMEDIATELY AND THEN THE DRY SLIPS WILL
18 FILL UP OVER SOME PERIOD OF TIME, LET'S SAY TWO YEARS

19 SO WHEN WE'RE BUILDING THE PROFORMA YOU'RE TRYING TO
20 REALIZE HOW MUCH CASH YOU'RE GOING TO HAVE TO OPERATE THE
21 BUSINESS AND YOU HAVE TO ASSUME THAT IT'LL TAKE SOME
22 PERIOD OF TIME FOR THE BUSINESS TO STABILIZE OR TO GET,
23 IN THIS CASE, FOR THOSE DRY STACKS TO BE FILLED WET
24 SLIPS SHOULD BE FILLED IMMEDIATELY DRY SLIPS WILL COME
25 OVER TIME

1 MR HOLLEMAN: NOTHING FURTHER, YOUR HONOR

2 THE COURT ALL RIGHT

3 MR HOWARD YOUR HONOR, CAN I GET THEM TO PUT UP
4 EXACTLY WHAT THAT EXHIBIT WAS THAT HAD THE NINETY ON IT
5 'CAUSE I SAT HERE AND READ TWO HUNDRED AND I JUST --
6 I'M JUST CURIOUS

7 (PAUSE)

8 MR HOLLEMAN: WELL, HERE IT IS RIGHT HERE HERE IS
9 ONE EXAMPLE THIS IS THE LAST PAGE, RTTW561 NO, THAT'S
10 NOT IT WE'LL HAVE TO FIND IT THAT'S ALL I HAVE, YOUR
11 HONOR

12 THE COURT OKAY ANYTHING ELSE?

13 MR HOWARD I HAVEN'T SEEN THE NINETY SLIPS
14 EXHIBIT

15 THE COURT ALL RIGHT WELL, ---

16 MR HOLLEMAN THANK YOU

17 THE COURT THANK YOU, SIR YOU CAN STEP DOWN

18 MR ROBERSON THANK YOU

19 THE COURT ALL RIGHT LADIES AND GENTLEMEN, THIS
20 IS PROBABLY A GOOD TIME TO BREAK FOR LUNCH I'M GOING TO
21 ASK YOU TO BE BACK IN YOUR JURY ROOM AT 2 15 PLEASE
22 REMEMBER NOT TO DISCUSS THE CASE OR GO ON-LINE AND DO
23 RESEARCH OR GO VISIT THE SITE Y'ALL HAVE A NICE LUNCH
24 WATCH OUT FOR LEPRECHAUNS

25 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12 37

1 PM)

2 THE COURT OKAY ANYTHING BEFORE WE BREAK?

3 MR HOLLEMAN NO, YOUR HONOR

4 THE COURT WHY DON'T Y'ALL SEE IF YOU CAN FIND THE

5 EXHIBIT THAT YOU WERE REFERRING TO OVER LUNCH JOSH

6 LOOKS A LITTLE PERTURBED OKAY ALL RIGHT SEE Y'ALL

7 BACK AT 2 15

8 (WHEREUPON COURT WAS IN RECESS AT 12 37 PM)

9 THE COURT ALL RIGHT WE HAD AN IN-CHAMBERS

10 CONFERENCE MR HOWARD

11 MR HOWARD WE DID, YOUR HONOR YOUR HONOR, AFTER

12 DISCUSSING IT OVER LUNCH MY CLIENTS HAVE OPTED TO DISMISS

13 ALL COUNTER-CLAIMS WITH PREJUDICE

14 THE COURT OKAY AND, I GUESS, I SHOULD ASK, ALL

15 YOUR CLIENTS ARE IN THE COURTROOM, IS THAT CORRECT?

16 MR HOWARD THEY ARE

17 THE COURT ALL RIGHT IS THERE ANY OF YOU DISAGREE

18 WITH WHAT YOUR ATTORNEY HAS REPRESENTED TO THE COURT?

19 (WHEREUPON ALL DEFENDANTS SAID NO)

20 THE COURT: OKAY AND YOU UNDERSTAND DISMISSAL WITH

21 PREJUDICE MEANS YOU CAN'T RAISE THESE CLAIMS AGAIN?

22 (WHEREUPON ALL DEFENDANTS SAID YES)

23 THE COURT OKAY ALL RIGHT WELL, THAT MOTION IS

24 GRANTED NOW I'M GOING TO JUST GO TELL THE JURY THEY CAN

25 GO WE'LL TRY THE REST OF THIS CASE ---

1 MR HOWARD I WAS GOING TO SAY ---

2 THE COURT --- IN FRONT OF ---

3 MR HOWARD I'LL TAKE THE SECOND, YOUR HONOR

4 THE COURT WE'LL GET A NEW FACT-FINDER HOW ABOUT

5 THAT? ALL RIGHT I'LL BE BACK IN JUST A MINUTE

6 (WHEREUPON COURT WAS IN RECESS AT 2 41 PM)

7 THE COURT OKAY Y'ALL READY?

8 MR HOLLEMAN YES, YOUR HONOR

9 MR HOWARD I'VE JUST GOT ONE ISSUE AND IT WOULD
10 BE EASIER PROBABLY JUST TO WALK UP AND TALK WITH YOU

11 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE
12 RECORD)

13 (WHEREUPON COURT WAS IN RECESS AT 2 59 PM)

14 MR HOWARD WE'RE GOING TO PUT THEM UP

15 THE COURT OKAY

16 MR HOLLEMAN YOU'RE GOING TO WHAT?

17 MR HOWARD WE'RE GOING TO PUT THEM UP YOUR
18 HONOR, DEFENDANTS CALL RICK THOENNES, III

19 THE COURT ALL RIGHT COME ON AROUND AND BE SWORN

20 FREDERICK R THOENNES,

21 III, BEING DULY SWORN TESTIFIED AS FOLLOWS

22 MADAME CLERK STATE YOUR NAME, PLEASE

23 MR THOENNES, III RICK THOENNES

24 MADAME CLERK THANK YOU BE SEATED

1 **DIRECT EXAMINATION BY MR. HOWARD**

2 Q RICK, YOU JUST -- JUST FOR THE RECORD, CAN YOU STATE
3 YOUR FULL NAME, PLEASE?

4 A FREDERICK RICHARD THOENNES, III

5 Q AND CAN YOU PROVIDE US WITH YOUR ADDRESS, PLEASE?

6 A 1007 STATE PARK ROAD, GREENVILLE, SOUTH CAROLINA

7 Q NOW YOU HAD PROVIDED -- WELL, GO AHEAD AND TELL ME,
8 WE'LL JUST START HERE, WHERE DID YOU GRADUATE COLLEGE?

9 A CLEMSON UNIVERSITY

10 Q AND WHAT YEAR DID YOU GRADUATE?

11 A 1991

12 Q AND DID YOU -- OBVIOUSLY YOU EARNED A DEGREE CAN
13 YOU TELL US WHAT YOUR DEGREE IS?

14 A MARKETING

15 Q IS THAT A BA?

16 A BS

17 Q BS IN MARKETING YOU'D ALREADY TESTIFIED AND YOUR
18 DEPOSITION'S IN THE RECORD AND SOME PORTIONS OF YOUR
19 BACKGROUND WHY DON'T YOU JUST START -- WHEN DID YOU
20 JOIN -- AT SOME POINT YOU JOINED WITH YOUR FATHER IN
21 PARTNERING UP TO DO CONSTRUCTION, IS THAT CORRECT?

22 A THAT IS CORRECT

23 Q OKAY CAN YOU TELL US WHEN YOU JOINED YOUR FATHER?

24 A WE TEAMED UP TOGETHER IN 1998 TO FORM A CONSTRUCTION
25 COMPANY

1 Q WHAT WAS THE NAME OF THAT COMPANY?

2 A MARICK HOME BUILDERS

3 Q OKAY PRIOR TO 1998 HAD YOU BEEN INVOLVED IN ANY
4 CONSTRUCTION?

5 A I HAD BUILT A COUPLE OF HOMES MYSELF, BUT NOT
6 REALLY, NOT TOO MUCH JUST GREW UP AROUND IT

7 Q UNDER ANY CORPORATE NAME?

8 A NO

9 Q ONCE ---

10 A I TAKE THAT BACK WE STARTED OUT AS CAPITAL HOMES,
11 BUT THAT ONLY LASTED FOR A FEW MONTHS AND WE SWITCHED,
12 SWITCHED OVER TO MARICK HOME BUILDERS

13 Q NOW WHEN YOU JOINED WITH YOUR FATHER IN MARICK
14 CUSTOM HOMES WAS IT JUST THE TWO OF YOU AS PARTNERS IN
15 THAT?

16 A THERE ACTUALLY WAS A THIRD PARTNER FOR A SHORT
17 PERIOD OF TIME

18 Q OKAY NOW DOES MARICK STILL EXIST?

19 A YES

20 Q OKAY IS MARICK STILL OPERATING?

21 A NO

22 Q WHEN DID MARICK CEASE TO OPERATE?

23 A TOWARDS THE END OF LAST YEAR

24 Q BETWEEN 1998 AND 2009 WAS MARICK INVOLVED IN --

25 WELL, JUST TELL ME WHAT KIND OF CONSTRUCTION PROJECTS

1 MARICK WAS INVOLVED IN DURING THAT PERIOD OF TIME

2 A WE STARTED OUT WITH SINGLE FAMILY HOMES AND
3 CONTINUED TO DO THAT THROUGHOUT TYPICALLY WERE HIGH END
4 LARGE RESIDENTIAL HOMES WE'VE DONE SOME DEVELOPMENT
5 WORK WE'VE DEVELOPED A SUBDIVISION CALLED COBBLESTONE,
6 WHICH IS A HIGH END GATED COMMUNITY IN GREENVILLE WE
7 HAVE DONE LARGE TOWNHOME COMMUNITIES, ONE ON LAKE KEOWEE
8 WE'VE ALSO DONE A COUPLE -- A FEW TOWNHOME PROJECTS IN
9 GREENVILLE THAT'S ABOUT THE EXTENT OF IT

10 Q OKAY

11 A WE ALSO DID THE CLUBHOUSE UP AT THE CLIFFS VINEYARDS
12 AS WELL

13 Q OKAY OUTSIDE MARICK HAVE YOU AND YOUR DAD BEEN IN
14 ANY OTHER CONSTRUCTION RELATED VENTURES?

15 A YES

16 Q OKAY WHAT OTHER CONSTRUCTION VENTURES HAVE YOU
17 BEEN INVOLVED IN OUTSIDE OF MARICK?

18 A WE TEAMED UP WITH TIM ROBERSON'S COMPANY FOR THE
19 STONELEDGE LAKE KEOWEE WE ALSO ARE PARTNERS IN A CUSTOM
20 CABINET COMPANY

21 Q OKAY

22 A WHICH IS TIED IN WITH CONSTRUCTION AND, OF COURSE,
23 WE'RE WORKING ON OTHER DEVELOPMENTS, THE GATEWAY PROJECT,
24 ANOTHER PROJECT ON LAKE KEOWEE IN ADDITION TO WARPATH

25 Q OKAY YOU HAVE -- WHO ARE YOU PRESENTLY EMPLOYED

1 BY?

2 A PARTNER IN MULTIPLE COMPANIES, BUT MAINLY THE M-
3 GROUP, M-GROUP CONSTRUCTION AND DEVELOPMENT

4 Q OKAY WHO IS THE M-GROUP MADE UP OF?

5 A THERE'S FOUR PARTNERS, ME, MY FATHER, MARK
6 HUTCHERSON AND MARK THOENNES

7 Q OKAY IS MARK THOENNES A BROTHER OF YOURS?

8 A YES

9 Q AND HOW DID THE M-GROUP COME ABOUT?

10 A WHEN THE ECONOMY STARTED DOING WHAT IT WAS DOING
11 MARICK STARTED STRUGGLING A LITTLE BIT SO WE NEEDED TO
12 BRING IN SOME ADDITIONAL FINANCIAL PARTNERS AND IN
13 DOING SO ME AND MY BROTHER AND MARK HUTCHERSON, WE ALL
14 AGREED THAT IT WOULD BE BEST TO FORM A NEW COMPANY SINCE
15 THEY WERE COMING IN AND OPERATE UNDER THAT NAME

16 Q NOW YOU INDICATED -- WELL, LET ME ASK YOU THIS IS
17 THE M-GROUP -- ARE YOU CURRENTLY DOING PROJECTS WITH THE
18 M-GROUP?

19 A YES

20 Q HOW MANY PROJECTS DO Y'ALL HAVE GOING RIGHT NOW?

21 A WE -- SINCE WE'VE FORMED AND REALLY STARTED
22 OPERATING BACK IN ABOUT SEPTEMBER/OCTOBER, WE'VE DONE
23 SEVEN HOMES

24 Q ARE THESE ALL FREE-STANDING, SINGLE FAMILY
25 RESIDENCES?

1 A YES

2 Q NOW YOU MENTIONED THIS A MOMENT AGO THAT YOU WERE
3 INVOLVED AND PART OF THE REASON WHY WE'RE HERE IS YOUR
4 INVOLVEMENT WITH YOUR DAD, AND TIM ROBERSON AND ANDY
5 BALLARD IN WARPATH, IS THAT RIGHT?

6 A THAT'S CORRECT

7 Q OKAY NOW YOU'VE BEEN INVOLVED SINCE THE BEGINNING
8 IN WARPATH?

9 A YES

10 Q AND SINCE ---

11 A SINCE THE BEGINNING SINCE WE PURCHASED IT FROM ANDY

12 Q WELL, THAT'S WHAT I MEAN SINCE THE BEGINNING WHEN
13 Y'ALL GOT INVOLVED IN WARPATH IN 2007, ---

14 A YES

15 Q --- IS THAT RIGHT?

16 A YES

17 Q OKAY AND I'M SHOWING YOU PLAINTIFF'S EXHIBIT 1,
18 WHICH IS THE STOCK PURCHASE AGREEMENT AM I CORRECT THAT
19 IS THE STOCK PURCHASE AGREEMENT?

20 A YES

21 Q AND ON THE LAST PAGE IS THAT YOUR SIGNATURE?

22 A YES

23 Q OKAY AND LET ME ASK YOU THIS PART OF THE -- ONE
24 OF THE ALLEGATIONS THAT MR BALLARD HAS MADE AGAINST
25 Y'ALL IS THAT Y'ALL HAVE IN VIOLATION OF THAT AGREEMENT

1 SOUGHT TO DILUTE HIM AT ANY POINT PRIOR TO SIGNING THAT
2 AGREEMENT HAS MR BALLARD EVER EXPRESSED ANY DESIRE TO
3 HAVE AN ANTI-DILUTION OR NON-DILUTION CLAUSE OR LANGUAGE
4 INCLUDED IN THAT AGREEMENT?

5 A NO

6 Q WAS THERE EVER ANY INTENT ON THE PART OF YOU, OR MR
7 ROBERSON OR YOUR FATHER THAT THERE BE AN ANTI-DILUTION OR
8 NON-DILUTION LANGUAGE OR PROVISION IN THE AGREEMENT?

9 A SAY -- REPEAT ---

10 Q WAS THERE EVER ANY INTENT ON THE PART OF YOU, YOUR
11 FATHER OR MR ROBERSON TO HAVE AN ANTI-DILUTION OR NON-
12 DILUTION PROVISION INCLUDED IN THAT AGREEMENT?

