THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

Appellate Case No. 2014-002055
Case No. 2004-CP-40-1915

Allegro, Inc., ... Respondent,

v.

Emmett J. Scully, Synergetic, Inc., George Corbin, and Yvonne Yarborough, ... Defendants,

Of whom Emmett J. Scully, Synergetic, Inc., George Corbin, and Yvonne Yarborough are ..... Petitioners.

APPENDIX
VOLUME ONE

C. Mitchell Brown
William C. Wood
Brian P. Crotty
NELSON MULLINS RILEY & SCARBOROUGH, LLP
Post Office Box 11070
Columbia, SC 29211
(803) 790-2000

Attorneys for Petitioners

Amy L. Gaffney
GAFFNEY LEWIS & EDWARDS, LLC
3710 Landmark Drive, Ste. 304
Columbia, SC 29204
(803) 790-8838

Other Counsel of Record:
Robert L. Widener
Richard J. Morgan
MCNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, SC 29211
(803) 799-9800

Attorneys for Respondent

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 04-CP-40-1915

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SC Court of Appeals

Allegro, Inc., ... Respondent,

v.

Emmett J. Scully, Synergetic, Inc., George C. Corbin, and Yvonne Yarborough, ... Appellants.

RECORD ON APPEAL - VOLUME I

C. Mitchell Brown
William C. Wood, Jr.
Brian P. Crotty
NELSON MULLINS RILEY & SCARBOROUGH LLP
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

Amy L. Gaffney
GAFFNEY LEWIS & EDWARDS, LLC
3710 Landmark Dr., Ste. 304
Columbia, SC 29204
(803) 790-8838

Attorneys for Appellants

Robert L. Widener
Richard J. Morgan
MCNAIR LAW FIRM, PA
Post Office Box 11390
Columbia, SC 29211
(803) 799-9800

Attorneys for Respondent

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Certificate of Counsel

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	CIVIL ACTION NO: 04-CP-40-1915
ALLEGRO, INC.)	
)	
PLAINTIFF,)	
)	
v.)	ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION
)	
EMMETT J. SCULLY, SYNERGETIC, INC., GEORGE CORBIN, AND YVONNE YARBOROUGH,)	
)	
DEFENDANTS.)	

INTRODUCTION

On April 15, 2004, Allegro, Inc. ("Allegro") filed a Complaint alleging numerous causes of action including allegations of breach(es) of the duty of loyalty. Allegro also filed a Motion for a Temporary Injunction on April 15, 2004. All parties have been served and all parties are now represented by counsel.

The Plaintiff alleged that Defendants, Emmett J. Scully ("Scully") and Yvonne Yarborough ("Yarborough"), former employees of Allegro, during the period of their Allegro employment took actions including contacting Allegro's customers and potential customers about doing business with a new company that Scully was establishing to provide the same services as being provided to them by Allegro. The Plaintiff further alleged that Scully and Yarborough received compensation and benefits from Allegro for and during the time that each was engaged in activities for the benefit of a Company known as Synergetic, Inc. ("Synergetic") and against the interests of Plaintiff. The Complaint has more specifically alleged that Defendants, Scully and Yarborough, in contravention of their duty of loyalty to Allegro, have directly or indirectly solicited clients and potential clients of

PLAINTIFF'S EXHIBIT

Allegro while employed by Allegro for Defendant Synergetic and were assisted in and/or directly or indirectly aided in these efforts by George Corbin ("Corbin").

Allegro has further alleged that Defendants, Scully and Yarborough, in contravention of Scully and Yarborough's duty of loyalty to Allegro have converted and continue to convert Allegro's property and confidential client information. Within days of opening Scully's new business, Synergetic, Allegro received letters of contract cancellation from Merritt Veterinary Supplies, Inc., Easlan Management, and Cherokee Kenworth, Inc.

Allegro further alleged that within minutes of submitting her resignation from Allegro and attempting to hide her actions, Defendant Yarborough emailed to Merritt Veterinary Supplies, Inc. all of the necessary data Merritt needed to allow her new employer Synergetic to immediately begin serving them upon Merritt's cancellation of the its contract with Allegro.

Pursuant to an agreed-upon Scheduling Order, the parties conducted discovery on the breach of duty of loyalty claims. The Court heard argument on the Motion for Preliminary Injunction on October 14 , 2004 and based on the pleadings, discovery, argument of counsel and other documents before it, this Court makes the following Findings of Fact and Conclusions of Law.

2

FINDINGS OF FACT

1. Allegro is a South Carolina corporation. Allegro began as a Division of Executive Staffing, Inc., a company owned and operated by Mary Etta McCarthy. Allegro eventually was incorporated as its own company (McCarthy, 7/15/04, pp. 10-12).[1]
2. Allegro is a Professional Employee Organization (PEO), or as more commonly known, an employee leasing company. (Scully, 7/29/04, pp. 17-18).

[1] References to deposition transcripts are by date deposition taken and page number. Exhibits to deposition transcripts are referenced as follows: (Name of Deponent, date, Ex #)

3. Allegro hired Scully to serve as its President in or about 1997, and he served continuously in that position until the effective date of his resignation on February 23, 2004. (Scully, 7/29/04, pp. 9-10).

4. At the time of Scully's resignation, he had a 49% ownership interest in the Allegro. (Scully, 7/29/04, p. 20).

5. As an owner of Allegro, Scully also held a seat on the company's Board of Directors. (Scully, 7/29/04, p.21).

6. As President of Allegro, Scully had full responsibility to handle the day-to-day operational functions of the business and had "trust responsibilities to manage the company in the best interests of the corporation." (Scully, 7/29/04, pp. 15, 16).

7. As President of Allegro, he had financial oversight responsibilities for the company, had responsibilities to insure that the company was on sound financial footing, and to disclose known facts and/or known information relevant to the operation of the company to Mary Etta McCarthy, Chairperson of Allegro and to the Board. (Scully, 7/29/04 pp. 29, 30, 31).

8. As President of Allegro, Scully had the responsibility to act in a good faith manner for the benefit of the company. (Scully, 7/29/04, p. 17).

9. Allegro hired Yarborough to serve as its Payroll Manager on or about February 7, 2002, and she served continuously in that position until the effective date of her resignation on March 1, 2004. (Yarborough, 7/22/04, pp. 14-16).

10. During Yarborough's employment with Allegro, she reported directly to Scully. (Yarborough, 7/22/04, p. 21; Scully, 7/29/04, pp. 25-26).

11. During the spring of 2003, Scully advised McCarthy that he would like to buy out McCarthy's interest in Allegro. (Scully, 7/29/04, pp. 31, 39; McCarthy, 7/15/04, pp. 46, 49).

12. At or about the time that Scully advised McCarthy that he would like to buy out McCarthy's interest in Allegro, Scully was in contact with George Corbin concerning the potential buyout. At the time of the conversation, Corbin held the position of Chief Financial Officer known as Merritt Veterinary and other related companies, a client/customer of Allegro (Scully, 7/29/04, pp. 39-40; Corbin, 7/22/04, pp. 14-16, 18, 29-31, 34-35, Ex. 1, 2, 3).

13. During the spring and early summer of 2003, Scully also disclosed to Kay Cress ("Cress") and Yarborough of his desire to take over the ownership of Allegro. (Scully, 7/29/04, pp. 48-51; Cress, 7/21/04, pp. 32-33; Yarborough, 7/22/04, pp. 22-24, 27-28).

14. At some point after the initial disclosure of his desire to own Allegro, Scully also told or informed Corbin, Yarborough, and Cress that if he was not successful in purchasing Allegro that he would start his own competing company. (Scully, 7/29/04, pp. 52-56; Corbin, 7/22/04, pp. 14-16, 18, 29-31, 34-35; Yarborough, 7/22/04, pp. 23, 30; Cress, 7/21/04, pp. 32-34).

15. Scully made clear to Yarborough that she was in his plans for the competing entity that he would establish if he did not take over control of Allegro. (Scully, 7/29/04, pp. 56-58; Yarborough, 7/22/04, pp. 23, 28, 30).

16. During the summer months of 2003, Scully additionally informed McCarthy that if he was not successful in purchasing her shares in Allegro that he would start his own business and "tear Allegro apart." (Scully, 7/29/04, pp. 52-53; McCarthy, 7/15/04, pp. 67, 69, 72, 176).

17. Beginning in the Spring of 2003 and continuing through his last day of employment during normal business hours and while being paid by Allegro, Scully routinely kept Yarborough informed of the status of his business plans to either buy McCarthy's

interest in Allegro or to start a new company. (Scully, 7/29/04, pp. 56-57, 60; Yarborough, 7/22/04, pp. 29-31).

18. Other than Scully's threat to McCarthy that he would start his own business if he was unsuccessful in purchasing McCarthy's interest in Allegro, McCarthy had no knowledge that Scully had enlisted the support and participation of Corbin and Yarborough to assist and/or aid in his plan to either own Allegro and/or start his own company. (Scully, 7/29/04, pp. 56-57; Yarborough, 7/22/04, pp. 23-24; Corbin, 7/22/04, pp. 14-16, 18, 29-31, 34-35; Cress, 7/21/04, p. 38).

19. During 2003, Scully informed Kay Cress ("Cress") that the Allegro clients he wanted to target were those that carried their own workers' compensation insurance. (Cress, 7/21/04, pp. 33, 38, 41-42, 47, 72-73, 103-108).

20. During 2003, Scully informed family friends of his plans to either buy McCarthy's interest in Allegro or to start a competing business if he was not successful in his negotiations with McCarthy. (Wolfe, 8/17/04, pp. 27-33).

21. By January 2004, during Allegro's normal business hours and while on Allegro's payroll, Scully increased his efforts to set up a competing business to include, among other things (Scully, 7/29/04; 8/17/04 ,pp. 67, 73-76, 80, 115, 116, 117, 119-120, 121-122)

- making sales calls to prospective customers and telling them to wait so that they could do business with him;
- advising existing Allegro clients of his plan to start a competing company;
- advertised and interviewed candidates for positions with the competing company;
- secured quotes for software packages which software was necessary to conduct to conduct business for the competing company;

- directed staff to move certain clients to their own, instead of Allegro's workers' compensation insurance coverage,
- directed staff to copy and provide to him Allegro's client master listing, Allegro's pricing model and database, Allegro's new-hire enrollment packet and database, Allegro's open enrollment database (including the Amanda database and forms), Allegro's workers' compensation database and forms, and employee information all of Allegro's client companies;
- removed from Allegro's place of business Allegro policies and forms and other employment and benefit forms for the express purpose of starting up a competing business; and
- during normal business hours dealt with his attorney concerning issues related to establishing a competing business;

22. While employed by Allegro, Yarborough routinely assisted Scully in identifying and securing information/data for the competing company during normal Allegro business hours and while being paid by Allegro. (Yarborough, 7/22/04, p. 31, Ex. 1).

23. On or about Saturday, February 28, Yarborough met with Allegro employee, Lisa Milliken, and Janet Lay at Scully's home to continue to lay the groundwork for the new company and competing with Allegro (Scully, 7/29/04, p. 113 ; Yarborough, 7/22/04, pp. 33-34).

24 Immediately prior to resigning and walking out on March 1, 2004, Yarborough sent to Merritt Veterinary the basic information it needed to allow Synergetic to set up employment and relationship files as soon as the Allegro relationship was severed. (Yarborough, 7/22/04, p. 89; Cress, 7/21/04, pp. 14, 34).

25 Immediately after the effective date of Scully's resignation on February 23, 2004, McCarthy and Jim Eberle ("Eberle) began to visit Allegro clients to advise them of the management change and were informed by Allegro clients, specifically Corbin, the CFO of Merritt Veterinary on or about February 24, that Merritt would be moving its business to Scully's competing company. (McCarthy, 7/15/04, pp. 25-27; Corbin, 7/22/04, pp. 30-31; 34-35).

CONCLUSIONS OF LAW

The Court carefully considered the pleadings, documents and argument of counsel at a hearing on October 14, 2004, and finds that despite Defendants' denials of wrongdoing, there is sufficient evidence to indicate that the Defendants were engaged in the activities alleged by the Plaintiff. See, Moore v. Moore, 599 S.E.2d 467, (S.C. Ct. App. 2004); Futch v. McAllister Towing of Georgetown, Inc., 518 S.E.2d 591 (S.C. 1999); Lowndes Products, Inc. v. Brower, 191 S.E.2d 761 (S.C. 1972).

Rule 65 of the South Carolina Rules of Civil Procedure governs requests for temporary injunction. The sole purpose of temporary injunctive relief is to preserve the status quo, thereby avoiding possible irreparable injury to the plaintiff pending the outcome of litigation. Powell v. Immanuel Baptist Church, 261 S.C. 219, 199 S.E.2d 60 (S.C. 1973); County Council of Charleston v. Felkel, 244, S.C. 480, 137 S.E.2d 577 (S.C. 1964). The discretion to issue temporary injunctive relief rests with the trial judge to whom the application is addressed. Powell, 199 S.E.2d at 61.

Two essential conditions must be established by the moving party to obtain a temporary injunction. First, the moving party must allege facts that appear sufficient to constitute a cause of

action for injunctive relief and second, it must allege facts or show that the conduct sought to be enjoined threatens to cause irreparable injury for which no adequate remedy at law exists. Thornton v. Alford, 260 S.E.2d 179 (S.C. 1979); Felkel, 137 S.E.2d at 578.

There is no question in this case that the Plaintiff has alleged facts sufficient to constitute a cause of action for injunctive relief. Importantly, the agreed-upon discovery supports the facts alleged in the Complaint that was filed in this case. The duty of loyalty was breached by both Mr. Scully and Ms. Yarborough in their actions taken to against Allegro's interest during their employment. Implicit in a duty of loyalty case is that "the employee has a duty not to do disloyal acts looking to future competition." Lowndes Products, Inc. v. Brower, 191 S.E.2d 761, 767 (S.C. 1972). When that employee holds a position of great responsibility, such as Mr. Scully (President and 49% owner), there is a greater responsibility to act on behalf of the entity and further to disclose all known information that is significant and material. Moore v. Moore, 599 S.E.2d 467, 472 (S.C. Ct. App. 2004)(Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud. ... Partners are fiduciaries to each other and their relationship is one of mutual trust and confidence, imposing upon the requirements of loyalty, good faith and fair dealing. Citations omitted). Ms. Yarborough's position with the Company, particularly the representations that only she in addition to Mr. Scully had any authority to make operational and financial decisions for the Company placed her in a position wherein she also had disclosure obligations to Ms. McCarthy. Other than Mr. Scully's expressed interest and the negotiations to purchase Ms. McCarthy's interest in Allegro, neither Mr. Scully nor Ms. Yarborough made any other disclosure as required under the law of this state.

Having met the first prong of the test, the court must examine whether the facts show that the conduct sought to be enjoined threatens to cause irreparable injury for which no adequate reedy at law exists. The court finds, despite Defendants arguments to the contrary, the Plaintiff this met this standard. Defendants' effort to support its position with affidavits stating that no Synergetic employee contacted them about doing business with Synergetic before February 23, 2004 misses the critical point that Mr. Scully, while President of Allegro, told at least one prospective client to come back and meet with him after he set up his new company, and had detailed ongoing discussions with clients such as George Corbin of Merritt Veterinary about his business plan. These contacts along with his multiple, ongoing internal and undisclosed activities support the issuance of an injunction.[2]

This Court recognizes that an injunction is a drastic remedy and should be applied cautiously. LeFurgy v. Long Cove Club Owners Ass'n, 313 S.C. 555, 443 S.E.2d 577, 578 (Ct. App. 1994); Forrest Land Co. v. Black, 216 S.C. 255, 266, 57 S.E.2d 420 (1950); Sprouse v. Winston, 212 S.C. 176, 46 S.E.2d 874, 878 (1948). It is not a legal right but is an equitable remedy committed to the Court's sound discretion, Metts v. Wenberg, 158 S.E. 411, 155 S.E. 734 (1930). Weighing the equities in this case, this Court finds that Plaintiff has met its burden and that an injunction should be issued.

WHEREFORE, this Court orders and decrees that:

(1) Defendants Scully, Yarborough and Synergetic be immediately enjoined and restrained, directly and indirectly, whether alone or in concert with others, including any officer,

[2] There may be other causes of action for which damages may be available, but as to issues before the Court an injunction is appropriate.

agent, employee, and/or representative of Defendants' present employer, and until further order of this Court, from doing any of the following:

(a) Directly or indirectly soliciting the business of any person whom Defendants Scully, Yarborough serviced or whose name became known to Defendants Scully or Yarborough while in the employ of Allegro, with the term "solicit" including, without limitation, contacting, notifying any Allegro customer that Defendants Scully, Yarborough, and/or Synergetic are providing services of the type provided by Allegro; and from accepting any business or account transfers from any of said customers whom Defendants Scully or Yarborough has solicited in the past for the purpose of doing business with Defendants' present employer; and

(b) From retaining possession of any records or information and/or any computerized, duplicated or copied records or information of Allegro and that any such records or information, in whatever form, shall be returned immediately to Allegro.

(c) From using, disclosing or transmitting information contained in the records of Allegro, including the names and addresses and financial information of said Allegro's clients; and

(d) From failing to maintain records in any form that would or may provide evidence including but not limited to activities complained of in the Complaint, income received from activities complained of in the Complaint, and any other information related thereto.

(2) This Order shall remain in full force and effect until such time as this Court specifically orders otherwise.

ALL OF WHICH IS SO ORDERED.

Special

Honorable Joseph M. Strickland
Circuit Court Judge
Fifth Judicial Circuit

~~October ___, 2004~~
January 18, 2005

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO 04-CP-40-1915

Allegro, Inc.

PLAINTIFF(S)

Emmett J. Scully, et al.

DEFENDANT(S)

FILED

CHECK ONE

[ ] **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

[X] **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[ ] **ACTION DISMISSED** (*CHECK REASON*): [ ] Rule 12(b), SCRCP; [ ] Rule 41(a), SCRCP (Vol. Nonsuit); [ ] Rule 43(k), SCRCP (Settled); [ ] Other _____

[ ] **ACTION STRICKEN** (*CHECK REASON*): [ ] Rule 40(j) SCRCP; [ ] Bankruptcy; [ ] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award. [ ] Other _____

IT IS ORDERED AND ADJUDGED: [X] See attached order; [ ] Statement of Judgment by the Court:

Dated at _____, South Carolina, this _____ day of _____, 20____.

PRESIDING JUDGE

This judgment was entered on the ____ day of _____, 20____, and a copy mailed first class this 19 day of Jan, 2005 to attorneys of record or to parties (when appearing pro se) as follows

Richard J. Morgan

ATTORNEY(S) FOR THE PLAINTIFF(S)

Angus H. Macaulay, Jr.

ATTORNEY(S) FOR THE DEFENDANT(S)

s/ [illegible]
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO: 04-CP-40-1915
ALLEGRO, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER DENYING**
	)	**POST-TRIAL MOTIONS**
EMMETT J. SCULLY, SYNERGETIC, INC., GEORGE CORBIN, AND YVONNE YARBOROUGH,	)	
	)	
Defendants.	)	
	)	

This matter is before me upon numerous post-trial motions by the Defendants. The jury returned a verdict for the plaintiffs and judgment was entered thereon. The Defendants seek *inter alia* judgment notwithstanding the verdict (JNOV), a new trial, and an election of remedies. All post-trial motions are denied for the reasons set forth below.

The Defendants seek JNOV on all causes of action. Any such motion, however, is limited to the specific grounds made in support of a motion for directed verdict at the close of the evidence. Rule 50(b), SCRCP. The Defendants did not make a directed verdict on any ground for the claims based on: (1) breach of duty of loyalty by Scully; (2) breach of duty of loyalty by Yarborough; (3) violation of S.C. Code Ann. § 33-8-420(a) by Scully; (4) breach of fiduciary duty by Scully; (5); or violation of S.C. Code Ann. § 33-8-310 by Scully. In addition, the Defendants did not make any directed verdict motions on the claims for punitive damages. Accordingly, their JNOV motions with respect to these matters are not properly before me,

cannot be granted and, therefore, are denied. In any event, I find there was sufficient evidence on all of these matters to submit the issues to the jury.[1]

The Defendants' directed verdict motion on the breach of contract claim was limited to the argument that there was no employee handbook, no employment agreement, and no non-compete agreement. Thus, the arguments based on a failure to prove the terms of the contract or a breach thereof cannot be the basis of a JNOV motion. In any event, I find there was sufficient evidence to present these matters to the jury. This leaves only the "existence of contract" ground, which is denied because there was sufficient evidence to present this matter to the jury.

The Defendants' directed verdict motion on the breach of contract accompanied by a separate fraudulent act claim was also limited to the argument that there was no employee handbook, no employment agreement, and no non-compete agreement. Thus, the arguments based on a failure to prove fraudulent intent or an accompanying fraudulent act cannot be the basis of a JNOV motion. In any event, there was sufficient evidence to submit this claim to the jury.

The Defendants complain that the verdict form did not identify a fraudulent act by Scully sufficient to support a claim for breach of contract with fraudulent intent. This is not a ground for directed verdict or JNOV, since it rests upon an alleged problem with the verdict form. The Defendants, however, waived this issue by not raising it before the discharge of the jury. *Dykema v. Carolina Emergency Physicians, P.C.*, 560 S.E.2d 894, 896 (S.C. 2002) (cannot sit silently when confronted with verdict erroneous in form). Moreover, although the jury used the word "intent" in answering this question, it clearly found that Scully's act of setting up his own

[1] The Defendants also assert their "election of remedies" arguments in support of their JNOV motion. They did not make this argument in support of their directed verdict motions and, therefore, they cannot make them in support of their JNOV motion. Moreover, this is not a proper ground for a directed verdict or JNOV motion. In any event, there was sufficient evidence to present all issues to the jury and, as held later herein, the jury's verdict did not create an "election of remedies" problem and any such problem was waived by the Defendants.

company while working for the Plaintiff was a fraudulent act, and the evidence supports this finding. (Verdict Form at top of page 3). In any event, there was sufficient evidence to submit this claim to the jury.

The Defendants' directed verdict motion on the fraud claim was limited to no evidence of a misrepresentation of a fact and no evidence of reliance. Thus, all other grounds, including the "clear and convincing evidence" ground, are not properly before this Court and cannot be the basis for a JNOV motion. In any event, there was sufficient evidence to submit this claim to the jury.

The Defendants' directed verdict motion on the gross negligence claim was limited to no evidence of a duty. Thus, the breach, causation, and damage grounds asserted in the JNOV motion are not properly before this Court and cannot be the basis for JNOV. In any event, there was sufficient evidence of all elements of this claim to submit it to the jury.

The Defendant did not make an "economic loss rule" argument in seeking a directed verdict on the gross negligence claim and, therefore, they cannot seek JNOV on this basis. In any event, the economic loss rule does not apply here and there was sufficient evidence to submit this claim to the jury.

The Defendants' directed verdict motion on the negligent misrepresentation claim was limited to no evidence of a misrepresentation of a fact and no evidence of reliance. (Tr. 486-487, Tab C). Thus, all other grounds for JNOV are not properly before this Court and cannot be the basis for JNOV. In any event, there was sufficient evidence of all elements of this claim to submit it to the jury.

The Defendants did not make a directed verdict motion against the conspiracy claims on the grounds that there was no evidence of special damages, no evidence of damages differing

from damages sought in the Plaintiff's other claims, or no evidence of actual malice. Thus, they cannot make a JNOV motion on these grounds. In any event, there was sufficient evidence of all elements of this claim to submit it to the jury.

The Defendants seek a new trial on numerous grounds, including several claims of the erroneous admission or exclusion of evidence.[2] All new trial motions are denied for the reasons set forth below.

The Defendants seek a new trial upon the ground that this Court erroneously admitted into evidence the temporary injunction issued before the trial of this case. The Defendants did not object to the reference to this injunction during testimony and, therefore, they cannot seek a new trial. Although the Defendants objected later to the introduction of the injunction into evidence, it was properly admitted to show what was in the record and that an injunction had been issued. The Defendants do not challenge my ruling on this ground in their motion and, therefore, there is a no basis for a new trial. At trial, the Defendants did not make the specific objections now asserted as a ground for new trial and, therefore, these grounds are improper and do not afford any basis for granting a new trial. In any event, these grounds are manifestly without merit.

Grounds 3-5 of the Defendant's new trial motions go to the testimony of Daniel S. McHenry, the Plaintiff's damages analysis expert. As to the Report of Mr. McHenry (Ground 3), the only objection at trial was a general hearsay objection. I overruled this general objection, which was insufficient as a matter of law to present any objection, upon the ground that experts are permitted to base their opinion on hearsay if it is the type generally relied upon by experts. The Defendants never objected that the hearsay, to the extent there was any, was not this

[2] The Defendants also incorporate all of their JNOV arguments as a ground for new trial. JNOV grounds are not grounds for a new trial. Most of the Defendants' JNOV grounds are not properly before this Court and none of them have any merit. Thus, the JNOV grounds afford no basis for a new trial

permissible type of hearsay. Their attempt to make this argument after trial (Ground 5) comes too late to present any proper ground for a new trial. Moreover, the Defendants' relevance and other arguments go to the weight of the evidence, not the admissibility of it. As to Ground 4, Mr. McHenry was not offered or accepted as an expert on PEO valuation. Rather, he was offered and accepted as an expert on the analysis of the damages suffered by the Plaintiff as a result of the Defendants' misconduct, *i.e.*, he evaluated the damages but did not value the company. His damage testimony was not based on a before-and-after valuation of the Plaintiff that attributed any reduction in value to the intervening conduct of the Defendants. The Defendants never objected at trial on the grounds they seek to interject now and, therefore, there is no basis for a new trial. More importantly, the Defendants do not seek a new trial on the ground that Mr. McHenry was not qualified to give the testimony he actually gave at trial, *i.e.*, an analysis and evaluation of the damages flowing from the Defendants' misconduct. Accordingly, there is no basis for a new trial based on this Court's decision to qualify Mr. McHenry as an expert. In any event, I find no prejudicial error in the admission of any of the foregoing evidence.

In Grounds 6-9 of their new trial motion, the Defendants challenge the exclusion of evidence related to the operations of the Plaintiff company after the Defendants' departure. These grounds share a common theme and a common fault. At trial, the Plaintiff limited its "lost customer" damage claims and evidence to the 30 customers that left immediately after the Defendants departed, *i.e.*, the customers taken by the Defendants. The Defendants sought to introduce evidence of customers that left much later, including customers that started and left after the Defendants' departure, claiming this evidence to be relevant to their defenses of mis-management and mitigation. This evidence was inadmissible, because it was not responsive to

the Plaintiff's damage theory. This Court repeatedly gave the Defendants an opportunity to present any case law or other authority to support their position. None was forthcoming.

The Defendants assert this Court improperly excluded the promissory note for the loan from Kay Cress, because it was relevant to the issue of bias. This promissory note, however, was not and could not have been probative on any issue of bias. The Plaintiff presented the testimony of Kay Cress by deposition because she was unavailable for trial due to illness. The deposition was taken on July 21, 2004. The loan evidenced by the promissory note did not occur until seven (7) months later in February 2005, when the promissory note was issued by the Plaintiff to Ms. Cress. Thus, at the time Kay Cress gave her deposition, there was no loan or note. Accordingly, her deposition testimony could not have been influenced by the existence of the note or the conditions for repayment.

The Defendants complain that the verdict form did not identify a fraudulent act by Scully sufficient to support a claim for breach of contract with fraudulent intent. The Defendants waived this issue by not raising it before the discharge of the jury. *Dykema*, 560 S.E.2d at 896 (cannot sit silently when confronted with verdict erroneous in form). Moreover, although the jury used the word "intent" in answering this question, it clearly found that Scully's act of setting up his own company while working for the Plaintiff was a fraudulent act, and the evidence supports this finding. (See Verdict Form at p. 3 (top of page)). In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

The Defendants seek a new trial on the civil conspiracy claim, contending there no indication the jury found the Defendants acted with actual malice so as to support an award of punitive damages. The Defendants never sought a directed verdict on punitive damages upon any ground, much less the absence of actual malice in the conspiracy claim. The Defendants did

not request a jury charge to this effect, nor did they object to the absence of such a jury charge. The Defendants did not request that the jury verdict form include actual malice as a finding, nor did they object to the absence of such from the jury verdict form. Thus, this argument for a new trial is not properly before this Court. In any event, actual malice is not required to support an award of punitive damages under a conspiracy claim and, therefore, there is no basis for a new trial.

The Defendants seek a new trial upon the ground that the jury's verdict was grossly excessive. The verdict is within the range of evidence admitted at trial. Therefore, as a matter of law, the verdict is not and cannot be grossly excessive. *Buzhardt v. Cromer*, 249 S.E.2d 898, 900 (S.C. 1978). Thus, the amount of the verdict affords no basis for granting a new trial. The Defendants have not identified anything "outside the evidence" that influenced the jury's verdict. Thus, the amount of the verdict is not a basis for granting a new trial.[3]

The Defendants seek a new trial upon the ground that there was no clear and convincing evidence to establish fraud or support an award for punitive damages. These grounds, however, are JNOV grounds, not new trial grounds, and the Defendants did not make any directed verdict motions on punitive damages or any directed verdict motions based on the absence of "clear and convincing evidence" to support fraud or punitive damages. They cannot cure these failures with a bootstrap motion for a new trial. In any event, there was clear and convincing evidence which supports the finding of fraud and the award of punitive damages.

---

[3] The Defendants also seek a new trial *nisi remittitur*. They attempt to recast all of their arguments on all of their motions in support of their *nisi remittitur* motion. This is improper. The only proper ground for *nisi remittitur* is that the verdict was unduly liberal. The jury's award is within the range of the evidence. Thus, as a matter of law, the amount of the verdict affords no basis for granting a new trial *nisi remittitur*. *Lemoine v. Hollingsworth*, 257 S.E.2d 713, 714 (S.C. 1979); *Hyland, Inc. v. Pre-Engineered Prods.*, 417 S.E.2d 622, 624-625 (S.C. App. 1992). In any event, I find there was sufficient evidence to support the jury's verdict.



The Defendants seek a new trial upon the ground that "[t]he jury was unable to follow the Court's instructions or charges in rendering its verdict." This ground is too vague and too general to present a proper ground for a new trial. Morevoer, the Defendants never objected to the jury instructions as being something "[t]he jury was unable to follow" or any similar objection. They cannot cure this failure with a bootstrap motion for a new trial. In any event, this Court's charge was clear and understandable. Nothing indicates the jury did not understand this Court's instructions, and the Defendants point to nothing evidencing any inability by the jury to follow them.

The Defendants seek a new trial on the ground of this Court's extraordinary power to sit as a thirteenth juror and set aside the jury's verdict. The Defendants make no arguments in support of their request for this Court to do so, and their motion is too vague and general to present any issue. In any event, the evidence was sufficient to support the jury's verdict, and I find no basis for this Court to exercise its extraordinary power to interfere with the jury's verdict. The jury was attentive throughout the trial and its deliberations, and there was sufficient evidence to warrant its conclusions and verdict.

The Defendants summarily seek a new trial upon ground of "inconsistent verdicts." The Defendants waived any claim of inconsistent verdicts by failing to object prior to the discharge of the jury. *Dykema*, 560 S.E.2d at 896. They cannot cure this failure with a bootstrap motion for a new trial. In any event, the jury's verdict was not inconsistent.

Finally, the Defendants summarily seek a new trial upon the ground of "cumulative error" based on all of the foregoing new trial grounds. This ground is too vague and general to present any proper ground for a new trial. In any event, having found no error in the specific grounds, there can be no cumulative error.

The remainder of the Defendants' motion go to the issues of "election of remedies" and "inconsistent verdict." All of these motions center around the special verdict form submitted to the jury and the jury's answers thereto. To properly understand these motions and my reasons for denying them, it is necessary to briefly review the relevant parts of the trial proceedings.

The Plaintiff submitted a Special Verdict Form to which the Defendants did not object. Thus, the Defendants waived any claims based on the form of the Special Verdict Form. Initially, the jury began to award the Plaintiff $1.76 Million Dollars in actual damages for each cause of action. (See ¶¶ 2 and 4 of Verdict Form). Apparently concerned with running afoul of my instruction that a plaintiff could only recover damages one time, the jury asked for further instructions on how to fill out the verdict form. Using an apple analogy, the jury foreperson asked: "For instance, if we said we were going to award them [the plaintiff] ten apples, so then on this one, we think, oh, this one is worth two apples, the next question would be until we –." (Tr. 586). I responded that the apple analogy was a good one and that of the total amount, the jury should "assign a certain number of apples for" each cause of action. (Tr. 587). The colloquy with the foreperson ended as follows:

> PL. ATTY: But they [the jury] would ultimately get to a total at the end of the day if there are damages found. The jury would say we believe that they're entitled to ten apples but the ten apples consist of one, three, one—
>
> JURY: Yes, that's what I meant.
>
> PL. ATTY: But at the end of the day they will say, that the Plaintiff should get ten apples. But they're only getting one apple on this cause of action.
>
> COURT: And one apple on that. You agree with that?
>
> DEF. ATTY: *I agree with that.*

(Tr. 587)(emphasis added). Thereafter, the jury returned its verdict wherein it award $160,000.00 in actual damages for each cause of action, *i.e.*, the jury evenly distributed its

intended award of $1.76 Million amongst the various causes of action. The jury also awarded a total of $250,000 in punitive damages, which it divided amongst two causes of action.