13 A NO

14 Q DO YOU BELIEVE THAT THERE IS AN ANTI-DILUTION OR
15 NON-DILUTION PROVISION IN THAT AGREEMENT?

16 A NO

17 MR HOLLEMAN OBJECTION I DON'T THINK HIS BELIEF
18 MATTERS ON THAT IT'S A QUESTION OF WHAT THE CONTRACT
19 MEANS

20 THE COURT ALL RIGHT THE CONTRACT SPEAKS FOR
21 ITSELF, BUT HE CAN SAY WHAT HE BELIEVES GO AHEAD

22 A I DO NOT SEE ONE IN HERE AND DON'T BELIEVE THAT
23 THERE IS ONE

24 Q YOU -- MY UNDERSTANDING ALSO -- TELL ME -- ON PAGE 2
25 OF THAT AGREEMENT IN PARAGRAPH 5, DOES THAT -- DOES

1 PARAGRAPH 5 SET FORTH PROMISES THAT YOU MADE AS A
2 SIGNATORY TO THIS AGREEMENT OR SOME OF THE PROMISES YOU
3 MADE TO DEVELOP THIS PROPERTY AS A SIGNATORY OF THIS
4 AGREEMENT?

5 A YES

6 Q OKAY NOW WHAT -- WHEN Y'ALL THREE GOT TOGETHER TO
7 LOOK AT THIS AGREEMENT WHAT ROLE WAS CONTEMPLATED THAT
8 YOU WOULD PERFORM?

9 A MY ROLE WAS TO ASSIST WITH ARCHITECTURE AND DESIGN
10 WITH MARKETING AND SALES AND, YOU KNOW, IF I COULD HELP
11 WITH FINDING FINANCE, I WOULD DO THAT

12 Q TELL ME WHAT THINGS YOU HAVE DONE TO MEET THOSE --
13 MEET THAT ROLE IN THE FURTHER DEVELOPMENT

14 A I'VE HAD MULTIPLE MEETINGS WITH THE ARCHITECTS
15 WORKING THROUGH DESIGN OF MANY PIECES OF THE DEVELOPMENT
16 AND, OF COURSE, WE'VE TALKED ABOUT -- MULTIPLE MEETINGS,
17 TALKED ABOUT MARKETING, AND WHO WE'D MARKET TO, AND WHAT
18 WE'D DO, AND HOW THE RESTAURANT WOULD BE MARKETED, AND
19 WHAT TYPE OF RESTAURANT WE SHOULD HAVE AND THOSE TYPES OF
20 THINGS

21 Q HAS THIS BEEN AN ONGOING PROJECT THAT YOU'VE BEEN
22 INVOLVED IN FOR THE LAST THREE YEARS?

23 A YES

24 Q AND THIS IS SOMETHING YOU'VE TAKEN AN ACTIVE
25 INVOLVEMENT IN OVER THE LAST THREE YEARS, IS THAT RIGHT?

1 A YES

2 Q NOW DEVELOPMENT, AM I RIGHT IN SAYING, IT'S STILL
3 ONGOING?

4 A YES

5 Q I THINK AS OF THIS DAY, YOU TELL ME IF YOU KNOW,
6 HAVE Y'ALL RECEIVED YOUR PERMITS YET?

7 A NO

8 Q AND BY THAT IT'S THE PERMIT TO -- I GUESS WE WERE
9 WAITING ON THE DHEC PERMIT, IS THAT RIGHT?

10 A CORRECT

11 Q NOW ONCE THE DHEC PERMIT COMES IN WHAT SORT OF
12 DEVELOPMENT WORK WOULD Y'ALL BE UNDERTAKING GOING FORWARD
13 AT THAT POINT?

14 A MY ROLE?

15 Q YEP

16 A WE WOULD -- I'D STILL BE WORKING ON DOCK DESIGN,
17 DOCK LAYOUT, WELL, NOT LAYOUT, DOCK DESIGN, RESTAURANT
18 DESIGN, HOTEL DESIGN, COTTAGE DESIGN, ANY KIND OF LAND
19 PLANNING CHANGES WE MIGHT NEED TO MAKE TO MAKE IT A MORE
20 MARKETABLE PROJECT ANYTHING THAT REALLY INVOLVED
21 MARKETING RELATED TYPE AND DESIGN RELATED TYPE THINGS

22 Q IS THIS SOMETHING THAT -- ARE THOSE AREAS SOMETHING
23 THAT YOU CONSIDER YOURSELF TO HAVE EXPERIENCE WITH?

24 A YES

25 Q WOULD YOU SAY THAT YOU HAVE SIGNIFICANT EXPERIENCE

1 WITH IT?

2 A YES

3 Q OKAY

4 A I'VE SOLD -- SOLD MANY, MANY MILLION DOLLARS WORTH
5 OF REAL ESTATE SO I WOULD SAY I'D HAVE EXPERIENCE WITH
6 THAT

7 Q NOW LET ME BACK UP YOU'VE HEARD -- THERE'S BEEN AN
8 ALLEGATION IN THIS CASE THAT -- WELL, LET ME JUST ASK YOU
9 THIS IN THIS AGREEMENT Y'ALL HAVE AGREED AND YOU HAVE
10 PAID MR BALLARD A MILLION DOLLARS, IS THAT CORRECT?

11 A THAT IS CORRECT

12 Q OKAY AND THERE'S AN AGREEMENT ALSO THAT YOU'RE
13 GOING TO PAY HIM AT GRAND OPENING, YOU'RE GOING TO PAY
14 HIM ANOTHER HUNDRED THOUSAND, IS THAT RIGHT?

15 MR HOLLEMAN I HAVE TO OBJECT TO THE FORM I
16 THINK THE TESTIMONY HAS BEEN THAT MR ROBERSON PAID HIM
17 MONEY THE THOENNESES HAVEN'T PAID HIM A PENNY AS I
18 UNDERSTAND IT

19 THE COURT OKAY

20 Q WELL, LET ME ASK, WHAT WAS THE MONEY PAID FOR?

21 A MR ROBERSON PAID ANDY A MILLION DOLLARS FOR EIGHTY
22 PERCENT OF WARPATH DEVELOPMENT

23 Q AND THAT EIGHTY PERCENT REPRESENTED HOW MANY SHARES?

24 A EIGHTY THOUSAND SHARES

25 Q NOW WERE YOU PRESENT FOR THE MAY 1, 2008

1 SHAREHOLDERS AND DIRECTORS MEETING?

2 A YES

3 Q OKAY AND WERE YOU AT THAT POINT ELECTED A
4 DIRECTOR?

5 A YES

6 Q DO YOU RECALL AT ANY POINT DURING THE COURSE OF THAT
7 MEETING THAT MR BALLARD ASKED TO BE ELECTED A DIRECTOR?

8 A I DON'T RECALL

9 Q ANSWER ME THIS QUESTION HAVE YOU IN ANY WAY IN ANY
10 ACTION YOU'VE TAKEN BREACHED THIS CONTRACT?

11 A NO

12 Q WERE THE ACTIONS TAKEN AT THE MAY 1, 2008 BOARD
13 MEETING, WAS THERE ANY CONCEPT THAT MR BALLARD WOULD BE
14 THE ONLY PERSON DILUTED IF ADDITIONAL SHARES WERE ISSUED?

15 A ABSOLUTELY NOT

16 Q IS IT FAIR TO SAY THAT IF ADDITIONAL SHARES WERE
17 ISSUED THAT ALL FOUR SHAREHOLDERS WOULD BE DILUTED
18 EQUALLY?

19 A THAT WOULD BE MY UNDERSTANDING

20 Q WHAT I'VE PLACED IN FRONT OF YOU IS PLAINTIFF'S
21 EXHIBIT 10 CAN YOU TELL ME WHAT PLAINTIFF'S EXHIBIT 10
22 IS?

23 A IT'S AN EMAIL FROM TIM TO MY FATHER AND ME

24 Q IS IT A -- FAIR TO SAY IT'S A STRING OF EMAILS?

25 A YES

1 Q IS THERE AN EMAIL -- LOOK DOWN AT THE EMAIL, TWO
2 BELOW, I GUESS, AT THE TOP, APPEARS TO BE AN EMAIL FROM
3 YOU TO YOUR FATHER WITH A COPY TO TIM, IS THAT RIGHT?

4 A YES

5 Q AND IF YOU LOOK DOWN AT PARAGRAPH 2 OF THAT EMAIL --
6 WHY DON'T YOU READ WHAT THAT SAYS?

7 A THE WHOLE PARAGRAPH?

8 Q PLEASE

9 A I ALSO WOULD NOT SAY, I GUESS, BEFORE THE TWO
10 OPTIONS I WOULD JUST SAY HERE ARE THE TWO OPTIONS WE
11 HAVE ALSO, IF HE RETURNS A PORTION OF THE ONE MILLION
12 IT DOES NOT SAY ANYTHING ABOUT THE TWENTY PERCENT DON'T
13 WE WANT TO GET HIM OUT OF THE DEAL? I'D RATHER KEEP THE
14 ONE MILLION AND GIVE HIM BACK THE TWENTY PERCENT HE
15 ISN'T GOING TO HAVE ANY CASH TO GIVE BACK ANYWAY I
16 WOULD LET HIM KEEP THE ONE MILLION, GIVE BACK THE TWENTY
17 PERCENT AND GIVE NO FUTURE PAYMENTS

18 Q NOW THERE'S BEEN TESTIMONY THAT THAT WAS DURING A
19 PERIOD OF TIME THAT THERE WAS -- WELL YOU TELL ME WHAT
20 WAS GOING ON AT THAT TIME, YOUR STATE OF MIND AND KIND OF
21 WHAT EVERYBODY ELSE WAS THINKING AT THAT TIME?

22 A WELL, OBVIOUSLY AT THAT POINT IN TIME WE WERE UPSET
23 ABOUT WHAT WAS HAPPENING WITH THE PROJECT, THAT WE
24 WEREN'T GOING TO GET THE NUMBER OF BOAT SLIPS THAT WE
25 THOUGHT WE WERE GOING TO GET OR THAT I THOUGHT ANDY HAD

1 LED US TO BELIEVE WE WERE GOING TO GET SO WE WERE
2 UPSET

3 AND IN MAKING THE COMMENT THAT I WANTED HIM OUT OF
4 THE DEAL, AT THAT POINT IN TIME I DID FEEL THAT WAY
5 BECAUSE I DIDN'T FEEL LIKE I WANTED TO BE IN BUSINESS
6 WITH SOMEONE WHO'S MISLEADING ME

7 Q OKAY

8 MR. HOLLEMAN YOUR HONOR, COULD I OBJECT IN THIS
9 SENSE? THEY HAVE JUST DISMISSED WITH PREJUDICE THEIR
10 CLAIM THAT HE MISLED THEM I THINK THAT'S BOTH RES
11 JUDICATA AND COLLATERAL ESTOPPEL AND I THINK WITNESSES
12 ARE ESTOPPED FROM CONTENDING HE MISLED THEM IN ANY WAY

13 MR. HOWARD YOUR HONOR, IT GOES TO THE STATE OF
14 MIND OF THESE GENTLEMEN WHEN THEY -- AS THEY WERE
15 PROCEEDING THROUGH THIS I MEAN, THERE'S -- THE EVIDENCE
16 SHOWS ---

17 MR. HOLLEMAN: IT'S THE ISSUE OF ESTOPPEL ---

18 THE COURT OKAY WELL, IT DOES GO TO HIS STATE OF
19 MIND AND WHETHER OR NOT HE BELIEVED IT AND WHETHER OR NOT
20 HE HAS EVIDENCE TO PROVE THAT HIS BELIEF IS SUBSTANTIAL
21 ARE TWO DIFFERENT THINGS SO GO AHEAD

22 Q AT ANY POINT DID YOU EVER EXPRESS TO ANDY BALLARD
23 THAT YOU WANTED HIM OUT OF THE DEAL?

24 A NO

25 Q AT ANY POINT DID YOU, OR MR. ROBERSON OR YOUR FATHER

1 EVER TAKE ANY STEPS TO REMOVE ANDY BALLARD FROM THIS --
2 FROM HIS POSITION AS A SHAREHOLDER IN THIS MATTER, IN
3 THIS ---

4 A NO

5 Q --- IN WARPATH?

6 A NO

7 Q HAVE YOU AT ANY POINT FAILED TO FULFILL ANY OF YOUR
8 OBLIGATIONS UNDER THIS CONTRACT?

9 A ABSOLUTELY NOT

10 Q HAVE YOU IN ANY WAY REPUDIATED THE CONTRACT OR ANY
11 WAY STATE THAT YOU WILL NOT PERFORM?

12 A NO, I HAVE NOT

13 Q ARE YOU AS A SHAREHOLDER WITH OBLIGATIONS TO THIS
14 COMPANY, ARE YOU READY, AND ABLE AND WILLING TO MEET
15 THOSE OBLIGATIONS?

16 A ABSOLUTELY

17 Q IS THERE ANY HESITATION IN YOU IN WANTING TO GET
18 THIS DEVELOPMENT FINISHED AND OPERATING?

19 A THERE IS NO HESITATION I'D LIKE TO GET IT DONE AS
20 QUICKLY AS POSSIBLE

21 Q DO YOU HAVE FULL INTENTIONS TO FULLY PERFORM UNDER
22 THIS CONTRACT?

23 A YES

24 Q HAVE YOU IN ANY WAY OPPRESSED OR MADE ANY ATTEMPT TO
25 FREEZE-OUT ANDY BALLARD?

1 A ABSOLUTELY NOT

2 MR HOWARD: THAT'S ALL I'VE GOT, YOUR HONOR

3 THE COURT OKAY CROSS

4 CROSS EXAMINATION BY MR HOLLEMAN

5 Q I BELIEVE YOU SAID YOU ALL HAD CREATED A NEW COMPANY
6 CALLED THE M-GROUP, IS THAT RIGHT?

7 A YES, THAT'S CORRECT

8 Q ISN'T THE REASON YOU CREATED THE M-GROUP IS YOU
9 WANTED TO AVOID THE DEBTS OF MARICK?

10 A NO

11 Q THEREFORE, YOU WANTED TO DO BUSINESS UNDER ANOTHER
12 CORPORATE STRUCTURE?

13 A ABSOLUTELY NOT

14 Q WELL, DIDN'T MARICK HAVE A GROUP OF JUDGMENTS
15 AGAINST IT?

16 A YES

17 Q LET'S SEE IT HAD A JUDGMENT OF FOUR TO FIVE
18 THOUSAND DOLLARS BY CARPET ONE FOR FAILURE TO PAY FOR
19 CARPETING, IS THAT CORRECT?

20 A YES

21 Q IT HAD A JUDGMENT OF FOURTEEN THOUSAND DOLLARS BY
22 JEFF LYNCH FOR FAILURE TO PAY FOR APPLIANCES, IS THAT
23 CORRECT?

24 A THAT'S CORRECT

25 Q AND A JUDGMENT OF FOUR TO FIVE THOUSAND DOLLARS FROM

1 CLAYTON TILE FOR FAILURE TO PAY FOR THOSE -- FOR TILE, IS
2 THAT CORRECT?

3 A THAT IS CORRECT BUT WE'VE ALSO WORKED OUT A DEAL
4 WITH THEM TO REPAY THEM, WHICH WE HAVE BEEN DOING OVER
5 THE PAST SEVERAL MONTHS

6 Q NOW CARPET ONE, AT LEAST WHEN I DEPOSED YOU, THAT
7 JUDGMENT WAS STILL OUTSTANDING, CORRECT?

8 A YES

9 Q AND YOU HAVE GIVEN -- ON FOUR DIFFERENT OCCASIONS
10 MARICK GAVE BANKS DEEDS IN LIEU OF FORECLOSURE, IS THAT
11 CORRECT?

12 A WE DID

13 Q AND YOU GAVE A CONFESSION OF JUDGMENT OF TWO MILLION
14 DOLLARS, IS THAT CORRECT?

15 A YES

16 Q AND SO IT IS -- AND, I GUESS, AS OF THIS DATE YOU'RE
17 NOT DOING ANY FURTHER CONSTRUCTION WORK UNDER THE
18 UMBRELLA OF MARICK, IS THAT CORRECT?

19 A WE ARE NOT UNDER THE UMBRELLA OF MARICK THAT IS
20 CORRECT

21 Q AND WAS MARICK THE ENTITY THAT CONTRACTED TO BUILD
22 CHAD ODOM'S HOUSE?

23 A YES

24 Q AND DID -- UNDER MARICK, I BELIEVE, YOU HANDLED THE
25 FINANCES WITH MARICK, IS THAT CORRECT? WERE YOU THE

1 FINANCIAL MAN?

2 A WE BOTH DID

3 Q OKAY BUT YOU TAKE PART IN THAT?

4 A SOMEWHAT, YES

5 Q AND SO, I BELIEVE, YOU ALL TOOK MONEY THAT CHAD ODOM
6 HAD PAID YOU FOR HIS HOUSE AND USED IT TO PAY FOR OTHER
7 EXPENSES ON OTHER PROJECTS UNRELATED TO CHAD ODOM'S
8 HOUSE, IS THAT CORRECT?

9 A WELL, WE TAKE MONEY FROM ANY JOBS WE'RE WORKING ON
10 AND PUT IT INTO ONE BANK ACCOUNT AND USE THAT TO PAY
11 EXPENSES, WHATEVER EXPENSES MAY COME UP AT THE TIME

12 Q WELL, MY QUESTION ---

13 A SO WE DIDN'T JUST ---

14 Q I'M NOT ASKING YOU WHAT YOU GENERALLY DO I'M
15 ASKING YOU AS TO CHAD ODOM'S HOUSE DID YOU TAKE MONEY
16 THAT HE HAD PAID YOU FOR HIS HOUSE AND USE IT TO PAY YOUR
17 OTHER EXPENSES ---

18 A HIS MONEY WENT INTO OUR BANK ACCOUNT, OUR ONE MARICK
19 HOMEBUILDERS BANK ACCOUNT AND ALL THAT MONEY IS POOLED
20 TOGETHER AND USED TO PAY EXPENSES

21 Q AND WHAT EXPENSES DID YOU USE IT TO PAY?

22 A WHATEVER BUSINESS EXPENSES WE HAD

23 Q YOU DON'T KNOW WHAT BUSINESS ---

24 A WE'VE BEEN DOING THAT ---

25 Q WELL, WHAT BUSINESS EXPENSES DID YOU PAY WITH IT IF

1 YOU'RE DEALING WITH THE FINANCES ---

2 A ALL KINDS ---

3 Q --- OF MARICK?

4 A --- OF BUSINESS -- I DON'T UNDERSTAND WHAT, DO YOU
5 WANT ME TO LIST THEM?

6 Q YES ABSOLUTELY, I DO I WANT TO KNOW EXACTLY WHAT
7 YOU SPENT IT ON

8 A I CAN'T TELL YOU THAT I DON'T KNOW EVERY CHECK I
9 WROTE

10 Q PARDON? WELL, I'M NOT ASKING YOU EVERY CHECK WHAT
11 ---

12 A YOU JUST WANTED ME TO SAY, ---

13 Q WELL, ---

14 A --- TELL ME EVERY EXPENSE ---

15 THE COURT WAIT A MINUTE WAIT A MINUTE ONE AT A
16 TIME DON T INTERRUPT SHE HAS TO TAKE EVERYTHING DOWN
17 OKAY

18 Q WHAT PROJECTS DID YOU SPEND IT ON?

19 A WE HAD MULTIPLE PROJECTS GOING AT THE TIME

20 Q TELL ME WHAT THEY WERE

21 A HOUSES, DIFFERENT HOUSES IN COBBLESTONE, MONTEBELLO,
22 CHAD'S HOUSE WE SPENT IT ON CHAD'S HOUSE AS WELL IF
23 BILLS WERE DUE, WE PAID WHATEVER BILLS WE NEEDED TO PAY
24 AT THE TIME

25 Q YOU PAID WHATEVER BILLS YOU HAD IN YOUR COMPANY

1 REGARDLESS OF WHETHER IT WAS FOR HIS HOUSE OR NOT?

2 A YES

3 Q AND DID -- WAS THIS MONEY HE PAID YOU OR WAS THIS
4 MONEY YOU DREW DOWN FROM A BANK?

5 A THIS IS MONEY THAT HE PAID US

6 Q NOW DID THAT RESULT IN A MATERIALMEN'S LIENS OR
7 MECHANIC'S LIENS BEING PLACED AGAINST THIS HOUSE?

8 A THERE WAS A MECHANIC'S LIEN PLACED AGAINST HIS
9 HOUSE, YES

10 Q IN CONNECTION -- I BELIEVE YOU SAID YOU WERE DOING
11 BUILDING UNDER M-GROUP, AS I RECALL I BELIEVE YOU TOLD
12 ME M-GROUP HAD A PART-TIME RECEPTIONIST AND THE FOUR
13 PARTNERS OR PART-TIME EMPLOYEE, IS THAT CORRECT?

14 A YES

15 Q IS THAT WHAT YOU STILL HAVE?

16 A RECEPTIONIST IS FULL-TIME

17 Q AND THEN YOU -- AND YOU'RE BUILDING SINGLE FAMILY
18 HOUSES, IS THAT RIGHT?

19 A THAT'S CORRECT

20 Q NOW ISN'T IT CORRECT THAT YOU WANTED TO GET ANDY
21 BALLARD OUT OF THE DEAL?

22 A I SAID THAT IN AN EMAIL

23 Q AND IS THAT NOT TRUE, YOU WANTED TO GET HIM OUT ---

24 A AT THAT POINT IN TIME I DID, YES

25 Q AND THE REASON YOU WANTED TO GET HIM OUT OF THE DEAL

1 WAS BECAUSE YOU THOUGHT IT MIGHT BE A WAY FOR YOU TO
2 RECOVER SOME OF THE MONEY YOU HAD LOST?

3 A NO, THAT'S NOT CORRECT

4 Q LET'S LOOK AT YOUR DEPOSITION I BELIEVE WE MAY
5 HAVE SUBMITTED IT TO THE COURT

6 THE COURT WHAT PAGE? THAT'S FINE, YEAH WHAT
7 PAGE?

8 MR HOLLEMAN 96

9 Q I'LL SHOW YOU PAGE 96 OF YOUR DEPOSITION AND I'M
10 GOING TO READ THE QUESTION AT LINE 11 WHY DID YOU WANT
11 TO GET MR BALLARD OUT OF THE DEAL? AND WHAT WAS YOUR
12 ANSWER? IF YOU COULD READ IT

13 A BECAUSE I FELT LIKE WE HAD BEEN TAKEN ADVANTAGE OF,
14 HAD BEEN SOLD SOMETHING THAT WAS NOT WHAT I FELT WE WERE
15 SOLD

16 Q BECAUSE IT TOOK LONGER TO GET THE PERMITS?

17 A THAT, AND IN ADDITION, MAINLY THE TWO HUNDRED BOAT
18 SLIPS I THOUGHT IT MIGHT BE A WAY FOR US TO POSSIBLY
19 RECOVER SOME OF THAT

20 Q SO ISN'T IT CORRECT THAT YOU THOUGHT THE REASON YOU
21 WANTED TO GET HIM OUT OF THE DEAL WAS IT WOULD BE A WAY
22 FOR YOU TO RECOVER SOME OF WHAT YOU THOUGHT YOU HAD LOST
23 FROM THE TWO HUNDRED BOAT SLIPS AND THE PERMIT ---

24 A I DID SAY THAT HERE I WAS REFERENCING THE EMAIL

25 Q NOW ANDY WAS NOT ELECTED A DIRECTOR IN 2008 AT THAT

1 MEETING YOU ATTENDED, IS THAT CORRECT?

2 A THAT IS CORRECT

3 Q AND I BELIEVE IT'S YOUR TESTIMONY THAT EVEN THOUGH
4 YOU ATTENDED AND EVEN THOUGH YOU WERE ELECTED A DIRECTOR
5 AND EVEN THOUGH, OF COURSE, YOU AND YOUR FATHER ARE
6 CLOSELY RELATED THAT YOU DO NOT KNOW WHY MR BALLARD WAS
7 NOT ELECTED A DIRECTOR, IS THAT CORRECT?

8 A THAT'S CORRECT

9 Q YOUR TESTIMONY IS YOU DON'T KNOW WHY?

10 A I DON'T KNOW WHY

11 Q NOW, I GUESS, THE DUE DILIGENCE AND THE PERMITTING
12 ISSUES ARE NOT AN ISSUE ANYMORE AND IF I COULD SHOW YOU
13 EXHIBIT 1, WHICH IS THE AGREEMENT, I GUESS YOU HAVE IN
14 FRONT OF YOU NOW YOUR TESTIMONY HAS BEEN THAT MR
15 ROBERSON PAID A MILLION DOLLARS SO YOU ALL WOULD HAVE
16 EIGHTY PERCENT OF THAT COMPANY

17 A THAT'S CORRECT

18 Q IS THAT RIGHT?

19 A YES

20 Q WHO WAS THE MILLION DOLLARS PAID TO?

21 A MR BALLARD

22 Q PERSONALLY?

23 A YES

24 Q HOW MANY SHARES DID MR BALLARD OWN WHEN HE WAS PAID

25 A MILLION DOLLARS?

1 A TWENTY THOUSAND

2 Q NO, HE ACTUALLY OWNED FORTY THOUSAND, CORRECT?

3 A SORRY HE WAS LEFT WITH TWENTY THOUSAND

4 Q HE OWNED FORTY -- ONLY OWNED FORTY THOUSAND SHARES

5 AND YOU ALL RECEIVED TWENTY THOUSAND SHARES FROM MR

6 BALLARD, CORRECT?

7 A YES, I BELIEVE SO

8 Q AND YOU ENDED UP GETTING EIGHTY THOUSAND SHARES

9 WHERE DID THE SIXTY THOUSAND SHARES COME FROM?

10 A FROM MR BALLARD, FROM WARPATH

11 Q CAME FROM WARPATH DEVELOPMENT, INC , CORRECT?

12 A RIGHT

13 Q WAS WARPATH DEVELOPMENT, INC PAID ANY MONEY?

14 A NOT DIRECTLY

15 Q NO IN FACT, THE MONEY WAS PAID PERSONALLY TO ANDY

16 BALLARD, CORRECT?

17 A YES, IT WAS

18 Q AND IF YOU WOULD READ, IF YOU WOULD, THE FIRST

19 SENTENCE OF PARAGRAPH 1 OF THE AGREEMENT

20 A THIS AGREEMENT MADE AND ENTERED INTO ---

21 Q NO, PARAGRAPH 1 THAT SAYS THE GROUP OF ROBERSON

22 A OH THE GROUP OF ROBERSON, THOENNES AND THOENNES,

23 III, WILL PAY TO BALLARD UPON CLOSING THE SUM OF ONE

24 MILLION DOLLARS IN EXCHANGE FOR TWENTY THOUSAND SHARES OF

25 BALLARD S FORTY THOUSAND SHARES AND WILL RECEIVE FROM THE

1 CORPORATION ADDITIONAL SHARES SO THAT BALLARD WILL HOLD
2 TWENTY PERCENT OF THE STOCK AND THE OTHER EIGHTY PERCENT
3 WILL BE HELD BY ROBERSON, THOENNES AND THOENNES, III WHEN
4 ALL SHARES ARE FINALLY ISSUED

5 Q THANK YOU

6 A WHEN THE NEW STOCK IS ISSUED THE FINAL HOLDINGS WILL
7 BE AS FOLLOWS

8 Q THAT'S WHAT THE FINAL HOLDINGS WOULD BE NOW I
9 BELIEVE YOU SAID YOU HAD -- WELL, LET ME ASK YOU THIS
10 QUESTION ISN'T IT TRUE YOU HAVE NOT DONE ANY
11 DEVELOPMENT WORK ON THIS PROJECT?

12 A THAT'S NOT TRUE

13 Q WELL, ISN'T IT TRUE THAT AS OF THE BOARD MEETING IN
14 2009 IN SEPTEMBER YOU HAD DONE NO WORK, DEVELOPMENT WORK
15 ON THIS PROJECT?

16 A THAT'S NOT TRUE

17 Q WOULD YOU TURN TO PAGE 45 OF YOUR DEPOSITION?

18 A I KNOW I SAID IN MY DEPOSITION -- BUT I WAS -- WE
19 HAVE DONE PLENTY OF DEVELOPMENT WORK WE HAVE NOT DONE
20 ACTUAL BREAKING OF GROUND AND I KNOW THAT'S WHAT YOU'RE
21 REFERENCING

22 Q NOW I ---

23 A WHAT PAGE?

24 Q I DIDN'T SAY BREAKING GROUND TURN TO PAGE 45,
25 PLEASE, LINE 5 MY QUESTION WAS, IN YOUR DEPOSITION,

1 SEPTEMBER 18TH, 2009, HAVE YOU DONE ANY DEVELOPMENT WORK

2 WITH RESPECT TO WARPATH? WHAT WAS YOUR QUESTION?

3 A I DIDN'T HAVE A QUESTION

4 Q I MEAN, WHAT WAS YOUR ANSWER? ON LINE 7?

5 A I HAVE NOT

6 Q ALL RIGHT AND THEN, I GUESS, YOU AND YOUR FATHER

7 MUST BE PRETTY CLOSE, CORRECT? YOU WORK TOGETHER

8 THERE'S JUST THREE OR FOUR OF YOU IN THE M-GROUP, IS THAT

9 RIGHT?

10 A THAT'D BE A GOOD ASSUMPTION

11 Q AND YOU WORKED TOGETHER IN MARICK AS WELL?

12 A YES

13 Q AND YOU ARE PARTNERS OR YOU'RE CO-SHAREHOLDERS IN

14 WARPATH, CORRECT?

15 A CORRECT

16 Q AND I ASKED YOU HAS YOUR FATHER -- THIS WAS

17 SEPTEMBER 18, 2009 THE LAWSUIT HAD BEEN PENDING OVER A

18 YEAR YOU HAD BEEN SHAREHOLDERS IN -- OVER TWO YEARS

19 AND I ASKED YOU, HAS YOUR FATHER DONE ANY DEVELOPMENT

20 WORK? AND WHAT WAS YOUR ANSWER?

21 A I SAID, I DON'T KNOW EXACTLY WHAT HE'S DONE YOU'LL

22 HAVE TO ASK HIM

23 Q AND I -- THEN I ASKED YOU, YOU DON'T KNOW ONE WAY OR

24 THE OTHER?

25 A AND I SAID, HUH-UH

1 Q AND I SAID, YOU NEED TO SAY NO FOR HER AND WHAT

2 DID YOU SAY?

3 A NO NO, I DON'T

4 Q NO, I DON'T KNOW, CORRECT?

5 A NO NO, I DON'T KNOW SORRY BUT I ---

6 Q AND YOU'RE NOT ---

7 A --- WAS REFERENCING -- I WAS REFERENCING ACTUAL

8 STRUCTURAL DEVELOPMENT, NOT THE DEVELOPMENT WORK THAT IT

9 TAKES TO GET TO THE POINT WHERE YOU CAN BREAK GROUND

10 Q WELL, THAT'S NOT WHAT THIS SAYS IN BLACK AND WHITE

11 THOUGH, IS IT?

12 A BUT I'M TELLING YOU WHAT I WAS REFERENCING

13 Q NOW DID YOU -- DID YOU REVIEW YOUR DEPOSITION AFTER

14 YOU -- AFTER YOU GOT THE HARD COPY BACK?

15 A YES

16 Q YOU READ IT? DID YOU DO -- YOU HAD AN OPPORTUNITY

17 TO DO AN ERRATA SHEET AND MAKE ANY CORRECTIONS?

18 A I'M SURE I DID

19 Q DID YOU MAKE ANY CHANGES WHEN YOU READ THIS?

20 A NO

21 Q AND YOU HAVEN'T EXECUTED ANY LOAN DOCUMENTS,

22 CORRECT?

23 A NO

24 Q AND YOU HAVE NOT EXECUTED AN AGREEMENT WITH WARPAT

25 FOR THAT MATTER AS CALLED FOR BY THE AGREEMENT AS ---

1 A CORRECT

2 Q --- THE CONTRACT PROVIDED?

3 A CORRECT I'D JUST LIKE IT TO BE KNOWN THAT I'M
4 AMENDING MY DEPOSITION RIGHT NOW, THAT WE HAVE DONE
5 PLENTY OF DEVELOPMENT WORK UP TO THIS POINT WE HAVE NOT
6 ACTUALLY DONE PHYSICAL CONSTRUCTION