After publishing the verdict, I again questioned the jury about its intent in its verdict. Specifically, I asked what was the jury's intent as to the total award of "apples," to which the jury responded $1.76 Million in actual damages. (Tr. 592). In response to questions from me, the jury affirmatively and repeatedly explained that it intended to award $1.76 Million Dollars in actual damages and $250,000 in punitive damages. (Tr. 592-593). I then offered both parties the opportunity to question the jury about its verdict, but neither party proffered any questions, whereupon the jury was dismissed.

Based upon the verdict form and the conversations with the jury before and after its verdict, I am convinced the jury intended to award $1.76 Million Dollars in actual damages for each cause of action, and that it intended to award $250,000 in punitive damages on the two causes of action. I am further convinced that the jury's apportionment of the verdict amongst the various causes of action does not reflect a finding that the Plaintiff suffered only $160,000.00 in actual damages. Thus, entering judgment for the Plaintiff in the total amount of $1.76 Million Dollars in actual damages and $250,000.00 in punitive damages does not give rise to a double recovery.

The Defendants assert the verdicts for Claims 4 and 5 are "inconsistent" with the verdict for Claim 7. The Defendants waived this argument by not raising it before the discharge of the jury, as the Supreme Court has repeatedly held:

> This Court has repeatedly held that a party should not be permitted to sit idly by while a verdict erroneous in form is being returned and witness its receipt without objection and later, after the jury has been discharged, claim advantage of the error, thus invited by acquiescence.

Dykema v. Carolina Emergency Physicians, P.C., 560 S.E.2d 894, 896 (S.C. 2002)(citations omitted). A defendant's "failure to challenge the verdict upon being given an opportunity to do so results in a waiver." *Id.* Here, this Court gave the Defendants "an opportunity to do so" and they declined it. Thus, they waived any "inconsistent verdict" argument. In any event, I find the verdicts are not inconsistent.

The Defendants' "economic loss rule" argument is not properly before this Court. This is a ground for a directed verdict, not an election of remedies, and the Defendants never argued the "economic loss rule" in support of any directed verdict motion.

The Defendants contend that Claims 6 and 8 are inconsistent, but they waived this "inconsistent verdict" argument by failing to raise it prior to the discharge of the jury. *Dykema, supra.* In any event, I find the verdicts are not inconsistent.

The Defendants contend that Claims 1-3 involve an alleged violation of the same duty and, therefore, should be considered only one cause of action. The Defendants waived any such argument by failing to object to the form of the verdict. They attempt to use a "directed verdict" ground to require an election of remedies, but they never argued this ground in support of any directed verdict motion. Moreover, the duty of loyalty claim was made against Scully in his capacity as and for his actions as an employee, whereas the breach of fiduciary duty claim was made against him in his capacity as and for his actions as an officer and director. Thus, they are separate claims. Finally, and most importantly, as demonstrated above, the jury's verdict does not represent "multiple recoveries" for the same misconduct.

Defendant Scully argues that all eleven claims against him are based on the same conduct and same damages. As I have found above, however, the jury's verdict does not represent "multiple recoveries" for the same misconduct. Moreover, this argument is waived for not

making it at the directed verdict stage, not objecting to verdict form, and failing to raise it prior to the discharge of the jury.

The Defendants contend that the Plaintiff's "duty of loyalty" and "conspiracy" claims against Yarborough are based on the same facts and therefore represent a multiple recovery. Here again, the Defendants attempt to use a "directed verdict" ground to require an election of remedies, but they never argued this ground in support of any directed verdict motion. Moreover, the duty of loyalty claim was made against Yarborough for actions undertaken while she was on the clock at work, whereas the conspiracy claim was based on acts undertaken to further the conspiracy while not on the clock at work. Thus, they are separate claims. Finally, and most importantly, as demonstrated above, the jury's verdict does not represent "multiple recoveries" for the same misconduct. The same is true of the Defendants' argument regarding Claims 10 and 13.

Contrary to the Defendants' argument, the jury's verdict does not represent a finding of only $160,000 in actual damages that the jury awarded 11 times. Rather, the verdict represents a finding of $1.76 Million Dollars in actual damages that the jury divided amongst the various claims, and without objection by the Defendants despite being given the opportunity to object or make further inquiry of the jury.

The Defendants contend that the awards of punitive damages against Yarborough in Claims 10 and 13 represent a double award. As I have found, however, the jury intended to award a total of $250,000 in punitive damages which it split between two causes of action. Thus, there is no "double award." Moreover, as also demonstrated above, the duty of loyalty claims and the conspiracy claims were not for the same conduct and, therefore, the jury did not punish the same conduct twice.

CONCLUSION

For all of the foregoing reasons, the Defendants' post-trial motions are denied, thereby mooting the Plaintiff's motion for a new trial *nisi additur*.

IT IS SO ORDERED.

L. Casey Manning, Judge
Fifth Judicial Circuit

April 9, 2008
Columbia, SC

COLUMBIA 878696v1

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28221/1500

The South Carolina Court of Appeals

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 29, 2008

C. Mitchell Brown, Esq.
William C. Wood, Jr., Esq.
Brian P. Crotty, Esq.
A. Mattison Bogan, Esq.
Nelson Mullins Riley & Scarborough
P O Box 11070
Columbia, SC 29211

Re: Allegro, Inc. v. Scully, Emmett

Dear Counsel:

The following Order has been endorsed on your Motion for Limited Remand in the above entitled case on appeal.

"Granted.

s/ Kaye G. Hearn C.J.

September 29, 2008."

Please be advised the above matter is hereby remanded to the lower court for the purpose of acting on the pending Motion to Alter or Amend. Time limits for perfecting this appeal will be held in abeyance pending the court's action. Once the motion is acted on, you are requested to provide this Court with a copy of the lower court's order. Please provide regular status update every thirty days.

Very truly yours,

V. Claire Allen, Deputy
CLERK

KAR/ma
cc: Amy L. Gaffney, Esq.
Robert L. Widener, Esq.
Richard J. Morgan, Esq.
The Honorable Barbara A. Scott
The Honorable L. Casey Manning

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO: 04-CP-40-1915
	)	
ALLEGRO, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER DENYING MOTION TO ALTER OR AMEND THE ORDER DENYING DEFENDANTS' POST-TRIAL MOTIONS**
	)	
EMMETT J. SCULLY, SYNERGETIC, INC., GEORGE CORBIN, AND YVONNE YARBOROUGH,	)	
	)	
Defendants.	)	
	)	

Introduction

This matter is before me upon limited remand from the Court of Appeals for a ruling on Defendants' motion to alter or amend. For the reasons set forth below, and for the reasons set forth in this Court's July 14 Order, Defendants' motion is denied.

This Court entered judgment for Plaintiff on the jury's verdict on May 5, 2006, in the amount of $1,760,000.00 in actual damages and $250,000.00 in punitive damages. Thereafter, Defendants filed a "Motion for Election of Remedies, JNOV, New Trial, and New Trial Nisi Remittitur" on May 15, 2006, which this Court denied by Order filed July 14, 2008 (July 14 Order). Defendants later filed the current motion and subsequently appealed before any hearing or order on the current motion. Pursuant to Defendants' motion in the appellate court, the Court of Appeals remanded the case to this Court for the limited purpose of hearing the current motion. Defendants' motion sets forth eight (8) enumerated grounds. All are denied.

Grounds 1 and 2

In Ground 1, Defendants assert this Court erred in the July 14 Order denying their post-trial motion by: (1) failing to address the election of remedies issue; (2) improperly reforming the jury's verdict; and (3) effectively granting Plaintiff's motion for a new trial *nisi additur* without giving Defendants the option of a new trial. In Ground 2, Defendants assert this Court erred in finding Defendants waived the right to require an "election of remedies for inconsistent verdicts" and to avoid double recovery. Defendants have misperceived this Court's rulings.

The crux of these issues lies in my entry of judgment on May 5, 2006. Contrary to Defendants' current motion, this judgment (not the July 14 Order) "reformed" the jury's verdict. The judgment could not and did not effectively grant Plaintiffs' motion for a new trial *nisi additur*, because the judgment was entered before Plaintiff made its motion. As set forth in my July 14 Order, I "reformed" the verdict form based on the following:

> The Plaintiff submitted a Special Verdict Form to which the Defendants did not object. Thus, the Defendants waived any claims based on the form of the Special Verdict Form. Initially, the jury began to award the Plaintiff $1.76 Million Dollars in actual damages for each cause of action. (See ¶¶ 2 and 4 of Verdict Form). Apparently concerned with running afoul of my instruction that a plaintiff could only recover damages one time, the jury asked for further instructions on how to fill out the verdict form. Using an apple analogy, the jury foreperson asked: "For instance, if we said we were going to award them [the plaintiff] ten apples, so then on this one, we think, oh, this one is worth two apples, the next question would be until we –." (Tr. 586). I responded that the apple analogy was a good one and that of the total amount, the jury should "assign

a certain number of apples for" each cause of action. (Tr. 587). The colloquy with the foreperson ended as follows:

PL. ATTY: But they [the jury] would ultimately get to a total at the end of the day if there are damages found. The jury would say we believe that they're entitled to ten apples but the ten apples consist of one, three, one—

JURY: Yes, that's what I meant.

PL. ATTY: But at the end of the day they will say, that the Plaintiff should get ten apples. But they're only getting one apple on this cause of action.

COURT: And one apple on that. You agree with that?

DEF. ATTY: *I agree with that.*

(Tr. 587)(emphasis added). Thereafter, the jury returned its verdict wherein it award $160,000.00 in actual damages for each cause of action, *i.e.*, the jury evenly distributed its intended award of $1.76 Million amongst the various causes of action. The jury also awarded a total of $250,000 in punitive damages, which it divided amongst two causes of action.

After publishing the verdict, I again questioned the jury about its intent in its verdict. Specifically, I asked what was the jury's intent as to the total award of "apples," to which the jury responded $1.76 Million in actual damages. (Tr. 592). In response to questions from me, the jury affirmatively and repeatedly explained that it intended to award $1.76 Million Dollars in actual damages and $250,000 in punitive damages. (Tr. 592-593). I then offered both parties the opportunity to question the jury about its verdict, but neither party proffered any questions, whereupon the jury was dismissed.

Based upon the verdict form and the conversations with the jury before and after its verdict, I am convinced the jury intended to award $1.76 Million

> Dollars in actual damages for each cause of action, and that it intended to award $250,000 in punitive damages on the two causes of action. I am further convinced that the jury's apportionment of the verdict amongst the various causes of action does not reflect a finding that the Plaintiff suffered only $160,000.00 in actual damages. Thus, entering judgment for the Plaintiff in the total amount of $1.76 Million Dollars in actual damages and $250,000.00 in punitive damages does not give rise to a double recovery.

(July 14 Order at pp. 9-10). I entered a judgment that I was convinced reflected the intent of the jury. I remained convinced of this when I denied Defendants' post-trial motions; and I remain convinced of it now.[1]

Defendants misperceive my ruling that they had waived their "inconsistent verdict" arguments. This misperception may lie in their post-trial motion attempt to blend the concepts of "inconsistent verdict" and election of remedies. In seeking an election of remedies, Defendants argued:

1. The claims for breach of contract and breach of contract with fraudulent intent were inconsistent with the claims for negligence and negligent misrepresentation. (Post-Trial Motion at 3, ¶ 1).

2. The claim for fraud was inconsistent with the claim for negligent misrepresentation. (Post-Trial Motion at 4, ¶ 2).

To the extent there was any inconsistency in awarding damages for all of these claims, that inconsistency manifestly appeared on the face of the verdict form and, therefore, any inconsistency argument was waived under *Dykema v. Carolina Emergency Physicians, P.C.*, 560

[1] At trial, Defendants did not object to this Court's questioning of the jury about its intent in filling out the jury verdict form. Defendants did not object to this procedure in their post-trial motions, nor do they object to this procedure in their current motion.

S.E.2d 894, 896 (S.C. 2002). That was my ruling in the July 14 Order and it remains my ruling. (July 14 Order at pp. 11-12).

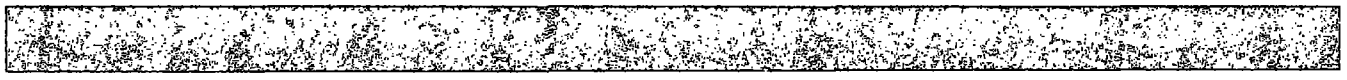
Defendants' current challenge to the foregoing ruling focuses on election of remedies, not inconsistency. (Motion to Amend at 3-4, ¶ 2). As noted earlier, however, the judgment entered on May 5, 2006 prevented any double recovery and, therefore, there was no election of remedies problem. This remains my ruling.

Defendants also contend this Court erred in reforming the verdict initially, and in doing it without granting the option of a new trial. (Motion to Amend at 2, ¶ 1). These issues are not properly before me because they were not raised in Defendants' post-trial motion, it being axiomatic that a motion to alter or amend a judgment cannot raise an issue for the first time. *Ex parte Beard*, 597 S.E.2d 835, 840 (S.C. App. 2004); see also *Camp v. Camp*, 662 S.E.2d 458, 460-461 (S.C. App. 2008) (party is limited to grounds specifically stated in motion; cannot later amend grounds by additional argument). In any event, I find Defendants' contention is without merit.

South Carolina has long recognized the power and duty of a trial court "to carry into effect what was clearly the jury's intentions." *Anderson v. Aetna Cas. & Sur. Co.*, 178 S.E. 819, 830 (S.C. 1935). To that end, a court may correct a jury's verdict under certain circumstances:

> While a trial judge may have the right in certain instances in a civil case to make, or order made, a correction in the verdict of a jury, after discharge of the jury, *for the purpose of giving effect to what the jury unmistakably found*, that power is *limited strictly to cases where the jury has expressed their finding in an informal manner* but the Judge cannot, under the power of amending the verdict, invade the province of the jury or substitute his verdict for theirs.

Camden v. Hilton, 600 S.E.2d 88, 92 (S.C. App. 2004) (emphasis added), *citing Lorick & Lowrance, Inc. v. Julius H. Walker & Co.*, 150 S.E. 789, 792 (S.C. 1929). In addition, "[a]fter the amendment, the verdict must be not what the judge thinks it ought to have been, but *what the*



jury intended it to be." *Camden*, 600 S.E.2d at 88 (emphasis added), *citing Vinson v. Hartley*, 477 S.E.2d 715, 724 (S.C. App. 1996).

Here, I corrected the verdict form in precisely the manner and for the precise purpose noted above. Based on the verdict form itself and my colloquies with the jury, I entered judgment in accordance with "what the jury intended it to be." This was done after the jury had "expressed their finding in an informal manner" during my colloquies with it, as well as the verdict form itself. I remain convinced, as I have been throughout this matter, that the judgment accurately reflects the intent of the jury.

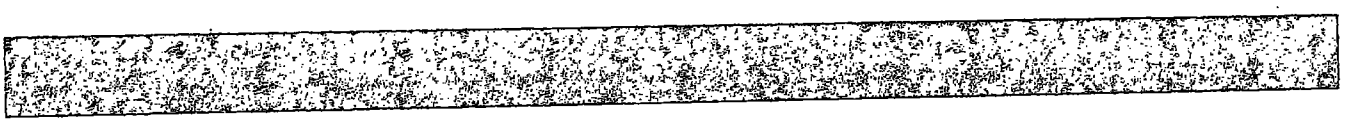
There remains the argument that I was required to grant Defendants the option of a new trial in correcting the jury's verdict. They contend this option must be given "[e]ven in the limited circumstances where a court can amend the verdict . . .." I disagree.

The rationale of the cases cited by Defendants is that a new trial option must be granted to the opposing party when a court changes the verdict from what the jury intended to something the judge deems more appropriate. The classic example of this is when a court grants a new trial *nisi remittitur* or *additur*. In these situations, the court changes the jury's intended verdict by decreasing or increasing it. That is not what happened in the present case. I did not invade the province of the jury to substitute my judgment for theirs.[2] Rather, I corrected the verdict form to conform the verdict to what the jury intended after consulting with the jury. Thus, there is no need or requirement to grant a new trial option to Defendants.[3]

---

[2] Contrary to Defendants' assertion, I did not effectively or otherwise grant Plaintiff's motion for a new trial *nisi additur*. I did not find that the jury's award was inadequate and thereafter require Defendants to suffer a higher award or take a new trial. Rather, I corrected the jury's verdict to conform it to what the jury intended. This rendered Plaintiff's *additur* motion moot, because that motion was defensively based on the assumption this court would alter the judgment under Defendants' post-trial motions.

[3] The cases cited by Defendants for the requirement of a new trial option are readily distinguished. Two cases involved the classic scenario of a trial court granting a new trial *nisi additur*. See *Waring v. Johnson*, 533 S.E.2d 906 (S.C. App. 2000) and *Graham v. Whitaker*, 321 S.E.2d 40 (S.C. App. 1984). That is not what happened here. The third case is a "zero verdict" case which, again, is not what happened here. *Stevens v. Allen*, 520 S.E.2d 625 (S.C.



Ground 3

Defendants renew their new trial motion based upon alleged error in admitting a temporary injunction order into evidence. In my July 14 Order, I ruled:

> The Defendants seek a new trial upon the ground that this Court erroneously admitted into evidence the temporary injunction issued before the trial of this case. The Defendants did not object to the reference to this injunction during testimony and, therefore, they cannot seek a new trial. Although the Defendants objected later to the introduction of the injunction into evidence, it was properly admitted to show what was in the record and that an injunction had been issued. The Defendants do not challenge my ruling on this ground in their motion and, therefore, there is a no basis for a new trial. At trial, the Defendants did not make the specific objections now asserted as a ground for new trial and, therefore, these grounds are improper and do not afford any basis for granting a new trial. In any event, these grounds are manifestly without merit.

(July 14 Order at 4). Relying on transcript page 268, Defendants now assert they objected at trial and restated their objection in their new trial motion. At page 268 is the following colloquy after Plaintiff moved the injunction order into evidence:

> [DEF. ATTY.]: I would object.
>
> THE COURT: I think subject to your earlier objection, is that fair enough, that I've already ruled upon?
>
> [DEF. ATTY.]: Yes.

App. 1999). The fourth case involved the return of a defense verdict after the defendant had admitted her negligence in causing an auto accident which, again, is not what happened here. *Vinson v. Hartley*, 477 S.E.2d 715 (S.C. App. 1996). (See Defs. Motion to Amend at pp. 2-3). None of these cases involved a correction of a verdict to reflect the jury's intent, with the correction having been made after and based upon discussions with the jury about its verdict.

This colloquy does not demonstrate any specific ground for any objection, nor does it demonstrate any error in my ruling in the July 14 Order. Accordingly, Defendants' motion is denied, and it is further denied for the reasons stated in my July 14 Order.

Ground 4

Defendants renew their new trial motion based upon alleged error in admitting the "McHenry [expert] report" into evidence. In my July 14 Order, I ruled:

> Grounds 3-5 of the Defendant's new trial motions go to the testimony of Daniel S. McHenry, the Plaintiff's damages analysis expert. As to the Report of Mr. McHenry (Ground 3), the only objection at trial was a general hearsay objection. I overruled this general objection, which was insufficient as a matter of law to present any objection, upon the ground that experts are permitted to base their opinion on hearsay if it is the type generally relied upon by experts. The Defendants never objected that the hearsay, to the extent there was any, was not this permissible type of hearsay. Their attempt to make this argument after trial (Ground 5) comes too late to present any proper ground for a new trial. Moreover, the Defendants' relevance and other arguments go to the weight of the evidence, not the admissibility of it.

(July 14 Order at pp. 4-5). Defendants now contend the context of their objection made the ground clear: "However, Defendants' hearsay objection was sufficient and preserves this issue for post trial review. State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001) (holding that specificity as to an objection is only required where ground is not apparent from the context of the discussion contained in the record)." (Motion to Amend at pp. 4-5, ¶ 4). Having been a participant in the "discussion contained in the record," it was not apparent to me that Defendants

were pursuing at trial the grounds they pursued after trial, nor have the Defendants pointed to anything "contained in the record" that should have made it apparent. Thus, the exception relied upon by Defendants does not apply and, therefore, their motion is denied for this reason and for the reasons in my July 14 Order. See *State v. New*, 526 S.E.2d 237, 239 (S.C. App. 1999) (the objection should be sufficiently specific to bring into focus the precise nature of the alleged error *so it can be reasonably understood by the trial court*); see also *State v. Rice*, 652 S.E.2d 409, 419 (S.C. App. 2007) (same; also noting transcript must make the ground for the objection apparent).

Ground 5

Defendants renew their new trial motion based upon alleged error in admitting Daniel McHenry as an expert on the valuation of PEO's. In my July 14 Order, I ruled:

> Mr. McHenry was not offered or accepted as an expert on PEO valuation. Rather, he was offered and accepted as an expert on the analysis of the damages suffered by the Plaintiff as a result of the Defendants' misconduct, *i.e.*, he evaluated the damages but did not value the company. His damage testimony was not based on a before-and-after valuation of the Plaintiff that attributed any reduction in value to the intervening conduct of the Defendants. The Defendants never objected at trial on the grounds they seek to interject now and, therefore, there is no basis for a new trial. More importantly, the Defendants do not seek a new trial on the ground that Mr. McHenry was not qualified to give the testimony he actually gave at trial, *i.e.*, an analysis and evaluation of the damages flowing from the Defendants' misconduct. Accordingly, there is no basis for a new trial based on this Court's decision to qualify Mr. McHenry as an expert. In any event, I find no prejudicial error in the admission of any of the foregoing evidence.

(July 14 Order at 5). Defendants now contend that "when Mr. McHenry was offered as an expert, the Court specifically asked Plaintiff's counsel if this expert was being offered 'on evaluation of P.E.O.'s' and was told 'yes.'" (Motion to Amend at 5, ¶ 5, quoting Transcript p. 287). Defendants have mistakenly misquoted page 287 of the transcript. During Plaintiff's examination of Mr. McHenry, counsel asked: "Have you been retained by Allegro to provide a damage assessment in this case?" to which Mr. McHenry replied "yes." Immediately thereafter, the following colloquy took place between this Court and Plaintiff's counsel:

> [PL. ATTY.]: Your Honor, at this point I would move to have Mr. McHenry qualified as an expert to testify in this case.
>
> THE COURT: On evaluation of P.E.O.s?
>
> [PL. ATTY.]: On the damages.
>
> THE COURT: Which goes to the evaluation of P.E.O.s?
>
> [PL. ATTY.]: Yes.

(Tr. Transcript p. 287) (emphasis added). Contrary to Defendants' mis-quotation of the transcript (shown by the above-underlined language), the transcript clearly shows that Plaintiff offered Mr. McHenry as a damages expert, not a valuation expert. Also contrary to Defendants' current motion, nothing in the transcript indicates Defendants raised at trial the objections being pursued by post-trial motion. Moreover, as noted in my July 14 Order and not challenged here, Mr. McHenry did not give any "valuation" testimony; rather, he testified to damages only. Accordingly, Defendants' current motion is denied for these reasons and for the reasons set forth in my July 14 Order.

Ground 6

Defendants renew their JNOV motion on Plaintiff's contract claims, contending Plaintiff failed to prove the terms of the contract and a breach of those terms. In my July 14 Order, I ruled:

> The Defendants' directed verdict motion on the breach of contract claim was limited to the argument that there was no employee handbook, no employment agreement, and no non-compete agreement. Thus, the arguments based on a failure to prove the terms of the contract or a breach thereof cannot be the basis of a JNOV motion. In any event, I find there was sufficient evidence to present these matters to the jury. This leaves only the "existence of contract" ground, which is denied because there was sufficient evidence to present this matter to the jury.
>
> The Defendants' directed verdict motion on the breach of contract accompanied by a separate fraudulent act claim was also limited to the argument that there was no employee handbook, no employment agreement, and no non-compete agreement. Thus, the arguments based on a failure to prove fraudulent intent or an accompanying fraudulent act cannot be the basis of a JNOV motion. In any event, there was sufficient evidence to submit this claim to the jury.

(July 14 Order at p. 2). Defendants now contend that the handbook, etc. language used in the directed verdict motions was merely by way of example and "*[i]mplicit in the argument* that no contract has been established is the claim that the terms of the contract or the breach of the contract have not been established." (Motion to Amend at p. 6, ¶ 6) (emphasis added).

A directed verdict motion "shall state the *specific grounds therefor.*" Rule 50(a), SCRCP (emphasis added). Implicit arguments do not satisfy the "specific grounds" requirement of Rule 50(a). Moreover, in seeking a directed verdict, the moving party must argue which element(s) of a cause of action are not supported by the evidence, something Defendants did not do here with any specificity. *Hendrix v. Eastern Distrib., Inc.*, 446 S.E.2d 440, 446 (S.C. App. 1994)("It was incumbent upon Eastern to argue specifically which element of breach of contract accompanied by a fraudulent act was not established to give the trial court the opportunity to rule on the point.") (emphasis added), *aff'd*, 464 S.E.2d 112 (S.C. 1995) (vacating opinion to extent it ruled on merits of issues not preserved for appeal). For all of these reasons, and for the reasons set forth in my July 14 Order, Defendants' motion is denied.[4]

Ground 7

Defendants again raise the JNOV question of whether there was sufficient evidence to satisfy the "clear and convincing evidence" burden of proof. This question was never raised in their directed verdict motion and, therefore, it cannot be the basis of a JNOV motion. Defendants contend, however: "*Implicit in the argument* that there was insufficient evidence, is the claim that the evidence did not rise to the applicable [clear and convincing] standard. (Motion to Amend at p. 7, ¶ 7). As noted earlier, "implicit" arguments are insufficient under the "specific ground" requirement of Rule 50(a), SCRCP and *Hendrix, supra*. Accordingly, Defendants motion is denied for these reasons and for the reasons set forth in my July 14 Order.

[4] Defendants also again raise the issue of whether the verdict form identified a fraudulent act. To the extent this attack is based upon the jury's use of the word "intent," I again find Defendants' failure to raise this issue prior to dismissal of the jury was a waiver of the error. To the extent Defendants contend the act found by the jury was not a separate fraudulent act, I again disagree as I did in my July 14 Order.

Ground 8

Here, Defendants raise three issues regarding the conspiracy claim. First, they contend they made a directed verdict on the question of special damages, *i.e.*, whether Plaintiff suffered damages from the conspiracy that differed from the damages caused by the other claims. Defendants correctly note that they moved for a directed verdict on this ground at the close of Plaintiff's case. It is firmly established, however, that such is insufficient to support a post-verdict JNOV motion unless the moving party renewed this ground at the close of all the evidence. *Hendrix*, 446 S.E.2d at 442. Although Defendants made a directed verdict motion on some grounds at the close of the evidence, they never renewed their prior motion and never argued this "special damage" issue at the close of the evidence. Accordingly, there can be no JNOV motion on this ground. *Id.* ("The rule that a judgment notwithstanding the verdict may not be granted unless the moving party moved for a directed verdict at the close of all the evidence is *a strict one.*") (emphasis added). In any event, there was sufficient evidence to submit this issue to the jury and, therefore, there is no basis for granting a directed verdict or JNOV.

Second, Defendants contend their directed verdict motion included the issue of "actual malice." They argue that their "intent to harm" argument "*necessarily includes* the position that the actual malice standard had not been met." (Motion to Amend at pp. 7-8) (emphasis added). This is another "implicit" argument that is insufficient under the "specific ground" requirement of Rule 50(a), SCRCP and *Hendrix, supra*. Moreover, research does not reveal any South Carolina case making "actual malice" an element of conspiracy, and Defendants have cited none.

Third, Defendants challenge my denial of their request for a new trial based on there being no finding by the jury of actual malice to support an award of punitive damages under the

conspiracy claim.[5] They sought a new trial because "there is no indication that the jury found that Defendants acted with actual malice, as is required to support an award of punitive damages." (Post-Trial Motion at 12, ¶ 12). As I held in my July 14 Order:

1. There was no request to charge the jury that "actual malice" was a necessary finding to award punitive damages for conspiracy, nor was any such charge given, nor was any objection made to any failure to give such a charge.

2. The verdict form did not mention actual malice or require the jury to answer any such question, and Defendants did not request any such question be included in the verdict form, nor did they object to the failure to include any such question on the verdict form.

3. Accordingly, there can be no issue regarding the failure of the jury to find actual malice in support of an award for punitive damages for the conspiracy claim.

(See July 14 Order at pp. 6-7). This remains my ruling.

Defendants challenge my further ruling that "actual malice" is not required to support an award of punitive damages in a civil conspiracy case. They cite the Court of Appeals' decision in *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 483 S.E.2d 789 (S.C. App. 1997), *aff'd in part and rev'd in part*, 514 S.E.2d 126 (1999).[6] I find *Swinton Creek* is not controlling for the following reasons:

1. The issue in *Swinton Creek* was whether the trial court erred in granting a directed verdict against the plaintiffs on their conspiracy claim. The Court of Appeals affirmed

[5] Defendants did not make a JNOV motion on punitive damages for the conspiracy claim based on there being no actual malice. As to the conspiracy claim, their JNOV motion claimed the evidence was insufficient "for the jury to render a verdict that [Defendants] engaged in a civil conspiracy." (Post-Trial Motion at 8-9, ¶ 15). As to punitive damages, their only JNOV motion was that the evidence "did not meet the standard of clear and convincing evidence to support such an award." (Post-Trial Motion at 9, ¶ 16).

[6] The Supreme Court's subsequent ruling in *Swinton Creek* sheds no light on this issue, because it did not grant certiorari on the conspiracy claim.

this ruling. Thus, the discussion of the punitive damages issue in an appended footnote was *dicta*, it being manifest that there could be no claim for punitive damages absent a viable cause of action for actual damages under a conspiracy claim. See 483 S.E.2d at 438-439 & n.6.

2. No other South Carolina case has held that "actual malice" is a prerequisite to an award of punitive damages for civil conspiracy, nor has any other South Carolina case held "actual malice" was relevant in any way to a civil conspiracy case.

3. To support the *dicta* in *Swinton Creek*, which appeared in a footnote, the Court of Appeals cited *Jones v. Garner*, 158 S.E.2d 909, 914 (S.C. 1968) and quoted it: "While *implied malice* will support an award of actual damages, punitive damages cannot be recovered in the absence of proof of *actual malice*." 483 S.E.2d at 439 n.6 (emphasis added). *Jones* was a defamation case against a newspaper, which necessarily involved questions of "implied malice" and "actual malice." The Supreme Court there defined actual malice: ". . . the defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff, or that the statements were published with such recklessness as to show a conscious indifference toward plaintiff's rights." 158 S.E.2d at 914.

I do not believe the Court of Appeals intended to incorporate the defamation concept of "actual malice" into the law of conspiracy.

In any event, assuming the Court so intended, my charge to the jury sufficiently instructed the jury on the proper standard for punitive damages (even under *Swinton*): "Punitive damages are awarded only if you find by clear and convincing evidence that the wrong committed by the Defendants was done willfully, wantonly or *maliciously*. Willful, wanton or



malicious conduct signifies the conscious knowing, doing of a wrongful act without just cause or excuse." (Trial Tr. p. 569) (emphasis added). I further charged the jury that the purpose of punitive damages was to vindicate a right that had been "recklessly, willfully or *maliciously* invaded." (Id. at 571) (emphasis added). Thus, my charge included the Supreme Court's definition of "actual malice" as stated in *Jones, supra,* which was the authority relied upon by the Court of Appeals in *Swinton, supra.* The jury therefore found "actual malice" as defined in *Jones* when it awarded punitive damages under the instructions received from me.

Conclusion

The principal issue here is whether I erred in entering judgment that corrected the verdict form. I was convinced at the time I entered judgment that it accurately reflected the intent of the jury based upon the verdict form itself and my colloquies with the jury. I remain convinced of this. Accordingly, for all of the foregoing reasons, and for the reasons set forth in my July 14 Order, Defendants' motion to alter or amend is denied.

IT IS SO ORDERED.

L. Casey Manning, Judge
Fifth Judicial Circuit

April 5
December ___, 2009
Columbia, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

Allegro, Inc.

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO 04 -CP-40-1915

George Corbin
Emmett J. Scully
Syracuse Ind.
Yvonne Yarbrough

DEFENDANT(S)

CHECK ONE:

[X] **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

[ ] **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[ ] **ACTION DISMISSED** (*CHECK REASON*): [ ] Rule 12(b), SCRCP; [ ] Rule 41(a), SCRCP (Vol. Nonsuit); [ ] Rule 43(k), SCRCP (Settled); [ ] Other _____.

[ ] **ACTION STRICKEN** (*CHECK REASON*): [ ] Rule 40(j) SCRCP; [ ] Bankruptcy; [ ] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [ ] Other _____.

IT IS ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by the Court:
The jury awarded the plaintiff $1,760,000 in actual damages and $250,000 in punitive damages for a total of $2,010,000.00. Parties have 10 days to file post-trial motions.

Dated at Columbia, South Carolina, this 5th day of May, 20 06.

PRESIDING JUDGE

This judgment was entered on the ___ day of _____, 20___, and a copy mailed first class this ___ day of _____, 20___ to attorneys of record or to parties (when appearing pro se) as follows.

Richard J. Morgan

ATTORNEY(S) FOR THE PLAINTIFF(S)

Amy L. Gaffney

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

SCRCP APP. 21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case Number 04-CP-40-1915
Allegro, Inc.	)	
	)	
Plaintiff,	)	**PLAINTIFF'S REQUEST FOR SPECIAL VERDICT FORMS**
	)	
vs.	)	
	)	
Emmett J. Scully, Synergetic, Inc., George Corbin and Yvonne Yarborough,	)	
	)	
Defendants.	)	

Plaintiff Allegro, Inc. (hereinafter "Allegro") moves and/or requests that the Court issue or use Special Verdict Forms as follows:

We, the jury, find as follows:

The Jury finds for Allegro on all claims. ✓

If you find for Allegro on all claims, please answer Questions 2, 4, 6, 8, 10, 12, 14, 16, 18, 20 and 22, and have the jury foreperson sign and date this form.