7 Q YOU MAY BE GIVING DIFFERENT TESTIMONY NOW, BUT IT'S
8 TOO LATE TO CHANGE YOUR DEPOSITION

9 A OKAY

10 MR HOLLEMAN THAT'S ALL I HAVE, YOUR HONOR THANK
11 YOU

12 THE COURT ALL RIGHT ANY REDIRECT?

13 MR HOWARD JUST A COUPLE, YOUR HONOR

14 **REDIRECT EXAMINATION BY MR HOWARD**

15 Q RICK, CAN YOU PICK UP EXHIBIT 1 AGAIN, THE STOCK
16 PURCHASE AGREEMENT?

17 A YES

18 Q CAN YOU READ THE FOURTH WHEREAS, THE FIRST PAGE?

19 A WHEREAS BALLARD WISHES?

20 Q THAT'S CORRECT

21 A WHEREAS BALLARD WISHES TO CONVEY TO THE OTHER
22 PARTIES EIGHTY PERCENT OF THE CORPORATION IN EXCHANGE FOR
23 THE PURCHASE OF ONE HALF OF HIS STOCK, PLUS AN ADDITIONAL
24 SIXTY THOUSAND SHARES

25 Q WAS THE INTENT THAT Y'ALL WERE PURCHASING EIGHTY

1 PERCENT OF THE CORPORATION?

2 A IN MY OPINION WE WERE GIVING HIM A MILLION DOLLARS
3 FOR EIGHTY PERCENT OF THE CORPORATION

4 Q AT THE TIME THAT THAT AGREEMENT WAS ENTERED INTO WAS
5 THERE A PRESENT INTENT THAT Y'ALL WOULD POSSESS ALL THE
6 SHARES, EIGHTY THOUSAND SHARES?

7 A YES

8 Q WAS THERE EVER ANY INTENT EXPRESSED BY ANYBODY ELSE,
9 ANYBODY OUT OF Y'ALL FOUR, THAT Y'ALL WOULDN'T POSSESS
10 THE EIGHTY THOUSAND SHARES THAT WERE ISSUED TO YOU?

11 A NO, THERE IS NONE THAT'S WHY IT'S SHOWN AT THE
12 BOTTOM THAT WE HAVE EIGHTY THOUSAND WHEN IT'S BROKEN OUT

13 Q YOU WERE JUST ASKED SOME QUESTIONS ABOUT YOUR
14 DEPOSITION AND DEVELOPMENT WORK CAN YOU DEFINE -- HOW
15 DID YOU DEFINE DEVELOPMENT WORK?

16 A IN THE DEPOSITION WHEN I WAS ANSWERING THE QUESTION
17 I WAS REFERENCING DEVELOPMENT WORK AS ACTUAL CONSTRUCTION
18 SITE WORK, BUILDING OF BUILDINGS, PUTTING IN DOCKS,
19 THINGS LIKE THAT

20 I WAS NOT REFERENCING THE WORK THAT IT TAKES
21 BUILDING UP TO THE POINT WHERE YOU GET PERMITS AND CAN
22 START CONSTRUCTION THERE IS A LOT OF DEVELOPMENT WORK
23 THAT GOES INTO GETTING IT READY FOR CONSTRUCTION

24 MR HOWARD THAT'S ALL I HAVE, YOUR HONOR

25 A CAN I MAKE ONE ADDITIONAL POINT?

1 THE COURT NO, YOU CAN'T DO NARRATIVE STUFF
2 A OKAY
3 THE COURT ALL RIGHT ANYTHING ELSE?
4 MR HOWARD NO, SIR
5 MR HOLLEMAN: NO, SIR, YOUR HONOR
6 THE COURT THANK YOU YOU CAN STEP DOWN
7 MR HOWARD DEFENDANTS CALL MR RICK THOENNES, SR
8 FREDERICK THOENNES, SR ,
9 BEING DULY SWORN TESTIFIED AS FOLLOWS
10 MADAME CLERK STATE YOUR NAME, PLEASE
11 MR THOENNES, SR RICK THOENNES
12 MADAME CLERK THANK YOU PLEASE BE SEATED
13 DIRECT EXAMINATION BY MR HOWARD:
14 Q GOOD AFTERNOON, MR THOENNES
15 A GOOD AFTERNOON
16 Q FOR THE PURPOSE OF THE RECORD, CAN YOU STATE YOUR
17 FULL NAME, PLEASE?
18 A FREDERICK RICHARD THOENNES
19 Q AND CAN YOU PROVIDE US WITH YOUR ADDRESS, PLEASE?
20 A 414 LODGEWOOD TRAIL, GREER
21 Q PART OF YOUR EMPLOYMENT HISTORY WAS INCLUDED IN THE
22 -- IN YOUR DEPOSITION THAT WAS READ EARLIER SO WE'RE
23 NOT GOING TO GO THROUGH ALL OF THAT BUT I WOULD LIKE
24 YOU TO TELL ME STARTING FROM THE BEGINNING OF YOUR
25 EMPLOYMENT THAT IS RELATED TO THE CONSTRUCTION INDUSTRY

1 A BASICALLY A YEAR AND A HALF TIL AFTER I GOT OUT OF
2 COLLEGE I CAME BACK TO GREENVILLE AND STARTED IN
3 DEVELOPMENT AND CONSTRUCTION AT THAT TIME WITH MY FATHER
4 AS A PARTNER AND A COUPLE OF OTHER BUSINESSMEN HERE IN
5 THE CITY

6 AND FROM THAT TIME, 1969 UNTIL TODAY I'VE BEEN IN
7 CONSTRUCTION AND DEVELOPMENT WITH THE EXCEPTION OF TWO
8 STINTS IN FLORIDA WHEN I WAS AN ADMINISTRATOR OF A
9 CHRISTIAN SCHOOL IN A LARGE METROPOLITAN CHURCH SO
10 VIRTUALLY ALL OF MY ADULT LIFE HAS BEEN IN CONSTRUCTION
11 AND DEVELOPMENT

12 Q OKAY WHAT CONSTRUCTION AND DEVELOPMENT COMPANIES
13 HAVE YOU BEEN INVOLVED WITH?

14 A WELL, RICK THOENNES BUILDERS, I BUILT FOR MYSELF
15 RICK PICERNO CONSTRUCTION IN FLORIDA, WHEN I WENT TO
16 FLORIDA I DEVELOPED AND BUILT WITH THEM I WAS THE VICE-
17 PRESIDENT OF U S SHELTER FOR A FEW YEARS AND HEADED UP
18 THEIR MULTI-FAMILY CONSTRUCTION DIVISION AND THEN WITH
19 THE NUMEROUS COMPANIES THAT RICK AND I HAVE BEEN INVOLVED
20 WITH, GATEWAY THEY'VE ALL BEEN ENUMERATED, BUT GATEWAY,
21 MARICK, M-GROUP, STONELEDGE, SEVERAL OTHER DEVELOPMENTS
22 THROUGHOUT THE CITY

23 Q YOU WERE UP UNTIL -- I SUPPOSE YOU ARE STILL A
24 PARTNER IN MARICK, IS THAT RIGHT?

25 A YES

1 Q AND MARICK STILL EXISTS, BUT IT'S JUST NOT

2 OPERATIONAL AT THIS TIME?

3 A THAT'S RIGHT

4 Q AND AT THIS POINT YOU'RE ALSO A PARTNER IN M-GROUP?

5 A THAT'S RIGHT

6 Q AND IS THE M-GROUP OPERATING?

7 A IT IS

8 Q AND IS IT PRESENTLY WORKING ON PROJECTS?

9 A YES WE'RE BUILDING -- RIGHT NOW WE'RE BUILDING
10 SINGLE FAMILY HOMES

11 Q NOW OVER THE YEARS IS THERE ANY WAY TO ESTIMATE HOW
12 MANY SINGLE FAMILY HOMES YOU'VE BUILT?

13 A HUNDREDS AND PROBABLY FIVE TO TEN THOUSAND APARTMENT
14 UNITS, SEVERAL COMMERCIAL SHOPPING CENTER STRIPS,
15 CLUBHOUSE AT THE VINEYARDS, THOSE KINDS OF THINGS

16 Q WHAT KIND OF COMMERCIAL VENTURES HAVE YOU DONE?

17 A DONE THE VINEYARDS CLUBHOUSE WE REMODELED THE OLD
18 IVEY'S BUILDING DOWNTOWN WHERE ATLANTA BREAD IS FROM THE
19 BASEMENT UP THOSE WOULD BE THE TWO MOST RECOGNIZABLE, I
20 GUESS WE'VE BUILT HILLENDALE PLAZA OUT AT POINSETT
21 HIGHWAY NUMEROUS, NUMEROUS THINGS

22 Q OKAY WHAT HAS YOUR ROLE TYPICALLY BEEN? I MEAN,
23 WHAT IS YOUR SORT OF SKILL SET THAT YOU WOULD SAY YOU
24 POSSESS?

25 A MORE OF THE CONSTRUCTION AND -- CONSTRUCTION END OF

1 THINGS THAT'S WHY MY SON AND I ARE ABLE TO WORK
2 TOGETHER IS BECAUSE WE HAVE ROLES THAT WE PLAY HE
3 HANDLES THE MARKETING AND FINANCING AND THAT KIND OF END
4 I HANDLE ALL THE CONSTRUCTION AND DEVELOPMENT END OF IT,
5 THE ACTUAL -- I'M OUT ON THE JOB ALL THE TIME AND DOING
6 THOSE KINDS OF THINGS

7 Q YOU'VE GOT BOOTS ON AND WALKING AROUND IN THE DIRT,
8 IS ---

9 A YES

10 Q --- THAT FAIR TO SAY? AND MANAGING THE HAMMERS, I
11 GUESS, ---

12 A YES

13 Q --- IS THE WAY TO PUT IT

14 A I DON'T SWING A HAMMER, BUT I MANAGE THEM

15 Q AND -- OKAY NOW, WHAT BRINGS US HERE IS -- WELL,
16 LET ME PUT IT THIS WAY YOU'VE GOT -- WOULD YOU SAY THAT
17 YOU'VE GOT CONSIDERABLE EXPERIENCE AND EXPERTISE IN
18 MANAGING A CONSTRUCTION PROJECT AND MANAGING DEVELOPMENT
19 OF A CONSTRUCTION PROJECT?

20 A YES

21 Q AND PART OF THAT -- WOULD YOU SAY PART OF THAT
22 EXPERIENCE IS HANDLING THE PERMITTING PROCESS THAT MAY
23 LEAD UP TO ACTUAL BREAKING GROUND?

24 A YES

25 Q OKAY

1 A IT WOULD BE ALL ASPECTS OF CONSTRUCTION

2 Q OKAY AND IS IT -- IS THERE DEVELOPMENT WORK GOING
3 ON BEFORE YOU EVEN BREAK GROUND?

4 A YES, THERE'S A LOT I GUESS I'D LIKEN IT TO THE WAY
5 YOU GUYS WORK IT'S TAKEN US A YEAR AND A HALF TO GET
6 HERE FOR A THREE DAY TRIAL AND IT'S TAKEN YOU THAT
7 AMOUNT OF TIME TO PREPARE FOR IT

8 WELL, THAT'S WHAT -- THAT'S WHAT HAPPENS WITH ME
9 IT TAKES LONGER TO PREPARE FOR THE ACTUAL CONSTRUCTION
10 THAN IT DOES TO DO THE ACTUAL CONSTRUCTION AND IN THE
11 CASE OF WARPATH, IT'S TAKEN EVEN LONGER BUT IT TAKES A
12 LONG TIME TO GET TO THE TURNING DIRT PLACE

13 Q NOW, WE'RE ALL HERE YOU'RE CLEARLY ONE OF THE
14 SHAREHOLDERS IN WARPATH DEVELOPMENT, IS THAT RIGHT?

15 A YES

16 Q AND YOU PRESENTLY HOLD TWENTY THOUSAND SHARES, IS
17 THAT RIGHT?

18 A THAT'S CORRECT

19 Q AND THAT AT PRESENT REPRESENTS TWENTY PERCENT OF THE
20 COMPANY, IS THAT CORRECT?

21 A CORRECT

22 Q OKAY YOU'VE GOT EXHIBIT 1 THERE IN FRONT OF YOU
23 IS THAT THE SHAREHOLDER AGREEMENT THAT Y'ALL ENTERED
24 INTO?

25 A YES

1 Q LOOKING AT THE LAST PAGE, IS THAT YOUR SIGNATURE?

2 A IT IS

3 Q WERE YOU PRESENT FOR THE NEGOTIATIONS LEADING UP TO
4 THE SIGNING OF THAT AGREEMENT?

5 A YES, I WAS

6 Q DID YOU DEAL DIRECTLY WITH THE LAWYER'S OFFICE WHO
7 PREPARED THAT AGREEMENT?

8 A YES

9 Q WAS MR BALLARD GIVEN AN OPPORTUNITY TO REVIEW THAT
10 AGREEMENT BEFORE HE SIGNED IT?

11 A YES

12 Q WAS HE GIVEN AN OPPORTUNITY TO COMMENT?

13 A YES

14 Q WAS HE GIVEN AN OPPORTUNITY TO HAVE IT REVIEWED BY
15 AN ATTORNEY?

16 A YES

17 Q DO YOU KNOW WHETHER HE HAD IT REVIEWED BY AN
18 ATTORNEY?

19 A HE DID

20 Q DO YOU RECALL HIS ATTORNEY'S NAME?

21 A I DON'T

22 Q BUT YOU KNOW THAT -- IT WAS YOUR UNDERSTANDING THAT
23 HE HAD AN ATTORNEY ---

24 A YES

25 Q --- REVIEW IT? DIDN'T HE -- AND YOU TELL ME IF YOU

1 RECALL IT OR NOT, DIDN'T MR BALLARD ACTUALLY SUGGEST A
2 CHANGE TO A PORTION OF THE FIRST DRAFT?

3 MR HOLLEMAN I HAVE TO OBJECT, YOUR HONOR, AT THIS
4 POINT THEY'VE DISMISSED ALL THESE CLAIMS THAT RELATE TO
5 REPRESENTATION IF THIS DOESN'T VIOLATE THE PAROLE
6 EVIDENCE RULE, WHAT DOES? I MEAN, HE'S GOING ABOUT
7 PRECEDING CONVERSATIONS ABOUT -- I DON'T REALLY KNOW WHAT
8 THIS IS ABOUT, FRANKLY, BUT, I MEAN AT SOME POINT YOU
9 HAVE TO DRAW A LINE THEY'RE JUST TRYING TO GO INTO THE
10 ---