ON PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF LOYALTY AGAINST DEFENDANT SCULLY

1. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the duty of loyalty owed to Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 2; if "No," proceed to Question No. 3.

2. If you answered "Yes" to Question No. 1, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $ 160,000, one hundred sixty thousand dollars, compensatory damages in the amount of $ 0, zero dollars, and punitive damages in the amount of $ 0, zero dollars.

COLUMBIA 842621-1

ON PLAINTIFF'S CLAIM FOR VIOLATION OF S.C. CODE SECTION 33-8-420(a) AGAINST DEFENDANT SCULLY

3. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully violated S.C. Code Section 33-8-420(a)?

Yes ✓ No ____

If "Yes," proceed to Question No. 4; if "No," proceed to Question No. 5.

4. If you answered "Yes" to Question No. 3, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand dollars, compensatory damages in the amount of $0, zero dollars, and punitive damages in the amount of $0, zero dollars.

ON PLAINTIFF'S CLAIM FOR BREACH OF COMMON LAW FIDUCIARY DUTY AGAINST DEFENDANT SCULLY

5. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the common law fiduciary duty owed to Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 6; if "No," proceed to Question No. 7.

6. If you answered "Yes" to Question No. 5, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand dollars, compensatory damages in the amount of $0, zero dollars, and punitive damages in the amount of $0, zero dollars.

ON PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT WITH FRAUDULENT INTENT AGAINST DEFENDANT SCULLY

7. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the contract with Allegro, and that this breach was accompanied with fraudulent intent and accompanied by a separate fraudulent act that was closely related to the breach of contract?

Yes ✓ No ____

If "Yes," that fraudulent act was (insert the fraudulent act): Hope intent to establishing his own company somewhere while still enabled employment with Allegro.

If "Yes," proceed to Question No. 8; if "No," proceed to Question No. 9.

8. If you answered "Yes" to Question No. 7, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT AGAINST DEFENDANT SCULLY

9. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the contract with Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 10; if "No," proceed to Question No. 11.

10. If you answered "Yes" to Question No. 9, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars.**

ON PLAINTIFF'S CLAIM FOR FRAUD AGAINST DEFENDANT SCULLY

11. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein, upon which Allegro relied, constituted fraud?

Yes ✓ No ____

If "Yes," proceed to Question No. 12; if "No," proceed to Question No. 13.

12. If you answered "Yes" to Question No. 11, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

COLUMBIA 842621v1

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand dollars, compensatory damages in the amount of $ 0, zero dollars, and punitive damages in the amount of $ 0, zero dollars.

ON PLAINTIFF'S CLAIM FOR GROSS NEGLIGENCE
AGAINST DEFENDANT SCULLY

13. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein constituted gross negligence?

Yes ✓ No ____

If "Yes," proceed to Question No. 14; if "No," proceed to Question No. 15.

14. If you answered "Yes" to Question No. 13, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand dollars.

ON PLAINTIFF'S CLAIM OF NEGLIGENT MISREPRESENTATIONS
AGAINST DEFENDANT SCULLY

15. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein constituted negligent misrepresentation?

Yes ✓ No ____

If "Yes," proceed to Question No. 16; if "No," proceed to Question No. 17.

16. If you answered "Yes" to Question No. 15, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand dollars, compensatory damages in the amount of $ 0, zero dollars, and punitive damages in the amount of $ 0, zero dollars.

ON PLAINTIFF'S CLAIM FOR VIOLATION OF S.C. CODE SECTION 33-8-310 AGAINST DEFENDANT SCULLY

17. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully violated S.C. Code Section 33-8-310?

Yes ✓ No ____

If "Yes," proceed to Question No. 18; if "No," proceed to Question No. 19.

18. If you answered "Yes" to Question No. 17, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF LOYALTY AGAINST DEFENDANT YARBOROUGH

19. ~~Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Yarborough~~ breached the duty of loyalty owed to Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 20; if "No," proceed to Question No. 21.

20. If you answered "Yes" to Question No. 1, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $75,000, seventy-five thousand **dollars.**

ON PLAINTIFF'S CLAIM FOR CIVIL CONSPIRACY AGAINST DEFENDANTS SCULLY, CORBIN AND YARBOROUGH

21. Has the Plaintiff proven, by a preponderance of the evidence, that Defendants Scully, Corbin and Yarborough's actions herein constituted civil conspiracy?

Yes ✓ No ____

If "Yes," proceed to Question No. 22.

22. If you answered "Yes" to Question No. 21, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $_____ **dollars, and punitive damages in the amount of** $175,000, one hundred seventy five thousand **dollars.**

Foreperson

Dated: 5/15/06

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)) ALLEGRO, INC.)) PLAINTIFF,)) v.)) EMMETT J. SCULLY, SYNERGETIC, INC., GEORGE CORBIN, AND YVONNE YARBOROUGH,)))) DEFENDANTS.)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO:_____ **COMPLAINT** **(Jury Trial Demanded As Set Forth Herein)**

TO: THE DEFENDANTS NAMED ABOVE:

The Plaintiff, complaining of the Defendants, respectfully requests a trial by jury on the following common law causes of action and would allege and show unto the court as follows:

1. The Plaintiff, Allegro, Inc. ("Allegro") is a corporation organized under the laws of the State of South Carolina and is authorized to conduct and does conduct business in the State of South Carolina.

2. The Defendant, Emmett J. Scully, ("Scully"), is a resident of and conducts business in Richland County in the State of South Carolina.

3. The Defendant, Synergetic, Inc., ("Synergetic") is a corporation organized under the laws of the State of South Carolina and is authorized to conduct and does conduct business in the State of South Carolina.

4. The Defendant, Yvonne Yarborough, ("Yarborough"), is a resident of Richland County, South Carolina.

5. The Defendant, George Corbin, ("Corbin") is upon information and belief the Chief Financial Officer of Merritt Veterinary Supplies, Inc., a corporation that is authorized to conduct and is conducting business in Richland County, South Carolina.

6. The Court has personal jurisdiction over the parties, subject matter jurisdiction over this action, and venue is proper in this Court.

7. Allegro is a professional employer organization (PEO), otherwise known in the public as an employee leasing Company.

8. Mary Etta McCarthy is the owner and principal shareholder of Allegro.

9. From on or about August 1998, until his resignation effective on or about February 23, 2004, Scully served as the President of Allegro.

10. Scully had and continues to have an ownership interest in Allegro, beginning with a 30% ownership interest in 1998 and owning 49% of Allegro as of the date of his resignation.

FOR A FIRST CAUSE OF ACTION
(Breach of the Duty of Loyalty Against Scully)
(Jury Trial Demanded)

11. Plaintiff realleges Paragraphs 1 through 10 as if fully stated herein.

12. Plaintiff employed Scully (who had served as President and as a member of the Board of Directors with Allegro) from on or about August 1998, until his resignation as an employee, officer and director of Allegro effective on or about February 23, 2004.

13. During his employment with Allegro, Scully had all of the powers and authority normally exercised by the President of a Company, including but not limited to,

hiring and firing employees, marketing, contact with Plaintiff's customers and clients, and other powers as set forth in the corporation's by-laws.

14. As the President and pursuant to the Plaintiff's and Scully's employment relationship, Scully was responsible, both directly and indirectly, for all aspects of the Corporation's business and fully was authorized to take whatever reasonable and prudent actions that were in Allegro's best interests.

15. Scully failed and/or refused to perform and/or satisfy his contractual, common law, and statutory responsibilities and duties.

16. The Plaintiff alleges that on several occasions McCarthy advised, counseled, and instructed Scully of: (1) Allegro's reasonable expectations regarding Scully's job performance; (2) Allegro's policies, practices, and procedures regarding, among other issues, all aspects of management and accounting; (3) Scully's repeated failure and/or refusal to act in the best interests of Allegro and otherwise satisfy Allegro's expectations; and (4) the likely consequences of Scully's continued failure and/or refusal to improve his job performance, satisfy Allegro's reasonable expectations, and act in the best interests of Allegro.

17. Beginning in or about April 2003, Scully informed McCarthy that he desired to buy out her shares in Allegro, and failing in that he was going to set up his own business directly competing against Allegro in or around Richland County, South Carolina and that he would take Allegro's client with him.

18. During the period on or before April 2003, and continuing until the date of his resignation from Allegro, Scully consulted with Corbin concerning his plans to buy out McCarthy's interest in Allegro.

19. During the period on or before April 2003, and continuing until the date of his resignation from Allegro, Plaintiff alleges, on information and belief, that Scully also informed Corbin of his plans to start his own business to compete with Allegro if he was unsuccessful in purchasing McCarthy's shares.

20. Despite Allegro's repeated, good faith efforts to advise, counsel, correct, and/or listen to Scully's business proposals, Scully took advantage of his position as President of Allegro and discussed his plans with existing and potential clients, specifically inviting one potential Allegro client to do business with him when he set up his new business as set forth in the attached affidavit, that these discussions took place while being paid by Allegro and, in fact, was paid by Allegro for the time spent in setting up his competing business.

21. . During the time that he was President of Allegro, Scully engaged in and/or authorized imprudent, unreasonable, and/or otherwise risky business practices that were contrary to the Allegro's policies, practices, and procedures and further were contrary to widely-accepted industry standards including but not limited to, on information and belief, providing or attempting to provide legal advice to customers.

22. Scully breached the common law duty of loyalty that Scully owed to Allegro by engaging in the aforementioned actions, omissions, and/or misconduct, which include multiple instances of self-dealing, engaging in conflicts of interest, nondisclosure of material facts and transactions, and otherwise acting in furtherance of Scully's own personal interests and in complete disregard for Allegro's best interests.

23. Allegro never advised, sanctioned, instructed, or authorized Scully to engage in any of the aforementioned actions, omissions, and/or misconduct.

24. Scully's aforementioned actions, omissions, and/or misconduct harmed Allegro's financial position, image, and reputation in the business community and were directly adverse, contrary to, and violative of widely-accepted industry standards, applicable legal regulations, and Allegro's instructions, policies, practices, procedures, and overall business philosophy.

25. All employees in South Carolina owe their employer a duty of loyalty.

26. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's breach of the duty of loyalty and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing Against Scully)
(Jury Trial Demanded)

27. Plaintiff realleges Paragraphs 1 through 26 as if fully stated herein.

28. Scully owed Allegro an implied duty to deal fairly, act in good faith, and otherwise perform all actions that, according to reason and justice, were necessary, reasonable, prudent, and proper in satisfying Scully's duties to Allegro, pursuant to his employment with Allegro and consistent with Allegro's by-laws.

29. Scully breached the duty of good faith and fair dealing that the Plaintiff owed to Allegro, as Scully repeatedly acted in bad faith toward and dealt unfairly with Allegro by engaging in the aforementioned actions, omissions, and/or misconduct.

30. Plaintiff is entitled to the actual damages that they suffered as a result of Scully's breach of the covenant of good faith and fair dealing.

FOR A THIRD CAUSE OF ACTION
(Violation of South Carolina Code Section 33-8-420(a) Against Scully)
(Jury Trial Demanded)

31. Plaintiff realleges Paragraphs 1 through 30 as if fully stated herein.

32. From at least at least on or about August 1998, through the effective date of Scully's February 23, 2004, resignation from Allegro, Scully served as a duly appointed Officer of Allegro and was required to perform all duties set forth in the by-laws, as well as all duties that the Board of Directors required him to perform.

33. Allegro's Bylaws and Allegro's Board of Directors vested Scully with discretionary authority to discharge his aforementioned duties.

34. South Carolina Code Section 33-8-420(a) requires an officer with discretionary authority to discharge his duties under that authority: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders.

35. Scully's aforementioned actions, omissions, and/or misconduct violated S.C. Code Section 33-8-420(a), as the Plaintiff, in his role as an Officer: (1) acted in bad faith; (2) failed and/or refused to act with the care that an ordinarily prudent person in a like position would have exercised under similar circumstances; and (3) failed and/or refused to act in a manner that he reasonably believed was in the best interests of Allegro.

36. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of the Plaintiff's violation of S.C. Code Section 33-8-420(a) and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION
(Breach of Common Law Fiduciary Duty Against Scully)
(Jury Trial Demanded)

37. Plaintiff realleges Paragraphs 1 through 36 as if fully stated herein.

38. Pursuant to Scully's position as an officer with Allegro, Scully owed Allegro a common law fiduciary duty that required Scully to act reasonably, prudently, in good faith, and to fully disclose to Allegro's Board of Directors all relevant facts to Allegro prior to and/or upon entering into any transaction and/or conducted any business on behalf of Allegro.

39. Scully breached the common law fiduciary duty that he owed to Allegro by engaging in the aforementioned actions, omissions, and misconduct, which include multiple instances of self-dealing, engaging in conflicts of interest, nondisclosure of material facts and transactions to the Allegro's Board of Directors, and otherwise acting in furtherance of his own personal interests and in complete disregard of Allegro's best interests.

40. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's breach of a common law fiduciary duty and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR A FIFTH CAUSE OF ACTION
(Breach of Contract With Fraudulent Intent Against Scully)
(Jury Trial Demanded)

41. Plaintiff realleges Paragraphs 1 through 40 as if fully stated herein.

42. Scully's aforementioned actions, omissions, and/or misconduct materially breached the terms and conditions of the employment relationship by and between Scully and Allegro.

43. Scully's breach of the terms and conditions of the employment relationship was accompanied with fraudulent intent and accompanied by a separate fraudulent act that closely was related to the breach of contract, as Scully, upon

information and belief, dishonestly, unfairly, and fraudulently used his position with Allegro to advance his own personal, financial, and other interests and/or the interests of his friends, family, and personal associates, while intentionally and knowingly harming Allegro's financial position, image, and reputation in the business community by engaging in those acts.

44. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's breach of contract with fraudulent intent and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR A SIXTH CAUSE OF ACTION
(Breach of Contract Against Scully)
(Jury Trial Demanded)

45. Plaintiff realleges Paragraphs 1 through 44 as if fully stated herein.

46. Scully's aforementioned actions, omissions, and/or misconduct materially breached the terms and conditions of his employment relationship/contract.

47. Plaintiff is entitled to the actual damages that it suffered as a result of Scully's breach of contract.

FOR A SEVENTH CAUSE OF ACTION
(Fraud Against Scully)
(Jury Trial Demanded)

48. Plaintiff realleges Paragraphs 1 through 47 as if fully stated herein.

49. Prior to entering into the agreement to become President of Allegro and the agreement whereby McCarthy reduced the percentage of shares in the Corporation and increased Scully's shares so that at the time of his resignation he held forty-nine percent (49%) of the outstanding shares of Allegro, Scully represented to and ensured Allegro that he fully was capable of and indeed would satisfy all of the duties required by

these agreements, Allegro's Bylaws, and Allegro's Board of Directors and further represented to the Plaintiff that Scully caused and/or required (and would continue to cause and/or require) Allegro to operate pursuant to reasonable and prudent business standards that were acceptable within the industry and to Allegro's management.

50. Scully's aforementioned representations were false and material to Allegro's execution of these agreements.

51. At the time of the representations, Scully either knew that his aforementioned representations were false, or Scully recklessly disregarded the representations' truth or falsity.

52. Scully intended for the Plaintiff to rely on his aforementioned representations.

53. Despite Allegro's reasonable and diligent efforts to discover otherwise, Allegro completely was unaware of the falsity of Scully's aforementioned representations.

54. The Plaintiff reasonably and rightfully relied on Scully's aforementioned representations.

55. Scully's aforementioned representations consequently and proximately caused the Plaintiff to suffer harm and injuries as described herein.

56. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's fraud and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR AN EIGHTH CAUSE OF ACTION
(Gross Negligence Against Scully)
(Jury Trial Demanded)

57. Plaintiff realleges Paragraphs 1 through 56 as if fully stated herein.

58. Throughout his employment, Scully owed the Plaintiff common law and statutory fiduciary duties, express contractual duties, a duty of loyalty, a duty to act in good faith, and a duty to deal fairly with the Plaintiff.

59. These duties required Scully to, among other things, abide by and follow the instructions and policies promulgated by the Plaintiff, the Plaintiff's Bylaws, and the Plaintiff's Board of Directors, as well as the provisions and covenants contained in agreements he signed, and to refrain from acts and/or behavior that would adversely affect the Plaintiff.

60. Scully breached these duties as he intentionally and consciously failed to exercise even a slight degree of care with his actions, omissions, and/or misconduct toward the Plaintiff.

61. Scully's behavior and/or actions proximately caused harm and injury to the Plaintiff's financial position, image, and reputation in the business community.

62. Scully's aforementioned behavior and/or actions constitute gross negligence.

63. Plaintiff is entitled to the actual damages that it suffered as a result of Scully's gross negligence.

FOR A NINTH CAUSE OF ACTION
(Negligent Misrepresentations Against Scully)
(As Alternative to Fraud Counterclaim(s))
(Jury Trial Demanded)

64. Plaintiff realleges Paragraphs 1 through 63 as if fully stated herein.

65. Prior to entering into the employment relationship with Allegro and signing various agreements, Scully represented to and ensured the Plaintiff that he fully was capable of, and indeed would satisfy, all of the duties inherent in the relationship as an employee, an officer, and director, as required by the aforementioned agreements, the Plaintiff's By-laws, and the Plaintiff's Board of Directors and further represented to the Plaintiff that he caused and/or required (and would continue to cause and/or require) Allegro to operate pursuant to reasonable and prudent banking standards that were acceptable within the industry and to Allegro's management.

66. Scully's aforementioned representations were false.

67. Scully had a pecuniary interest in making the representations.

68. Scully owed a duty of care to the Plaintiff to ensure that he communicated truthful information to the Plaintiff.

69. Scully breached this duty by failing to exercise due care.

70. Plaintiff justifiably relied on Scully's aforementioned representations.

71. Plaintiff suffered a pecuniary loss as the proximate result of its reliance on Scully's aforementioned representations.

72. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's negligent misrepresentations and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR A TENTH CAUSE OF ACTION
(Violation of South Carolina Code Section 33-8-310 Against Scully)
(Jury Trial Demanded)

73. Plaintiff realleges Paragraphs 1 through 72 as if fully stated herein.

74. Scully, in his role as an Officer and/or Director with Allegro, created and/or engaged in impermissible conflicts of interest by having a direct and/or indirect personal, familial, and/or financial interest in various transactions, including but not limited to those transactions involved with hiring his wife, giving himself raises and other transactions.

75. Scully never timely disclosed, or even attempted to timely disclose, his interest in and the material facts of any of the aforementioned transactions to the Plaintiff's Board of Directors, to any committee of the Plaintiff's Board of Directors, or to any other committee that could have authorized, approved, and/or ratified any of the aforementioned transactions.

76. Neither a disinterested majority of the Plaintiff's Board of Directors nor any authorized committee of any kind authorized, approved, and/or ratified any of the aforementioned transactions by taking an affirmative vote and/or any other measure.

77. None of the aforementioned transactions were fair to the Plaintiff, as Scully would have demanded more favorable terms and/or conditions on each of the aforementioned transactions, if Scully properly had disclosed the transactions to the Plaintiff prior to entering into them.

78. Scully's aforementioned actions, omissions, and/or misconduct violated S.C. Code Section 33-8-310, as Scully, in his role as an Officer and/or Director with the Plaintiff, created and/or engaged in impermissible conflicts of interest by having a direct and/or indirect personal, familial, and/or financial interest in various transactions, including but not limited to those transactions described more fully herein.

79. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's violation of S.C. Code Section 33-8-310 and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR AN ELEVENTH CAUSE OF ACTION
(Breach of the Duty of Loyalty Against Yarborough)
(Jury Trial Demanded)

80. Plaintiff realleges Paragraphs 1 through 79 as if fully stated herein.

81. Plaintiff employed Yarborough from on or about February 2000, until her resignation as an employee of Allegro on or about March 1, 2004.

82. During her employment with Allegro, Yarborough had access to information and data bases with Plaintiff's customer information, had contact with customers and clients and other duties providing her access to confidential business information of the Plaintiff.

83. As an employee of Allegro, Yarborough was required to take reasonable and prudent actions that were in Allegro's best interests.

84. Upon information and belief, Plaintiff alleges that Yarborough was aware of Scully's plans to set up a competing business with Allegro.

85. Upon information and belief, Plaintiff alleges that Yarborough assisted Scully during her employment with Allegro to help set up Scully's competing business, performed those duties while being paid by Allegro, and in fact, was paid by Allegro for the time spent assisting Scully in setting up his competing business.

86. On the day of her resignation and after accepting a position with Synergetic, Inc., Yarborough e-mailed various personnel reports concerning Merritt Veterinary Supplies, Inc. to a Joan Gathers, and thereafter deleted the e-mail in an

attempt to cover-up the transaction, for the express purpose of assisting Scully and Synergetic in securing information concerning an Allegro Customer.

87. Yarborough breached the common law duty of loyalty that Yarborough owed to Allegro by engaging in the aforementioned actions, omissions, and/or misconduct, which include engaging in conflicts of interest, nondisclosure of material facts and transactions, and otherwise acting in furtherance of Yarborough's own personal interests and in complete disregard for Allegro's best interests.

88. Allegro never advised, sanctioned, instructed or authorized Yarborough to engage in any of the aforementioned actions, omissions, and/or misconduct.

89. Yarborough's aforementioned actions, omissions, and/or misconduct harmed Allegro's financial position, image, and reputation in the business community and were directly adverse, contrary to, and violative of widely-accepted industry standards, applicable legal regulations, and to Allegro's instructions, policies, practices, procedures, and overall business philosophy.

90. All employees in South Carolina owe their employer a duty of loyalty.

91. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Yarborough's breach of the duty of loyalty and is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR A TWELFTH CAUSE OF ACTION
(Violation of South Carolina Code Section 41-10-10, et seq.,
Against Scully and Yarborough)
(Jury Trial Demanded)

92. Plaintiff realleges Paragraphs 1 through 91 as if fully stated herein.

93. Defendant Scully's and Yarborough's disloyal acts to include, but not limited to, soliciting existing customers, soliciting potential customers, and/or using

Allegro resources and personnel to set up competing business, require forfeiture of compensation during the entire period of disloyal acts.

94. Said acts of disloyalty were in bad faith, with no reasonable good faith basis entitling Plaintiff, in addition to the forfeiture of their wages during the periods of disloyalty, a trebling of the award and its attorneys' fees.

FOR A THIRTEENTH CAUSE OF ACTION
(Civil Conspiracy Against Scully, Corbin and Yarborough and Synergetic)
(Jury Trial Demanded)

95. Plaintiff realleges Paragraphs 1 through 94 as if set forth herein.

96. In or about April 2003, Scully advised McCarthy of his desire to buy out her shares and ownership interest in Allegro.

97. Plaintiff discovered after Scully's resignation that Scully had been using the Plaintiff's computer system to include e-mails to communicate with George Corbin about his plans to either buy out McCarthy and/or set up a competing business.

98. Corbin was aware of Scully's plan to either buy out McCarthy and/or set up a competing business to Allegro before April 2003.

99. Corbin acted as a confidant to and provided advice to Scully to assist Scully in his plan to either buy out McCarthy and/or set up a competing business with Allegro.

100. Upon information and belief, Corbin's intimate knowledge of and involvement with Scully's plans included his agreement to deliver the Merritt Veterinary Services to Scully's new business Synergetic.

101. Within four business days of Scully leaving Allegro, Corbin sent Allegro a letter on behalf of his employer Merritt Veterinary Services, Inc. of cancellation of their

contract with Allegro and, thereafter, followed up with a request that certain information be sent to Synergetic as Merritt's new PEO.

102. During her employment with Allegro and while on Allegro's time and while receiving pay from Allegro, Yarborough assisted Scully in setting up his new business, Synergetic, to include, but not limited to, the gathering and forwarding customer information to persons outside of Allegro.

103. Upon information and belief, these electronic messages contained trade secret and other proprietary information including, but not limited to, customer personnel information, and other protected confidential information owned by the Plaintiff.

104. Yarborough transferred the aforementioned protected information in anticipation of her resignation.

105. Yarborough resigned her employment with the Plaintiff on or about March 1, 2004.

106. Yarborough was thereafter employed by, and remains employed with Synergetic whose business includes, but is not limited to, providing PEO services.

107. Synergetic is comprised of several of the Plaintiff's former employees, including but not limited to, Scully, Yarborough and Lisa Millikin .

108. Upon information and belief, Scully and/or Yarborough conspired with each other and one or more of the Plaintiff's customers to misappropriate trade secrets and other protected confidential information from the Plaintiff for their own advantage and to enable Scully and Yarborough to directly compete with the Plaintiff.

109. Scully and his co-conspirators misappropriated the Plaintiff's protected and confidential information specifically intending to harm the Plaintiff.

110. As a result of Scully, Yarborough, Corbin and Synergetic's conduct the Plaintiff has incurred substantial damages.

111. Scully, Yarborough, Corbin, and Synergetic's misconduct entitles the Plaintiff to compensation for the actual and compensatory damages that it has sustained and the Plaintiff is also entitled to an award of punitive damages in an amount to be determined by a jury.

WHEREFORE, the Plaintiff hereby requests a jury determination of the issues raised in the common law causes of action and prays that this Honorable Court and/or the trier of fact award the following relief:

A. Judgment in favor of the Plaintiff and against the Defendants;

B. An award of actual, compensatory and punitive damages for the Plaintiff and against Scully on the Plaintiff's cause of action alleging breach of the duty of loyalty, violation of S.C. Code Section 33-8-420(a), breach of common law fiduciary duty, breach of contract with fraudulent intent, fraud, negligent misrepresentation, and S.C. Code Section 33-8-310.

C. An award of actual damages for the Plaintiff and against Scully on the Plaintiff's causes of action alleging breach of the covenant of good faith and fair dealing, breach of contract, and gross negligence.

D. An award of forfeiture of pay against Scully and Yarborough trebled and Plaintiff's reasonable attorneys' fees pursuant to the cause of action alleging a violation of S.C. Code Section 41-10-10 *et seq*.

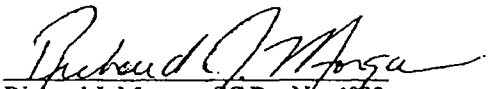
E. An award for of actual compensatory and punitive damages for the Plaintiff and against Scully, Yarborough, and/or Corbin jointly and/or severally for the Plaintiff's cause of action alleging civil conspiracy;

F. Judgment in favor of the Plaintiff and against the Defendants Scully, Yarborough and Synergetic ordering him/her/it to cease and desist from using or continuing to use client and customer information that Scully and/or Yarborough had as a result of his/her employment and/or his ownership interest in Allegro;

G. Judgment in favor of the Plaintiff and against Scully, Yarborough and/or Synergetic for all income earned and/or secured as a result of Scully and/or Yarborough's breach of the duty of loyalty to include an award of punitive damages;

H. Other and further relief as the Court deems just and proper pursuant to the terms of the Agreement and all applicable laws.

McNAIR LAW FIRM, P.A.
Richard J. Morgan
Reginald W. Belcher
Robyn K. Wietecha
Post Office Box 11390
Columbia, South Carolina 29211

By: 
Richard J. Morgan, SC Bar No. 4088
ATTORNEYS FOR PLAINTIFF

April 15, 2004
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHALAND)

AFFIDAVIT

PERSONALLY APPEARED before me, Cathy D. Jordan, who first being duly sworn deposes and states as follows:

1. On the date of this affidavit I work for Azor Financial ("Company") in Columbia, South Carolina and am the owner/broker of the Company.
2. During the calendar year 2004 up until February 27, 2004, I worked as a Branch Manager for a unit of NovaStar Home Mortgage, Inc. ("NovaStar") in Columbia, South Carolina.
3. While employed by NovaStar, some employee at NovaStar handled payroll and general human resources matters for the Branch office where I worked. Our responsibility at the Branch office was to keep and transmit to NovaStar required information for then to perform these functions.
4. During the Month of February, 2004, I telephoned Allegro, Inc. ("Allegro") to inquire about the possibility of Allegro providing payroll and possibly other human resources services to the Company as I was changing my affiliation from NovaStar to General Mortgage Services ("General"). I understood that Allegro serviced General's payroll for its other Columbia, South Carolina operations.
5. A Mr. Emmett Scully from Allegro returned my call and we set up a meeting in my office to discuss using Allegro's services. Scheduled to join us at the meeting was Kevin Williams, another individual who was getting ready to affiliate with General.
6. Mr. Scully came to my office during February as an Allegro representative. At the

meeting I informed him that I was moving my affiliation from NovaStar to General and that I understood that Allegro serviced General's account. Mr. Scully said that was correct and that he understood change as he was getting ready to undertake a similar change. Mr. Scully told me he was setting up his own company, that he thought the company's name would be Synergetic, Inc., and that he was trying to buy out the lady who had been a silent partner. Mr. Scully described his partner as the money behind Allegro, that she did not have the background to run Allegro, and that he was the one who knew the business and ran Allegro's operations. Mr. Scully went on to tell me that he was taking space on the first floor in the same building where Allegro was located, and that he was going to move his business to that first floor location.

7. My concern was who was going to be doing General's business and Mr. Scully told me that General Mortgage was going to be his client and would be moving with him to his new company.

8. During this discussion Mr. Scully gave me some general, generic information about Allegro's services and then left.

9. A couple of weeks later, I went to the business address given to me by Mr. Scully looking for Mr. Scully, but did not find an office for Synergetic open. I went to an office of Executive Staffing Services and inquired whether they knew of Synergetic and Mr. Scully. The person at Executive asked what I believed was far too many questions about my inquiry and ultimately was directed to Allegro's offices to look for Mr. Scully.

10. When I got the Allegro offices, I inquired if General was an Allegro client and when I was advised that they were, I set up an appointment with Allegro as I know it is not right to do what Mr. Scully did with me and that was to recruit for his own business while still working with Allegro.

11. I met Mr. Scully only the one time and spent about one hour with him on the day we met.

12. I have been promised no benefit to make this statement nor have I been threatened in any way. I give this affidavit of my own free will, and it accurately and truthfully sets forth the facts and information that I know about the matter.

FURTHER AFFIANT SAYETH NAUGHT.

Cathy D. Jordan

Sworn to before me this 12th
Day of April, 2004

Susanne T. Pope (L.S.)
Notary Public of South Carolina
My Commission Expires: My Commission Expires October 10, 2012

COLUMBIA 785742v1

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	CIVIL ACTION NO:04-CP-40-1915
ALLEGRO, INC.)	
)	**AMENDED COMPLAINT**
PLAINTIFF,)	**(Jury Trial Demanded As Set Forth Herein)**
)	
v.)	
)	
EMMETT J. SCULLY, SYNERGETIC, INC., GEORGE CORBIN, AND YVONNE YARBOROUGH,)	
)	
DEFENDANTS.)	

RICHLAND COUNTY FILED
2005 MAY 23 PM 4:23
BARBARA A. SCOTT C.C.P. & G.S.

TO: THE DEFENDANTS NAMED ABOVE:

The Plaintiff, complaining of the Defendants, respectfully requests a trial by jury on the following common law causes of action and would allege and show unto the court as follows:

1. The Plaintiff, Allegro, Inc. ("Allegro") is a corporation organized under the laws of the State of South Carolina and is authorized to conduct and does conduct business in the State of South Carolina.

2. The Defendant, Emmett J. Scully, ("Scully"), is a resident of and conducts business in Richland County in the State of South Carolina.

3. The Defendant, Synergetic, Inc., ("Synergetic") is a corporation organized under the laws of the State of South Carolina and is authorized to conduct and does conduct business in the State of South Carolina.

4. The Defendant, Yvonne Yarborough, ("Yarborough"), is a resident of Richland County, South Carolina.

5. The Defendant, George Corbin, ("Corbin") is upon information and belief the Chief Financial Officer of Merritt Veterinary Supplies, Inc., a corporation that is authorized to conduct and is conducting business in Richland County, South Carolina.

6. The Court has personal jurisdiction over the parties, subject matter jurisdiction over this action, and venue is proper in this Court.

7. Allegro is a professional employer organization (PEO), otherwise known in the public as an employee leasing Company.

8. Mary Etta McCarthy is the owner and principal shareholder of Allegro.

9. From on or about August 1998, until his resignation effective on or about February 23, 2004, Scully served as the President of Allegro.

10. Scully had and continues to have an ownership interest in Allegro, beginning with a 30% ownership interest in 1998 and owning 49% of Allegro as of the date of his resignation.

FOR A FIRST CAUSE OF ACTION
(Breach of the Duty of Loyalty Against Scully)
(Jury Trial Demanded)

11. Plaintiff realleges Paragraphs 1 through 10 as if fully stated herein.

12. Plaintiff employed Scully (who had served as President and as a member of the Board of Directors with Allegro) from on or about August 1998, until his resignation as an employee, officer and director of Allegro effective on or about February 23, 2004.

13. During his employment with Allegro, Scully had all of the powers and authority normally exercised by the President of a Company, including but not limited to,

hiring and firing employees, marketing, contact with Plaintiff's customers and clients, and other powers as set forth in the corporation's by-laws.

14. As the President and pursuant to the Plaintiff's and Scully's employment relationship, Scully was responsible, both directly and indirectly, for all aspects of the Corporation's business and fully was authorized to take whatever reasonable and prudent actions that were in Allegro's best interests.

15. Scully failed and/or refused to perform and/or satisfy his contractual, common law, and statutory responsibilities and duties.