11 THE COURT HE SAYS IT'S NOT RELEVANT WHERE ARE
12 YOU GOING?

13 MR HOWARD WELL, IT IS RELEVANT, YOUR HONOR ALL
14 I'M TRYING TO POINT OUT IS THAT MR BALLARD ACTUALLY
15 RECEIVED THE AGREEMENT, SUGGESTED A CHANGE, AND THEY
16 INCORPORATED HIS CHANGE IN IT THAT HE HAD EVERY RIGHT
17 IF HE THOUGHT SOMETHING WAS MISSING OR SOMETHING NEEDED
18 TO BE IN THERE THAT HE COULD HAVE INCLUDED IT IN THERE
19 THIS IS DIRECTLY RELEVANT TO ---

20 THE COURT ALL RIGHT

21 MR HOWARD --- WHETHER THERE'S AN ANTI-DILUTION
22 CLAIM

23 THE COURT DID YOU INCORPORATE WHAT YOUR ATTORNEY
24 JUST SAID?

25 A HE DID HAVE SOME SUGGESTIONS THAT WE TALKED ABOUT

1 I THOUGHT THEY WERE VERY AMICABLE NEGOTIATIONS AND WE
2 AGREED ON WHATEVER CHANGES EITHER ONE OF US HAD AND I
3 DON'T THINK THERE WAS ANY BIG DISAGREEMENTS ABOUT ANY OF
4 THE LANGUAGE TO TELL YOU THE TRUTH I THINK MOST OF IT
5 HAD TO DO WITH WORDING, BUT THERE WERE SOME SUGGESTIONS
6 THAT HE SENT TO US, YES

7 Q AND I GUESS WE ALL ULTIMATELY -- WOULD YOU SAY THAT
8 MR BALLARD HAD FULL AND FAIR OPPORTUNITY TO REVIEW AND
9 COMMENT ON THIS AGREEMENT BEFORE HE SIGNED IT?

10 A ABSOLUTELY

11 Q OKAY NOBODY WAS TWISTING MR BALLARD'S ARM TO SIGN
12 THIS AGREEMENT?

13 A NO

14 Q OKAY AND PRIOR TO THE SIGNING OF THIS AGREEMENT
15 WERE YOU EVER AWARE OF MR BALLARD EVER SAYING AT ANY
16 POINT THAT HE WANTED AN ANTI-DILUTION PROVISION OR A NON-
17 DILUTION PROVISION IN THIS AGREEMENT?

18 MR HOLLEMAN SAME OBJECTION, YOUR HONOR IF
19 THAT'S NOT PAROLE EVIDENCE, WHAT IS?

20 THE COURT YEAH THAT'S GETTING -- THE DOCUMENT
21 SPEAKS FOR ITSELF

22 Q WAS THERE ANY INTENT ON YOUR PART TO HAVE A -- ON
23 YOUR PART THAT THIS AGREEMENT HAS A NON-DILUTION OR ANTI-
24 DILUTION CLAUSE OR PROVISION IN IT?

25 A NO I DIDN'T EVEN KNOW WHAT IT WAS TIL AFTER THIS

1 WAS SIGNED

2 Q OKAY NOW YOU'VE GOT SOME OTHER OBLIGATIONS THAT
3 ARE IDENTIFIED IN THAT AGREEMENT, I BELIEVE, IN PARAGRAPH
4 5 THAT WE IDENTIFIED EARLIER?

5 A YES

6 Q OKAY AND I'LL JUST GO ON AND READ THEM THESE
7 RESPECTIVE DUTIES INCLUDE BUT NOT LIMITED TO DEVELOPMENT
8 WORK, EXECUTION OF LOAN DOCUMENTS, ASSISTING WITH
9 PROFORMAS, ASSISTANCE WITH OBTAINING PERMANENT FINANCING
10 AND SUCH OTHER SERVICES, SERVICES AS MAY BE APPROPRIATE
11 IS THAT WHAT YOU UNDERSTOOD TO BE THE SCOPE OF WHAT YOU
12 OWED, I SUPPOSE, THAT YOU WERE AGREEING TO AMONG THE FOUR
13 OF YOU?

14 A YES THAT'S HOW I WAS GOING TO EARN MY TWENTY
15 THOUSAND SHARES

16 Q OKAY NOW TELL ME OVER THE LAST THREE YEARS -- NOW
17 I THINK IT'S WELL ESTABLISHED BY NOW THAT THE PERMITS
18 AREN'T IN PLACE AT THIS POINT, IS THAT RIGHT?

19 A THE FINAL PERMIT IS NOT THERE ARE SOME PERMITS IN
20 PLACE

21 Q THE FINAL PERMIT'S NOT?

22 A THAT'S CORRECT

23 Q AND IT'S BEEN APPROXIMATELY -- I BELIEVE THIS
24 AGREEMENT WAS SIGNED ON THE 29TH OF MAY, 2007 SO WE'RE
25 ALMOST THREE YEARS DOWN THE ROAD

1 A YES

2 Q NOW TELL US WHAT HAVE YOU BEEN DOING OVER THE LAST
3 THREE YEARS TO DRIVE THIS PROJECT FORWARD WE COULD
4 PROBABLY SIT HERE FOR AN HOUR, BUT GO AHEAD AND TRY

5 A I'VE BEEN -- I'VE BEEN WORKING WITH -- THE TWO MAIN
6 GROUPS WE STARTED WORKING WITH WERE THE ARCHITECTS AND
7 THE ENGINEERS THE ENGINEERS -- WE HAVE DEVELOPED A
8 SEWER WASTE WATER TREATMENT FACILITY THAT'S LOCATED OFF-
9 SITE

10 SO WE'VE GOT ALL -- WE HAVE THE PERMIT FROM DHEC FOR
11 THAT SO THAT HAD TO -- THAT WAS A BIG MAIN INGREDIENT
12 OF THE WHOLE THING NO SEWER/NO PROJECT SO WE'VE BEEN
13 WORKING ON THE WASTE WATER FACILITY

14 WE'VE BEEN WORKING ON THE STORM WATER, WHICH IS ALL
15 THE WATER RUNNING OFF ON THE SITE DURING CONSTRUCTION AND
16 POST CONSTRUCTION THEY BASICALLY -- NOBODY WANTS MUD IN
17 THE LAKE AND THAT'S WHAT -- THAT'S WHAT KEEPS THE MUD
18 FROM GOING IN THE LAKE DURING CONSTRUCTION AND AFTER SO
19 THOSE WERE TWO BIG POINTS THAT WE'VE BEEN WORKING WITH
20 WITH THE ENGINEERS

21 THE THIRD BIG ONE WAS THE DOCKS AND WHAT WOULD BE
22 ALLOWED FOR THE DOCKS AND WHAT WOULD BE ALLOWED FOR THE
23 SHORELINE AROUND THE DOCKS

24 AND THEN THE ARCHITECTURAL SIDE OF IT, WE'VE HAD TO
25 DEVELOP THE RESTAURANTS, THE LAYOUT FOR THE HOTEL, THE

1 CABINS, THE RV SITES I MEAN, THERE'S -- THERE'S
2 PROBABLY BEEN A HUNDRED MEETINGS, HUNDRED AND FIFTY
3 MEETINGS WITH MYSELF, AND ARCHITECTS, AND ENGINEERS AND
4 EVERYBODY INVOLVED IN ISSUING THE PERMITS
5 SO IT'S TAKEN US THAT LONG TO GET TO THIS POINT
6 THERE'S -- I THINK THERE'S TWELVE AGENCIES THAT ARE
7 INVOLVED IN SIGNING OFF ON WHETHER WE COULD BUILD ON THE
8 LAKE OR NOT SO ALL THOSE PEOPLE HAD TO BE CONTACTED AND
9 WRITTEN AND GET THEIR APPROVAL

10 SO ALL OF THOSE THINGS ARE WHAT WE'VE BEEN WORKING
11 ON AND ALSO PREPARING PROFORMAS AND BUDGETS SO THAT WE
12 COULD GET FINANCING

13 Q IS -- DO YOU PERFORM SERVICES -- TELL ME, HOW OFTEN
14 DO YOU PERFORM SERVICES FOR WARPATH? IS THIS WEEKLY? IS
15 THIS MONTHLY?

16 A IT'S -- I WOULD SAY SEVERAL TIMES A WEEK

17 Q AND ---

18 A WITH SOMEBODY

19 Q AND APPROXIMATELY HAS BEEN SPENT ON ENGINEERING, ON
20 ARCHITECTURAL SERVICES?

21 A ENGINEERING, ARCHITECTURAL SERVICES, INSURANCE,
22 PERMIT FEES, STUDIES AND ALL THAT, ALMOST A QUARTER OF A
23 MILLION DOLLARS PLUS THE LAND THAT WE HAD TO PURCHASE
24 AS WELL

25 IN ADDITION TO THOSE FEES WE HAD TO BUY A PIECE OF

1 LAND WE HAD TO HAVE THE PIECE OF LAND BEFORE WE COULD
2 DEVELOP THE WASTE WATER FACILITY SO WE HAD TO BUY THAT
3 LAND IN ORDER TO HAVE A SEWER OUTLET

4 Q HAVE YOU AT ANY POINT STOPPED OR STOPPED TRYING TO
5 PUSH FORWARD WITH DEVELOPING WARPATH?

6 A NO IT'S -- I'M NOT BUILT THAT WAY, FIRST OF ALL
7 I'M A VERY IMPATIENT PERSON, BOTTOM LINE AND WE'VE BEEN
8 PUSHING TO GET THIS OPEN AS QUICKLY AS WE COULD BECAUSE
9 IT BENEFITS ALL OF US, ALL OF THE STOCKHOLDERS TO GET IT
10 UP AND RUNNING AS QUICKLY AS POSSIBLE

11 Q ONCE THE FINAL PERMITS ARE ISSUED FROM DHEC WHAT
12 SORT OF WORK WILL THEN BE OCCURRING?

13 A THEN WE'LL SWITCH TO ANOTHER PHASE WHERE WE ACTUALLY
14 HAVE TO GET BUILDING PERMITS FOR EACH OF THE STRUCTURES
15 THAT ARE BUILT INCLUDING THE DOCKS, AND THE CABANAS,
16 SWIMMING POOLS, COTTAGES, THE RV SITES, THE PARKING LOTS
17 ALL OF THOSE WILL HAVE TO -- WE'LL HAVE TO GET A
18 PERMIT -- FIRST WE HAVE TO GET A PERMIT FROM DUKE POWER
19 THAT SAYS, OKAY, YOU HAVE ALL YOUR PERMITS IN PLACE, WE
20 AGREE WITH THEM, WE LIKE YOUR LAYOUT, WE'RE GOING TO LET
21 YOU BUILD IT

22 AND THEN DUKE POWER, I DON'T KNOW WHAT FORM THEY
23 WOULD ISSUE IT IN, PROBABLY NOT IN A PERMIT FORM, BUT
24 THEY'LL ISSUE A LETTER TO US SAYING WE ACCEPT YOUR
25 LAYOUT, WE ACCEPT WHAT YOU'RE GOING TO DO, DHEC HAS

1 APPROVED IT, SO GO AHEAD AND START CONSTRUCTION AND
2 THEN WE GO TO THE COUNTY AND GET ALL OF OUR ACTUAL
3 BUILDING PERMITS FROM THEM

4 Q NOW THIS FURTHER WORK THAT'S GOING TO NEED TO TAKE
5 PLACE, IS THIS SOMETHING THAT YOU HAVE HAD EXPERIENCE
6 WITH OVER THE YEARS?

7 A YES

8 Q OKAY I USE JUST COLLOQUIAL TERMS, SORT OF A
9 GENERAL CONTRACTOR TYPE WORK AT THAT POINT, DOES THAT
10 FAIRLY SUM IT UP OR IS IT EVEN MORE THAN THAT?

11 A IT'S MORE THAN THAT WHEN YOU'RE ON THE DEVELOPMENT
12 SIDE OF IT BECAUSE A GENERAL CONTRACTOR WOULD PROBABLY
13 ONLY BE INVOLVED WITH A PORTION OF IT YOU'D PROBABLY
14 HAVE A CONTRACTOR FOR THE WASTE WATER FACILITIES, WHICH
15 WOULD BE SEPARATE YOU MAY BREAK IT UP TO WHERE YOU HAVE
16 ONE CONTRACTOR DOING SITE WORK, ANOTHER DOING THE ACTUAL
17 BUILDING AND CONSTRUCTION OF COTTAGES AND BUILDINGS BUT
18 WE WOULD SUBCONTRACT EVERYTHING

19 Q I ASKED YOU BEFORE IF YOU'RE EXPERIENCED WITH IT
20 WOULD YOU SAY THAT YOU'VE GOT SIGNIFICANT EXPERIENCE WITH
21 IT?

22 A OVER FORTY YEARS

23 Q LET ME ASK IT TO YOU LIKE THIS, JUST MOVING FORWARD
24 WE'VE -- THERE'S BEEN AN ALLEGATION IN THIS CASE THAT
25 THERE'S BEEN ATTEMPTS TO FORCE ANDY BALLARD OUT OF THIS

1 -- OUT OF WARPATH HAVE YOU EVER WANTED TO FORCE ANDY
2 BALLARD OUT OF WARPATH?

3 A FOR A PERIOD OF A FEW WEEKS I DID, YES, 'CAUSE I WAS
4 UPSET THAT WE THOUGHT HE HAD MISLED US ON THE TIMING AND
5 ON THE NUMBER OF DOCKS WE COULD GET ONCE I CALMED DOWN,
6 IT WAS, YOU KNOW, LET'S GO ON AND GET THIS THING BUILT

7 Q DID YOU EVER EXPRESS ANY OF THOSE FRUSTRATIONS OR
8 CONCERNS OR EXPRESS TO MR BALLARD THAT YOU WANTED HIM
9 OUT OF WARPATH?

10 A NO, I NEVER TOLD HIM I WANTED HIM OUT I THINK WE
11 ASKED IN EMAILS IF HE WOULD CONSIDER ADJUSTING THE DEAL
12 SOMEHOW BUT, I MEAN, HE -- HE KNEW THE DEAL BETTER THAN
13 ANY OF US SO FOR ME TO ASK HIM TO GET OUT WOULD BE LIKE
14 CUTTING OFF ONE OF MY ARMS

15 Q WERE -- YOU WERE PRESENT AT THE MAY 1, 2008
16 SHAREHOLDERS MEETING, IS THAT RIGHT?

17 A I WAS

18 Q WERE ANY OF THE ACTIONS TAKEN AT THE MAY 1, 2008
19 SHAREHOLDERS MEETINGS, WERE ANY OF THOSE DESIGNED TO TRY
20 TO FORCE MR BALLARD OUT OF THE DEAL?

21 A IT WASN'T MY INTENT I CAN ONLY SPEAK FOR MYSELF

22 Q OKAY LET ME ASK YOU THIS THERE WAS -- THERE'S
23 BEEN SOME TESTIMONY THAT HAS COME UP THAT MR BALLARD HAS
24 BEEN DENIED ACCESS OR DENIED DOCUMENTS OR DENIED REQUESTS
25 TO Y'ALL DO YOU RECALL MR BALLARD MAKING A REQUEST TO

1 YOU FOR -- WELL, ACTUALLY LET ME PUT IT THIS WAY DID
2 MR BALLARD EVER CALL YOU ABOUT REQUESTS FOR SITE PLANS?

3 A HE DID

4 Q OKAY AND WHAT DID HE TELL YOU AT THAT TIME?

5 A HE -- I DON'T REMEMBER THE EXACT CONVERSATION, BUT
6 THERE WERE SOME DOCUMENTS HE WANTED, SOME ARCHITECTURAL,
7 I'M SORRY, SITE PLANS HE WANTED TO LOOK AT OR TO GET A
8 COPY OF

9 Q WHAT DID YOU TELL HIM AT THAT TIME?

10 A I TOLD HIM I'D HAVE TO CHECK WITH YOU

11 Q OKAY AND DID YOU EVER GET BACK TO HIM AFTER
12 TALKING WITH ME?

13 A AFTER YOU -- I DON'T REMEMBER THE PROCESS, BUT YES,
14 WE TOLD HIM THAT HE COULD GET THOSE THINGS, THAT I WOULD
15 GET THEM FOR HIM BECAUSE I HAD -- I HAD TWO OF THE ITEMS,
16 I BELIEVE AND SO I EMAILED THOSE TO HIM AND THE THIRD
17 ONE, WE DON'T HAVE ANY RECORD OF I CALLED MR JUSTICE
18 WHO DID THE ARCHITECTURAL PLANS HE DOESN'T HAVE ANY
19 EITHER SO WE GAVE HIM EVERYTHING WE HAD THAT HE WANTED

20 Q AFTER WE SEARCHED AGAIN FOR ONE OF THE ITEMS HE WAS
21 LOOKING FOR DID -- WAS HE THEN TOLD TO CONTACT MR
22 JUSTICE DIRECTLY?

23 A YES I TOLD -- AFTER I TALKED WITH YOU -- YOU ASKED
24 -- I THINK YOU SENT ME AN EMAIL, ASKED ME WHY WE HADN'T
25 GOTTEN THAT THIRD ITEM TO HIM AND I TOLD YOU THAT WE

1 DIDN'T HAVE IT AND I TOLD HIM HE'D BE -- I CALLED MR
2 JUSTICE AND TOLD HIM TO EXPECT A CALL FROM ANDY AND WE
3 TOLD ANDY HE COULD CALL SAM JUSTICE DIRECTLY AND I
4 INSTRUCTED SAM TO GIVE HIM WHAT HE NEEDED

5 Q OKAY HAVE -- I KNOW PART OF YOUR OBLIGATIONS WERE
6 ALSO TO ASSIST, I SUPPOSE, IN RETAINING FINANCING HAVE
7 Y'ALL MADE THOSE ATTEMPTS?

8 A I'M NOT SURE I THINK EVERYBODY'S DEFINITION OF
9 WHAT ASSISTING AND FINANCING -- WHAT THAT DEFINITION IS
10 IS DIFFERENT I TOOK THAT AS TO GIVE TIM ANYTHING AND
11 EVERYTHING HE NEEDED TO MAKE A PROPOSAL TO ANYBODY THAT
12 HE WENT TO FOR FINANCING I DIDN'T THINK IT WAS OUR
13 RESPONSIBILITY TO BE THE PRIMARY PERSON TO LINE UP
14 FINANCING

15 BUT HAVING SAID THAT, I DID CALL -- I CALLED A
16 COUPLE OF BANKS BEFORE WE MADE THE DEAL WITH ANDY AND I
17 CALLED SOME BANKS AFTER AND THERE ARE SOME NON-
18 TRADITIONAL FUNDING SOURCES THAT ARE OUT THERE THESE DAYS
19 THAT WE'VE BEEN MAKING CONTACT WITH OVER THE LAST SEVERAL
20 MONTHS TRYING TO GET THEM INTERESTED IN THIS DEAL

21 SO IN THAT MANNER I HAVE HELPED IN FINANCING BUT
22 THAT WASN'T -- MY PRIMARY FUNCTION WAS TO DO THE
23 DEVELOPMENT END OF IT

24 Q NOW MR ROBERSON HAD TESTIFIED EARLIER THAT IT WAS
25 HIS UNDERSTANDING BEFORE THIS DEAL COMMENCED THAT HE

1 COULD GET AN EIGHTY/TWENTY LOAN DID YOU ALSO RECEIVE
2 THAT INFORMATION?

3 A YES

4 Q AND DID YOU RECEIVE THAT INFORMATION FROM ONE OF THE
5 BANKS YOU WORKED WITH?

6 A ACTUALLY TWO OF THEM ONE OF THEM HE HAD WORKED
7 WITH ALREADY AND THEN I HAD TALKED WITH MY OWN BANK AS
8 WELL

9 Q OKAY WHAT'S THE NAME OF THE BANK YOU TALKED TO?

10 A GREENVILLE FIRST

11 Q WHEN A -- WHEN THE MILLION DOLLARS WAS PAID TO ANDY
12 BALLARD WHAT WERE Y'ALL -- WHAT WAS -- WHAT IS YOUR
13 UNDERSTANDING THAT YOU WERE PURCHASING?

14 A WE WERE PURCHASING STOCK IN WARPATH WHICH HELD THE
15 LEASE BASICALLY -- BASICALLY THE LEASE WAS THE SOLE
16 ASSET OF WARPATH AT THAT POINT

17 Q HOW MUCH STOCK WERE YOU PURCHASING?

18 A TWENTY -- TWENTY PERCENT ME PERSONALLY?

19 Q WELL, HOW MUCH STOCK WERE Y'ALL PURCHASING AS A
20 WHOLE?

21 A TWENTY, TWENTY AND FORTY SO EIGHTY PERCENT

22 Q OKAY AND WAS THAT REPRESENTED BY EIGHTY THOUSAND
23 SHARES?

24 A YES

25 Q AND AT THE TIME OR SHORTLY THEREAFTER DID YOU

1 RECEIVE THOSE SHARES?

2 A YES

3 Q AND WAS THERE ALWAYS A PRESENT INTENT THAT THOSE
4 SHARES WOULD COME TO YOU AT THAT TIME?

5 A YES

6 Q OKAY MR THOENNES, HAVE YOU BREACHED THE CONTRACT
7 BETWEEN YOURSELF AND ANDY BALLARD IN ANY WAY?

8 A NOT THAT I KNOW OF

9 Q HAVE YOU FULFILLED -- HAVE YOU FAILED TO FULFILL ANY
10 OF YOUR OBLIGATIONS UNDER THE CONTRACT?

11 A NO AND I THINK I'VE GONE OVERBOARD THE OTHER WAY

12 Q HAVE YOU REPUDIATED THE CONTRACT OR IN ANY WAY
13 STATED THAT YOU WILL NOT PERFORM THE CONTRACT?

14 A NO THAT WOULD BE COUNTER-PRODUCTIVE

15 Q DO YOU INTEND TO PERFORM, TO FULLY PERFORM ANY
16 REMAINING OBLIGATIONS YOU'VE GOT UNDER THE CONTRACT?

17 A YES AND AS LATE AS YESTERDAY I HAD A MEETING ABOUT
18 THINGS FOR WARPATH SO WE WILL CONTINUE

19 Q DO YOU FEEL LIKE YOU HAVE THE ADEQUATE EXPERIENCE
20 AND EXPERTISE TO PERFORM IN THE REMAINING OBLIGATIONS YOU
21 HAVE?

22 A PLENTY MORE THAN I NEED

23 Q HAVE YOU IN ANY WAY TAKEN ANY ACTION TO OPPRESS OR
24 MADE ANY ATTEMPT TO FREEZE-OUT ANDY BALLARD FROM WARPATH?

25 A NO

1 MR HOWARD THAT'S ALL I HAVE

2 CROSS EXAMINATION BY MR HOLLEMAN

3 Q MR THOENNES, I THINK I HEARD YOU SAY WHEN YOU
4 STARTED OUT YOUR TESTIMONY THAT YOU WERE GOING TO EARN
5 YOUR TWENTY THOUSAND SHARES BY DOING THE DEVELOPMENT
6 WORK, THAT'S HOW YOU EARN YOUR TWENTY THOUSAND SHARES, IS
7 THAT RIGHT?

8 A YES

9 Q AND, I GUESS, YOUR SON IS GOING TO EARN HIS TWENTY
10 THOUSAND SHARES BY WORKING ON THE DEVELOPMENT WORK TOO?

11 A YES

12 Q WELL, THAT ---

13 A AMONG OTHER THINGS

14 Q RIGHT WELL, THAT MUST MEAN THEN YOU DIDN'T BUY
15 THOSE FORTY THOUSAND SHARES WHEN YOU PAID ANDY BALLARD A
16 MILLION DOLLARS YOU'VE STILL GOT TO EARN THEM, RIGHT?

17 A SURE

18 Q SO, IN FACT, WHAT YOU BOUGHT FROM ANDY BALLARD FOR A
19 MILLION DOLLARS WAS TWENTY THOUSAND OF HIS FORTY THOUSAND
20 SHARES, ---

21 A NO

22 Q --- CORRECT?

23 A THAT WAS THREE YEARS AGO TOO SO WE'VE ALREADY
24 EARNED MORE THAN THE TWENTY THOUSAND SHARES

25 Q WELL, WE DON'T HAVE AN OPEN DEVELOPMENT UP THERE

1 YET?

2 A NO, BUT ALL THE DEVELOPMENT -- HALF OF THE
3 DEVELOPMENT WORK HAS BEEN DONE

4 Q LET ME ASK YOU WAS IT YOUR UNDERSTANDING THAT MR
5 ROBERSON HAD THE RESPONSIBILITY TO PROVIDE THE NECESSARY
6 CAPITAL TO OBTAIN LONG-TERM FINANCING ---

7 A YES

8 Q AND THAT THERE IS NO LIMIT ON HIS OBLIGATION?

9 A I WOULD CONSIDER THERE WOULD BE A LIMIT JUST FROM
10 EXPERIENCE

11 Q BUT THERE'S NO LIMIT IN THE AGREEMENT?

12 A NO

13 Q AND, IN FACT, YOU AND HE BOTH KNEW THAT HE MIGHT
14 HAVE TO PROVIDE UP TO SIXTY PERCENT OF THE TOTAL COST OF
15 THE DEVELOPMENT?

16 A WHEN WE WENT INTO THE DEAL WE REALLY THOUGHT IT
17 WOULD BE TWENTY PERCENT

18 Q WELL, LET'S LOOK AT EXHIBIT 8, TRIAL EXHIBIT 8 AND
19 I WOULD JUST SHOW THAT TO YOU AND IF YOU'LL LOOK,
20 THAT'S AN EMAIL AT THE TOP FROM YOU TO TIM ROBERSON AND
21 YOUR SON DATED MARCH 24TH, 2007, IS THAT CORRECT?

22 A YES

23 Q AND BELOW THAT IS AN EMAIL FROM TIM TO YOU AND IT
24 SAYS THE NUMBERS LOOK GOOD AS IS, BUT THE REALITY IS THE
25 LOAN MIGHT BE SIXTY PERCENT EQUITY REQUIRED, CORRECT?

1 A CORRECT

2 Q SO IS IT NOT CORRECT THAT GOING IN, THIS IS A MONTH
3 AND A HALF BEFORE YOU SIGNED THE AGREEMENT, YOU ALL KNEW
4 THAT TIM ROBERSON MIGHT HAVE TO PUT UP AS MUCH AS SIXTY
5 PERCENT OF THE EQUITY?

6 A WELL, THAT'S WHAT TIM SAID

7 Q WELL, YOU KNEW TIM KNEW THAT YOU MIGHT NOT HAVE
8 KNOWN THAT

9 A TIM SAID THAT, I DIDN'T

10 Q AND YOU KNEW THAT WHAT TIM WOULD HAVE TO PUT UP
11 WOULD BE AN EQUITY CONTRIBUTION, CORRECT?

12 A SAY THAT AGAIN

13 Q YOU KNEW WHAT TIM WOULD BE PUTTING UP WOULD BE AN
14 EQUITY CONTRIBUTION, IS THAT ---

15 A CORRECT

16 Q CORRECT OKAY NOW YOUR OTHER UNDERSTANDING WAS, I
17 BELIEVE, IS THAT -- AND JUST, AGAIN, TO MAKE SURE WE'RE
18 CLEAR ON THIS, IS THAT YOU WERE PAYING ANDY BALLARD A
19 MILLION DOLLARS FOR TWENTY THOUSAND SHARES THAT'S
20 RIGHT, CORRECT?

21 A FOR HIS TWENTY THOUSAND, YES

22 Q OKAY NOW I BELIEVE YOU SAID THAT AT ONE POINT YOU
23 WANTED HIM OUT OF THE DEAL, CORRECT?

24 A I DON'T KNOW WHETHER I SAID THAT OR NOT

25 Q I THOUGHT YOU JUST SAID THAT IN YOUR DIRECT

1 TESTIMONY

2 A OH, YOU MEAN FOR THE TWO OR THREE WEEKS? YES

3 Q WELL, YOU SAID FOR TWO OR THREE WEEKS

4 A WELL, I'M ONLY SPEAKING FOR MYSELF

5 Q OKAY WELL, THE EMAIL THAT WE HAVE SEEN SEVERAL
6 TIMES THAT YOU WERE A PARTY TO THAT TALKS ABOUT GETTING
7 ANDY OUT OF THE DEAL IS DATED IN OCTOBER OF 2007 DO YOU
8 REMEMBER THAT? LET ME SHOW YOU EXHIBIT 10

9 A I DON'T REMEMBER 2010

10 Q I WOULDN'T EXPECT YOU'D REMEMBER THAT LET'S SEE IF
11 WE CAN FIND EXHIBIT 10 IS THERE AN EXHIBIT 10 UP THERE
12 BEFORE YOU?

13 A YES

14 Q OKAY WHAT IS THE DATE ON EXHIBIT 10?

15 A OCTOBER 28TH, 2007

16 Q NOW THE BOARD MEETING WHERE ANDY WAS REMOVED FROM
17 THE BOARD WAS MAY OF 2008, IS THAT CORRECT?

18 A RIGHT

19 Q NOW THAT -- NOVEMBER, DECEMBER, JANUARY, FEBRUARY,
20 MARCH, APRIL, MAY, WOULD YOU SAY SEVEN MONTHS IS MORE
21 THAN A COUPLE OF WEEKS?