16. The Plaintiff alleges that on several occasions McCarthy advised, counseled, and instructed Scully of: (1) Allegro's reasonable expectations regarding Scully's job performance; (2) Allegro's policies, practices, and procedures regarding, among other issues, all aspects of management and accounting; (3) Scully's repeated failure and/or refusal to act in the best interests of Allegro and otherwise satisfy Allegro's expectations; and (4) the likely consequences of Scully's continued failure and/or refusal to improve his job performance, satisfy Allegro's reasonable expectations, and act in the best interests of Allegro.

17. Beginning in or about April 2003, Scully informed McCarthy that he desired to buy out her shares in Allegro, and failing in that he was going to set up his own business directly competing against Allegro in or around Richland County, South Carolina and that he would take Allegro's client with him.

18. During the period on or before April 2003, and continuing until the date of his resignation from Allegro, Scully consulted with Corbin concerning his plans to buy out McCarthy's interest in Allegro.

19. During the period on or before April 2003, and continuing until the date of his resignation from Allegro, Plaintiff alleges, on information and belief, that Scully also informed Corbin of his plans to start his own business to compete with Allegro if he was unsuccessful in purchasing McCarthy's shares.

20. Despite Allegro's repeated, good faith efforts to advise, counsel, correct, and/or listen to Scully's business proposals, Scully took advantage of his position as President of Allegro and discussed his plans with existing and potential clients, specifically inviting one potential Allegro client to do business with him when he set up his new business as set forth in the attached affidavit, that these discussions took place while being paid by Allegro and, in fact, was paid by Allegro for the time spent in setting up his competing business.

21. During the time that he was President of Allegro, Scully engaged in and/or authorized imprudent, unreasonable, and/or otherwise risky business practices that were contrary to the Allegro's policies, practices, and procedures and further were contrary to widely-accepted industry standards including but not limited to, on information and belief, providing or attempting to provide legal advice to customers.

22. Scully breached the common law duty of loyalty that Scully owed to Allegro by engaging in the aforementioned actions, omissions, and/or misconduct, which include multiple instances of self-dealing, engaging in conflicts of interest, nondisclosure of material facts and transactions, and otherwise acting in furtherance of Scully's own personal interests and in complete disregard for Allegro's best interests.

23. Allegro never advised, sanctioned, instructed, or authorized Scully to engage in any of the aforementioned actions, omissions, and/or misconduct.

24. Scully's aforementioned actions, omissions, and/or misconduct harmed Allegro's financial position, image, and reputation in the business community and were directly adverse, contrary to, and violative of widely-accepted industry standards, applicable legal regulations, and Allegro's instructions, policies, practices, procedures, and overall business philosophy.

25. All employees in South Carolina owe their employer a duty of loyalty.

26. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's breach of the duty of loyalty and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
(Violation of South Carolina Code Section 33-8-420(a) Against Scully)
(Jury Trial Demanded)

27. Plaintiff realleges Paragraphs 1 through 26 as if fully stated herein.

28. From at least at least on or about August 1998, through the effective date of Scully's February 23, 2004, resignation from Allegro, Scully served as a duly appointed Officer of Allegro and was required to perform all duties set forth in the by-laws, as well as all duties that the Board of Directors required him to perform.

29. Allegro's Bylaws and Allegro's Board of Directors vested Scully with discretionary authority to discharge his aforementioned duties.

30. South Carolina Code Section 33-8-420(a) requires an officer with discretionary authority to discharge his duties under that authority: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders.

31. Scully's aforementioned actions, omissions, and/or misconduct violated S.C. Code Section 33-8-420(a), as the Plaintiff, in his role as an Officer: (1) acted in bad faith; (2) failed and/or refused to act with the care that an ordinarily prudent person in a like position would have exercised under similar circumstances; and (3) failed and/or refused to act in a manner that he reasonably believed was in the best interests of Allegro.

32. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of the Plaintiff's violation of S.C. Code Section 33-8-420(a) and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Breach of Common Law Fiduciary Duty Against Scully)
(Jury Trial Demanded)

33. Plaintiff realleges Paragraphs 1 through 32 as if fully stated herein.

34. Pursuant to Scully's position as an officer with Allegro, Scully owed Allegro a common law fiduciary duty that required Scully to act reasonably, prudently, in good faith, and to fully disclose to Allegro's Board of Directors all relevant facts to Allegro prior to and/or upon entering into any transaction and/or conducted any business on behalf of Allegro.

35. Scully breached the common law fiduciary duty that he owed to Allegro by engaging in the aforementioned actions, omissions, and misconduct, which include multiple instances of self-dealing, engaging in conflicts of interest, nondisclosure of material facts and transactions to the Allegro's Board of Directors, and otherwise acting in furtherance of his own personal interests and in complete disregard of Allegro's best interests.

35. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's breach of a common law fiduciary duty and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract With Fraudulent Intent Against Scully)
(Jury Trial Demanded)

36. Plaintiff realleges Paragraphs 1 through 35 as if fully stated herein.

37. Scully's aforementioned actions, omissions, and/or misconduct materially breached the terms and conditions of the employment relationship by and between Scully and Allegro.

38. Scully's breach of the terms and conditions of the employment relationship was accompanied with fraudulent intent and accompanied by a separate fraudulent act that closely was related to the breach of contract, as Scully, upon information and belief, dishonestly, unfairly, and fraudulently used his position with Allegro to advance his own personal, financial, and other interests and/or the interests of his friends, family, and personal associates, while intentionally and knowingly harming Allegro's financial position, image, and reputation in the business community by engaging in those acts.

39. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's breach of contract with fraudulent intent and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR A FIFTH CAUSE OF ACTION
(Breach of Contract Against Scully)
(Jury Trial Demanded)

40. Plaintiff realleges Paragraphs 1 through 39 as if fully stated herein.

41. During the Defendant's (Scully) employment with the Plaintiff, Plaintiff set forth in corporate bylaws job duties and responsibilities of the job held by Defendant Scully.

42. In addition, during the Defendant's (Scully) employment with the Plaintiff, Plaintiff issued employment guidelines through documents to include but not limited to employee handbooks, policy manuals, and other written material describing duties and responsibilities for all of Plaintiff's employees including the Defendant (Scully).

43. Scully's aforementioned actions, omissions, and/or misconduct materially breached the terms and conditions of his employment relationship/contract as set forth in the documents/materials set forth in Paragraphs 41 and 42 of this Amended Complaint.

44. Plaintiff is entitled to the actual damages that it suffered as a result of Scully's breach of contract.

FOR A SIXTH CAUSE OF ACTION
(Fraud Against Scully)
(Jury Trial Demanded)

45. Plaintiff realleges Paragraphs 1 through 44 as if fully stated herein.

46. Prior to entering into the agreement to become President of Allegro and the agreement whereby McCarthy reduced the percentage of shares in the Corporation and increased Scully's shares so that at the time of his resignation he held forty-nine percent (49%) of the outstanding shares of Allegro, Scully represented to and ensured Allegro that he fully was capable of and indeed would satisfy all of the duties required by these agreements, Allegro's Bylaws, and Allegro's Board of Directors and further represented to the Plaintiff that Scully caused and/or required (and would continue to

cause and/or require) Allegro to operate pursuant to reasonable and prudent business standards that were acceptable within the industry and to Allegro's management.

47. Scully's aforementioned representations were false and material to Allegro's execution of these agreements.

48. At the time of the representations, Scully either knew that his aforementioned representations were false, or Scully recklessly disregarded the representations' truth or falsity.

49. Scully intended for the Plaintiff to rely on his aforementioned representations.

50. Despite Allegro's reasonable and diligent efforts to discover otherwise, Allegro completely was unaware of the falsity of Scully's aforementioned representations.

51. The Plaintiff reasonably and rightfully relied on Scully's aforementioned representations.

52. Scully's aforementioned representations consequently and proximately caused the Plaintiff to suffer harm and injuries as described herein.

53. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's fraud and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR AN SEVENTH CAUSE OF ACTION
(Gross Negligence Against Scully)
(Jury Trial Demanded)

54. Plaintiff realleges Paragraphs 1 through 53 as if fully stated herein.

55. Throughout his employment, Scully owed the Plaintiff common law and statutory fiduciary duties, express contractual duties, a duty of loyalty, a duty to act in good faith, and a duty to deal fairly with the Plaintiff.

56. These duties required Scully to, among other things, abide by and follow the instructions and policies promulgated by the Plaintiff, the Plaintiff's Bylaws, and the Plaintiff's Board of Directors, as well as the provisions and covenants contained in agreements he signed, and to refrain from acts and/or behavior that would adversely affect the Plaintiff.

57. Scully breached these duties as he intentionally and consciously failed to exercise even a slight degree of care with his actions, omissions, and/or misconduct toward the Plaintiff.

58. Scully's behavior and/or actions proximately caused harm and injury to the Plaintiff's financial position, image, and reputation in the business community.

59. Scully's aforementioned behavior and/or actions constitute gross negligence.

60. Plaintiff is entitled to the actual damages that it suffered as a result of Scully's gross negligence.

FOR AN EIGHTH CAUSE OF ACTION
(Negligent Misrepresentations Against Scully)
(As Alternative to Fraud Counterclaim(s))
(Jury Trial Demanded)

61. Plaintiff realleges Paragraphs 1 through 60 as if fully stated herein.

62. Prior to entering into the employment relationship with Allegro and signing various agreements, Scully represented to and ensured the Plaintiff that he fully was capable of, and indeed would satisfy, all of the duties inherent in the relationship as

an employee, an officer, and director, as required by the aforementioned agreements, the Plaintiff's By-laws, and the Plaintiff's Board of Directors and further represented to the Plaintiff that he caused and/or required (and would continue to cause and/or require) Allegro to operate pursuant to reasonable and prudent banking standards that were acceptable within the industry and to Allegro's management.

63. Scully's aforementioned representations were false.

64. Scully had a pecuniary interest in making the representations.

65. Scully owed a duty of care to the Plaintiff to ensure that he communicated truthful information to the Plaintiff.

66. Scully breached this duty by failing to exercise due care.

67. Plaintiff justifiably relied on Scully's aforementioned representations.

68. Plaintiff suffered a pecuniary loss as the proximate result of its reliance on Scully's aforementioned representations.

69. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's negligent misrepresentations and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR A NINTH CAUSE OF ACTION
(Violation of South Carolina Code Section 33-8-310 Against Scully)
(Jury Trial Demanded)

70. Plaintiff realleges Paragraphs 1 through 69 as if fully stated herein.

71. Scully, in his role as an Officer and/or Director with Allegro, created and/or engaged in impermissible conflicts of interest by having a direct and/or indirect personal, familial, and/or financial interest in various transactions, including but not

limited to those transactions involved with hiring his wife, giving himself raises and other transactions.

72. Scully never timely disclosed, or even attempted to timely disclose, his interest in and the material facts of any of the aforementioned transactions to the Plaintiff's Board of Directors, to any committee of the Plaintiff's Board of Directors, or to any other committee that could have authorized, approved, and/or ratified any of the aforementioned transactions.

73. Neither a disinterested majority of the Plaintiff's Board of Directors nor any authorized committee of any kind authorized, approved, and/or ratified any of the aforementioned transactions by taking an affirmative vote and/or any other measure.

74. None of the aforementioned transactions were fair to the Plaintiff, as Scully would have demanded more favorable terms and/or conditions on each of the aforementioned transactions, if Scully properly had disclosed the transactions to the Plaintiff prior to entering into them.

75. Scully's aforementioned actions, omissions, and/or misconduct violated S.C. Code Section 33-8-310, as Scully, in his role as an Officer and/or Director with the Plaintiff, created and/or engaged in impermissible conflicts of interest by having a direct and/or indirect personal, familial, and/or financial interest in various transactions, including but not limited to those transactions described more fully herein.

76. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Scully's violation of S.C. Code Section 33-8-310 and also is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR AN TENTH CAUSE OF ACTION
(Breach of the Duty of Loyalty Against Yarborough)
(Jury Trial Demanded)

77. Plaintiff realleges Paragraphs 1 through 76 as if fully stated herein.

78. Plaintiff employed Yarborough from on or about February 2000, until her resignation as an employee of Allegro on or about March 1, 2004.

79. During her employment with Allegro, Yarborough had access to information and data bases with Plaintiff's customer information, had contact with customers and clients and other duties providing her access to confidential business information of the Plaintiff.

80. As an employee of Allegro, Yarborough was required to take reasonable and prudent actions that were in Allegro's best interests.

81. Upon information and belief, Plaintiff alleges that Yarborough was aware of Scully's plans to set up a competing business with Allegro.

82. Upon information and belief, Plaintiff alleges that Yarborough assisted Scully during her employment with Allegro to help set up Scully's competing business, performed those duties while being paid by Allegro, and in fact, was paid by Allegro for the time spent assisting Scully in setting up his competing business.

83. On the day of her resignation and after accepting a position with Synergetic, Inc., Yarborough e-mailed various personnel reports concerning Merritt Veterinary Supplies, Inc. to a Joan Gathers, and thereafter deleted the e-mail in an attempt to cover-up the transaction, for the express purpose of assisting Scully and Synergetic in securing information concerning an Allegro Customer.

84. Yarborough breached the common law duty of loyalty that Yarborough owed to Allegro by engaging in the aforementioned actions, omissions, and/or misconduct, which include engaging in conflicts of interest, nondisclosure of material facts and transactions, and otherwise acting in furtherance of Yarborough's own personal interests and in complete disregard for Allegro's best interests.

85. Allegro never advised, sanctioned, instructed or authorized Yarborough to engage in any of the aforementioned actions, omissions, and/or misconduct.

86. Yarborough's aforementioned actions, omissions, and/or misconduct harmed Allegro's financial position, image, and reputation in the business community and were directly adverse, contrary to, and violative of widely-accepted industry standards, applicable legal regulations, and to Allegro's instructions, policies, practices, procedures, and overall business philosophy.

87. All employees in South Carolina owe their employer a duty of loyalty.

88. Plaintiff is entitled to the actual and compensatory damages that it suffered as a result of Yarborough's breach of the duty of loyalty and is entitled to an award of punitive damages in an amount to be determined by a jury.

FOR AN ELEVENTH CAUSE OF ACTION
(Violation of South Carolina Code Section 41-10-10, et seq.,
Against Scully and Yarborough)
(Jury Trial Demanded)

89. Plaintiff realleges Paragraphs 1 through 88 as if fully stated herein.

90. Defendant Scully's and Yarborough's disloyal acts to include, but not limited to, soliciting existing customers, soliciting potential customers, and/or using Allegro resources and personnel to set up competing business, require forfeiture of compensation during the entire period of disloyal acts.

91. Said acts of disloyalty were in bad faith, with no reasonable good faith basis entitling Plaintiff, in addition to the forfeiture of their wages during the periods of disloyalty, a trebling of the award and its attorneys' fees.

FOR A THIRTEENTH CAUSE OF ACTION
(Civil Conspiracy Against Scully, Corbin and Yarborough and Synergetic)
(Jury Trial Demanded)

92. Plaintiff realleges Paragraphs 1 through 91 as if set forth herein.

93. In or about April 2003, Scully advised McCarthy of his desire to buy out her shares and ownership interest in Allegro.

94. In or about April 2003 or shortly thereafter, Scully informed others to include Yarborough and Corbin that he would set up his own company to compete against the Plaintiff if he was unsuccessful in his efforts to buy out McCarthy's shares and ownership interest in Allegro.

95. That from on or about April 2003 or shortly thereafter, Scully had numerous meetings with Yarborough to discuss the status of his negotiations with McCarthy.

96. In these meetings with Yarborough, the two discussed among the topics, the establishment of a new company to compete against the Plaintiff if Scully was unsuccessful in his efforts to buy out McCarthy's shares and ownership interest in Allegro.

97. As a result of these discussions, Scully took steps to prepare to compete with Allegro and Yarborough, while employed by Allegro, took certain steps to aid and/or assist Scully in securing information and taking other steps designed to set up a business to compete with Allegro.

98. Plaintiff discovered after Scully's resignation that Scully had been using the Plaintiff's computer system to include e-mails to communicate with George Corbin about his plans to either buy out McCarthy and/or set up a competing business.

99. Corbin was aware of Scully's plan to either buy out McCarthy and/or set up a competing business to Allegro before April 2003.

100. Corbin acted as a confidant to and provided advice to Scully to assist Scully in his plan to either buy out McCarthy and/or set up a competing business with Allegro.

101. Upon information and belief, Corbin's intimate knowledge of and involvement with Scully's plans included his agreement to deliver the Merritt Veterinary Services to Scully's new business Synergetic.

102. Within four business days of Scully leaving Allegro, Corbin sent Allegro a letter on behalf of his employer Merritt Veterinary Services, Inc. of cancellation of their contract with Allegro and, thereafter, followed up with a request that certain information be sent to Synergetic as Merritt's new PEO.

103. During her employment with Allegro and while on Allegro's time and while receiving pay from Allegro, Yarborough assisted Scully in setting up his new business, Synergetic, to include, but not limited to, the gathering and forwarding customer information to persons outside of Allegro.

104. Upon information and belief, these electronic messages contained trade secret and other proprietary information including, but not limited to, customer personnel information, and other protected confidential information owned by the Plaintiff.

105. Yarborough transferred the aforementioned protected information in anticipation of her resignation.

106. Yarborough resigned her employment with the Plaintiff on or about March 1, 2004.

107. Yarborough was thereafter employed by, and remains employed with Synergetic whose business includes, but is not limited to, providing PEO services.

108. Synergetic is comprised of several of the Plaintiff's former employees, including but not limited to, Scully, Yarborough and Lisa Millikin .

109. Upon information and belief, Scully and/or Yarborough conspired with each other and one or more of the Plaintiff's customers to misappropriate trade secrets and other protected confidential information from the Plaintiff for their own advantage and to enable Scully and Yarborough to directly compete with the Plaintiff.

110. Scully and his co-conspirators misappropriated the Plaintiff's protected and confidential information specifically intending to harm the Plaintiff.

111. As a result of Scully, Yarborough, Corbin and Synergetic's conduct the Plaintiff has incurred substantial damages.

112. Scully, Yarborough, Corbin, and Synergetic's misconduct entitles the Plaintiff to compensation for the actual and compensatory damages that it has sustained and the Plaintiff is also entitled to an award of punitive damages in an amount to be determined by a jury.

WHEREFORE, the Plaintiff hereby requests a jury determination of the issues raised in the common law causes of action and prays that this Honorable Court and/or the trier of fact award the following relief:

A. Judgment in favor of the Plaintiff and against the Defendants;

B. An award of actual, compensatory and punitive damages for the Plaintiff and against Scully on the Plaintiff's cause of action alleging breach of the duty of loyalty, violation of S.C. Code Section 33-8-420(a), breach of common law fiduciary duty, breach of contract with fraudulent intent, fraud, negligent misrepresentation, and S.C. Code Section 33-8-310.

C. An award of actual damages for the Plaintiff and against Scully on the Plaintiff's causes of action alleging breach of contract, and gross negligence.

D. An award of forfeiture of pay against Scully and Yarborough trebled and Plaintiff's reasonable attorneys' fees pursuant to the cause of action alleging a violation of S.C. Code Section 41-10-10 *et seq.*

E. An award for of actual compensatory and punitive damages for the Plaintiff and against Scully, Yarborough, and/or Corbin jointly and/or severally for the Plaintiff's cause of action alleging civil conspiracy;

F. Judgment in favor of the Plaintiff and against the Defendants Scully, Yarborough and Synergetic ordering him/her/it to cease and desist from using or continuing to use client and customer information that Scully and/or Yarborough had as a result of his/her employment and/or his ownership interest in Allegro;

G. Judgment in favor of the Plaintiff and against Scully, Yarborough and/or Synergetic for all income earned and/or secured as a result of Scully and/or Yarborough's breach of the duty of loyalty to include an award of punitive damages;

H. Other and further relief as the Court deems just and proper pursuant to the terms of the Agreement and all applicable laws.

McNAIR LAW FIRM, P.A.
Richard J. Morgan
Post Office Box 11390
Columbia, South Carolina 29211

By: _____
Richard J. Morgan, SC Bar No. 4088
ATTORNEYS FOR PLAINTIFF

May 18, 2005
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF COMMON PLEAS
2004-CP-40-01915

ALLEGRO INC., PLAINTIFF)
VS.)
GEORGE CORBIN, EMMETT J. SCULLY, SYNERGETIC INC., AND YVONNE YARBOROUGH, DEFENDANTS.)

TRANSCRIPT OF RECORD

MAY 1, 2006
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE L. CASEY MANNING, JUDGE AND JURY.

A P P E A R A N C E S:

RICHARD J. MORGAN, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

AMY L. GAFFNEY, ESQUIRE
ATTORNEY FOR THE DEFENDANT

CRYSTAL T. JACKSON

OFFICIAL COURT REPORTER

EXHIBITS

NO.	DESCRIPTION	I.D.	EVD.
P-1	Scully 2/2/04 Letter Apology to McCarthy		108
P-2	Scully 2/14/04 Letter to Children		135
P-3	Corbin 3/27/03 Letter to Scully RE: 3 Views of Purchase Price		240
P-4	Yarborough/Kim Egginton 2/5/04 E-mails RE: PayPlus - with Attachments		131
P-5	Yarborough 3/1/04 E-mail to Joan Gathers Merritt Veterinary - with Attachments		128
P-6	McHenry Consulting Limited Scope Report		294
P-7	List Allegro Clients now with Synergetic		121
P-8	Estimate of Monthly Revenues Prepared by Yarborough - RE: Synergetic		354
P-13	Scully 10/14/99 E-mail to Lynn Ciesla RE: Noncompete Agreements		244
P-14	Interoffice Memo		133
P-15	Interoffice Memo		134
P-17	Emmett and Cathrine Scully 11/02, 4/03, 10/03, 1/05 Financial Statements		264
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P-21	Scully 2/16/04 Letter of Resignation (Also referred to as P-22)		
P-23	McCarthy 2/23/04 Acceptance Scully Resignation		115

NO.	DESCRIPTION	I.D.	EVD.
P-25	Scully Letter to McCarthy RE: Geneva Companies Evaluation to Allegro 12/24/03 (Also referred to as P-24)		104
P-26	McCarthy Letter to Scully 1/29/04 RE: Sale of Allegro Stock		106
P-26	Cress to Yarborough E-mail 1/30/04 RE: Long's Worker's Comp		266
P-27	Cress to Scully E-mail 1/28/04 RE: Long's Worker's Comp		267
P-28	2001-2004 Tax Returns, W-2 Forms Yvonne and Dennis Yarborough		356
P-29	12/31/04 Synergetic Audited Statement Of Operations		270
P-31	Attorney Gaffney 11/15/05 Fax Producing Corbin 2000-2004 Sources of Income, Taxable Income Recap 2000-2004		373
P-32	Synergetic 2004 Tax Returns With Attachments		271
P-33	Mount Valley Foundation Repair/Allegro 2/04 Employee Handbook		255
P-34	Allegro Client Revenue Losses through 6/30/04		134
P-35	1/17/04-1/19/04 E-mails from Janet Lay to Scully RE: References		280

NO.	DESCRIPTION	I.D.	EVD.
P-36	Sully 2/11/03 E-Mails to Maria Diaz		269
P-40	Yarborough Noncompete Agreement w/Allegro		224
P-41	Millikin Noncompete Agreement w/Allegro		223
P-42	Judge Strickland's Order 1/18/05 Granting Temporary Injunction		268
P-44	Scully Letter 1/23/04 to McCarthy RE: Sale of Allegro		106
P-44	Administrative Fee Financials Reviewed by Expert Daniel McHenry		294
D-1	Letter from McCarthy to Scully		174
D-7	Worker's Comp Information - Longs	334	
D-9	Letter from Scully to McCarthy 12/24/03	182	
D-10	Allegro to Corbin Letter 3/16/04	479	
C-1(9)	30 Day Notice Letters	121	

testimony on that. But again I would submit that Emmett Scully did what any reasonable person would do when their partner has turned their back. He started another business. That was a reasonable thing to do. And I think in the end as you have heard the evidence and as you have heard the testimony and viewed the documents in the record you too will agree that he did the only thing that he could have in February of 2004.

Thank you.

THE COURT: All right. Mr. Morgan, you may call your first witness.

MR. MORGAN: Plaintiff would call Dr. Matt Wolf.

Dr. Matt Wolf, after being duly sworn, testified as follows:

THE COURT: Spell your last name for the record, sir?

THE WITNESS: Matthew Bernard Wolf. W.O.L.F.

THE COURT: All right. Mr. Morgan.

DIRECT EXAMINATION

BY MR. MORGAN:

Q Dr. Wolf, could you please introduce yourself again to the jury, if you would?

A Okay. I'm Matt Wolf.

Q Give me a little bit about your background. Where did you go to school?

A I went to school at U.C.L.A. I have a bachelor's degree in engineering, master's degree in engineering and a Ph.D in physiology.

Q Where do you work now, Doctor?

A I'm a professor at the U. S. C. School of Medicine. I teach

physiology to medical students and nurse anesthesia students over on Garner's Ferry Road in the department of -- long name, pharmacology physiology and neuroscience.

Q How long have you been at the School of Medicine out at USC?

A Since 1976. I came right after the new school had been formed.

Q Do you know Mr. Scully who is one of the Defendants in the case?

A I certainly do.

Q Can you tell the jury how you came to get to know Mr. Scully?

A It was in my mind 1997, 98. I'm a jogger, runner, and I joined a group of people who would meet over in Forest Acres and run on Saturday mornings. And Mr. Scully joined that group also. And over the course of time we, as runners do, we form into different groups depending upon your abilities and we began to run together on those Saturday afternoon runs. And that continued in various forms up until the end of 2003. So, probably six or seven, or more years of doing that together.

Q How many days a week on average would you run with Mr. Scully?

A Well, it started out just on Saturdays. But in the year 2000 my wife came down with cancer. And Mr. Scully suggested that -- I think at that time he had joined an athletic club and he suggested that I join with him. And we worked out four or five times a week. And for me it was a time that I could kind of get away from some of the bad things that were happening with my wife and home. And I would just a relief. And I to this day appreciate the fact that I had someone I could talk to about some of those things. So over that course of time we were together

pretty constantly.

Also, he became involved with the Carolina Marathon Association and puts on a race there in town in November called the Governor's Cup. And he became an officer and asked me to be in that connection, We also met frequently about issues relating to that organization.

Q What else would you discuss on those many runs that you had with Mr. Scully other than your wife's illness?

A Well, virtually everything. I was, you know, interested in the business he was involved in. It was like, to me, I'd never been involved in a business. And running a business was like a kind of a puzzle that I was always interested in. So, I would question him and he would be very freely talk about some of the issues of personnel, money, virtually anything I felt like we were pretty open with each other. We talked about his family and my family. And we were just very good friends. We were open and talked about things that, you know, that concerned us.

Q At some point in those discussions did the issue of his desire to purchase Ms. McCarthy's part of Allegro ever come up?

A Yes. I'm thinking probably as early as 2002.

Q Could you tell the jury what that discussion or discussions were?

A Well I knew that he was, he had a certain interest in running that business. He, Emmett, was a very industrious person but he was not one to, I think to share authority with others. He wanted that business and he wanted to run it. And he felt like he had developed it and so he talked about a lot of his plans to eventually have a business of his own.

And I was certainly aware that he was trying to buy out Mary Etta. And I know of the frustration he had that he couldn't buy that business. That every time he would come up with proposals he couldn't seem to bring them to fruition and I wasn't sure whether it was a conflict of styles or whether it was money, or what that was the ultimate frustration. But, yes, I can remember many occasions when he talked about sending proposals that were not answered and getting extremely angry about that fact that he, you know, couldn't seem to bring this to an end.

It was also talked about when after my wife passed away in 2002 from cancer, they were kind enough, Emmett and Cathrine, to invite me over to their house at least once a week for dinner and there were very open in discussions of how to buy that business. And what it would take and so, I felt like I was sort of a party to this whole issue.

Q As part of those discussions, did Mr. Scully ever mention what he would do if he couldn't buy the business from Ms. McCarthy?

A Well, we talked about it. And I guess I had, in his discussions of the business, I had felt that yes, he was the prime mover and if he left, that business would fold. And I kind of asked what would happen. And the impression I got was that, you know that, that's kind of the pressure that he would bring that if he left that business that it would fold and so, you know, I felt that that was kind of the thrust that he was going for to try and force her out of that business. But he also talked at one time about what would happen if she didn't sell. And he would take some of the key people with him when he started his new business and one of those was Ms. Yarborough. But the other one was a person that I married, her

name was Kay Cress at that time. And she was the human resource's manager. And he indicated to me that he would take Kay, both Kay and Yvonne and form his new business.

Q Do you continue to run with Mr. Scully today?

A No.

Q Would you tell the jury why you don't run with Mr. Scully?

A After my wife passed away as I said, I -- it was a difficult time for me. And Allegro or the Carolina Marathon Association, which I was an officer of, would meet at Allegro. And I met there one of Emmett's employees, Kay Cress at that time and I got to know her and I found out that her husband had a terminal illness. And I felt very sympathetic and I offered my help if she wanted to talk to me because I felt at that time that I had just gone through this. And over the course of time I met Kay a few more times. But it wasn't until, that was late 2002, it wasn't until early 2003 that Cathrine came up with the idea that I should take Kay to a movie. And I had gone to a conference in San Diego in April of 2003 and when I got back I called her and we went to see the movie "Chicago" and at the time it was sort of -- it started out to be companionship but developed into a lot more and it developed very quickly into a close relationship.

I saw Kay everyday after that date or acquaintance. It was about a week later and I guess I felt like after my wife died that my life was kind of over as far as anything romantic or anything and with Kay I found a new life and I was very excited and here is an old guy with a new life and my kids thought I was crazy and everybody. I went out and I bought

a sport's car, fancy sports car. Looking back it was a very impulsive thing to do and I wanted to go over and show Emmett this. And so, Kay and I were driving around the day after I bought the sports car. I go over to show Emmett my new car. I guess I was showing off to him and Kay said --

MS. GAFFNEY: Objection, Your Honor.

THE COURT: Sustained as to what she might have said to you, sir.

Q Just say what occurred if you would, Dr. Wolf?

A Okay. We went over there and Emmett and Cathrine were out in the garden and they came out to the car and Cathrine seemed genuinely pleased that I had done this and Emmett had kind of, had a funny look on his face but he didn't say a lot. And we only stayed for about 15 minutes. And then we left. And I, you know -- and I -- it was impetuous but I did it. The next day, about the middle of the morning, Emmett called me and he said Kay is very upset. She went home from work. She is the human resources manager at that business, or not human -- I guess she would be called the benefit's manager but she also did human resources things with Emmett. She went home sick. You better go home and see what the problem is.

So I went home and I found out that --

MS. GAFFNEY: Objection, Your Honor.

THE COURT: Basis? He went home and found out?

MS. GAFFNEY: If he's going to testify –

THE COURT: I don't know what he's going to testify to. But right

now your objection is premature. Overruled. Ask the question again. I don't know what he's going to say.

MS. GAFFNEY: I understand.

Q What did you find out when you got home?

A I got home and I talked to Kay and she said that Emmett had reprimanded her.

MS. GAFFNEY: Your Honor.

THE COURT: Well you can't say what she said, sir.

A Okay.

Q What did you find out, Dr. Wolf, as a result of your discussion with Ms. Cress?

A That she had been reprimanded and written up for some sort of insubordination and told that she should no longer talk to me about anything about Allegro business. And as far as I know, this, she had had years and years of human resources employment as a manager of people and this had never happened to her before. And so, I was extremely upset at what happened. And we agreed that we would try to honor Emmett's wish of not talking about Allegro.

But that was very difficult. We had very close relationship. That evening Emmett and I -- I went to the athletic club where we worked out and was a real nice evening. We decided -- we went outdoors for a run and about five minutes into that run he started screaming and yelling at me. And swearing, calling me every word, dirty word in the book and saying I got to me, that I had a big mouth and he did this for about 30 minutes. It was just endless until finally I said, Emmett, I felt like I owed

you so much for the -- that I could talk to you when my wife was dying and it was an outlet for me but I wouldn't take this from anybody else in the world. And I told him that he had some kind of problem that I didn't totally understand. He was totally against this relationship of Kay and I. And apparently afraid that we were going to tell all of the secrets of Allegro to somebody or somebody else. And from that time on Emmett and my relationship went down hill.

Over the course of time we would still run together and occasionally I would just, I'd criticize him by the way he handled his employees and my girlfriend at that time. We were later married and the next day Kay would come home and I learned that he had dumped on her, yelled on her, verbal abuse and this went on for months and months and months. So I was in between this thing of wanting to say what I felt to him but every time I did he would take it out on her. So I was between this rock and this hard place.

We continued to run together. But I knew that any discussions of Kay were now off limits. He told me that we would never be friends, he and Cathrine, we never, Kay and I would never be welcome in his house. Because we were, we continued in the marathon association and that year I was to be the meet director, a very responsible position. Emmett was the director of the organization. We had to work together closely to make -- to bring this race off in October. And I felt at the time Emmett would put road blocks in my place rather than the help I needed. He became obstructed.

Eventually in November -- in October, Kay and I got married. In

November the race occurred. We had a major glitch which Emmett blamed on me and I felt it was something that he had done that caused this glitch. But he blamed this on me.

The next -- it was a Saturday. The next Monday we ran together and we didn't talk. And then the next day we got together again and he said if we aren't going to talk there was no use in us continuing to run together. I said, well if we're going the talk, I'm going to tell you exactly the way I feel about what happened at that race and where you made the mistake and not me, and I did. And he got extremely angry. I said, well, if you don't want to run together any more just tell me. He said, I don't. And I left the track and I never worked out with him again. The only other occasion I had to see him was the Allegro Christmas party that year. I didn't want to go. And Kay felt -- Kay still worked for the company. Even with all that had happened and she urged me to go for her sake. And I did. And that was the last words. I said hello to him and that -- and that was the last time we talked together. I stopped being involved with the marathon association. I guess they relieved me. I was a director and there was no communication but I assume they just relieved me of my responsibilities and Kay continued to work at the company. And which was difficult for me, with the kind of relationship that I knew that she was continued to be verbally abused on a daily basis. She was a key person when he went into a new business and then she became this other kind of employee that wasn't to be trusted and was to be abused.

Q Please answer any questions that Ms. Gaffney might have.

BY MR. MORGAN:

Q Ms. Jordan, could you tell the jury what you do for a living?

A I'm a loan officer of Countrywide Home Loans.

THE COURT: I'm sorry could you repeat that? Yes, sit a little closer.

A I'm a loan officer at Countrywide Home Loans.

Q How long have you been with Countrywide Home Loans?

A For one year.

Q What did you do before that?

Q I owned a mortgage company. I was a broker for 13 years and then I worked for General Mortgage Services for about, about a year and a half, two years total. And then I owned another company called Nova Star Home Mortgage.

Q Have you ever had an occasion to be introduced to Mr. Emmett Scully?

A Yes, I met him.

Q When did you meet him?

A I met him when I had started, excuse me, after I had stopped my business with Nova Star and I went back to General Mortgage Services. I made an appointment to see him to talk about -- to talk to him about H.R. functions.

Q Why did you make that contact with Mr. Scully?

THE COURT: I'm sorry. I'm confused. When was it? That was the question. Do you have a date or time or something like that?

Q What was the year?

A It was February 2004.

THE COURT: All right. Sorry.

MR. MORGAN: Thank you, Your Honor. Please go ahead, Ms. Jordan.

Q Why did you contact Mr. Scully to talk about human resources functions?

A When I left Nova Star, when I stopped my business with Nova Star Mortgage and I went back to General Mortgage Services, I was an independent contractor with them which meant that I had a hundred percent commission, 1099. I also had employees and because of my arrangement with them they wanted me to have my own payroll service so they paid me 100 percent and in return I had to pay my own employees, so I needed a payroll company because I didn't want to handle payroll or H.R. functions.

Q How did you come about finding the name of Mr. Scully?

A I didn't have his name. I had the name of Allegro because General Mortgage Services used Allegro for their H.R. functions and since I was working with General Mortgage, for General Mortgage and I knew of them through them it was just an easier vendor to use for services.

Q Could you tell the jury about your meeting with Mr. Scully in February of 2004?

A When he came to my office it was not a long meeting when he came to my office. We kind of talked about just kind of general things. At the time we met I had just transitioned from Nova Star Home Mortgage to General Mortgage Services and so we kind of talked about that a little

bit and I was not happy, you know, with my situation with Nova Star. He talked to me about the fact that he worked for Allegro and was also considering leaving them and then starting his own company Synergetic. And so we kind of talked about that a little bit because we were both transitioning from one company to another.

Q Did he describe to you in any way during that conversation what his role was at Allegro?

A No, he didn't describe his role. I just assumed that he was their outside sales agent that signed up companies for H.R. services.

Q During the meeting, did he mention to you Ms. Mary Etta McCarthy?

A No, he did not.

Q During the meeting did he indicate to you where his business would be located?

A Yes, he did.

Q What did he tell you?

A He said that when he opened that he would probably be located on Sumter Street. I don't remember the address. But I remembered it because there was another mortgage company there and he said that he would probably be located there.

Q Do you know where Allegro was located at that time?

A At that time I did not.

Q How long do you recall that meeting with Mr. Scully lasting?

A Not more than an hour. I'm not exactly sure how long it was but it wasn't, you know, a terribly long meeting.

Q What kinds of information, if any, did he leave with you?

A He left general H.R. brochures that just talked about payroll services and H.R. services but it didn't have anything to do with prices. He didn't give me a price list, just kind of very general brochures.
Q At some point after that meeting with Mr. Scully did you have an opportunity to go look for the address at Synergetic that he had given to you?
A I did not look for it specifically. I went for Mr. Scully. I went to the building to look for Allegro. Excuse me, I did go look for him and I think I also knew at the time that Allegro was there. And I remember when I went in I looked under the directory, building directory, and the name was not listed on the directory yet.
Q What name was not listed?
A Synergetic.
Q But you knew to look for Synergetic?
A Yes, I did.
Q Go ahead. I didn't mean to interrupt you.
A So anyway I didn't see the name. So I went into one of the offices that was located on the first floor and asked if they knew of the company or knew where it was located.
THE COURT: Could I see you all a minute please?
(Thereupon, a bench conference was held.)
Q What was the name of the company that you initially went to ask where Mr. Scully might be, if you recall?
A It was Executive Staffing.
Q What do you recall you were directed to do after you met with

someone at Executive Staffing?
A (No response.)
Q Let me back up. Did you have any discussions with someone at Executive Staffing?
A There was a lady that was at the front desk and I asked her if she had ever heard of Synergetic or if she knew where they were located. She said she had not. And then we talked for maybe a minute or two. Then she went to the back and she asked me to hold on. She went in the back and got someone. And when I was in the lobby I was just kind of reading some of the information that was on the walls on the plaques and there was an article on the wall.
Q And who was that article about?
A It was about Ms. McCarthy. And at the time I didn't know, you know, who she was. And I read it and when the lady came out it was the same person. And I just asked, I told her that I was looking for Synergetic. And that was it. From there I went upstairs to Allegro and asked if Mr. Scully was there because he'd just said he was transitioning. He didn't tell me the business was actually open yet. So I thought maybe he was still there and I went upstairs and talked to them for a few minutes.
Q Who did you talk to when you went upstairs?
A Just whoever was at the front.
Q And was that someone at Allegro?
A At Allegro.
Q During your conversation with Mr. Scully in February of 2004, did

you have any belief that he was trying to recruit you for Synergetic while he was working with Allegro?

A Yes, I did. He made the comment that General Mortgage had been a long time client of Allegro and he kind of gave me the impression that General Mortgage was going to transition from Allegro over to Synergetic when he opened it. And I remembered that because I was trying to decide since I was with General Mortgage should I make the transition. Also because I didn't want to be with one company and then they were -- another company and that they were a potential payroll issues or payroll problems it was easier to be with one company or the same company.

Q Other than having seeing Ms. McCarthy's picture on the wall in the article, do you know Ms. McCarthy personally?

A No, I don't.

Q Please answer any questions that Ms. Gaffney might have.

THE COURT: All right.

MS. GAFFNEY: Thank you, Your Honor.

Q Good afternoon, Ms. Jordan.

CROSS-EXAMINATION

BY MS. GAFFNEY:

Q Now, Ms. Jordan, you explained for the jury that you were looking for a company to provide you with payroll services?

A Payroll and H.R.

Q And H.R. services because you were in the transition from one mortgage company to another, correct?

Ms. Mary Etta McCarthy, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MORGAN:

A I was born in North Carolina.

Q Where did you go to high school?

A I went to school in Virginia. I grew up in Virginia and I went to college in Virginia and taught school in Virginia.

Q What year did you finish college?

A 1963.

Q What college was it that you attended?

A I went to Radford College.

Q What course of study did you take while you were at Radford?

A I took -- I was trained to be a home economics teacher. My degree was a Bachelor of Science degree in home economics.

Q Do you hold any other degrees beyond your bachelor's degree?

A I do. I have a master's degree from the University of South Carolina in mental retardation.

Q When did you secure that degree, Ms. McCarthy?

A In 1974.

Q Are you currently married?

A Yes.

Q Who are you married to?

A To Larry Lafebre (phonetic). He's here today.

Q Do you have any kids?

A Yes. I do.
Q How many?
A I have two daughters.
Q How many -- do you have any grandkids?
A Larry has children too but he raised his children and I raised mine. I have two daughters and did you say grandchildren?
Q How many grandchildren?
A Four and I have got pictures.
MR. MORGAN: Judge, I'm afraid that this is going to take more than an hour.
THE COURT: We're not going to look at any pictures.
Q Ms. McCarthy, could you tell the jury a little bit about your work background?
A Okay. Like I said I taught school in northern Virginia and while I was there in the same school I taught I met my deceased husband. I was married to another Larry. So they're both Larry's. And he was -- he worked in the field of handicap and conditions. We were interviewed -- he was interviewed for a job in Spartanburg, South Carolina not long after we were married and we moved down here. So we have been here, I have been here ever since. He became the director of the school for handicap children in Spartanburg. And when he died the school was renamed for him, so there's a McCarthy School in Spartanburg. We had one daughter while he was living. And when he died I was pregnant with my second child. So I had my second daughter after he died.
I did a lot of volunteer work at the school and became very

interested in working with handicap, especially with severely and profoundly handicap, and knew that I was going to support this little family that I had, that I needed to go back to school and I came to Columbia, South Carolina to go to the University of South Carolina to earn that master's degree. I did that with an assistantship. It is one of the reasons I chose the University of South Carolina because I did get an assistantship here. So I worked 20 hours a week and did my class work and raised my family. When I finished my degree I intended to go back to Spartanburg but the job offers started here and I just have remained here.

The first job that I had was at the University of South Carolina and there I was working on a project that wrote curriculum for the severely and profoundly retarded children and these centers were starting to pop on up all over the state. That was a year to year grant situation. We knew it would last about five years and it did and we finished our work and we got these curriculum and all of the centers around the state.

So then I began looking for another job and found a job at the State Department of Education. And there I went back to my old degree of home economics and worked in vocational education at the State Department of Education for about eight years I think it was. Should I stop there?

Q What did you do after you finished up there?

A Okay. I did some consulting work on my own. And that's kind of significant because I was -- I was -- it was a business of my own. I was a one man band business. And during that time, I have a first cousin in

North Carolina who had gotten into the staffing business and she just loved it. And every time I saw her she would say, Mary Etta, you should be doing this, you would love it. You love people, you love details, and that's what you have got to do to be in the staffing business.

Q Ms. McCarthy, tell the jury if you would what a staffing business is?

A Okay. Staffing is the temporary business where a company will call you for ten temporaries to get them through say Christmas or through another period. Also, those companies can hire permanent employees from you, say they need a manager and they would call us and describe what department they needed a manager for so they would look for that professional level person as well. So she kept at me about you really should look into this. So finally I did. Since I was working on my own, periods of time that I was not doing my consulting work, I went to North Carolina to her business, looked over her shoulder. Her whole staff just helped me learn that business and I thought it was extremely interesting. So it took me about a year and a few months to make the decision.

So at that time I said, okay, I'm going to do this and I mortgaged my house and put money into the business and got it started and that was 15 years ago.

Q What year was that that you started the Executive Staffing?

A 1991.

Q How long did you operate Executive Staffing before you created a division that you call Allegro?

A This is not exactly accurate but it was about five years. And during that five year period I kept getting information across my desk about this

new business, this other kind of business that helped small to midsize businesses out in a different way. And I think you kind of have already heard that today that --

Q Ms. McCarthy, I need for you to tell the jury what a data organization is and what it is called if you would please.

A Those organizations are called P.E.O.s and that means Professional Employer Organization. And if you, for example, made quilts and started a business making quilts and soon you had four or five people working for you. You would be making quilts. And you would also be in the H.R. business so we can partner with you and take care of all of the H.R. business and you take care of making and selling your quilts. So I thought that sounded like something that we needed and it sounded like it was a way that America was going. And I looked into it. And then through some contacts I had -- I discovered a contract that was available and it was a very large contract and it equaled to about the rest of our business. That one contract the way it was written was quite large. And so it was worth my while to give it a shot.

And I did. And for about 18 months, 16 months, I think it was, I had that one contract and it needed to have paychecks written, taxes withheld and deposited on time, health insurance withheld and paid to the company but that's all -- and worker's comp, sorry but that's all it needed. It did not need this H.R. component. So that's why I started it as a division of Executive Staffing because Executive Staffing already had the specialized software to make a paycheck and to withhold your taxes and we had the accounts with the federal and the state tax

withholdings to deposit your taxes. So that administrative side of that business we had in place at Executive and that's why it became a division of Executive.

And then just immediately I realized that, a full fledged P.E.O. would need more than that administrative side. It would also need the H.R. side. Someone that could write handbooks for our clients, could help clients learn how to interview people, could help clients with their employee training. It is required by law that you have safety training and that you have sexual harassment training ever so often. So I needed someone who had experience in that who could do that. So I started looking for a partner.

Q How long did you look for a partner, Ms. McCarthy?

A Over a year.

Q How did you come into contact with Mr. Scully?

A Someone who worked on our Executive Staffing staff, Cathy Lynn Dell, was one of our sales people and she's just super and her husband was at Shaw Air Force Base and we knew we only had her for a short period of time. So when she heard me talking about this P.E.O. business she said you know what, I worked with this guy in Texas and he has now moved on to the Midwest and he has just lost his job and he ran the H.R. division for a manufacturing company. Maybe he would be the kind of person that you are looking for.

Q Okay. Did you then contact Mr. Scully?

A We did. Through Cathy and I can't exactly remember how it happened. There were exchange of phone numbers or something and

we talked on the phone, excuse me, at length a couple of times. Then Emmett came here for about three days and we talked nonstop about how this thing would look. And the fact that I had the administrative side in place and what I needed was someone who could be in charge of day to day operations, who could be in charge of those H.R. functions, make sure all of the clients were covered under federal and state law with all of the handbooks and training that they needed. And that it was going to be very hard because starting a new business is very, very hard and there were a lot of details when you start a new business you have got to start collecting your receipts of what came in and what went out from day one to make sure your money flow is right.

And then the minute you hire somebody you are responsible for them. So I tried to paint as bleak a picture as I could so that a person wouldn't come in and then just give up in three or four days. But that they would know it was going to be a long hard haul.

Q You ultimately struck a deal with the Mr. Scully?

A We did, and I --

Q What was, what was the arrangement that you and he agreed upon?

A Okay.

Q Do you bring him on board with Allegro?

A Okay. Mr. Scully needed to have a salary right away. When you start a new business most of the time you don't have a salary right away. When I started Executive Staffing I wouldn't have one for about 14 months. So you got to figure out how to support yourself and then

with Allegro he needed a salary from the get go. He had a family. He had work for other companies. So, I said, well, I'm going to put in X amount of money. He put in half that amount to get the company started. And I said we'll make sure you have a salary and I won't take a salary until the business has a cash flow going and then we can pay me back little bits at a time for as long as it takes to get me caught up. And also it would be a new enterprise so we would have stock and he would start out with 30 percent on day one. And I would start out with 70 percent checking my math here and each year he would gain a little bit more and I would subtract a little bit until the third year he would have 49 and I would have 51 percent. So that's the deal that we struck.

Q After you struck that deal what were the roles that you took with Allegro and what was the role then that Mr. Scully had with Allegro?

A Okay. Well, Mr. Scully was to take day to day operations, which includes overseeing money matters. I was to take the more global issues making sure that the company was headed in the same kind of direction that Executive Staffing had headed. I hope I don't get side tracked here but something that's very important to me was the way the company was run. From the get go Executive Staffing had been collaborative. We all worked together like a team. If I'm doing payroll and I get behind somebody from the next office would come over and help me stuff envelopes. We always helped each other to do everything. And I wanted Allegro to develop that same company culture. It was like a family. And that was very important to me. I had one employee at Executive had been there 13 years and I couldn't kick her out the door.

So I wanted that same feeling in Allegro. So it was my job to help to get the company started, make sure that that company culture was coming, was developing that way. And so we were really sewn together at the hip for many months.

And very -- let's see that was my job. My job was to take care of the national and state issues. There was a national organization, Napeo, N.A.P.E.O. There's a state organization K.P.O., the Carolinas Association of P.E.O.s and so I represented us on that national board and I was the president of this North and South Carolina organization K. P.O. My job was to set up banking relationships. What I did, which I did in the very beginning, my job was to introduce Emmett and whatever sales staff we developed to people that I met on the various boards that I worked with in the community.

Emmett's job was to take care of day to day operations. And to work with what the -- we had two employees at the beginning. And to work with employees as we grew to keep up client relationships. He was not always the person that spoke with clients. We had a staff. We had our H.R. benefit, we had our benefit's person. We had our payroll person. Those people were making contacts with our clients. That was his job was the day to day and mine was the global issue.

Now I said that we were sewn together by the hip for a lot of months. And right away within 30 days I saw that there were no books being set up. And that concerned me a great deal.

Q Let me ask you a question if I might interrupt. What title did Mr. Scully have when he first came with the company?

A His title was president.
Q And what title did you hold?
A Chairman.
Q Okay. What title do you hold today?
A Still chairman. I'm still chairman of Allegro.
Q And what title did Mr. Scully have at the time that you accepted his resignation.
Q He was president still.
Q Did Mr. Scully serve on the board of Allegro?
A He did.
Q Now you were getting ready to tell us about after a month there was something that happened?
A Yes. We, I discovered there had not been any books set up.
Q What steps did you take to address that, Ms. McCarthy?
A Well first of all, I bought a little blue ledger book at Staples and said, here is where we can put in what bills we have paid and what money we get in. And it was very simple. But it just didn't get done. And so, what actually happened in about two or three months time, Emmett got -- secured a student from the University of South Carolina, graduate student, I believe he was, going for his C.P.A. to set up sub books on quick books and it turned out that was just a giant mess. It never did get straightened out. I never knew where we were. I kept being told that we could not, I could not know when I left the office at night how much money was in the bank. Whereas Executive had books and I knew exactly how much money we had in the bank, could we meet payroll

tomorrow.

So that was a very big issue with me that we couldn't, that I couldn't be given, I wasn't being given the numbers that I needed. So about that time is when George Corbin was invited in to see what he could do to back track, take receipts, and set up the sub books.

Q How did you come upon Mr. Corbin to help with the books at Allegro?

A I have a -- an accountant that had worked with me at Allegro, I mean at Executive Staffing for several years. His name is Philip Laughridge, we have heard about him already. And he recommended George. He knew George and he said that George had some time that he was able to do this in a flexible way and he would come in on his schedule and that was fine with us and spent a few hours each day until he got those books set up.

Q Whose responsibility was it to have those books set up at Allegro?

A The president of the company.

Q And that was Mr. Scully?

A Correct.

Q With Mr. Corbin, was the company eventually able to get its record keeping set up to your satisfaction?

A No. It never did. I never did get my report on them. I didn't ask for it on a daily basis. But everyday if you own a business you should know how much money is in the bank and I never could get that number extracted. After Emmett left on February 23rd it took us from February to July but we did get them straightened out and I do have that number

now. I do know what we have in the bank.
Q As the chairman of Allegro you indicated that you and Mr. Scully were kind of joined at the hip for a number of months. At some point did you have to un-join at the hip?
A We did, of course. I mean that was our goal. That he would be off and running and doing the day to day, but let's see. We started Allegro in one room of Executive and it was fun. I have three desks in one little room. As soon as we could which was about two months we moved Allegro to a small suite upstairs. Then we moved all together to Elmwood Street and we were in the same office space, the 5,000 square foot office space and we shared the kitchen, we shared the hall ways, we shared the receptionist it made sense the two companies to share those expenses. And Emmett's and my offices were right next to each other with a door between which stayed open most of the time. There was nothing secret I thought. And I would hear Emmett, well let's see. I would hear him yelling and screaming at people. That started two months after he got here. And that's when we had just moved out of that little one room to a little suite upstairs and --
Q What steps did you take when you heard Mr. Scully yelling and screaming?
A Well, it's my feeling that you should be praised in public and shouldn't have issues talked about that are problems in private and that little office was so small there was no place for us to have a conversation where everybody that he supervised would hear it. And I didn't want to undermine his authority. So I called a friend who I knew

had a connection with a church down the street. And they got -- he got me a little chapel and we went down to that chapel that morning and that's when we had our first coaching conversation.

Q How long after Mr. Scully joined Allegro do you recall that?

A I think that was a couple of months. And it came about because people had been yelled and screamed at. And I just said, Emmett, we can't do business like this. We can't develop a strong business by yelling and screaming at people. People make mistakes either because they don't know how to do it or because they are trying something new. And you want people to try new things. And I said, we have got to take care of details, may be the first time we talked about the money situation, the receipts and the pay out. And so we had our session there and it was a good conversation. Emmett tends to get kind of volatile and blow up and get angry. And if for some reason I could just step back from that and let him blow up and get angry and say I understand that but this is what we have got to do to make this business work and we are in this thing together. We are partners. So we had conversations like that over the years one right after the other.

Q How many occasions, Ms. McCarthy, do you think you had conversations like that with Mr. Scully?

A A dozen.

Q Let me ask you if you know Ms. Yarborough here?

A Yes.

Q How do you know Ms. Yarborough?

A Well, Ms. Yarborough was an employee of Allegro. She was the

payroll administrator.
Q Who did she report to as the payroll administrator?
A To Emmett.
Q You know how long she was employed at Allegro?
A Two years, maybe a little bit more. I think it was 02 to 04.
Q Mr. Corbin, how long did he work for you at Allegro setting up the books?
A That started in the, I think, the fall of 99 and I think it took him several months I would guess seven or eight months then he did audits, he did our audit for us each year which we are required by law for our license.

So P.E.O.s must be licensed today to stay in business.

Q Do you recall how many years Mr. Corbin did the auditing for the company?
A Not exactly. But two or three.
Q At some point did he have to cease doing the audit work for the company?
A Yes, he did because his company became one of our clients so then he would have been Allegro's employee and he couldn't do the audits because that would not be an objective view of the company.
Q As president of the company, did Mr. Scully have responsibilities for the day to day operations, operational functions of the business?
A Yes. He did. And I realize I didn't finish with that. What I was going to say also when we came to the point where we moved over to Elmwood and we were in the 5,000 square foot area and his office and

mine were next door to each other I heard many one day two doors down with the doors shut I heard yelling and screaming at an employee. So that was like, that was the straw that broke the camels back and we sat down and talked again and I said Emmett I have been very polite about this up until now but I'm telling you we just cannot develop a strong business if this is the way our employees are treated if they are not treated in a civil manner. It was just very soon after that that he started pushing really hard to get Allegro moved up stairs again. And away from me because I think he, and he told me point blank that he did not want me involved in day to day. He said I will come to you and we will talk about the larger issues of the money and the hiring of new employees and I said great. That's the way it should be. But it's got to be with civility. We can't do it yelling and screaming.

Q At some point did Allegro move to a different floor than Executive Staffing was on?

A They did. Allegro moved and it's not, I even said to him I didn't agree with the move. It was too soon. Allegro didn't need all that space and sure enough about 50 percent of the office was unoccupied. And then that left Executive with an office that was about 50 percent unoccupied so it was not the smart economic thing to do but he was very, very anxious to get a way from me.

Q When Allegro moved to the other offices, how often would you and Mr. Scully meet?

A Okay. We set up a plan that every Monday morning there was a staff meeting and, which I attended, and that way I could hear the issues

that we're dealing with this claim or that claim at least be aware of it. I did not need to be involved in the details of it. I just needed to be aware of it. And then after that meeting he and I would go into his office and have a partners meeting and if there was another issue that we needed to talk about we would. If there had been an employee that he was beginning to feel needed to be replaced or if we could see a short fall of money coming up we could discuss what to do about that etcetera.

Q What was your role in the hiring of employees at Allegro?

A Once again to give that latitude which he wanted to run this thing on a day to day basis, he would after placing the add and he would get resumes in he would go through the resumes and find the top three, four or five that he wanted to interview. He would interview as well as every member on the staff that was a policy that we had if we're going to work together every member on the staff needs to interview that person. And then I would have the last interview. Emmett would let me know, well we like Susan and John very much and he would either tell me I like John better than Susan or John and Susan are about equal. I can't quite decide. And then I would have the interview with the final interview with the candidates and then he and I would confer and if I liked John and Susan the same amount also I would say you know what I agree with you, they are both well qualified the decision is yours or if one or the other struck me as more qualified for some reason I would tell him that. And that's how we hired new people.

Q And also seated over here is Ms. Scully?

A Yes.

Q At some point did she also become an employee of Allegro?
A She did.
Q What was her -- what were her responsibilities as an employee of Allegro?
A Okay. She, first thing I believe she did was to balance the checkbook. She took the bank statement and balanced the bank statement. And then she, as she increased her hours because she also teaches, and as she increased her hours at Allegro and reduced the teaching hours she took on some more responsibilities and she paid our bills, the phone bill, the insurance bill, and was responsible for making sure that the insurance bill that we received was exactly correct. And you can imagine how big that is when you have got a thousand employees. You need to go through a lot of spread sheets to find out you know if this, if each and every charge was correct before we paid it. And she didn't necessarily do that. She just made sure that it was done before she paid the bill.
Q At some point in the year of 2003, did Mr. Scully approach you about changing your business relationship?
A He did.
Q Okay. If you could, tell the jury sequentially as those things unfolded, what occurred?
A Okay.
Q Did he come to you?
A It was in one of our partner meetings after the Monday morning staff meeting. So we were together in his office. And he told me that

morning, it was in the spring of 03 that he was interested in buying out my shares. And he had thought about it and he didn't want to work with me anymore. And he wanted to have his own business. And I was stunned. I was absolutely stunned. I hadn't heard this before. We were still rocking along and building the business. Didn't think we were done with it yet. And I was just stunned. So, I said to him, and I said that to him. Well I'm absolutely stunned, Emmett, and it is something that I need to think about. And I can't give an answer right now. He said fine. You know, just go ahead and think about it. So I did, left and I guess it came up maybe two weeks later in discussion again. And I said well I have thought about it. And I guess the first thing we need to do is get an evaluation of the company to find out what it's worth before we can start talking about how much you know I would sell my 51 percent for. And she said fine. And I told him that I had gotten an evaluation for Executive Staffing on the advice of my attorney, who was in trying to look ahead to retirement. So I said I'd worked with a company, the Geneva Company, and they did a good job, they seemed to be thorough, they were a pleasant people to work with. How about if I contact them and have them do the Allegro evaluation, he said fine. I said, you have got plenty on your plate that is one of those global issues that I can handle and I will contact them and get it set up and get it going and he said fine. So, we --

Q What happens next then?

A Next with me just, well how is the evaluation going? Well fine and I would have to go to Yvonne and get financials for this year or that six

months period and what not. And just there's a lot of data to collect when you have your company evaluated. It is a lot of paper work. And so we would need to pull it off of the computers of Allegro. And Yvonne would pull a good bit of it. Over the course of the summer in August, I received a phone call from the woman at Geneva and she says, Oh my gracious, I got a phone call from Emmett this morning and he was so irate.

MS. GAFFNEY: Objection, Your Honor.

THE COURT: Sustained. You can't say what she said.

Q You can't say what someone said. What occurred when you received the phone call from Geneva? What did you do?

A Let's see. You may have to stop me and guide me a little bit more. I listened to Ginger. And I learned that a phone call --

MS. GAFFNEY: Objection.

A Okay.

Q Just say what you did after you got the phone call from the lady at Geneva?

A Okay. I went directly to Emmett and I said to the girl, the lady on the phone --

Q No what did -- I want you to say what you said to Mr. Scully?

A Okay. I went to Mr. Scully and I said, I got -- I had a phone call from Ginger. And she was quite upset because you called her this morning.

MS. GAFFNEY: Objection.

THE COURT: Wait. You still got that objection? It is kind of hard to do it right now.

MS. GAFFNEY: I understand.

THE COURT: Ask the question again. Let's back up one more time. She has a conversation, then she meets with Scully and talks to him about --

Q And what did you do with Mr. Scully? What did you say to Mr. Scully?

A I said to him, Ginger just called me and she's very upset over the phone call that you made to her this morning. And you raised your voice to her, you said that there was a 90 day period of time in our contract when this evaluation was supposed to be done and -- it's not done yet and we are not paying you if you don't get it done in 90 days. And I had to calm Ginger down and tell her, oh yes, we do want this finished. And we will pay you. And the reason it's not done in 90 days is my fault over the summer I had not given her documents just like that. I had been a little slow getting some documents to her. So it was not Geneva's fault it was my fault and I told that to Emmett and I said what is the difference in two weeks in the life of selling a company? Just be patient it will be here, that Geneva is doing their best and they are putting the material together. He said okay. Fine. Well, in a few weeks the evaluation was complete and it came to us I think in September.

Q What did you do when you got the evaluation?

A Took it straight to Emmett and shared with him.

Q When you had an opportunity to review that evaluation, what were your thoughts about the work that had been done?

A Well I thought compared to the evaluation that they did on Executive

-- I really thought it was under valued but --
Q Why is that Ms. McCarthy?
A Because of the amount of money they said that the company was worth. Is that what you mean?
Q Is it fair that you disagreed with that evaluation?
A I think so. Because of the fact that I own another business I know what that business is worth. I also am so involved with the national and state organizations that I know how P.E.O.s are sold. And they didn't exactly figure the price of the P.E.O. on the model that we use in our business to sell a P.E.O. business.
Q Did you tell that to Mr. Scully?
A We discussed that. Yes.
Q What did Mr. Scully do next with you after you handed him that Geneva evaluation?
A Well over the course of the fall, he and I had several discussions again. And he offered me 51 percent of what the evaluation had stated. And I said to him, that's fine. The evaluation I think is under valued. However, if I can be paid, I have not been paid yet for the two years that I worked with no salary so you could come here with a salary and I would like the company to pay me that money first and then I will sell my shares for the amount that the evaluation stated. And that was the sinking point, he said absolutely not. He said the price of the company - is the price of the company. And so, the conversations back and forth got escalated to the point where he told me one day and he told me this three or four times if you do not take the money I'm offering you, I'm

leaving Allegro. I am taking Yvonne and Lisa. I am taking 50 percent of the clients. I already know which ones I want and it will be 50 percent of your business and I am going to tear Allegro apart. And I was just floored to hear, I'm going tear Allegro apart when he was a partner, it was his business why would he want to do that to his own business? And I, I just I still to this day get tongue tied when I think about tearing the company apart and telling me that.

Q When did that conversation take place, Ms. McCarthy?

A October, November. More than once. More than once.

Q What was the tone of Mr. Scully's voice when he told you that he was going to tear Allegro apart?

A It was loud, it was rough, it was mean. It was, I'm going to tear the company apart. And then, finally the letters started going back and forth and, well actually let me back up, about the middle of December, he had a conversation with me again where he made that offer and absolutely not the company is not going to pay you for your back salary. And I said, Emmett we have got Christmas parties coming up for Allegro and for Executive and Christmas is coming up. Could you possibly put this on the back burner until after Christmas? I want to spend time with my family at home for the Christmas two weeks. And he was thinking of taking a vacation and leaving town for almost two weeks. And I said could we please wait until after Christmas and get back to this discussion and try to get something settled. And he said, yes.

MR. MORGAN: May I approach, Your Honor?

THE COURT: Yes, sir.

Q Ms. McCarthy, I'm going to show you a document that we marked as Exhibit Number 25. Do you recognize that document?
A I do.
Q What is that document?
A Well this is the letter that came to me on Christmas Eve.
Q Who is the letter from?
A It is from Emmett to me.
Q Did you actually receive a copy of that letter?
A I did on my desk.
THE COURT: It has already been entered?
MS. GAFFNEY: Without objection.
THE COURT: All right publish it. I mean if you would like to. I'm not making you.
A And this letter, I went in on Christmas Eve afternoon to surprise my employees and say go home. And I'll keep the office open until 5:30 and our business when people think they are going to pick up their checks until 5:30 you have to keep the door open until 5:30. So I stayed and everybody else went home. I went in my office and this letter was on my desk.
Q How did that make you feel, Ms. McCarthy?
A I was just blown over again. I just -- tears came to my eyes and I thought well he did not regard what he said he would do and that is wait until after Christmas. Now this had a deadline to it. First time I'd been given a deadline.
Q What was the deadline?

A The deadline was January the 23rd. January 23rd. So, I had no alternative but over Christmas to start thinking about it. And it -- I went home and was serving Christmas Eve dinner to my family and this letter was in my head. Just disregarding everything I asked --

THE COURT: Are you going to publish the letter? You don't have to.

MR. MORGAN: I just want to get it into evidence, Your Honor.

(WHEREUPON, Plaintiff's Exhibit Number 25 was received into evidence.)

Q What is the next thing that occurred in this discussion that you and Mr. Scully were having with regard to this business transaction.

A Let's see. As I recall when he came back we got together and talked about this and I said you know once again you are not responding to the fact that I worked for two years to enable you to learn this business because he had never had any experience in the P.E.O. business. And I think the company should pay me back those two years that I didn't get a salary. We had that conversation a couple of different times. And now I can't remember the next letter that happened. I received the next letter.

MR. MORGAN: May I approach, Your Honor?

THE COURT: Yes, sir.

Q I'm going to show you a letter that's been marked as Plaintiff's Exhibit Number 44 and ask whether you recognize that document?

A I do.

Q Is that the letter, the sequence of things that occurred?