22 A YES, BUT WE WEREN'T TRYING TO GET HIM OUT OF
23 WARPATH

24 Q I'M SORRY?

25 A WE WEREN'T TRYING TO GET HIM OUT OF WARPATH

- 1 Q YOU JUST REMOVED HIM AS A DIRECTOR?
- 2 A RIGHT
- 3 Q AND THEN YOU VOTED AT THAT MEETING TO ISSUE NINE
- 4 HUNDRED THOUSAND ADDITIONAL SHARES, CORRECT?
- 5 A NO WE AUTHORIZED IT
- 6 Q YOU AUTHORIZED ---
- 7 A RIGHT
- 8 Q --- THE ISSUANCE, CORRECT? AND THAT WAS TIM'S IDEA
- 9 TO DO THAT, CORRECT?
- 10 A YES
- 11 Q AND AT THE MEETING YOU KNEW HE WAS AGAINST THAT?
- 12 HE, ANDY
- 13 A HE, ANDY? YES
- 14 Q YES AND YOU KNOW THAT, I MEAN, THE THREE OF YOU
- 15 WERE DIRECTORS WHY WOULDN'T YOU LET HIM BE A FOURTH
- 16 DIRECTOR? YOU'D STILL HAVE THREE AND FOUR
- 17 A AT THAT TIME WE JUST WANTED TO MOVE ALONG AND WE
- 18 THOUGHT IT WAS GOING TO BE A HINDRANCE
- 19 Q SO YOU WEREN'T TRYING TO RUN HIM OUT OF THE COMPANY
- 20 AT THAT POINT?
- 21 A ABSOLUTELY NOT UNEQUIVOCABLY NO I DON'T KNOW HOW
- 22 MANY DIFFERENT WAYS TO SAY THAT
- 23 Q ALL RIGHT NOW ARE YOU THE PERSON WHO SIGNED THE
- 24 NOTICE OF THE SHAREHOLDERS MEETING DATED AUGUST 27, 2009
- 25 THAT WE HAVE SEEN IN THIS TRIAL?

1 A I DON'T KNOW IF YOU SHOW IT TO ME I CAN TELL YOU

2 IF IT'S MY SIGNATURE YES

3 Q OKAY SO YOU'RE THE SIGNATORY OF THE NOTICE THAT

4 WAS TWO DAYS AFTER ANDY FILED HIS AMENDED COMPLAINT

5 ALLEGING ---

6 A THAT'S RIGHT

7 Q --- CORPORATE OPPRESSION? NOW IS IT YOUR TESTIMONY

8 THAT THAT NOTICE HAD NOTHING TO DO WHATSOEVER WITH MR

9 BALLARD FILING AN AMENDED COMPLAINT THAT INCLUDED

10 CORPORATE OPPRESSION?

11 A I CAN UNEQUIVOCALLY SAY IT AGAIN, THAT IS TRUE

12 Q IT'S A ---

13 A IT HAD ---

14 Q --- PURE COINCIDENCE?

15 A --- NOTHING TO DO WITH IT

16 Q IT'S A PURE COINCIDENCE?

17 A PURE COINCIDENCE

18 Q AND YOU ALL ELECTED HIM A DIRECTOR JUST OUT OF THE

19 BLUE JUST TO BRING HIM BACK INTO THE COMPANY, IS THAT ---

20 A NOT OUT OF THE BLUE ANDY COULD BE A BIG HELP TO

21 US

22 Q WELL, HE COULD HAVE BEEN A BIG ---

23 A AND I KNEW -- ARE YOU GOING TO LET ME ANSWER OR

24 Q SURE, ABSOLUTELY I THOUGHT YOU HAD FINISHED

25 A ANDY COULD BE A BIG HELP TO US AND WE THOUGHT THAT

1 HE WANTED TO GET RE-ENGAGED WITH IT AND, IN FACT, I
2 CALLED HIM SEVERAL TIMES AFTER THAT AND WE HAD GOOD
3 CONVERSATIONS AND HE MADE GOOD, GOOD POINTS ABOUT HOW
4 TO HANDLE SOME OF THESE DHEC PERMITS AND SOME PEOPLE THAT
5 HE KNEW TO CALL ABOUT THE DHEC PERMITS SO THAT'S WHY I
6 THOUGHT IT WOULD BE GOOD TO GET HIM RE-ENGAGED 'CAUSE HE
7 COULD BE A HELP AND AFTER ALL, HE'S A PARTNER

8 Q AND HE COULD HAVE BEEN A HELP IN JUNE OF ---

9 A SURE, HE COULD HAVE BEEN A HELP AT ANY TIME

10 Q MAY OF 2008 WHEN YOU DIDN'T ELECT HIM A DIRECTOR

11 A THAT'S RIGHT

12 Q AND SO YOU ELECT HIM A DIRECTOR IN SEPTEMBER JUST
13 BECAUSE YOU HAD THEN DECIDED HE COULD BE A HELP?

14 A YOU CAN STATE IT ANY WAY YOU WANT, MR -- I DON'T
15 KNOW WHAT TO TELL YOU ANYMORE I DON'T KNOW HOW MANY
16 DIFFERENT WAYS TO STATE IT I CAN LOOK ANDY IN THE EYE
17 RIGHT NOW AND TELL HIM THAT I WAS NOT TRYING TO GET HIM
18 OUT OF THE CORPORATION

19 Q SINCE HE HAS BEEN ELECTED A DIRECTOR HAVE YOU ALL
20 HAD ANY DIRECTORS MEETINGS?

21 A NO NO NEED TO

22 Q HAVE YOU SENT HIM ANY INFORMATION OR UPDATES ON THE
23 EFFORTS TO FINANCE THE COMPANY?

24 A NO

25 Q HAVE YOU SENT HIM ANY DOCUMENTS, OR UPDATES OR MEMOS

1 ABOUT WHERE THE PERMITS STAND?

2 A HE KNEW BEFORE I KNEW

3 Q I'M ASKING YOU AS DIRECTORS, NOT GRAPEVINE BUT AS
4 DIRECTORS, HIM AS AN OFFICIAL DIRECTOR, HAVE YOU ALL SENT
5 HIM ANY INFORMATION ABOUT THE STATUS OF THE PERMITS?

6 A NO

7 Q AND I BELIEVE YOU SAID -- I BELIEVE AS WE'VE SEEN
8 INTRODUCED ON FEBRUARY 27TH, THAT'S LAST MONTH, DHEC
9 ISSUED A NOTICE OF INTENT AT LEAST TO ISSUE THIS PERMIT,
10 CORRECT?

11 A I DON'T KNOW THE DATE, BUT YES

12 Q AND DID YOU RECEIVE THAT?

13 A I GOT AN EMAIL FROM SOMEBODY TELLING ME THAT IT HAD
14 BEEN ISSUED I DON'T REMEMBER WHETHER IT WAS BILLY
15 BOLGER OR WHO

16 Q AND DID YOU INFORM MR BALLARD OF THAT?

17 A NO

18 Q ALL RIGHT I BELIEVE YOU JUST SAID OR TESTIFIED OR
19 SOMEONE DID THAT AN OBJECTION HAS BEEN FILED TO THE
20 PERMIT, IS THAT CORRECT?

21 A THAT'S RIGHT

22 Q WHEN DID THAT HAPPEN?

23 A I DON'T KNOW

24 Q WHEN DID YOU LEARN ABOUT THAT?

25 A BILL HAD JUST SENT ME AN EMAIL YESTERDAY I HAD

1 HEARD FROM -- I DON'T REMEMBER WHO I HEARD IT FROM I
2 HEARD FROM EITHER TIM OR SOMEBODY THAT THERE WAS AN
3 OBJECTION SO I CALLED BILLY BOLGER WHO'S THE ENGINEER
4 THAT'S HANDLING THE DHEC PERMIT AND ASKED HIM IF HE COULD
5 GIVE ME A STATUS OF IT HE SENT ME AN EMAIL YESTERDAY
6 AND TOLD ME THAT THERE WAS A -- I FORGET WHAT THEY CALLED
7 IT THERE WAS A LETTER SENT FROM THE SUBDIVISION NEXT
8 DOOR OBJECTING TO THEM ISSUING THE PERMIT
9 Q ALL RIGHT NOW WHEN YOU SAID, GOING BACK, YOU SAID
10 YOU HAD BEEN TICKED OFF AT ANDY AT ONE POINT BUT NOW IS
11 IT NOT CORRECT TO SAY ANDY HAD DONE NOTHING TO DELAY THE
12 PROGRESS OR THE PROCESS?
13 A HAS HE DONE ANYTHING TO DELAY IT?
14 Q DELAY IT?
15 A NO
16 Q AND HE HAD TRIED TO HELP, IS THAT CORRECT?
17 A YES
18 Q TO YOUR KNOWLEDGE HAVE THE ARTICLES OF INCORPORATION
19 OF WARPATH BEEN AMENDED?
20 A I DON'T THINK SO, BUT I DON'T KNOW
21 Q AND IN TERMS OF THE STATUS OF YOUR COMPANIES I THINK
22 I ASKED YOUR SON MOST ALL THESE QUESTIONS, BUT LET'S SEE
23 IF YOU KNOW SOMETHING HE DID NOT KNOW YOU TESTIFIED IN
24 YOUR DEPOSITION THAT YOU ALL HAD TAKEN MONEY THAT MR
25 ODOM HAD PAID YOU FOR HIS HOUSE AND USED IT TO PAY BILLS

1 ON OTHER HOUSES YOU WERE BUILDING, CORRECT?

2 A YES

3 Q ALL RIGHT AND WHAT HOUSES HAVE YOU SPENT THAT
4 MONEY ON?

5 A WHATEVER HOUSES WE WERE BUILDING AT THE TIME

6 Q HOW MUCH MONEY ---

7 A I DON'T KNOW

8 Q --- DID YOU TAKE FROM HIM?

9 A I DON'T KNOW

10 Q YOU DON'T KNOW?

11 A NO

12 Q DO YOU KNOW, WAS IT MORE THAN A HUNDRED THOUSAND?

13 A OH, YEAH HIS IS -- IT'S A FIVE MILLION DOLLAR
14 HOUSE

15 Q AND SO YOU TOOK MORE THAN A HUNDRED THOUSAND DOLLARS
16 FROM HIM TO USE TO PAY OTHER BILLS?

17 A OH, NO, I DON'T KNOW THAT

18 Q ALL RIGHT LET ME ASK YOU, WAS IT MORE THAN A
19 HUNDRED?

20 A I DON'T THINK SO, NO

21 Q WAS IT MORE THAN FIFTY THOUSAND?

22 A YOU CAN GO DOWN ANY NUMBER YOU WANT I DON'T KNOW
23 I WISH I COULD TELL YOU, BUT I DON'T KNOW

24 Q ALL RIGHT WHO RUNS MARICK?

25 A MY SON AND MYSELF

1 Q SO YOU TWO ARE THE ONLY ONES WHO MIGHT KNOW,

2 CORRECT?

3 A WELL, OUR ACCOUNTANT WOULD TOO

4 Q WHO'S YOUR ACCOUNTANT?

5 A PHYLLIS GRAYDON FROM -- I CAN'T RECALL THE FIRM

6 NAME

7 Q AND I BELIEVE IT WAS YOUR HOUSE IN OCONEE COUNTY

8 THAT WAS LISTED FOR TAX SALE, IS THAT CORRECT?

9 A THAT'S RIGHT THE TOWNHOUSE

10 Q NOW IN YOUR DEPOSITION YOU TESTIFIED THAT YOU DID

11 NOT BELIEVE ANDY HAD INTENTIONALLY LIED, CORRECT?

12 A I'M SORRY, I DIDN'T HEAR YOU

13 Q IN YOUR DEPOSITION YOU TESTIFIED THAT YOU DID NOT

14 BELIEVE THAT ANDY HAD INTENTIONALLY LIED, IS THAT RIGHT?

15 A THAT'S RIGHT

16 Q AND THAT WAS MONTHS AGO THAT YOU TESTIFIED TO THAT

17 A WHENEVER IT WAS

18 Q SO WHY DID YOU SUE HIM FOR FRAUD?

19 A I DON'T KNOW

20 Q YOU DON'T KNOW?

21 A I DON'T KNOW I JUST SAID I DON'T KNOW

22 Q AND SO WHY DID YOU KEEP YOUR FRAUD SUIT GOING AFTER

23 YOU TESTIFIED IN YOUR DEPOSITION THAT HE DIDN'T

24 INTENTIONALLY LIE?

25 A HAVE NO IDEA

1 Q WHO MADE THE DECISION TO KEEP THE FRAUD SUIT GOING?

2 A IT WAS A COMBINATION OF THE PARTNERS AND OUR
3 ATTORNEYS

4 Q AND WHO MADE THE DECISION TO FILE THE FRAUD SUIT?

5 A I HAVE NO IDEA

6 Q WELL, WHEN THE STOCK WAS ISSUED AFTER THE AGREEMENT
7 WAS ENTERED INTO WAS THAT STOCK ISSUED BY YOUR ATTORNEY,
8 JIM FAYSSOUX?

9 A YES

10 Q NOW YOUR ATTORNEY ASKED YOU SOME QUESTIONS ABOUT
11 DILUTION PROVISIONS ISN'T IT TRUE THAT AT THE TIME YOU
12 ENTERED INTO ---

13 A MY ATTORNEY ASKED ME ABOUT

14 Q DILUTION, THIS GUY

15 A I THOUGHT YOU WERE TALKING ABOUT DEPOSITION

16 Q NO, NO, HERE TODAY ABOUT DILUTION PROVISION
17 ISN'T IT TRUE AT THE TIME YOU ENTERED INTO THE
18 SHAREHOLDER AGREEMENT YOU DIDN'T HAVE IN MIND ISSUING
19 STOCK TO DILUTE SHAREHOLDERS?

20 A THAT'S TRUE

21 Q AND THE SHAREHOLDER AGREEMENT PROVIDED THAT ANDY'S
22 FINAL HOLDINGS WOULD BE TWENTY PERCENT, IS THAT CORRECT?

23 A CORRECT IT ALSO SAID THAT OUR TOTAL WOULD BE
24 TWENTY PERCENT, MY TOTAL

25 Q YOU HAVE NOT EXECUTED AN AGREEMENT WITH WARPATH,

1 CORRECT?

2 A NO WELL, NO, THAT'S NOT -- I DON'T KNOW WHETHER
3 THAT STOCK AGREEMENT IS PART ---

4 Q YOU EXECUTED THE STOCK AGREEMENT

5 A RIGHT

6 Q SUBSEQUENT TO THAT YOU HAVEN'T EXECUTED ---

7 A THAT'S CORRECT

8 Q I BELIEVE YOU TALKED ABOUT DEALING WITH BANKS AND
9 OTHER FINANCIAL INSTITUTIONS DO YOU HAVE ANY WRITTEN
10 DOCUMENTS TO SUPPORT THAT THAT YOU'VE INTRODUCED INTO
11 EVIDENCE?

12 A I'M SORRY?

13 Q DO YOU HAVE ANY WRITTEN DOCUMENTS TO SUPPORT YOUR
14 CLAIMS OF WORKING WITH BANKS OR OTHER FINANCIAL
15 INSTITUTIONS THAT YOU HAVE SUBMITTED INTO EVIDENCE?

16 A NO, MOST OF THAT HAS BEEN DONE BY A PHONE CALL

17 Q HAVE YOU ALL GIVEN ANDY BALLARD AS A DIRECTOR JUST A
18 PERIODIC FINANCIAL REPORT, A FINANCIAL STATEMENT OR
19 BALANCE SHEET OR ANYTHING ABOUT THE STATUS OF WARPATH
20 DEVELOPMENT?