A Yes it is. And the tone of this one was just as harsh and unyielding as this one was.
Q What was the date of that letter, the 44?
A January 23rd.
Q And did you receive a copy of that letter?
A I did.
Q And who was that letter from?
A From Emmett Scully.
Q What information did it contain, Ms. McCarthy?
A It talks about the money that we both put in at the beginning and how he didn't think that should come back to me. It had to do with salary, the paying my back salary and he didn't think that was justified. He says there was a piece in here about some money that George in the audit figured out he thought that Executive owed Allegro and --
Q Did you agree with that?
A Did not.
THE COURT: Mr. Morgan, I will not stop you but when she said George, for my benefit and for the jury's benefit, tell the full name.
THE WITNESS: I'm sorry. George Corbin.
THE COURT: That's all right.
A No, I didn't because there was no paper trail for it. One piece of it I could trace through Executive and that was that the Executive health insurance like mine and my incorporate employees was not paid because we didn't get charged on the Allegro computer. And I said, you are exactly right. So we switched the funds from one company to the

other to put them where they should be. He wanted Allegro's telephone system back. And then he gave an offer based on the evaluation.

Q Did you agree with that approach from Mr. Scully?

A No.

Q Did you respond to Mr. Scully at some point?

A I did.

MR. MORGAN: Your Honor, may I approach please.

THE COURT: Yes, sir.

MR. MORGAN: May I move number 44 into evidence.

THE COURT: Any objection?

MS. GAFFNEY: Without objection, Your Honor.

THE COURT: All right.

(WHEREUPON, Plaintiff's Exhibit Number 44 was received into evidence.)

Q Must be 26. Will you take a look at that Exhibit, Ms. McCarthy, please?

A Okay this is a letter.

Q Who is that letter from?

A From me to Emmett.

Q What is the date of that letter?

A That letter is dated January 29th which is one week after this letter.

Q Okay. What does that letter contain?

A It contains my counteroffer where I have put in writing for the first time my claim for my back salary and the amount of money to sell the company.

Q Did you ever get a response to the letter that we have marked as

Exhibit Number 26?

A Let's see, I did. I got --

MR. MORGAN: First, Your Honor, may I move Exhibit Number 26 into evidence?

THE COURT: Without objection?

MS. GAFFNEY: Without objection.

(WHEREUPON, Plaintiff's Exhibit Number 26 was received into evidence.)

MR. MORGAN: May I approach, Your Honor.

THE COURT: Yes, sir.

Q Ms. McCarthy, I'm going to show you an Exhibit that we marked Exhibit Number 1, Plaintiff's 1.

A Okay.

Q Can you tell the jury what that is?

A This is another letter from Emmett to me.

Q What is the date of that letter?

A February the 2nd.

Q And you say it was from Mr. Scully?

A That's correct.

Q Ms. McCarthy, if you would go to the 1, 2, third paragraph and publish for the jury third, fourth and fifth paragraphs of that letter?

A More importantly than those considerations however, is the fact that you did make the emotional investment to include me and my family into Allegro, Executive Staffing, and your circle of friends in the community. When you selected me as your partner you did so totally and

unconditionally. I do believe that your commitment to me and the success of Allegro was a deeply personal one and completely heartfelt. Unfortunately, I did not reciprocate in those personal commitments and as a result I did not up hold my end of the relationship.

I felt that if I invested myself totally in making Allegro a success that would be sufficient. Unfortunately, I now realize what a mistake that was. Rather than taking the time to invest in our relationship I devoted all of my energies to Allegro. As a result of my behavior we grew apart and I created most of the disharmony that now exist between us.

Q Ms. McCarthy, who wrote that letter again?

A That was Emmett.

MR. MORGAN: Your Honor, we would move into evidence Exhibit Number 1.

MS. GAFFNEY: Without objection, Your Honor.

THE COURT: Without objection.

(WHEREUPON, Plaintiff's Exhibit Number 1 was received into evidence.)

Q Ms. McCarthy, what is the next thing that occurred after you received that letter of February 2nd of 2004?

A I received another letter on February the 16 -- he approached me on February 16th and said we cannot agree. So, I resign. And this letter is a letter of resignation. I received a letter of resignation.

Q I show you an Exhibit that's been marked Exhibit Number 22. Can you tell the jury what that is?

A That is the letter that I just referred to on February the 16th.

Q And who is it addressed to?
A It is addressed to me.
Q Is that your home address?
A Yes it is.
Q Could you please publish this letter to the jury?
A I am hereby resigning as an officer, director, and employee of Allegro Incorporated effective immediately. I wish you and other employees at Allegro the very best in the future. Thank you for the opportunity of having worked with you and Allegro during the past six years.
Q What did you do when you received this letter, Ms. McCarthy?
A I could hardly think. He also said to me as soon as I finished reading it, now you know you have got that sexual harassment issue in Alabama that needs to be taken care of on Wednesday and Thursday and you've got this company, a man who fired his son and that was a very difficult situation and that has to be finished up this week. I said, well thank you very much. And I felt like I was backed into a corner and plastered in a corner. He had just for months just beaten me up and beaten me up and beaten me up. He says I didn't respond to him but we -- I responded each and every time he asked me to. And he just could not take anything slowly. It had to be bam, bam, bam, bam, and I just felt absolutely beaten up. And so I said, would you just wait two hours and let me go home and digest this before you walk out the door? He said, sure.
Q Did you go home?

A I did.
Q What did you do when you went home?
A I cried. And I'm not a crying business woman but I cried and I cried and I cried. And I just said, I don't see any other choice than to take this man's offer because he's already threatened that if I don't take that amount of money he's going to tear the company apart. And that wouldn't be good for my inside employees, that wouldn't have been good for the clients out there and all of their employees. And I just didn't want it to happen. I didn't want to see that family broken up. It felt like a family to me.
Q What did you do then, Ms. McCarthy?
A I went back to the office.
Q What did you say?
A And I said to Emmett, I said, you have left me no choice but to accept this. And I very, very, very reluctantly accepted his letter of resignation. I mean his offer, not his letter of resignation, but his offer to buy the company. And I said to him, I have some lawyers that will draw up the sale papers and probably take them three or four days. And so by the end of the week I should have them, and he said fine. And I just left the office. I couldn't say anything else.
Q What did you do after that?
A Well, I went back home. And I just felt like a beaten up rag doll and talked to my husband. And I called a friend of mine.
Q Who is this friend?
A Brian Nugent.

Q Who is Brian Nugent?
A He is an attorney that I have met on that national board a real fine young man that worked for a very large P.E.O. And over the last several months I had just been talking to him about Emmett's offering to buy my company and I just felt I just wasn't sure what to do. And so --
Q What did you and he discuss? Not what he said but what did you and he discuss?
A We discussed the fact that I was having the lawyers I had already called the lawyers to draw up the papers to sell the company. And we were on the phone quite a bit of the time. He was silent a little bit. I was silent a little bit. And he said, you know, you just can't lose that company. There has got to be a way you can hang on to that company. I said, it is going to be an uphill battle because he has made -- he formed golfing relationships and taking people to Heritage and that sort of thing and I said, some of those customers I know he's already talked to and I said, they are going to be customers leaving our company and it is going to be an uphill a battle.
Q What did you do after you had that discussion with Mr. Nugent?
A Well, the just thought, just thought, and thought I guess over, over the course of that week.
Q Did you make any contacts with any other persons after the conversation with Mr. Nugent?
A Yes, I did.
Q Who did you contact, Ms. McCarthy.
Q Well Mr. Nugent said to me --

MS. GAFFNEY: Objection, Your Honor.
Q My question is who did you contact after you spoke with Mr. Nugent?
A Well, I contacted Mr. Nugent again is what -- who I contacted again. And he told me that he had a friend.
MS. GAFFNEY: Objection.
THE COURT: All right.
A He had a friend.
THE COURT: Stop. Stop. Stop. Relax. You can't say what he said. But you can say what you did as a result of the conversation. And this happens all of the time, ladies and gentlemen.
A Yes I know it does. It's hard --
THE COURT: So relax a little bit. Not what he said but as a result of the conversation what did you do?
A Okay. As a result of the conversation, I said to him, yes, if you do have a friend, that you think is available on a short term basis, do ask him if he could help me out on a consultant basis if I decide to keep the company. So Mr. Nugent did do that.
Q And what did you do? What did you do, Ms. McCarthy?
A I hung up the phone and the next day I talked on the phone with Brian Nugent and Brian Nugent set up a meeting with Jim Everly and I, to meet and just talk about what had happened.
Q Okay. Did you then meet with Mr. Everly?
A I did.
Q Okay and is Mr. Everly in the courtroom?

A Yes, he is with the red necktie.
Q Okay. What did you and Mr. Everly discuss?
A Okay. I told him the same story I have told you. And that I was just, I just hardly could think about going through with letting this company go. And if I decided to hold on to it what a horrible thing it would be and how much hard work it would be. And would he be interested in jumping into from the frying pan, into the fire with both feet and helping me out and to see if we could save that company.
Q Did you personally meet with Mr. Everly that week?
A I did.
Q When during the week did you meet with Mr. Everly?
A I think it may have been Wednesday.
Q Did you make any commitments with Mr. Everly on Wednesday?
A I did not. He just listened. And I was surprised that I ever saw him again. But we talked the next day on the phone.
Q And the next day would have been what day, Ms. McCarthy?
A Thursday.
Q Did you receive anything from your attorneys on Thursday?
A On Thursday I received the papers to sell the company.
Q Now when you received those papers, tell the jury what you did next.
A Okay. I looked at them and I thought that it was like reality. And I said, you know what, I just cannot do this. I cannot let this company go to somebody that has treated me like this and I know that he's a yeller, a screamer, the company won't grow, he beats the walls and so I just

couldn't do it. And I called the attorneys and I said, would you listen to me? Have I lost my mind? I think I might want to hold on to the company.

Q Did you get back to Mr. Scully at any time during that week of the 16th?

A No, I did not.

Q When was the next time you got back to Mr. Scully?

A He was gone and avoiding me and I was gone.

Q When was the next time you had a chance to meet with Mr. Scully?

A On Monday the 23rd of February.

MR. MORGAN: May I approach, Your Honor.

THE COURT: Yes, sir.

Q I'm going to show you an Exhibit that we marked Exhibit Number 23.

A Okay.

Q Do you recognize that?

A I do.

Q What is that letter?

A That is a letter from me to Emmett accepting his resignation that he gave me on the 16th.

Q What steps if any did you take when you presented that letter of the 23rd to Mr. Scully?

A Well, I had --

Q Did you ask him, did you ask him to do anything?

A I did.

Q What did you ask him to do?

A I asked him for the keys to the car and he said, you are taking my car away and I said, no, it belongs to the company and you are the person that's been designated to drive it. It's a company car. So he gave me the keys. You asked me what steps I'd taken.

I had the police in the next room because I knew how volatile he was and I didn't know what might happen and I had a cab called for the outside so that he would have a way to get home.

Q Did Mr. Scully leave?

A He did. And he didn't have quite enough money for cab fair so we gave him money for a cab fair.

MR. MORGAN: Your Honor, we would move Exhibit 23 into evidence.

THE COURT: All right.

MS. GAFFNEY: Without objection, Your Honor.

(WHEREUPON, Plaintiff's Exhibit Number 23 received into evidence.)

BY MR. MORGAN:

Q Ms. McCarthy, after you met with –

THE COURT: What Exhibit was it?

MR. MORGAN: 23.

A Okay, it was February 23rd letter that's Exhibit Number 23.

MR. MORGAN: Yes, sir that is correct. Thank you, Your Honor.

Q After you met with Mr. Scully on February 23rd, what was the next step you took after accepting his resignation.

Q Jim Everly and I went directly up stairs and gathered the staff

together in the conference room to tell them that Emmett was no longer with the company and that he had left and to introduce Mr. Everly who would take over the job of president and running the day to day operations of the business.

Q What was the day that you hired Mr. Everly to become president of Allegro?

A That day, the 23rd.

Q Okay. Go ahead. What did you and Mr. Everly do then?

A Well we allowed the company to, the employees to ask any questions they had for us because you can imagine what a shock that would be if you were a part of that group and then we said we would meet with each and every person and we offered them their jobs to reassure them they had a job and they would have a new non-compete contract to fill out to sign.

Q Why were you going to have a new non-compete contract?

A Well for one thing, so that the new person, the new president's name would be offering the job to the people just a legality.

Q Once you met with your employees, what was the next step that you took?

A Two employees piped up at the staff meeting and said that they would not sign non-compete and those were the two employees that went with Emmett Scully.

Q Who were those employees, Ms. McCarthy?

A Yvonne Yarborough and Lisa Millikin.

Q What were the steps you took after you accepted Mr. Scully's

resignation?
A We did spend the day meeting with each and every employee and offering the new contracts and we did e-mail every single client to let them know that Emmett was no longer working there and that any concerns or issues the staff was still on board and payroll would still come out as normal and any concerns they had they could call any staff member they have been accustomed to working with they could call me or they could call Jim. And then we made a plan to start visiting each and every client.
Q Who was the first client that you visited if you recall?
A Merritt Veterinarian which is George Corbin's company.
Q Who did you meet at Merritt Vet?
A George Corbin.
Q Who met with Mr. Corbin?
A Jim Everly and I did.
Q What did you and Mr. Everly discuss with Mr. Corbin?
A Well, we -- and the reason we did that one first is it was our largest client. And we told him that Emmett was no longer working with the company and I wanted him to meet Jim Everly so he could see him face to face and know who he was dealing with. And I thanked him very much for his business over the past year and I hoped that he would continue his business with us.
Q Was there any other discussion that you and Mr. Everly had with Mr. Corbin?
A Yes. Mr. Corbin then said to me, well you know, Mary Etta, because

of my friendship with Emmett I probably will go with his new company.
Q At any time, Ms. McCarthy, in the year 2003, did Mr. Corbin who was an accountant doing services for Allegro, ever come to you and tell you of his involvement with Mr. Scully?
A No.
Q At any time in the year of 2003 did Mr. Corbin ever report to the board of directors of the work that he was doing privately for Mr. Scully?
A No, he did not.
Q In 2004 prior to accepting Mr. Scully's resignation, did Mr. Corbin ever come and report to you directly of his involvement with Mr. Scully?
A No he did not.
Q Did he ever report in 2004 prior to your accepting Mr. Scully's resignation report to the board of directors of Allegro about his involvement?
A No, he didn't.
Q Did he on that day that you met with him, what was that day, Ms. McCarthy?
A February 24th, the day after Emmett left.
Q Did Mr. Corbin tell you that day of his involvement with in prior discussions with Mr. Scully?
A No, he did not. But he knew about the company and said we will go with the new company, Synergetic. He already knew the name of it. He knew that they had health insurance in place or he wouldn't have transferred a hundred plus employees.
MR. MORGAN: May I approach, Your Honor.

THE COURT: Yes, sir.

Q I'm going to show you several documents that have been marked as Exhibit 9 and I ask you to take a look at each of those documents.

Q Ms. McCarthy, if you would look at the first page of that Exhibit Number 9. Could you tell the jury what that is please?

Q That's the letter that Merritt Vet Supplies wrote to Allegro saying we're leaving you in 30 days. That's the way our contract works. If you want to leave our company the out that you have is to give us 30 days notice. That gives us time to wrap up payroll, insurance payments and that sort of thing. It says that they will leave March 31st, that was less than a month after we received the letter. No it was a month after we received the letter.

Q What is the date, what is the date of the letter that is page one of Exhibit Number 9?

A February 27th, which is four days after Emmett left.

Q And if you go to page two of Exhibit Number 9 what is the date of that letter?

A March 23rd, which is one month to the date after he left.

Q Who is that letter from?

A That's from Hawthorne Medical Equipment.

Q Who is that addressed?

A To me.

Q What is the substance of that letter?

A That they would be leaving April 22nd.

Q Were they giving you notice?

A Yes, giving us notice.
Q And the next page is a letter dated what?
A March 4th.
Q Who is it to?
A To me.
Q Who is it from?
A It's from Eastlan Management Company.
Q What is the substance of that letter?
A It was the notice letter from them as well, 30 days.
Q And the following page of Exhibit 9?
A Eastlan again. The date is March 4th. It's from another branch of Eastlan and they were going to be leaving on April 4th.
Q And the following page of Exhibit Number 9?
A It is the same thing, a letter to me on March 4 from another division of Eastlan that they would be leaving on April 4th.
Q And then the last page of Exhibit Number 9, what is the date of the letter there?
A March 8th.
Q And who is that from?
A These from Cherokee Kenworth, another company of ours. These are all large companies that had their own worker's comp insurance that he could take with him without having to form a worker's comp policy of his own. Every company that left had their own worker's comp insurance and some of those insurances were set up just two months before he left.

THE COURT: Now, Mr. Morgan, so Exhibit 9 consists of six pages of six different letters.

MR. MORGAN: That's correct, Your Honor. May we move that into evidence?

MS. GAFFNEY: Without objection.

THE COURT: Yes, sir. Court's Exhibit.

(WHEREUPON, Court's Exhibit Number 1 (9) was marked for identification.)

MR. MORGAN: May I approach, Your Honor.

THE COURT: Yes, sir.

Q Ms. McCarthy, I'm going to show you an Exhibit that we marked as Exhibit Number 7. Do you recognize that document?

A I do.

Q What is that document?

A It is a list of the clients who left us and the date that they terminated.

Q What is the time frame of the list of those clients that left you?

A Within the first two to three months

Q After what event?

A After Emmett resigned.

MR. MORGAN: Your Honor, we'd move that into evidence.

THE COURT: All right. Without objection, I'm assuming. Any objection, Ms. Gaffney?

MS. GAFFNEY: No, Your Honor.

THE COURT: All right.

(WHEREUPON, Plaintiff's Exhibit Number 7 was received into

evidence.)

A And the reason this is significant is that when a company decides to go with a P.E.O. it usually takes two to three months to set them up with their health insurance, their worker's comp insurance, the payroll, to get all of the information from all of the employees about who they want to cover on their health insurance, how many deductions you want on your payroll and to enter all of that into the computer and run your first payroll for a client but these happened overnight.

Q What is the importance, Ms. McCarthy, of each of those Allegro or former Allegro clients not having their own worker's comp insurance?

A Because as a new P.E.O. it is very difficult if not impossible to get a blanket worker's comp insurance policy.

Q Could you explain to the jury why that is so hard?

A Yes. The insurance market over the last few years has done what we called hardened and at this time there were three companies in the nation that would work with a P.E.O. and part of that came about because of 9/11 and the worker's comp industry was very devastated because I had so many payments to pay out. So, it was easy enough to deny the P.E.O. industry that would be an interesting discussion but they did and so there were only three companies that worked with P.E.O.s. So those -- a few companies had their own insurance any way because they liked who they were dealing with and we administered it. Those companies that did not have their own insurance I found out through later investigation were moved in the course of December -- November December and January to their own worker's comp policy.

Q Could you tell the jury on that list of terminated clients that you have which of those have transfer of worker's compensation to their own coverage during the time period December 2003 through the time of Mr. Scully's resignation in February of 2004?
A Now, I'm going to give you what I know. But you may ask --
Q That's all I want.
A You may ask Jim Everly for additional information.
Q All I want you to do is tell the jury what you know?
A I know that Eastlan which has three different companies here were moved in December to their own worker's comp and Hawthorne Drugs had not left -- had not gotten their own worker's comp at the time they left us. But we had the quote for them. And Yvonne asked Kay, you have heard Matt talk about Kay this morning, for a copy of that quote and she took it with her. So that quote had already been done by us. We had already contacted the insurance company and gotten a quote from Hawthorne Drugs and it disappeared from sight. Those are the only two that I want -- I feel comfortable giving you dates on.
Q That's fine. That's fine.
A Mr. Morgan, but I do know that Jim can help us out further.
Q At some point did you receive a resignation from Ms. Yvonne Yarborough?
A I did. On the day that, I'm sorry?
Q What day was that?
A On March 1st.
Q Can you tell me what happened about what time on March one?

A Okay.
Q That occurred?
A We had been talking to her all week. And she couldn't quite make up her mind whether she wanted to stay every single day she said that to us. So at 3:00 on Monday morning -- on Monday afternoon March 1st, she came to my office with her very large pocketbook and a couple of other things in her hand and said I'm leaving. And I said, Yvonne, that's so abrupt. She said I'm leaving. I need someone to help me with my chair and my picture. I said, we would be glad to. So Jim and I went to her office. It was her own chair she liked it -- it was a comfortable chair. And we pushed her chair and her pictures down stairs and helped her load them in her car. And she left.
Q Now after Mr. Scully resigns on February 16th, you accept it on the 23rd, Ms. Yarborough resigned, did you have someone or did you yourself look at the computers at the office?
A Yes.
Q What did you do to look at computers, Ms. McCarthy?
A Okay. On the day after Yvonne left, popped up, something popped up on her screen that was a little message says, I read your document, I read your letter and there were three messages from Merritt Vet. And so we looked into the computer to see what it was responding to and there was nothing there, it had been deleted. So that got our curiosity up and we ended up having the harddrive from Yvonne's computer, from Emmett's computer, and from one other computer in the building sent to San Francisco and it was forensically recovered is the word they used

and they went through harddrives and they were able to pull back the things that had been deleted.

THE COURT: All right stop for a minute. Can I see you all?

(Thereupon, a bench conference was held.)

THE COURT: Members of the jury, of course, even if you are from New Jersey you can figure that out. We're at a good stopping point and we will stop for the day. I got to remind you, please don't talk about this case in any way shape or form for the reason that I have given you early you. It would be unfair to the Plaintiff, unfair to the Defendants for you to do so. Once again the time to take about this case would be at the very end once you have heard everything. So until then please don't discuss it among yourselves and don't talk to your wives or significant others about it. It would be unfair under our rules for you to do that. I trust that you have a pleasant and restful evening. And ask that you be back in the jury room tomorrow morning at 9:30, ladies and gentlemen. See you all at 9:30 in the morning. Thank you so very much.

(Jury exits the courtroom.)

THE COURT: We were getting there, were at the point that they were getting a little tired.

MR. MORGAN: Excellent.

THE COURT: Anything further?

MS. GAFFNEY: Nothing further, Your Honor.

THE COURT: See you all tomorrow morning at 9:30.

MR. MORGAN: Thank you, Your Honor.

(Whereupon proceedings of May 1, 2006 were concluded.)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF COMMON PLEAS
2004-CP-40-01915

ALLEGRO INC., PLAINTIFF)
VS.)
GEORGE CORBIN, EMMETT J. SCULLY, SYNERGETIC INC., AND YVONNE YARBOROUGH, DEFENDANTS.)

TRANSCRIPT OF RECORD

MAY 2, 2006
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE L. CASEY MANNING, JUDGE AND JURY.

A P P E A R A N C E S:

RICHARD J. MORGAN, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

AMY L. GAFFNEY, ESQUIRE
ATTORNEY FOR THE DEFENDANT

CRYSTAL T. JACKSON

OFFICIAL COURT REPORTER

May 2, 2006:

MR. MORGAN: We pulled that and anything after three has been renumbered. And I believe, Your Honor, I had introduced without objection some Exhibits beyond three yesterday.

THE COURT: I got the impression that you all had agreed on the Exhibits, marked them ahead of time, and technically they're all in?

MS. GAFFNEY: No, Your Honor, there are objections to several of them.

MR. MORGAN: But those that went in yesterday were without objection.

MS. GAFFNEY: That is correct.

THE COURT: Mr. Bowen, you may invite them in, sir.

(Jury enters the courtroom.)

THE COURT: Welcome back, madam forelady. I hope that you all have had a blessed week (sic). This week will resume with Mr. Morgan, with Ms. Mary Etta McCarthy retaking the stand. Ms. McCarthy, you may come back up and of course you are still sworn.

I think we left off yesterday computers sent off to California. Some forensic study up somewhere along that line, is that correct?

MR. MORGAN: That is correct, Your Honor.

DIRECT EXAMINATION

BY MR. MORGAN:

Q When we left off yesterday we were talking about some computer forensics that you had conducted on some computers at the office. Did you have an opportunity yourself then personally to review the

information that you had asked the computer forensic people to take a look at?

A Yes, I did.

MR. MORGAN: May I approach, Your Honor?

THE COURT: Yes, sir.

Q I'm going to show you a document that has been marked as Plaintiff's 5. Do you recognize that document?

A Yes, I do.

Q Can you tell the jury what that document is?

A Okay. I believe yesterday I mentioned that the day after Emmett left a message came to our computer from Merritt Vet they had read the document that is had been sent to them. When we looked into Yvonne's computer there were no documents. They had been deleted. So when this forensic recovery was done the documents were pulled out of the delete again and these are the documents. And they are all of the employees of Merritt Vet with their information like their social security number, their birth date, the day they started with the company, their salary, and it's information that in this format could be used to set up a new payroll very quickly without putting all this -- without gathering the information from the employees first as a P.E.O. does when they start from scratch. And then without putting the data in the computer it was already there.

Q Ms. McCarthy, what is the date, time stamp that appears on page one of the e-mail with those attached documents?

A That was Monday, March the 1st, the day that Yvonne left, at 2:16

p.m. And she left about 3:00.

Q The information contained in Exhibit Number 5 is the information that appears on pages two through the end information that is maintained in the ordinary course of business at Allegro?

A Yes, it is.

Q How do you consider that information?

A Confidential.

MR. MORGAN: Your Honor, we would move Exhibit 5 into evidence.

THE COURT: All right.

(WHEREUPON, Plaintiff's Exhibit Number 5 was received into evidence.)

MS. GAFFNEY: Your Honor, may we approach?

THE COURT: Sure.

(Thereupon, a bench conference was held.)

THE COURT: Yes, sir. You may continue.

MR. MORGAN: Thank you, Your Honor.

THE COURT: Objection is noted, overruled along the lines that I discussed with you all up here. Okay?

MS. GAFFNEY: Thank you, Your Honor.

MR. MORGAN: Thank you, Your Honor. May I approach Your Honor?

THE COURT: Yes, sir.

Q Ms. McCarthy, I'm going to show you an Exhibit that has been marked as Plaintiff's Exhibit Number 4. Do you recognize that

document?
A I do.
Q Where did you secure that document?
A This came from the forensic recovery as well. And it came from Yvonne -- on Yarborough's computer.
Q Can you tell the jury what information is contained on that document?
A This is the pricing and the demo information for the software that's used in our industry that we use in our office we already have it on our computers and this is --
Q Ms. McCarthy, if I may interrupt for a second. You said this is information from Pay Plus?
A I'm sorry. Yes, I didn't say that though. Pay Plus.
Q What software package did Allegro use in February of 2004?
A Pay Plus.
Q Was there any need for Allegro to secure any additional information about Pay Plus pricing for Allegro's business?
A None whatsoever.
Q If you could go on and explain what the importance of Pay Plus is to the jury?
A Okay. Pay Plus is a software that's written just for our industries in to which we can put your paycheck amounts and the taxes are computed for whatever state you live in because we have businesses in states other than South Carolina. After we have put in the information about your insurance whether you want it just on yourself, yourself and

your spouse your children etcetera that information is in this software so that the deductions get made from your paycheck properly every two weeks or every week or every month or whenever you get paid.

Q If you could go down to about the middle to where it has original message and under that there is statement that starts Hi, Yvonne. Could you please publish that for the jury?

A Hi, Yvonne, it was good to talk with you. Here is the information we send to potential customers. Let me know if you need anything else.

Q And as I understood, Allegro was already a customer?

A We were already a customer.

Q What is the date on that e-mail that Ms. Yarborough received from the Pay Plus people?

A February the 5th, 2004.

Q And what is the time that she received that e-mail?

A At 4:40 in the afternoon.

Q What were the hours of work that Allegro had for its staff during February of 2004?

A Approximately 8 to 5.

Q And if you could go up to the top of that e-mail, did Ms. Yarborough transmit that information to any individual?

A She did.

Q Who did she submit it to?

A To Emmett Scully.

Q What was the date and time that she submitted it to Mr. Scully?

A That was February the 5th, 2004 at 4:46. Six minutes later.

Q And underneath there has a tracking piece of information. What does that reveal?
A That reveals that Emmett Scully read this document on the same day February 5th, 2004 at 4:48, two minutes later.
Q On February 5th of 2004 were both Ms. Yarborough and Mr. Scully employed by Allegro?
A They were.
Q Were they receiving a paycheck from Allegro.
A Yes, they were.
Q Were they receiving benefits from Allegro?
A Yes, they were.
MR. MORGAN: Your Honor, we would move Exhibit Number 4 into evidence.
THE COURT: All right.
MS. GAFFNEY: Without objection, Your Honor.
THE COURT: All right without objection.
(WHEREUPON, Plaintiff's Exhibit Number 4 was received into evidence.)
MR. MORGAN: May I approach again, Your Honor?
THE COURT: Yes, sir.
Q Ms. McCarthy, I'm going to show you an Exhibit that has been marked as Exhibit Number 14. Do you recognize that document?
A I do.
Q I don't want you to tell me what the document says. But I want you to tell the jury what the document is.

A Okay. It is a print out of a message between our office or in our office within our office. It's a print out of a message that someone in our office wrote to someone else in our office.

Q Now, in the normal course of business when someone in your office receives a call is there some method that is ordinarily used by Allegro to record that information?

A This is the method. The record keeping is done in the computer the date and the time of the telephone call, who it was from, and what it was about.

Q And does that information that is contained on Exhibit Number 14 the type of information that is ordinarily and normally maintained by Allegro in the conduct of its business?

A Yes, it is.

Q And has that been the case during the period of time of January, 2004 through the period of the information that you hold in your hand as Exhibit 14?

A Yes. It is.

MR. MORGAN: Your Honor, with that foundation I would move that into evidence.

THE COURT: All right.

MS. GAFFNEY: There is an objection to that, Your Honor.

THE COURT: Basis?

MS. GAFFNEY: Basis is hearsay.

THE COURT: Overruled exception to hearsay to rule kept in the course of everyday business. You may continue Mr. Morgan.

(WHEREUPON, Plaintiff's Exhibit Number 14 was received into evidence.)

Q I show you an Exhibit that we have marked as Exhibit 15. Do you recognize that document?

A Yes, I do.

Q Ms. McCarthy, if I ask you the same series of questions with regard to Exhibit 15 would your answers be the same as for Exhibit 14?

A Absolutely.

MR. MORGAN: Your Honor, we would move Exhibit 15 into the record.

THE COURT: Ms. Gaffney?

MS. GAFFNEY: Same objection.

THE COURT: Same Ruling.

(WHEREUPON, Plaintiff's Exhibit Number 15 was received into evidence.)

MR. MORGAN: May I approach, Your Honor?

THE COURT: Yes, sir.

Q Ms. McCarthy, I'm going to show you another Exhibit that we have marked as Exhibit 34. Do you recognize that document?

A Yes I do.

Q Can you tell the jury what that document is?

A This is a list of the clients that we lost from February the 23rd when Emmett left through June 30th of that same year, 04. And these are the clients that went, that he took to Synergetic and these are the amounts of revenues that we lost because those clients were taken off of

Allegro's rolls.

MR. MORGAN: Your Honor, we would move that into evidence. Exhibit 34.

THE COURT: Ms. Gaffney?

MS. GAFFNEY: Your Honor, may we approach about this?

THE COURT: Sure.

(Thereupon, a bench conference was held.)

Q Ms. McCarthy, where did this information that appears on Exhibit Number 34 come from?

A From our business records.

Q Did you have someone in your office prepare that?

A Yes.

Q And is that information that is normally and generally available in the ordinary course of business at Allegro?

A Absolutely.

MR. MORGAN: With that foundation, Your Honor, we would move it into evidence.

MS. GAFFNEY: No objection, Your Honor.

THE COURT: All right. Very well.

(WHEREUPON, Plaintiff's Exhibit Number 34 was received into evidence.)

MR. MORGAN: May I approach, Your Honor?

THE COURT: Yes, sir.

Q Ms. McCarthy, I'm going to show you another Exhibit that we have marked as Plaintiff's Exhibit Number 2. Do you recognize that

document?
A I do.
Q Where did that document come from?
A This came from the forensic recovery as well.
Q Did you personally review the information that the folks pulled off of the computers?
A I did.
Q Did you personally review this document?
A I did.
Q Can you tell the jury what that document is, not what it says but what it is?
A Okay. It is a letter to Emmett's two children and daughter in law on Valentine's Day of 2004.
Q And that was information that you took off of the computers at the office?
A That is correct.
Q Your Honor, with that foundation we would move Exhibit Number 2 into evidence?

MS. GAFFNEY: No objection, Your Honor.

THE COURT: All right without objection.

(WHEREUPON, Plaintiff's Exhibit Number 2 was received into evidence.)

Q Ms. McCarthy, if you would please, I would ask that you publish paragraph's three, four, and five of this document. First what I would like for you to do is tell the jury the date of that document.

A Okay. This is Valentine's Day, February 14, 2004.
Q Please then publish paragraph's three, four, and five for the jury?
A And that's the one that starts, I will meet?
Q Yes, ma'am, that is correct.
A Okay. I will meet with her on Monday morning after the staff meeting and reaffirm my last offer to her. If she does not accept it on the spot, I will tell her my plans about taking all of the forms and the paperwork, approaching Yvonne and Lisa and soliciting our customers. Then I shall resign with your mother. I have all of my stuff out of there except what is on the walls and the shelves so it won't take 30 minutes to pack up. I will then go to the lawyer's office and we will incorporate Synergetic. Once that happens I need to call Janet. She will be on notice and I will formally offer letters to Yvonne and Lisa. I will then get to calling each of the customers I want to take and see if they will move with me. Out of 88, I only want 25 with about 700 lives. I have arranged to take over half of the suite below us on the first floor. We will go from 4,986 square feet to 2900 square feet. That space will be available March 1st. So I will work out of the house until then. Carolina Care Plan is in the final stages of letting me know if they will offer me health insurance. If they don't, I have another carrier who can help us out.
Q Ms. McCarthy, on February 14, of 2004, how many lives or employees did Allegro have?
A We had about a thousand to 1100.
Q And when we took a look at that list of those clients that left Allegro and went to Synergetic, how many employees or lives was that?