21 A NO

22 Q ANY REPORT FROM YOUR ACCOUNTANTS OF ANY KIND?

23 A I THINK THE TAX RETURN

24 Q AND HE'S GOTTEN THE TAX RETURN?

25 A YEAH

FREDERICK THOENNES, SR. - REDIRECT EXAMINATION BY MR. HOWARD 575

1 Q BUT HAVE YOU SENT HIM PERIODIC, BI-QUARTERLY OR ---

2 A NO, THAT WOULD BE ---

3 Q --- SEMI-ANNUALLY FINANCIAL STATEMENTS?

4 A THAT WOULD BE THE OFFICIAL DOCUMENT REALLY

5 Q WELL, WHAT ABOUT BALANCE SHEETS AND FINANCIAL

6 STATEMENTS?

7 A THEY'RE ATTACHED TO THAT

8 Q ONLY FOR TAX PURPOSES, BUT NOT AS ---

9 A IT'S THE SAME ---

10 Q --- DIRECTORS MEETINGS ---

11 A IT'S THE SAME -- THE TAX RETURN -- THE BALANCE SHEET

12 AND THE TAX RETURN -- AND THE TAX RETURN WOULD BE THE

13 OFFICIAL DOCUMENT

14 Q WHAT ABOUT QUARTERLY REPORT?

15 A NO I HAVEN'T ISSUED THOSE TO ANY DIRECTORS

16 MR HOLLEMAN: THAT'S ALL I HAVE, YOUR HONOR

17 THE COURT ALL RIGHT

18 MR HOWARD JUST A COUPLE

19 **REDIRECT EXAMINATION BY MR. HOWARD**

20 Q MR THOENNES, YOU WERE ASKED ABOUT THE TAX SALE ON

21 YOUR PIECE OF PROPERTY DID YOU PAY THOSE TAXES?

22 A YES

23 Q YOU WERE ASKED ABOUT THE DILUTION OR THE

24 AUTHORIZATION OF ADDITIONAL SHARES WHEN Y'ALL WERE AND

25 YOU ARE STILL CONTEMPLATING OR WERE CONTEMPLATING THE

FREDERICK THOENNES, SR. - RECROSS EXAMINATION BY MR. HOLLEMAN 576

1 POTENTIAL NEED FOR DILUTION WAS THERE ANY -- WAS IT EVER
2 CONTEMPLATED THAT ANDY BALLARD WOULD BE THE ONLY
3 SHAREHOLDER DILUTED?

4 A NO

5 Q FAIR TO SAY THAT IF ADDITIONAL SHARES ARE ISSUED
6 Y'ALL ALL ARE GOING TO BE DILUTED EQUALLY?

7 A YES

8 MR HOWARD THAT'S ALL I HAVE, YOUR HONOR

9 RECROSS EXAMINATION BY MR. HOLLEMAN

10 Q JUST TO BE CLEAR ON THAT, THAT IS NOT TRUE ACTUALLY
11 IF MR ROBERSON OR ROBERSON, IF HE BUYS THOSE SHARES,
12 EVERYONE WON'T BE DILUTED EQUALLY HE'LL HAVE MORE
13 SHARES, CORRECT?

14 A I DON'T KNOW

15 Q IF YOU ISSUED THEM AND HE WERE TO BUY THEM HE WOULD
16 HAVE MORE STOCK, CORRECT?

17 A IF WE ISSUED THEM AND HE BOUGHT THEM, YEAH, BUT I
18 DON'T KNOW WHY HE'D DO THAT

19 Q WELL, TO RETURN -- INCREASE HIS RETURN ON INVESTMENT
20 ---

21 A BUT I WOULD THINK THAT WOULD HAVE TO BE OFFERED TO
22 ALL OF US

23 Q BUT IF HE BOUGHT THEM GIVEN HIS ---

24 A I CAN'T SPEAK FOR ---

25 THE COURT WAIT, WAIT JUST ONE AT A TIME

FREDERICK THOENNES, SR. - RECROSS EXAMINATION BY MR HOLLEMAN 577

1 A I CAN'T SPEAK FOR HIM I JUST KNOW THAT TIM

2 COULDN'T INDISCRIMINATELY DECIDE HE WANTS TO BUY MORE

3 SHARES

4 Q NO, BUT GIVEN HIS SECURE FINANCIAL POSITION HE WOULD

5 BE IN A POSITION TO BUY MORE SHARES THAN ANY OF THE REST

6 OF YOU, CORRECT?

7 A I HAVE NO IDEA

8 Q AND, OF COURSE, IF THEY WERE ISSUED TO MEMBERS OF

9 HIS FAMILY HE AND MEMBERS OF HIS FAMILY WOULD HAVE A

10 GREATER SHARE OF THE COMPANY, CORRECT?

11 A WHY WOULD WE AS DIRECTORS LET HIM DO THAT?

12 Q WELL, BECAUSE HE'S -- YOU PASSED A RESOLUTION SAYING

13 YOU MIGHT ISSUE THEM TO EMPLOYEES AND HE PLANS TO HIRE

14 HIS FAMILY TO WORK THERE

15 A HE'D HAVE TO CLEAR THAT WITH US HE COULDN'T JUST

16 GO OUT AND SAY I THINK I'LL GIVE MY MOTHER OR MY SISTER

17 SOME SHARES OF STOCK

18 Q DID HE CLEAR WITH YOU NOT ELECTING ANDY BALLARD A

19 DIRECTOR BEFORE THE MEETING?

20 A HE TOLD US WHO -- WE TALKED ABOUT WHO WE WANTED TO

21 HAVE AS DIRECTORS, YES

22 Q AND SO HE TALKED -- WHAT DID HE TELL YOU WHY HE

23 DIDN'T WANT ANDY BALLARD A DIRECTOR?

24 A WE'VE ALREADY -- I'VE ALREADY ANSWERED THAT

25 MR HOWARD IT'S GOING WELL BEYOND MY REDIRECT

FREDERICK THOENNES, SR. - RECROSS EXAMINATION BY MR HOLLEMAN 578

1 MR HOLLEMAN WELL, HE'S ---

2 THE COURT WELL, THAT'S ALL RIGHT

3 Q WHAT DID HE TELL YOU ABOUT WHY HE DIDN'T WANT ANDY
4 BALLARD A DIRECTOR?

5 A I THINK I TOLD YOU BEFORE BECAUSE WE REALLY WANTED
6 TO MOVE AHEAD WITH THIS THING AT A QUICKER PACE AND WE
7 FELT LIKE AT THAT TIME WITH THE ANIMOSITY THAT HAD GROWN
8 THAT IT WASN'T GOING TO WORK THAT WAY

9 FROM A PRACTICAL MATTER IT'S VERY DIFFICULT TO DEAL
10 WITH THE PERSON ON THE OTHER SIDE OF A LAWSUIT YOU
11 KNOW, YOU ATTORNEYS CAN DO THAT EVERY DAY, I GUESS, AND
12 JUST SET IT ASIDE I HAVE A VERY DIFFICULT TIME DOING
13 THAT AND I'M SURE IT'S HARD FOR ANDY TOO

14 YOU DON'T JUST SAY -- PRETEND THAT THIS ISN'T
15 HAPPENING, THAT SOMEBODY ISN'T SUING YOU, THAT SOMEBODY
16 ISN'T IMPEDING WHAT YOU'RE TRYING TO SAY ALL OF A
17 SUDDEN HERE IS A PARTNER THAT'S SUING ME AND ---

18 Q AFTER -- GO AHEAD

19 A AND WE ONLY COUNTERED BECAUSE HE SUED US I GUESS
20 THAT'S THE WAY IT'S DONE I DON'T KNOW I'VE NEVER BEEN
21 IN A LAWSUIT BEFORE I'VE NEVER IN MY LIFE HAD A LIEN
22 FILED I'VE NEVER WRITTEN A BAD CHECK IN MY FORTY-FIVE
23 YEARS OF EXISTENCE IN GREENVILLE AND SO HOW YOU CAN --
24 HOW YOU CAN STAND THERE AND SAY, YOU KNOW, PRETEND NONE
25 OF THIS IS HAPPENING, IT'S IMPOSSIBLE

FREDERICK THOENNES, SR. - RECROSS EXAMINATION BY MR HOLLEMAN 579

1 Q BUT YOU PUT HIM BACK ON THE BOARD AFTER HE FILED AN

2 AMENDED COMPLAINT ---

3 A THAT'S RIGHT, BECAUSE ---

4 Q --- WHILE THE LAWSUIT WAS PENDING

5 A --- BECAUSE HE GOT RE-INVOLVED

6 MR HOLLEMAN THANK YOU NOTHING FURTHER

7 THE COURT ALL RIGHT ANYTHING ELSE?

8 MR HOWARD (NEGATIVE NOD)

9 THE COURT ALL RIGHT THANK YOU, SIR YOU CAN

10 STEP DOWN ALL RIGHT, MR HOWARD

11 MR HOWARD: YOUR HONOR, DEFENSE RESTS

12 THE COURT OKAY ANYTHING IN REPLY?

13 MR HOLLEMAN NO REPLY, YOUR HONOR

14 THE COURT ALL RIGHT

15 MR HOWARD DO YOU WANT TO HOLD THESE MOTIONS IN

16 ABEYANCE AND WE CAN MAKE THEM IN WRITING? I SUPPOSE IT

17 MAY BE THE EASIEST WAY I THINK WE TALKED ABOUT ---

18 MR HOLLEMAN BUT I DO -- I WANT TO RESERVE MAKING

19 MY MOTIONS AT THIS POINT

20 MR HOWARD I THINK WE TALKED ABOUT BRIEFING I

21 DON'T KNOW IF YOUR HONOR IS INTERESTED IN THAT, BUT

22 THE COURT WELL, HOW DO YOU ALL WANT TO HANDLE IT?

23 YOU WANT TO MAKE COMMENTS OR DO YOU WANT TO MAKE, I MEAN,

24 DO YOU WANT TO DO IT BY BRIEFS, MR HOLLEMAN, OR NOT?

25 MR HOLLEMAN YOUR HONOR, I THINK IT WOULD BE MORE

1 EFFICIENT FOR ALL CONCERNED IF WE DID IT ORALLY AND
2 THEN WE COULD SUBMIT BRIEFS IF YOU WANT US -- IF YOU WANT
3 ADDITIONAL MATERIALS

4 THE COURT ALL RIGHT WELL, YOU READY TO GO?

5 MR HOLLEMAN BUT I GUESS WE CAN

6 THE COURT I'M STARTING ANOTHER TRIAL TOMORROW SO

7

8 MR HOWARD YOUR HONOR, MY PREFERENCE WOULD BE TO
9 DO IT BY JUST WRITTEN MOTION, AND WE CAN HANDLE IT LATER

10 MR HOLLEMAN I'D LIKE TO GET IT ON THE RECORD,
11 YOUR HONOR, MY MOTIONS ANYWAY

12 THE COURT OKAY

13 MR HOLLEMAN I'D RATHER NOT JUST GENERATE MORE AND
14 MORE PAPER BECAUSE WE'VE SORT OF BRIEFED THIS TO YOU IN
15 SUMMARY JUDGMENT AND WE -- I THINK THE EVIDENCE IS
16 PRETTY CLEAR

17 THE COURT OKAY WELL, DO YOU WANT TO DO IT NOW OR
18 DO YOU WANT TO ---

19 MR HOLLEMAN I CAN DO IT NOW IF YOU WANT ME TO

20 THE COURT ALL RIGHT LET'S GO

21 MR HOLLEMAN OKAY ONE THING OFF THE TOP, I DO
22 WANT TO COME BACK TO THE ISSUES MR HOWARD RAISED
23 EARLIER AND I WOULD LIKE TO MOVE THE COURT TO DIRECT
24 THE DEFENDANTS TO PUT INTO ESCROW THE SIXTY THOUSAND
25 SHARES THEY RECEIVED FROM THE COMPANY AS MR HOWARD SAID

1 THEY WOULD RECEIVE THOSE IN ANTICIPATION OF PERFORMING
2 SERVICES, WHICH THEY HAVE NOT DONE AND AS MR THOENNES
3 TESTIFIED THAT HE AND HIS SON WOULD HAVE TO EARN THOSE
4 SHARES, THEY WEREN'T PURCHASED

5 THE ARGUMENT MAY BE, OH, WE BOUGHT THEM FOR THE
6 MILLION DOLLARS THAT SIMPLY IS NOT CREDIBLE THERE
7 WERE ONLY FORTY THOUSAND SHARES OUTSTANDING WHEN THIS
8 TRANSACTION OCCURRED THE CHECK WAS PAID TO ANDY BALLARD
9 PERSONALLY, NOT TO THE CORPORATION

10 AND AS THE COURT KNOWS, IT'S BEEN EMPHASIZED OVER
11 AND OVER AGAIN, IF YOU LOOK AT THE ACTUAL AGREEMENT, NOT
12 THE WHEREAS, BUT THE ACTUAL AGREEMENT, SECTION ONE SAYS
13 WE'RE PAYING ANDY BALLARD A MILLION DOLLARS FOR HIS
14 TWENTY THOUSAND SHARES AND IN ADDITION WILL RECEIVE SIXTY
15 THOUSAND SHARES FROM THE CORPORATION SO THAT IS A
16 DIFFERENT ISSUE THAN HAS BEEN HERE, BUT THAT WOULD BE
17 ISSUE ONE

18 ISSUE TWO AS TO BREACH OF THE ARTICLES OF
19 INCORPORATION WE THINK IT IS UNDISPUTED THE ARTICLES OF
20 INCORPORATION PROVIDE FOR ONE HUNDRED THOUSAND SHARES AND
21 NO MORE AND THEY HAVE -- IT IS UNDISPUTED, IT IS IN
22 WRITING, THEY HAVE AUTHORIZED OVER MR BALLARD'S
23 OBJECTION IN THE MAY 1, 2008 MEETING THE ISSUANCE OF AN
24 ADDITIONAL NINE HUNDRED THOUSAND SHARES

25 THEIR SOLE ARGUMENT SEEMS TO BE, WELL, WE HAVEN'T

1 THEY ARE SIMPLY NOT CAPABLE OF DOING THAT AND FOR THAT
2 REASON THEY SHOULD RETURN THE SHARES THEY RECEIVED AS
3 WELL

4 AND I DON'T NEED TO ADDRESS THE COUNTER-CLAIM
5 (PAUSE)

6 MR HOLLEMAN AND, YOUR HONOR, I THINK THOSE ARE
7 OUR MOTIONS WE'D MOVE FOR DIRECTED VERDICTS ON ALL OUR
8 CLAIMS AND WE'D ALSO MOVE THAT THEY BE DIRECTED TO PUT
9 THEIR SIXTY THOUSAND, NOT THE TWENTY THOUSAND SHARES THEY
10 BOUGHT FROM MR BALLARD, BUT THE SIXTY THOUSAND SHARES IN
11 ESCROW AS REQUIRED BY THE 33 6-210 (e)

12 THE COURT I'M SORRY, WHAT WAS THAT?

13 MR HOLLEMAN: THE CITATION IN THE STATUTE MR
14 HOWARD CITED WAS 33-6-210 LITTLE (e)

15 THE COURT OKAY

16 MR HOLLEMAN THAT'S OUR MOTIONS, YOUR HONOR

17 THE COURT ALL RIGHT

18 MR HOWARD: I'LL RESPOND RIGHT NOW, BUT I WOULD
19 LIKE LEAVE TO RESPOND MORE FULLY IN WRITING

20 THE COURT: GO AHEAD TELL ME WHAT YOU WANT TO TELL
21 ME

22 MR HOWARD WHAT'S THAT?

23 THE COURT GO AHEAD TELL ME WHAT YOU WANT TO TELL
24 ME

25 MR HOWARD YOUR HONOR, FIRST OF ALL, I'M JUST