A About 700.

MR. MORGAN: If I could have a moment, Your Honor, please?

THE COURT: Yes, sir. (Pause.)

Q Ms. McCarthy, please answer any questions Ms. Gaffney may have of you?

THE COURT: Okay cross?

MS. GAFFNEY: Thank you, Your Honor. May it please the court.

THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. GAFFNEY:

Q Good morning, Ms. McCarthy?

A Good morning.

Q How are you?

A Fine.

Q Ms. McCarthy, to begin with, Emmett Scully never had any sort of contract with Allegro did he?

A We had partnership agreement.

Q I understand but nothing that spoke to his employment?

A That is correct because we were partners.

Q I understand. But he was also in addition to being your business partner and co-owner, he was an employee of Allegro, correct?

A The same as I was.

Q And he was actually the president of Allegro?

A That is correct.

Q And again my question was, he never had a contract of employment

A I have got 20 and 22.
Q Okay. I'm going to show you if I might approach, Your Honor?
THE COURT: Yes, ma'am.
Q Exhibit Number 24. And you testified yesterday that that is the letter that you found waiting for you on December 24 of 03 correct?
A That is correct.
Q I believe you said that you were surprised when you got that letter. Shocked me was your word?
A I was. It came on Christmas Eve after we had agreed to wait after Christmas to really settle the matter.
Q You knew for roughly nine months by that time that Emmett was interested in buying your 51 percent of the shares, correct?
A That is correct.
Q You knew that you had had an evaluation company come in and provide you with an appraisal of the company?
A That's correct.
Q You knew that Mr. Scully had come to you a number of times and communicated his desire to buy your shares?
A That is correct.
Q And you even knew that he was going to be gone for two weeks at Christmas time, correct?
A Correct.
Q And there's nothing in that letter that forces you to make a hasty decision, correct?
A There is a deadline on this letter.

Q And the deadline is what?
A January the 23rd.
Q Okay. So 30 days from when you received that, you were to give him some response, correct?
A To of which were Christmas holiday. Two weeks of which were Christmas holiday.
Q Allegro was closed for two weeks?
A No.
Q Okay. He was gone for two weeks.
A He was gone for two weeks and Christmas activities were going on for two weeks including office parties.
Q I understand. Now read the first sentence for the jury's attention please?
A Thank you for providing me with a copy of the Allegro evaluation from the Geneva companies. I have read the document numerous times and while I disagree with some points, over all they did a good job analyzing the company.
Q Okay. In reading that does that refresh your recollection of perhaps Mr. Scully may be didn't get the evaluation until December of 03?
MR. MORGAN: Objection. Argumentative.
A No it does not refresh my memory to that fact.
MS. GAFFNEY: That's fine. We will move on, Your Honor.
Q What are the two options that Mr. Scully presents to you in his initial proposal?
A They were very convoluted. Do you want them both read?

Q Well, isn't it true that one proposal is that he will pay you $164,000 plus transfer a life insurance policy to you?

MR. MORGAN: Your Honor, I think the document stands for itself.

THE COURT: Well, she has it. She can ask that question. It is overruled. I don't know what it says. But that's a fair question.

Q Isn't that correct, Ms. McCarthy?

A I have got to read it to be sure. Because I got so many offers like this that they were confusing. A total value of 164 plus, cash payment two or three years in a row, transfer life insurance policy to me, surrender value of $4,000. That was not very much. I'd be getting Merritts and I would have to provide a confidentiality and non-compete agreement.

Q And that was the first?

A That was the first one.

Q And then the second, you got 164 and the second option was 194 without the life insurance policy, correct?

A Yes. And still provide the customary -- the customary confidentiality and non-compete agreement. We didn't have a customer non-compete agreement between him and I.

Q You never had a non-compete between you and him?

A No. We were partners.

Q And this was you are still partners, correct?

A According to documents we are. Yes.

Q And again, you have got until January 23rd of 04 to respond,

correct?
A That is correct.
Q Now?
A 23rd.
Q I'm sorry?
A January 23rd. What you said? That's correct.
MS. GAFFNEY: Your Honor, may we approach?
THE COURT: Yes, ma'am.
Q I show you document 43, Plaintiff's Exhibit and that indeed is your response of January, 2004, correct?
A That is correct.
Q You presented a complete counter proposal asking for what in excess of a hundred thousand dollars more than what Mr. Scully had offered you, correct?
A I had asked for my back salary, which was an issue always. He never recognized the fact that I worked for nothing. And I asked for my initial investment to be paid back, which I understood from the get go that it would be to both of us.
Q Okay. Do you understand, Ms. McCarthy, that if you expected your initial investment to be paid back, that would be considered a debt of the company?
A I do now.
Q Did you understand in 2004 that if you expected salary for those two years you didn't take it, that too would be a debt of the company?
A No, I did not understand that.

Q All after a week of his understanding that he was in essence buying the company?
A Correct.
Q Let's talk about the company car for a minute. That was the car that Mr. Scully had driven for several years. Right?
A I think a year.
Q Okay. And was the co signer personally on that vehicle, correct?
A That's what I understand.
Q Okay. And in fact, continues today to cosign the note for that car that Mr. Everly drives?
A He may.
Q Okay. On that day, you also sent Mr. Scully a letter that's been marked as Defendant's Exhibit 1 that I will hand back.
MS. GAFFNEY: May I approach, Your Honor.
THE COURT: Yes, ma'am.
Q I show you that, Ms. McCarthy, and ask if you recognize it.
THE COURT: Hold on a minute. Mr. Morgan can't find that letter. So if you can share it with him before the witness answers that question.
MS. GAFFNEY: I'm sorry.
Q Ms. McCarthy have you had an opportunity to review Defendant's Exhibit 1?
A I have.
Q Is that a letter over your signature?
A It is.
Q And is this a letter that you provided to Mr. Scully?

A Do you know, I -- yes.
Q Are you familiar with this letter?
A No.
Q But that is your signature that appears on page two?
A Yes, it is.
MS. GAFFNEY: Your Honor, I would move Defendant's Exhibit 1 into evidence.
(WHEREUPON, Defendant's Exhibit Number 1 was received into evidence.)
MR. MORGAN: I have no objection.
THE COURT: All right no objection. Defendant's Number 1.
Q So, again for context purposes, Ms. McCarthy, on the 16th you first accept his resignation and then you tell Mr. Scully you will sell to him. The next Monday the 23rd you tell Mr. Scully that he's out of the company. You have a replacement for him. And then you send him the documents that's been marked as Defendant's one offering to buy his shares of Allegro, is that correct?
A That is correct.
Q And again, he owned 49 percent of the shares of Allegro, right?
A That is correct.
Q And he had offered you I believe the last offer was 250,000 for your 51 percent ownership?
A Well, I think that's correct.
Q On February 4, 2004? The verbal offer?
A February 4th.

Q Yes, ma'am. We talked about a conversation where he came in and said a hundred thousand this year, a hundred thousand next year, and 50,000?
A Yes.
Q All right so you recall his making that offer of 250, 51 percent ownership?
A Yes.
Q You responded with Defendant's Exhibit 1, correct?
A Yes.
Q On the 23rd and you offered him a hundred thousand for 2 percent less ownership than you had.
A (Nods head.)
Q Is that correct?
A Correct.
Q All right. So he had offered you 250 for 51 percent you offered him, a hundred for 49 percent ownership, is that correct?
A Correct.
Q This was the first of a series of letters between you and Mr. Scully's representatives. Do you recall that?
MR. MORGAN: Objection, Your Honor, that's going to go to Motion in Limine that I had filed.
THE COURT: Do we need to take it up now or --
MR. MORGAN: We can wait until the document comes in.
THE COURT: If we need to take it up now, we can take it up now. Do we?

A Yes.
Q Okay. Now we have talked a good bit about non-compete agreements. You have never seen a signed non-compete agreement for either Yvonne Yarborough or Lisa Millikin, have you?
A No, I have not.
Q So you have no first hand knowledge that they ever signed anything correct?
A That is correct.
Q And in fact, when Ms. Yarborough resigned or when she spoke with you around February 23rd she told you she was not going to sign a non-compete, correct?
A That is correct.
Q And in fact, Lisa Millikin, also employed with Synergetic, told you she would not sign a non-compete with Allegro, correct?
A That is correct.
Q When Ms. Yarborough did resign on, that was March 1st, 2004?
A Yes.
Q Okay. You testified yesterday about what led up to her resignation. You said that she came into your office and told you she was leaving. You recall that?
A That is correct.
Q And you said she got her big old purse and left with her chair and plant or her chair and her picture, correct?
A Correct.
Q Now she did offer to you to look into her purse if you had any

question about what she had in there, correct?
A I don't remember that.
Q You're not suggesting to this jury that she took anything out of Allegro out of her purse?
A No it went on her computers.
Q So the mention of her purse was just incidentally?
A Yes.
Q The chair I think you did mention was Ms. Yarborough's chair?
A That is correct.
Q Ms. Millikin gave you notice of her resignation and you actually asked her to stay on a little bit longer than the notice period, correct?
A That I don't remember either. I just remember that she told us she was going to leave I think around the 16th. And she did leave on the day she said she was going to.
Q Okay. That's your recollection?
A That's my recollection.
Q All right. Now, I'm going to show you a document, Ms. McCarthy, marked as Defendant's Exhibit 9. Might I approach, Your Honor?
THE COURT: Yes, sir.
MR. MORGAN: I will have an objection on relevancy.
THE COURT: All right. You all better let me see it.
MS. GAFFNEY: Here you go, Your Honor.
THE COURT: All right.
(Thereupon, a bench conference was held.)
(WHEREUPON, Defendant's Exhibit Number 9 was marked for

identification.)

Q I'm going to show you a document that's been marked as Defendant's Exhibit 9 for I. D. purposes and I'll take that this one, Your Honor, had already been remarked so I'm going to take that out. Just give you an opportunity to review that, Ms. McCarthy. Is that a document that you have seen before or a photo copy of a document you have seen before?

A Yes it is.

Q And again your relationship with Emmett Scully continues in that you are both still co owners of Allegro, correct?

A Yes.

Q And there was an instance in the year 2005 after this lawsuit had been commenced when your husband was unfortunately stricken ill, correct?

A Correct.

Q And at that point Mr. Scully and his wife communicated to you their good wishes and I think stated that they would keep you and your husband in their thoughts and prayers, correct?

A Correct.

Q Now, also in 2005, there was an occasion where?

A If this were sincere why was it copied?

THE COURT: This is how it works. She asked the question. You have to answer. This is how it always works. The lawyer asks the questions, you have to answer them and Mr. Morgan if he needs to will come back and ask a follow up question. How is that?

Q Ms. McCarthy, in the year of 2005 also you Allegro, sought loans

from it's employees correct?

MR. MORGAN: Objection, Your Honor.

THE COURT: What was the question again now? She sought what?

MS. GAFFNEY: Loans.

MR. MORGAN: It goes to my Motion in Limine.

THE COURT: You all approach again.

(Thereupon, a bench conference was held.)

MS. GAFFNEY: Beg the Court's indulgence, Your Honor?

THE COURT: Yes, ma'am.

Q Ms. McCarthy, since February of 2004 there have been perspective buyers who have approached you about buying?

MR. MORGAN: Objection, Your Honor, relevance.

THE COURT: How is this relevant? Members of the jury, I'm sorry. I'm going to ask you to go to the jury room once more please. Don't talk about this case. These matters come up all of the time in a lot of trials. Please don't talk about the case.

(Jury exits the courtroom.)

THE COURT: Let's hear it all out now. Let me hear your arguments about this particular --

MR. MORGAN: On the issue.

THE COURT: This is on your Motion in Limine. It goes back to that.

MR. MORGAN: This -- on the last objection on the relevance, all of those discussions about a buyer taking over the business or buying

was part of mediation process in the case. We had retained mediator Jim Edwards from Spartanburg, who mediated and the mediation was adjourned.

THE COURT: Without an offer.

MR. MORGAN: That is correct, for purposes of discussing many options, one of which was whether or not a purchaser of one or both of the businesses could take place. So that took place in the confines of mediation which under the rules is really part of settlement discussions and therefore --

THE COURT: I agree with that how about that -- Ms. Gaffney, I'm sorry.

MS. GAFFNEY: Your Honor.

THE COURT: Position of the Plaintiff is that this is part of mediation negotiation, settlements and this sort of thing. So why whether or not a third party wants to buy this company -- both companies is relevant in this particular trial?

MS. GAFFNEY: First of all, Your Honor, I believe it is outside the scope of what happened in the mediation because I think Mr. Everly, the company's current president, testified that there had been offers that came in, I think back in the fall of 2005. So that would have predated the mediation in January of 2006. I think further, Your Honor, it goes to the issue of damages. Again, we have in our answer alleged that Allegro failed or has failed to mitigate the damages that it now claims my clients are responsible for. And I think a purchase offer would be an attempt to mitigate any damages. In other words, they could receive

some income for the business.

THE COURT: So, your position is because the company Allegro, might have tried to place the value on it after the split so to speak and may be wanted to sell it, that some how goes to whether or not they failed to mitigate their damages?

MS. GAFFNEY: They are trying to say that there's been this hemorrhage since February of 2004.

THE COURT: All right.

MS. GAFFNEY: Because of what my clients did, that my clients took the business, or that they had caused them to lose all this money.

THE COURT: Well, so far that's fair.

MS. GAFFNEY: Well, what we're saying is, is there had been some attempts to put money back in the pockets of Allegro or to take, in other words to -- how should I say this? Allegro has been valued as Ms. McCarthy has testified to and then in a separate independent incident company, at least once a company has come in and offered almost a half million dollars to buy the company, prior to the mediation.

THE COURT: And?

MS. GAFFNEY: And I believe it is relevant to the issue of whether or not the company's been --

THE COURT: All right. Cite a case or a rule for me that supports your position, Ms. Gaffney?

MS. GAFFNEY: Your Honor, I would need a moment to find a case or a rule --

THE COURT: All right. Give you ten minutes.

MS. GAFFNEY: Your Honor, I don't think I will be able to pull a case within --

THE COURT: Well how much time do you need? Look, I'm here to help both of you. I'm the referee, I'm not here for one side or the other. I'm trying to make this as convenient as I can for both of you. I know how lawyers operate. You feel this way, you think that way but you have got to give me something to support your position on. And you might feel this way or think that way and it might be true but absent some authority or position I just can't rule for you because you think it might or you feel it might and I 'm not trying to be harsh to anybody. But the fact that somebody else comes along two years later and says here is $5 million what does that have to do with the harm that caused that event two or three years later. I don't know what somebody might offer the company today. How does that affect back during the time that this gives rise to this lawsuit? In other words, like at the time that they split, maybe the company is left $300,000 between 250 and three, who knows. The fact that after the split, somebody comes along and says, here is $500,000, how does that mitigate the harm that's caused? Help me understand that.

MS. GAFFNEY: I think what that shows, Your Honor, is that that there's a market value for this company.

THE COURT: Listen, there is a market value right now for this case. Get an expert to come in and say in the cash flow's continued for the next 18 months it will be worth $700,000 or it could be worth $50,000. I don't know so speculative.

MS. GAFFNEY: I understand, Your Honor, and that's what they are going to offer in terms of an expert opinion.

THE COURT: Do you have an expert?

MS. GAFFNEY: We don't have an expert.

THE COURT: You do have an expert.

MS. GAFFNEY: No, Your Honor, we don't. But what I would like to be able to establish is there is a market value communicated to Ms. McCarthy and that that market value exceeds what the market value of it was when Mr. Scully --

THE COURT: All right. All I'm asking you to do is provide me with a case with some authority that provides your position.

MS. GAFFNEY: All can I point to is the rule of evidence.

THE COURT: I disagree. Your objection is sustained. Anything further?

MR. MORGAN: Do you want to take up the --

THE COURT: Let's take up everything.

MR. MORGAN: I -- Your Honor, I don't think Ms. Gaffney has gotten through this point yet but it goes to the same issue as to the post, what I'll call post February 23rd issue. And there is demonstrative Exhibit that she has that I will object to.

THE COURT: What is it? Show it to me now.

MR. MORGAN: Do you have it? It's this Exhibit here. And what I think it purports to portray, and I don't want to say anything incorrect, is that when Mr. Scully leaves, Synergetic retains those clients that he took from Allegro at the time he moved to Synergetic and hadn't lost any of

the Allegro clients. That after Mr. Scully leaves, these are the national averages, and these are the percentages of clients retained by Allegro. And again I don't see the relevance of what occurs in a retention of a client base when you have taken, you know, folks out and you are trying to get the business up and running when the president leaves and there will be some evidence in a little bit from Ms. Yarborough that she was kind of the number two person. So that when the number one and number two person who were in charge of operations leave the organization it did take some time to get things in order and manage and the company has gone forward and is still existing today.

So what retentions they may have, the question is in my mind as to the relevance that that has with regard to those events that led up to the event and the acts that occurred that led to the split. And I don't think anything that occurs after that is relevant similar to my argument with regard to the other points on post management.

THE COURT: Ms. Gaffney, why don't you explain your proposal.

MS. GAFFNEY: Thank you, Your Honor. Again one of our defenses is that any damages that Allegro claims to have sustained is a direct and proximate result of my client's departure have not been mitigated because of Allegro's own problems. In other words, their expert, if I understand his report is going to come in and say that the national average among P.E.O.s, the national retention rate average is 85 percent that is what you would assume a P.E.O.'s retention rate going to be. Allegro provided us with a list of the clients that it has, had, and has lost since we left. They are saying that we're responsible for

losing these clients. Our position is that there have been clients who have come to Allegro post Scully that have already left. And so again that goes to the mit --

THE COURT: Then the clients went to Allegro post Scully?

MS. GAFFNEY: Correct.

THE COURT: Also left?

MS. GAFFNEY: That have already left.

THE COURT: All right. Back up a little bit. I'm a simple person. You are confusing me.

MS. GAFFNEY: I'm sorry.

THE COURT: That's all right.

MS. GAFFNEY: Allegro lost clients.

THE COURT: All right, certain point in time Scully leaves.

MS. GAFFNEY: Right. Clients left with him.

THE COURT: However many it was.

MS. GAFFNEY: That is correct.

THE COURT: Now what do you propose to use that to show what now?

MS. GAFFNEY: That based on Allegro's own records its retention rates, its retention rate of customers goes to -- Ms. McCarthy testified that their retentions rate was 85 to 90 percent but again based on the information they provided us their actual retention rate has been and this is with new clients who have come to Allegro.

THE COURT: Well how would something new be relevant to something old? Help me out.

MS. GAFFNEY: Because, Your Honor, what we are trying to say is that clients had left the company because they are not being serviced because Allegro is not providing service. They come to Allegro and they are getting bad service so they leave. If we are supposed to be responsible.

THE COURT: The issue is not the health and conditions of the company now, is what happened then that caused the break up. You see you got to -- you got to connect it.

MS. GAFFNEY: But what they are trying to say is in the months of that followed the break --

THE COURT: I don't know what they are trying to say. I haven't heard from an expert that gave me an evaluation from this period of time to that period of time. I think it might be a little premature. How do you propose to get this in through whom?

MS. GAFFNEY: Mr. Scully is going to explain it.

THE COURT: Is he an expert?

MS. GAFFNEY: He is an expert in which clients have come to his company and stayed --

THE COURT: No. Is he an expert in evaluation that's nationwide like their --

MS. GAFFNEY: We are not talking about evaluation, Your Honor. We are talking about the number of clients that have stayed with Allegro. These are the number of clients that stayed with Synergetic --

THE COURT: Isn't the issue in this case is how many clients were left at the time of the break up that was already with Allegro that

Mr. Scully took with him, if anything. The question is not what's going on now but what happened then and I'm not yelling at anybody but I'm just, you know, I can't split the baby like Solomon. The baby dies but I got to make a decision one way or the other and I'm just trying to make the best one between the two of you taking these different positions. My problem is this, a certain date and time Scully leaves there is a break up, physical break up because on paper they are still together.

MS. GAFFNEY: Right.

THE COURT: Now how is it relevant three years from now what is going on with Allegro in terms of what caused the break up and the damage that was done when it occurred?

MS. GAFFNEY: Again what that goes to, Your Honor, is that Allegro has not mitigated its own damages. We will have clients who will come in and testify that they left Allegro after Scully because of problems they experienced with Allegro.

THE COURT: All right. Stop. How is that relevant to why the people who left initially when the break up occurred with Scully? What's going on now has nothing to do with what happened then it seems to me.

MS. GAFFNEY: Your Honor, we're going to have to find a point in time because these clients --

THE COURT: Well you need to find it because I am not going to search for it.

MS. GAFFNEY: Understand. But what I'm saying is, within the four months roughly after Scully left, clients are going to say that their

service of Allegro dropped off dramatically.

THE COURT: All I'm asking both of you all is this, I'm going to take a break. Find me some authority, a case or a rule that supports your position and I will be happy to rule for you but you just can't get up and say I want this I think this. So point to a specific rule or point to a case that supports your position I will be happy to rule for either one of you. But you all just can't come up and say, Judge, I want this, I think this, give me something as a basis of authority to rule yes or no for either one of you. That is all I'm asking. Give me some authority give me a case give me a rule. Otherwise, it's for them to turn to my discretion, I'll go ahead and exercise my discretion, make a ruling and we will move on. I'm willing to give you a chance and you a chance to say Judge, here's a case from 1957 same sort of situation. This is what the Court says, this is the rule that's laid out but unless either one of can come up with something like that it is within a tunnel of discretion, you answer this, you answer that, I'm going to say no to both of you. I'm going the make a decision, we're going to move on and I'm willing to give both of you a chance to find some authority to support the respective positions you are maintaining but it is got to be more than I think this, I want that, I believe this, give me a case, give me a rule. That's all I could ask for and that's what I'm asking for as a judge in this case. Otherwise, if the basis of your request is I want this, I think this, my answer's going to be obvious. Give me some authority, give me a case, give me a rule. That applies both of you equally. That's the way we operate, I'm sorry.

MR. MORGAN: One point, Your Honor, I don't believe that there is any witness that is listed that would address those who came and then determined to go on and I don't believe that since there's no -- and I do believe that since there is no witness listed to testify to that, any surmise that Mr. Scully may have as to why someone left Allegro's business --

THE COURT: You'd almost have to bring in the clients and say, I specifically left because I didn't like Mary Etta McCarthy. I specifically left because my grandmother had relationship with Mr. Scully, I mean, we're opening up a whole can of worms and a second lawsuit almost. I don't care. I really don't have an interest. But either side or both sides got to give me some authority if you maintain the position that supports your position.

MS. GAFFNEY: I understand, Your Honor.

THE COURT: And I'm not yelling at you all. But you know this is a great thing about law students they are supposed to be this way. But I as the Judge, I have got to make a decision one way or the other. And if you can't decide a case or rule then it is within my discretion and I have got to say A or B and I will be willing to say A or B right now or later on however you all want to do it, but know, you got to help me understand how, what is going on with Allegro, you know, as relevant to what happened two or three years ago whenever the break up occurred and everything else. Because you can say that okay, since the break up, there's been 20 clients that have left Allegro. Okay? Why did they leave? Okay? Did somebody else solicit them? Were they dissatisfied?

How is she going to cross examine those people?

MS. GAFFNEY: We are going to bring those people in, Your Honor.

THE COURT: All right. I don't know.

MR. MORGAN: Those are the ones that are there, are those that were Allegro clients at the time that Mr. Scully was acting in the president's role and, you know, immediately --

THE COURT: So you have witnesses prepared to say, at the time of the break up I was with Allegro and the whole ball of wax but I preferred Mr. Scully. I left for this reason blah, blah, blah?

MS. GAFFNEY: Because of problems that they encountered.

THE COURT: Now, what you want me to do is to let you say yesterday or last week two clients left because they were dissatisfied with what Mary Etta McCarthy was doing or what the people at Allegro was doing?

MS. GAFFNEY: Your Honor, what Ms. McCarthy has testified in her deposition to is that after Mr. Scully left --

THE COURT: I haven't seen her deposition.

MS. GAFFNEY: I think she testified yesterday that there were a number of errors, a number of problems that they discovered after Mr. Scully left.

THE COURT: Have you asked her about those?

MS. GAFFNEY: I haven't gotten to it yet.

THE COURT: Okay.

MS. GAFFNEY: That is kind of the direction I was headed.

THE COURT: All right. Mr. Morgan?

MR. MORGAN: I think she can ask the questions. I'll have to wait and hear what the questions are.

THE COURT: Let's ask them right now. This is what in camera means. This is what a proffer means. Go ahead.

MS. GAFFNEY: Thank you, Your Honor.

THE COURT: And it is not personal. But like I told you in chambers, when you argue it is no evidentiary basis for me to rule. Let's make a record and ask a question. The jury is out. He can cross examine, we can make a nice little neat record so if I'm wrong I can be reversed. If I'm right, I can be affirmed. You may proceed.

MS. GAFFNEY: Thank you, Your Honor, may it please the court.

THE COURT: Yes, ma'am.

THE WITNESS: So this is just like as if the jury were here?

THE COURT: Yes. Yes. But I got to make an evidentiary record.

THE WITNESS: Okay.

THE COURT: They are arguing and I don't know what the question's going to be, what the answers are going to be. And she needs to ask the questions. Mr. Morgan needs to cross examine.

I need to look at everything and then I hear their arguments and say I'm going to let this in or I'm going keep this out. And for everybody out there other than the lawyers this happens all of the time. This is a course of business. It is not to get upset about. So don't you worry. Don't the defense worry. This is how we do things. And it is probably the best way to do it instead of my hearing the arguments about what

they're going to say this, they might say that. You just ask the questions, she can get the answer, we can cross examine. And based on that record I can say yes or no. It makes it easier to reflect. With that in mind, let's get on.

MS. GAFFNEY: Thank you, Your Honor.

EXAMINATION (In camera.)

BY MS. GAFFNEY:

Q There were errors or glitches that you discovered in Allegro's record keeping after Mr. Scully was terminated from company, correct?

A That is correct.

Q And I think you testified about that in some detail yesterday.

A No. I don't believe we did yesterday.

Q You deemed Mr. Scully to have been responsible for whatever errors or problems that you found in the computer records?

A We didn't talk about that yesterday. I don't believe.

Q Did you -- well then is it your testimony that you did find errors?

A Yes.

Q And do you hold Mr. Scully responsible for those errors?

A For the ones that he was responsible for, yes, that happened while he was there.

Q All right. And Ms. Yarborough, also you hold her responsible that she had --

A A part to play.

Q -- some hand in that?

A That is correct.

Q And was one of those errors attributable to a client known as Ways Incorporated (phonetic)?
A No.
Q All right. Is that error something outside?
A That's absolutely outside. That is after Emmett left the company. And that was – it's irrelevant to this because it was a mistake we made. We rectified it and it's done.
Q All right and that was something that you found what in the summertime of 2004?
A I don't remember. You know, Mr. Everly would be able to answer that question better than I.
Q All right. And that was part of the reason that you sought loans from your employees?
A No, it was not.
Q That is not part of the reason?
A That is not part of the reason. No.
Q The $79,000 debt that you owed was not part of the reason that you sought loans from your own employees?
A To my knowledge, it was not. Again, if you would please check with Mr. Everly, the main reason we -- when you change carriers for either worker's comp or health insurance you are required quite -- to make quite a large deposit. Most of the -- of that issue was related to the large deposit for the health insurance.
Q That you had to make at what point in time?
A Again, I don't -- don't take my word for it. But I think it was

August 1st of 04.

Q But that was for Carolina -- when Carolina Care Plan dropped Allegro?

A That is correct.

Q All right and that was the reason that you sought loans from your employees?

A There was just no specific reason, Ms. Gaffney. Money was simply infused into the company because employees wanted to do it. They believed in what we were doing and we used it, part of it for, as I recall, the health deposit and you can ask Mr. Everly for further information.

Q Well isn't it true, Ms. McCarthy, that part of that money that the employees deposit back into the company was to cover the loss of revenue from the clients who left with Mr. Scully?

A I can't answer that question.

Q You have offered, Ms. McCarthy, as Exhibit 34, a list of client revenue losses through June 30, 2004. Do you recall looking at that document?

A Yes.

Q And you have stated that through from the time Mr. Scully left through June 30 of 40 Allegro lost $87,000?

A In revenues.

Q Correct?

A That is correct.

Q And again, my question is, because of that loss of revenue, combined with other causes, you had to get loans from your

employees?
A Yes.
MS. GAFFNEY: Your Honor, then I would think that because they have said that Mr. Scully is responsible for the client losses through June 30th, she's just testified that that was one.
THE COURT: Well why don't we hear Mr. Morgan examine her. Let me hear the full picture, see the full picture, and I will make a ruling. I will hear your arguments. Go ahead, Mr. Morgan.
MS. GAFFNEY: Thank you.

EXAMINATION (In camera.)

BY MR. MORGAN:
Q Ms. McCarthy, I believe you testified that you would hold Mr. Scully responsible for those things up until the point of February 23rd?
A Yes.
Q That there were some things that occurred after February 23rd that you -- did come to light, correct?
A Did come to light?
Q That did come to light.
A Yes.
Q And some of those were under Mr. Scully's watch?
A That is correct.
Q Now, during the period of time from February 23rd until approximately June 30th, there is the Exhibit that you lost a number of clients?
A Correct.

Q And those clients all went to Synergetic, is that correct?
A That is correct.
Q And Mr. Scully is the one who had the relationship with them on February 23rd of the year 2004 when he left, is that correct?
A Yes. That Allegro had.
Q Principally?
A Yes.
Q Principally as an individual?
A An individual. That is correct.
Q In the normal course of your business, over the years have you ever had to borrow money to address things such as changes in insurance programs?
A Yes.
Q Have you ever had to borrow money to address any cash flows issues that you may have as a normal course of a flow of an operation of a business?
A Yes.
Q Was this borrowing of money from employees any different than what you had done in the past to make sure that you had sufficient funds to operate the company?
A No. It was not.
THE COURT: All right.
MS. GAFFNEY: Your Honor, just briefly in recross.
THE COURT: Please go ahead. Once again please take your time. It's all right. I'm not going to grow any horns or tails in the course

of this trial so take your time. I might but -- -- I certainly don't intend it.

EXAMINATION (In camera.)

BY MS. GAFFNEY:

Q Ms. McCarthy, you have sued Mr. Scully and others for breach of his duty of loyalty for soliciting clients according to you both before and after February 23rd, 2004, correct?

A That's part of the reason.

Q Okay. You believe that before February 23rd, and certainly after February 23rd, he approached Allegro clients and induced them in some manner to come to Synergetic, his new business, correct?

A By letting them know he was starting a new business.

Q Certainly. And in the months that followed February 23rd, and specifically up to June 30th, in fact, a number of those clients did leave Allegro's services and in so doing caused Allegro to lose according to your records $87,000 by the end of the second quarter, correct?

A That's correct.

Q And as a result of Mr. Scully's soliciting those clients, those clients leaving Allegro, and the loss of $87,000 in revenue by the end of the second quarter of 04 combined with other factors, you asked your existing Allegro employees to loan money back to the company? To cover that loss of cash?

A I can't -- I can't say yes to that. The employees did lend money to the company. It was a great vote of confidence. We used it for various things but to specifically say it was because of that $87,000, I can't do that.

Q Now my question is that the 87,000 loss of revenue?
A Yes.
Q Was one factor among perhaps several which caused you to ask your employees to loan money back to the company to cover things like loss of revenue?
A Again, I -- the loans didn't come in 04. We were able to make it through, let's see, maybe they did come in 04. I'm not sure, could be part of, part of the loans, yes.
Q Was the?
A I cannot tell you exactly what that money was spent on.
Q I understand. But again my chronology is this, Scully left, correct?
A Correct.
Q You contend that he solicited clients away from Allegro in and to Synergetic both before and after he left?
A Uh-huh.
Q And you contend that as a result of his solicitation , which is the subject of this lawsuit that your company, Allegro lost $87,000 by the end of the second quarter?
A Yes.
Q And that's what's memorialized in Plaintiff's Exhibit 34? Is there something that your --
A No.
Q Okay.
A Just looking. No -- yes. That sounds about right.
Q And as a result of that loss of revenue for Allegro, it ultimately had

to get loans from its employees to cover those losses?
A To cover expenses. I don't know that you can put it all on the losses that occurred. But to cover expenses that incurred. And the part of the lawsuit is not just his taking the clients but that he did all the planning for this company while he was working on my time.
Q I understand.
A Okay.
Q All causing you to lose clients which in turn caused the loss of revenue?
A Yes.
MR. MORGAN: Your Honor, there was a proffered Exhibit that Ms. Gaffney had. Then as we look at the entirety of the record, that lone document that I think has been excluded at this point was in February of 05. I just point that out to the Court. I don't have any other questions for --
THE COURT: All right, say that again. A lone document that --
MR. MORGAN: That Ms. Gaffney, I believe had proffered from one of the employees.
THE COURT: Proffered I.D. number 9?
MS. GAFFNEY: That was Exhibit 8. I have not asked her about that document. I thought that we were just on the loss of revenue to the company.
MR. MORGAN: What I'm trying to do is to put it into a context for working on a time line. If we're talking about 04, these loans weren't until 05.

MS. GAFFNEY: And that is in fact the documents --

THE WITNESS: That's right. And these, what I tried to answer that the loss of that money we dealt with it. It was not until 05 that we needed to infuse.

THE COURT: So it was not until 05. The loan got the split that they borrowed money.

THE WITNESS: That is correct.

MS. GAFFNEY: They offered the evidence again, Your Honor, that by June their loss of $87,000.

THE COURT: So what? That's June right after February of 2004.

MS. GAFFNEY: Correct.

THE COURT: When these clients leave 30, 40 whatever it was from Allegro that went to Synergetic. Now, this is a year later when they get money to keep the company afloat and while they're doing it how is that relevant to what happened back in 2004?

MS. GAFFNEY: Because her position is that the losses continue.

THE COURT: Yes, continue as to the people that left at that time of the break up that went and stayed. Not as to new people. And new things, that is, might have occurred subsequent to that.

MR. MORGAN: I am not asking her that, Your Honor. I'm asking about the exodus that followed --

THE COURT: Stop both of you. There's a certain number of people that left and went with Mr. Scully. How many there are, I don't know. Any questions relating to those people that left at the time that's been identified in the record already you can ask anything about them

but not about new clients, subsequent to those old clients with Allegro who went with Synergetic after that date and time. Anything that happened after those certain number of clients 30 or 40 of them that left, any new clients they got and anybody that remained, how is that relevant to the 30 that they are alleging that were damaged by that, he took with him when he left? Am I making sense or only to myself?

MR. MORGAN: I think you are making sense to me, Your Honor.

THE COURT: So, in other words, let's narrow it down. If he took 30 with him were -- I don't know many he took. I don't care. Whatever number that's been alleged that's been documented in the record so far that left with Mr. Scully at the time he departed Allegro, what happened then and what may be happening now to those specific clients will be relevant to this lawsuit. But any clients that came in that had nothing to do with Mr. Scully and Allegro when they were together is not relevant to that particular lawsuit.

MS. GAFFNEY: I can appreciate that, Your Honor.

THE COURT: Why are you asking -- why do you want to ask this witness about what's going on at Allegro now post the split that doesn't involve those clients that initially left with your client allegedly damaging this company?

MS. GAFFNEY: Your Honor --

THE COURT: And you all got to understand, I didn't attend the depositions. I got to depend on you all to help enlighten me and so --

MS. GAFFNEY: I understand. She's already introduced the evidence of the revenue loss and so again, to the extent that there was

any allegation of that revenue loss continued and ultimately precipitated.

THE COURT: That's regards to clients that left at the time that were with the company.

MS. GAFFNEY: Right.

THE COURT: But, all right. There's 30 of them but like let's say the 35th or three -- 31, 32, or 33 are clients that came in after the 30 left. How would 31, 32, 33, 34 be relevant to this case? What's happened after he took the 30, how is that relevant to taking the 30 is what I'm asking?

MS. GAFFNEY: I'm sorry?

THE COURT: All right. He takes 30 clients.

MS. GAFFNEY: Correct.

THE COURT: He leaves 20. Ten more join. How is that ten more that joined the 20 that remain relevant to the 30 that left?

MS. GAFFNEY: It is not.

THE COURT: Why do you want to ask questions about what's going on now after the 30 -- in other words, you are operating your business now still at a loss as a greater loss than it was then. Help me out. Am I just guessing? I don't know.

MS. GAFFNEY: No. You are not. I think what we want to stick with, is the clients who left with Scully whatever losses with were precipitated by that, we can explain why they left, we will bring them to testify.

THE COURT: That's why he goes, you go, anything else?

MS. GAFFNEY: Sure.

THE COURT: But for you to be able to get into what's happening now with new clients and what position they are and whether the company is doing well, I think is irrelevant to the 30 that left and what happened back then and I'm not -- I don't know what the jury's going to do and I don't care. But I mean, there comes a point in time when you've got to limit things in this case and that's what I'm trying to do now. I am not yelling at anybody and it is invigorating that you are both taking such strong positions but I got to say yes or no to one side or the other.

MS. GAFFNEY: I understand. I think also, Your Honor, when Mr. Wolf testified yesterday, the husband that testified that his wife still works, did I think that he made some mention of the fact that they had loaned money to the company.

MR. MORGAN: I don't recall that.

THE COURT: I don't know. He might have. We can always -- we can turn this into a mock trial and go back and read everything. I say that now. Maybe I'm getting too old. I think I've been on the bench too long, 12 years, but you know you always try to split the baby that sort of thing. You can't always do that. You know, you make your motions, you make your motion. I got to rule. We got to go on at some point in time. But we have aired this out enough. I hope we have included everything but the bottom line is this, and I don't know what the number is, whether it's 31 or whatever happened. Then he took, you would assume, if you had to take, and I'm not saying he was right or wrong in taking them, that's for the jury to decide but what happens with that,

that's what continues to affect this company now as opposed to then and everything else.

But anybody that was there that stayed, anybody that came in after the break, I don't see how it is relevant to how the company is functioning now based on a harm that might have been caused by the split up then.

MS. GAFFNEY: Right.

MR. MORGAN: Thank you, Your Honor, you have said my position very well and very articulately.

THE COURT: I don't know about all of that but I mean, you know, whether you win or lose on a particular motion, you just need to know where you stand so that you don't cross the line is all I'm trying to do. And I don't know if you're on the same page or not. I'm just making observations.

MR. MORGAN: I'm on your page, Your Honor.

MS. GAFFNEY: I've been on your page.

THE COURT: So, Ms. Gaffney.

MS. GAFFNEY: Yes, Your Honor?

THE COURT: So once again, whatever happened back then with the 30 people that left, it's been alleged that, you know, he planned, he wrote letters, he did this right.

MS. GAFFNEY: Right.

THE COURT: That's good but beyond that you know you're just kind of on the fringes, you -- well, you know, ten people stayed but they weren't happy either. And ten more people came in after the ten that

stayed weren't happy, you know. It's got to stop at some point in time.

Now, what I'm going to do is take a little break and catch my breath and I will come back and hear your final precise keen arguments on this subject I will make a definitive ruling and we'll be gone, but of course it is already 12:15. Do you want me to send the jury to lunch early and let's hash this out completely, let's talk about it so we know where we are? What do you all want to do?

MS. GAFFNEY: My preference would be to finish with this witness. I don't have much more to go and what Mr. -- I don't.

MR. MORGAN: I'm going to have very little. I have probably a hand full of questions.

THE COURT: I don't care and I really don't, I mean, and I say it over and over again. If it takes all night or two, I don't care. It's not going take that long. But I don't want anybody to feel rushed. I mean that is one of those personal peeves I have.

MR. MORGAN: But I agree with Ms. Gaffney. Ms. McCarthy's been up for a long time.

THE COURT: She's been up all morning. This is like a California trial. Are we all on the same page now?

MS. GAFFNEY: I believe so.

THE COURT: We'll come back and finish up with her. And I'm not surprised that it is taking this long. I'm not surprised at all.

(Whereupon a recess was taken commencing at 12:17 pm. and concluding at 12:28pm.)

THE COURT: Anything else you can think of before they come

THE COURT: Yes, ma'am. Yes, ma'am.

MS. GAFFNEY: Your Honor, we would wrap up the cross examination then.

THE COURT: All right. Mr. Morgan, redirect?

MR. MORGAN: May it please the court.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. MORGAN:

Q May I approach, Your Honor?

THE COURT: Yes. I mean, yes, sir.

MR. MORGAN: It's been a long morning.

THE COURT: It is still Tuesday isn't it.

MR. MORGAN: It's been a long morning.

Q Ms. McCarthy, I'm going to show you an Exhibit that has been marked I believe as Exhibit 41. And is that Ms. -- I'm sorry. These have been remarked, Your Honor.

THE COURT: All right.

Q That's marked number 41 but will be remarked, marked as 42. It will be remarked as Exhibit Number 41. Do you recognize that document, Ms. McCarthy?

A Yes, I do.

Q What do you recognize that document to be?

A It's the employment agreement between Allegro and Lisa Millikin.

Q How did you come into possession of this document of the employment agreement between Ms. Millikin and Allegro?

A It was on the computer.
Q Was that a part of the forensic deconstruction that was done on the computer information?
A Yes. It was. This particular agreement had been deleted from the computer and the forensic people pulled it back up.
Q And did you personally review those documents before you provided them to me?
A Yes. I did.
Q And would that be a document that would ordinarily be maintained by the company in its ordinary course of business?
A It would.
MR. MORGAN: Your Honor, I would move Exhibit 41 into.
MS. GAFFNEY: Without objection, Your Honor.
THE COURT: All right. 41. This is Lisa who?
MR. MORGAN: This is the employment agreement with Lisa Millikin.
THE COURT: All right.
(WHEREUPON, Plaintiff's Exhibit Number 41 was received into evidence.)
Q Now, Ms. McCarthy, as part of this employment agreement does it contain a non-compete provision?
A Yes, it does.
MR. MORGAN: May I approach again?
THE COURT: Yes.
Q This is marked 40 -- it will be remarked 40. Ms. McCarthy, that is a

document for Ms. Yarborough, an employment agreement. If I ask you the same questions with regard to that Exhibit as I had asked you with Ms. Millikin, will your answers be the same?

A Would be the same.

MR. MORGAN: Your Honor, with that I would move that into evidence.

MS. GAFFNEY: Without objection, Your Honor.

THE COURT: And what number is it?

MR. MORGAN: It should be 40, premarked 40.

(WHEREUPON, Plaintiff's Exhibit Number 40 was received into evidence.)

THE COURT: All right. And similarly does that have a --

Q And does have a non-compete provision in it?

A It does.

Q And since these came off of the computer there's no signatures on these?

A That's correct.

Q After Mr. Scully left, did you conduct a search of employee files to determine whether or not these documents were in Ms. Millikin's and Ms. Yarborough's files?

A We did and they were the only two files that we found that these documents were not in them. They were the documents that were there for every other employee except those two.

MR. MORGAN: That's all, Your Honor. Thank you.

THE COURT: Anything on recross?

MR. MORGAN: Your Honor, we call Mr. Emmett Scully.

THE COURT: Come on around, Mr. Scully?

THE COURT: And members of the jury, as Mr. Scully takes the stand, this is another thing that is not unusual in the case where the Plaintiff will call the Defendant in case you are wondering about that. That's permitted in our rules. Now, I know that is not necessary but I thought I'd tell them that anyway.

MR. MORGAN: I appreciate that, Your Honor, and if I might use the cross examination technique under the rule to ask my questions of Mr. Scully?

THE COURT: All right.

MS. GAFFNEY: Without objection, Your Honor.

Emmett J. Scully, after being duly sworn, testified as follows:

THE COURT: You may proceed. I'm sorry.

DIRECT-EXAMINATION

BY MR. MORGAN:

Q Mr. Scully, if you could again introduce yourself to the jury?

A Emmett Scully.

Q Mr. Scully, where did you secure your undergraduate degree?

A Georgetown University.

Q What was that degree in?

A Bachelor in Science and Language Linguistics.

Q What year did you receive that degree?

A 1971.

Q Did you further your education to secure a master's degree at any point if time?
A Yes.
Q. And where did you get that degree--
A -- Technical Institute.
Q What year was that?
A 1979, I believe.
Q What did you take that master's program in, sir? What did you secure your degree in your master's?
A Business Administration.
Q Business Administration? And have you been to any other school of higher learning?
A Yes.
Q What was that, sir?
A Glendale University College of Law.
Q And you received a diploma or J. D. degree from that institution?
A Yes.
Q Any other education that you have since college other than those two degrees?
A No, sir.
Q Let's move if we can to the time when you were introduced to Mary Etta McCarthy. Is that approximately in the year 1997?
A Yes it was.
Q And my understanding is that you had just been recently laid off from a job and were under a severance agreement at that time.

A That is correct.
Q Is that correct? When you talked with Ms. McCarthy, you agreed to come on and set up with her a new corporation called Allegro, Inc., is that correct?
A Yes it is.
Q And you understood at the time that when you came to that agreement that, in fact, that business had been running as a division for Executive Staffing for several years?
A That was not my understanding.
Q What was your understanding?
A That Executive Staffing had a contract and that the contract would become part of Allegro.
Q Was there a division of Executive Staffing to your knowledge that was called Allegro that had responsibility for that contract?
A No, sir.
Q When you came on board with Allegro, what was the first position that you held with that company.
A President.
Q What were your general responsibilities as president of Allegro when you joined the organization?
A The daily operations of the business.
Q As president of the company did you also sit on the board of directors?
A Yes, I did.
Q As president of the company did you have certain trust

responsibilities to manage Allegro in the best interest of that corporation?

A Yes I did.

Q And as president of the company, did you have financial oversight for the companies?

A Yes I did.

Q And did you have responsibilities when there were concerns to address those -- let me back up. When there were any concerns with the company, financial or otherwise, did you have a duty and responsibility as president of the company to address those concerns?

A Yes I did.

Q As president of the company did you have responsibility to hire a receptionist through other persons in the organizations?

A Yes I did.

Q As president of the company, did you always have the responsibility to act in a good faith manner for the benefit of the company?

A I believe I did. Yes.

Q As president of the company, did you disclose financials to Ms. McCarthy, who was the chairman?

A Yes I did.

Q As president of the company, did you have responsibility to report to the board in that capacity as president?

A I don't believe I had any responsibilities specifically to the board.

Q Who as president of the company do you believe you had a responsibility to in your role as president of Allegro?

A I shared any concerns or information I had with Ms. McCarthy.
Q Did you share any of those concerns that you had with any other board member?
A Only on one occasion.
Q When was that, sir?
A In the process of trying to purchase Allegro, I went to Mr. Brown who is the director.
Q Who was Mr. Brown?
A Mr. Brown is the third director of Allegro.
Q What did you specifically tell Mr. Brown?
A I asked for his help and his assistance and his counsel about the idea of my purchasing the company.
Q Isn't it true that the only thing you disclosed to Mr. Brown is that you had an intention to purchase Ms. McCarthy's share?
A I don't understand this question.
Q When you had your conversation -- let me ask it again, I want to make sure you understand. When you had your conversation with Mr. Brown, isn't it true that the only thing that you disclosed to him was his intention, your intention to purchase Ms. McCarthy's shares in the company?
A That was the extent of our conversation.
Q Did you have any, make any disclosure to Mr. Brown, a board member, that if you were unsuccessful in purchasing those shares of Ms. McCarthy's that you would set up your own business?
A I believe I did share that with Mr. Brown.

MR. MORGAN: If I might, Your Honor?

THE COURT: Deposition is it?

MR. MORGAN: Yes.

THE COURT: All right, members of the jury, a deposition is an out of court examination of a witness generally for purposes of trial. Both parties are present and probably Mr. Morgan was present and Ms. Gaffney was present. You must accept and view deposition testimony with the same force and effect that you already reviewed testimony given from a live witness on the stand as equal weight, any exceptions or additions to those remarks regarding deposition testimony.

MS. GAFFNEY: None from the Defendant, Your Honor.

THE COURT: All right. You may proceed.

MR. MORGAN: Your Honor, there were days of deposition I'm just going at this point to provide Mr. Scully with the July 29th, 2004 --

THE COURT: All right.

MR. MORGAN: Should I break the seal?

THE COURT: Yes, sir.

Q Mr. Scully, if you could pick that up for me for a moment and if you could turn with me, please, to page 30 of that deposition. Have you found that page?

A I have.

Q Okay. If we could begin on line 24. I ask you this question, in your role as president and member of the board did you understand that you had a duty to disclose known facts and known information that was

relevant to the operation of the company to the board of Allegro Inc.? And your answer was?

A Yes.

Q And my next question was, what information in your role as president and board member did you understand that you had a duty to disclose to the board of Allegro Inc.? And your answer?

A My intention to purchase Ms. McCarthy's share.

Q Were there any other duties or responsibilities that you had to disclose to the board or as a member of the board in your duties and responsibilities as president of the company? And your answer was?

A I don't believe so.

Q Does that help refresh your memory as to what you told me in July of 2004?

A No it doesn't. I'm sorry.

Q What -- that's fine. As president of the company were you authorized to retain outside accounting and C.P.A. services?

A Yes.

Q Did you do that?

A Yes I did.

Q Who did you use for your outside accounting and C.P.A. services?

A In what year?

Q In the -- the time that you first became president.

A We used Ms. McCarthy's accountant I believe for the first year.

Q Who was that?

A I don't remember the person's name.

Q Do you remember a person by the name of Philip Laughridge?
A My recollection is we used another lady by the name of Wanda Wildeman (phonetic) year two and I believe Mr. Laughridge came on in year three.
Q What about Mr. George Corbin?
A Mr. Corbin and Mr. Laughridge worked together.
Q Did you ever use Mr. Corbin's services for any outside accounting or C.P.A. services?
A Yes I did.
Q At some point during your term as president, did you consult with Mr. George Corbin about your desire to purchase Ms. McCarthy's shares?
A Yes I did.
Q And at the time you consulted with Mr. Corbin, was he an employee of Allegro?
A No, sir, I don't think so.
Q When was the first time that you consulted with Mr. Corbin about your desire to purchase Ms. McCarthy's share?
A Late 2002 or early 2003.
Q If it was late in 2002, would that have been a period of time that Mr. Corbin was not an employee of Allegro?
A I believe that would be the case.
Q Did he work for some company other than -- did he work in some other capacity other than in an association with Philip Laughridge, Mr. Corbin?

A When he was assisting us?
Q Yes.
A Not to the best of my knowledge.
Q Was he ever associated with a company by the name of Merritt Vet?
A Yes he was.
Q Do you know how long he had been associated with Merritt Vet?
A If I might correct myself on that, please. My understanding was that Mr. Corbin was an employee of Merritt Veterinarian Supplies and there were two companies. There was a trucking company and there was a supply company and I believe they were two separate legal entities.
Q Run by the same group.
Q I don't know the organization instructor.
Q At some point did Allegro take over the external human resources of Merritt Vet and its associated companies?
A Yes we did.
Q And what year was that?
A I don't recall.
Q Did you and Mr. Corbin ever have any exchange of written information concerning your interest in purchasing Ms. McCarthy shares in Allegro?
A Yes, we did.
MR. MORGAN: If I might approach, Your Honor.
THE COURT: Yes, sir.
Q If you'd take a look at that document, please, Mr. Scully? Do you

recognize that document?
A Yes I do.
Q What do you recognize that document to be?
A An e-mail and a letter I sent to George Corbin.
Q What is the date of that letter?
A December -- December 24, 2003.
Q Had you had prior communications with Mr. Corbin about your interest and desire in purchasing the shares, Ms. McCarthy's shares at Allegro?
A Yes I did.
Q When did you begin that written conversation with Mr. Corbin?
A I couldn't say for sure. It would be some time in summer of 2003 possibly. I just don't remember.
Q The time that you had those discussions in 2003, can you tell me whether or not Mr. Corbin was an employee of Allegro?
A I believe he was.
Q Did you disclose to Ms. Mary Etta McCarthy at any time in 2002 that you had consulted with Mr. Corbin about your desire to purchase her shares?
A I don't think so but I don't recollect that specifically.
Q And in 2003, did you disclose to Ms. Mary Etta McCarthy that you had discussions with Mr. Corbin about your desire to purchase the shares in the company?
A I don't believe I did.
Q And then in 2004 prior to the time that you submitted your

resignation, did you disclose to Ms. Mary Etta McCarthy that you had elicited the services of George Corbin to assist you in making a decision to purchase the shares of Allegro?

A In the capacity that Mr. Corbin assisted me was on a friendship basis, not in any kind of a contractual basis.

Q That wasn't my question. My question was this, Mr. Scully, disclose to Ms. McCarthy at any time in the year 2004 that you had elicited the services of George Corbin to assist you in purchasing the shares of the corporation?

A No.

MR. MORGAN: If I may approach, Your Honor.

THE COURT: Yes, sir.

Q I might show you an Exhibit that's been marked as Exhibit Number 3. I don't believe that's been entered into evidence yet. Would you take a look at that document, sir, please?

Q Have you had a chance to take a look at that?

A I have. Thank you.

Q And what is the date of that letter?

A March 27, 2003.

Q Who is it addressed to?

A To me.

Q And who is it from?

A George Corbin.

Q And what is the subject matter that he was writing to you about?

A Methods of evaluations of companies.

Q In specific, what company was he referring to, Mr. Scully?
A Allegro.
MR. MORGAN: Your Honor, we would move that into evidence.
MS. GAFFNEY: Without objection.
THE COURT: What number is it?
MR. MORGAN: Three.
THE COURT: Plaintiff's 3.
MR. MORGAN: Yes, sir.
(WHEREUPON, Plaintiff's Exhibit Number 3 was received into evidence.)
BY MR. MORGAN:
Q Back up for a few seconds. When you and Ms. McCarthy became partners in 1997, 1998 what was your percentage ownership in Allegro?
A 30 percent.
Q And you contributed approximately $25,000 in cash to the company?
A That is correct.
Q And that over a period of three years you earned additional equity in the company up to a point where you had 49 percent?
A That is correct.
Q And you held 49 percent at the time that you submitted your resignation on the 16th of February 2004?
A Yes, sir.
Q And at the time that you submitted your resignation, on 2004, you still held the position as president of Allegro, is that correct?

A Yes, that is correct.
Q At some point in the spring of 2003, you also began conversations with Ms. Yvonne Yarborough who is an employee of the company about your desire to purchase Ms. McCarthy's share, is that correct?
A I wouldn't characterize it like that.
Q Did you talk to her at all about your interest in purchasing Ms. McCarthy's shares at some point in 2003?
A When she was asked to produce certain financial information she approached me. I did not approach her.
Q But did you have a discussion, Mr. Scully?
A Yes I did.
Q And that discussion then informed Ms. Yarborough that in fact you had a desire to purchase or buy out Ms. McCarthy, is that correct?
A Yes.
Q And also in 2003, isn't it true that you told Ms. Yarborough that if you were unsuccessful you would start your own business?
A I believe that is correct.
Q And at no time from your first discussion with Ms. Yarborough until on or about the 16th or thereafter, February 2004, did you ever mention to Ms. McCarthy that you had begun conversations with Ms. Yarborough about bringing her into the loop about your desire to buy the company, is that correct?
A That is correct.
Q And in fact, on business time, on Allegro business time, there were occasions when you had Ms. Yarborough perform services such as

securing information about Pay Plus so that in the event you didn't get Ms. McCarthy to sell you those shares of stock, you could set up your own business, correct?

A That's not correct.

Q Let me show you an Exhibit that had been previously marked.

MR. MORGAN: Bear with me for a second, Your Honor.

Q Let he show you an Exhibit that has been previously marked as Exhibit Number 4. Do you recognize that document, Mr. Scully?

A Yes, sir.

Q And on that document it says it was read by you on February 4th I believe?

A 5th.

Q 5th?

A Yes, sir.

Q And has a date stamp, time stamp and that time stamp was before close of business?

A Yes, sir.

Q And isn't it true, Mr. Scully, that at that time you were president of Allegro, is that correct?

A Yes, sir.

Q And isn't it true, Mr. Scully that that time stamp that's on there was during a business day that Allegro was conducting business, is that correct?

A Yes, sir.

Q And isn't it true, Mr. Scully, that at that point in time Allegro already

had Pay Plus as a software package that it was using to input certain financial information to run Allegro's business?

A Yes, sir.

Q And so there was no need to get a new quote on Pay Plus because Allegro already had that. Is that a fair statement, Mr. Scully?

A That is correct.

Q And Ms. Yarborough reported to you directly?

A Yes sir.

Q During the time that she was employed and you were employed at Allegro, is that correct?

A Yes, sir.

Q And in fact she joined you on March 2nd of 2004, the day after she resigned as an employee of Allegro?

A That is correct.

Q At any point in time while you were president of Allegro did you ever advise Ms. McCarthy that neither Ms. Yarborough nor Ms. Millikin did not have non-competes?

A Yes, I did advise her.

Q And when was that?

A Sometime in the fall of 2003 as in our negotiation process.

Q Was that an oral discussion?

A Yes, sir, it was.

Q And what was the policy of the company that you had established with regard to non-competes? And having your employees sign those non-competes?

A All employees were asked to sign them.

MR. MORGAN: May I approach, Your Honor.

THE COURT: Yes, sir.

Q Will you take a look at Exhibit Number 13, please? Do you recognize document?

A Yes, sir.

Q Who is that document from and to?

A It is from Lynn Ciesla to me.

Q Okay is there also an earlier notation about the middle of the page from you to Ms. -- I can't remember her last name?

A Ciesla.

Q Ciesla. And in that if you would publish that what you told Ms. Ciesla, what was the year of that e-mail?

A October 14, 1999.

Q Could you please publish that to the jury?

THE COURT: Are you -- is it in or --

MR. MORGAN: I would move that that go in as an Exhibit.

MS. GAFFNEY: Without objection, Your Honor.

THE COURT: I'm sorry.

MR. MORGAN: That's okay. I get ahead of myself some time.

(WHEREUPON, Plaintiff's Exhibit Number 13 was received into evidence.)

Q Would you please publish that?

A Lynn, I greatly appreciate your loyalty to Allegro. It is my understanding that Paragon does not require their employees to sign a

non-compete and that is obviously their choice. We have always required everyone to sign one with Allegro. It is our opinion this document is crucial to operate successfully in a small community. Unfortunately, I am very uncomfortable with someone from Allegro joining any competing P.E.O. in the Columbia market not because of you but because of types of situations that you might be placed in. We have worked very hard to achieve the level of success we have. I do not want to risk compromising that. I guess I am saying that I would request that you not pursue the Paragon opportunity. We are investigating several projects for here -- for you here to keep you going in the interim. I have offered and will do my best to help you find another position in the area or whereever you choose to work. Let me know if I can help you in any way. I trust that you are rested and continue to feel even better.

Q Who was it that established the policy of having non-competes for Allegro as you outlined in that e-mail?

A I did.

MR. MORGAN: Might I approach again, Your Honor?

THE COURT: Yes, sir.

Q I'm going to show you two Exhibits I believe they have already been marked and entered 40 and 41. Do you recognize those two documents? One from Ms. Yarborough and one from Ms. Millikin?

A Yes, sir I do.

Q And if you go to the back those are unsigned documents.

A Yes, sir they are.

Q Now, Mr. Scully, during the period of time that you were president of Allegro, did you have custody of the Allegro employee personnel files?
A Yes I did.
Q And where were they kept, Mr. Scully? If I understood your testimony at your deposition they were kept in your office, is that correct?
A Yes, it is.
Q And you were the person that had access to that.
A Yes, sir I was.
Q Okay. And you had access to those documents up to the point in time when you submitted your resignation on February 16th of 2003, is that correct?
A Yes, sir it is.
MR. MORGAN: Your Honor, I believe that 40 and 41 have already been entered into evidence. If not, I would move to have entered at this time.
THE COURT: 41, Lisa Millikin, 40, no compete, Yarborough.
MS. GAFFNEY: They were entered.
MR. MORGAN: I just wanted to make sure because I have the originals here.
THE COURT: All right.
Q And, Mr. Scully, the only two employees of Allegro who went with you at the time that you left the company when Ms. McCarthy accepted your resignation was Ms. Yarborough and Ms. Millikin, is that correct?
A Except for my wife, yes, sir, it is.

Q I understand that. Except for your wife. There's been mention of an individual by the name of Kay Cress or Kay Cress Wolf in some of the earlier testimony. What position did Ms. Cress, that's how I refer to her as, hold at Allegro during the period of time that you were the president of the company?
A She was our benefit's manager.
Q At some point did she submit a resignation to you?
A Yes, sir, she did.
Q Did you ever mention to Ms. Mary Etta McCarthy that Ms. Cress prior to the time of your resignation had submitted her resignation?
Q No, sir, I did not.
A Was Ms. Cress's position a fairly responsible position with the company?
A Yes it was.
Q And if I understood the testimony in the depositions, Ms. McCarthy would want to know about major events. Would you consider the resignation of one of your key people a major event that you should have disclosed to Ms. McCarthy?
A Under normal circumstances the answer would have been yes but Ms. Cress left her last day of employment very open.
Q But my question was, is that a matter of importance that you normally would have disclosed to Ms. McCarthy, the resignation of a key personnel?
A If Ms. Cress' departure had been eminent the answer would have been yes.

Q What do you define as eminent, Mr. Scully?
A We had a date certain that she was going to let us know when she was going leave but she agreed to stay on indefinite.
Q That was at your request right?
A Yes, sir it was.
Q In December of 2003, did you ask any of the staff at Allegro to secure but I'll refer to it as separate quotes for worker's compensation for certain companies that were client companies of Allegro?
A Yes, I did.
Q And were those companies that you asked for separate quotes on. Let me ask it this way, Mr. Scully, when I talk in terms of separate quotes for worker's compensation that would be so that those companies would have their own worker's compensation coverage. Is that fair for me to understand?
A Yes, sir it is.
Q Okay. So, I refer separate quotes, you asked for separate quotes for Eastlan Construction?
A I don't believe that's accurate.
Q Did you ask for C.C.M. Realty?
A I don't recollect.
Q Long's Drugs?
A I believe Long's was one of the ones that we were discussing at that time.
Q Long Term Care?
A Yes.

Q Long's Thomson Georgia?
A Yes.
Q Hawthorne Medical?
A Yes.
Q Hawthorne Pharmacy?
A Yes.
Q Mount Valley Foundation and Repair?
A Yes.
Q Do you know if many of those companies were able to secure their own worker's compensation insurance on or after December 2003? Is that correct?
A Yes, sir.
Q And in fact, after you left Allegro, Eastlan Construction is now a Synergetic client?
A Yes, sir.
Q Long's Drug is a Synergetic client?
A Yes.
Q Long Term Care is a Synergetic client?
A Yes.
Q Long Thomson Georgia is a Synergetic client?
A Yes, sir.
Q Hawthorne Medical is a Synergetic client?
A Yes.
Q Hawthorne Pharmacy is a Synergetic client?
A Yes.

Q Mount Valley Foundation and Repair is a Synergetic client, isn't that correct?
A Yes.
Q And prior to that point in time, each of those companies were covered under the master worker's compensation policy of Allegro, is that correct?
A Yes, it is.
Q As president of Allegro, isn't it true that you understood that there was a back up procedure in place to maintain the security of your computer information?
A That is correct.
Q And that you also understood that there was a back up procedure in place to take care of hard paper or other company documents?
A I'm not sure I understand the second part of your question.
Q Let me try -- every now and again, you know, I will ask a question that's a little bit difficult. But you had a back up procedure to store for security purposes for your software information, software data?
A For Pay Plus.
Q Pay Plus and other software --
A We had two separate services. One for Pay Plus and one for the window's documents.
Q Okay, well let me ask you this way. Pay Plus you have a back up procedure?
A Yes.
Q And windows back up procedure?

A Yes.
Q And if you had just paper documents, did you have off site storage for your paper documents as well?
A No, we did not.
Q Where was the normal place that company records were to be maintained during the period of time that you were president of Allegro?
A On the property.
Q When you say on the property you mean in Allegro's offices?
A Yes.
Q That doesn't mean in a company car does it?
A I would say that I kept documents in my company car for extra safe keeping after 9/11.
Q Did you do that as a routine part of what you did?
A Yes, sir.
Q And did you keep every company document in your car?
A No, sir. I kept the important ones that should something happen to the internal server I would have those.
Q But you already had a back up system, right?
A Yes.
Q So that was a failsafe second?
A After 9/11, I think we all were very worried about integrity of data. I certainly was.
Q And at the time that Ms. McCarthy accepted your resignation on or about the 23rd, isn't it true that you had every, every company document from applications to policies, to insurance forms, to certain discs that

had confidential Allegro information in your car?

A I had a great deal of information in my company car. Yes, sir.

Q And you remember me asking you at your deposition in great detail why you had that information in the car and didn't you tell me that you had it there in case you had to start your own company?

A I did and all the information I had was on the internet. Yes, sir.

Q I'm sorry, sir?

A All of the information I think I had in my company car was on the internet except for a proprietary company documents.

MR. MORGAN: If I might have a moment, Your Honor.

THE COURT: Yes, sir.

MR. MORGAN: If I might approach.

THE COURT: Yes, sir. While we're waiting are you all okay? Does anybody need to stand up and stretch for a minute? Take a little breather. Stand up and stretch if you want to. Anybody need something to drink?

THE JUROR: I need water.

THE COURT: Anybody else need any water? Give her a glass of water.

MR. MORGAN: Thank you very much, Your Honor.

THE COURT: You may continue.

Q If you could, go to page 14. And join me on line 14 of the deposition of August 17th. I asked you a question, so there were individual enrollment forms or single enrollment forms is what I'm trying to get my hands around. And your answer was?

A I believe there were individual forms.
Q Okay. What was the reason why enrollment forms for voluntary benefits were in the company car at the time that you terminated your employment with Allegro. Mr. McCauley objected to the form, said you could answer, and your answer was?
A I put them there.
Q Question, why did you put them there? And your answer was?
A In the event I needed them should it have been necessary to start a new company.
MS. GAFFNEY: Your Honor, may we approach?
THE COURT: Sure.
(Thereupon, a bench conference was held.)
THE COURT: All right.
BY MR. MORGAN:
Q And then if we could go to line two of page 15. C. C. P. is a Carolina Care Plan was my question. Your answer?
A Yes.
Q Does Allegro use Carolina Care Plan for any of its health benefits? Your answer?
A Yes.
Q And that would have been during the period of time that you were employed at Allegro, and your answer was?
A Yes.
Q And my question was, while you were employed with Allegro, where I'm going to use C. C. P. instead of Carolina Care Plan if I might, were

there C. C. P. enrollment forms maintained in the ordinary course of business at Allegro during a period of time that you were employed at Allegro? Answer?

A In the benefits department.

Q Can you tell me why C. C. P. enrollment forms were found in the company car at the time that you terminated your employment with Allegro? Mr. McCauley objected to the form again and said you could answer. And your answer was?

A I put them there.

Q My question was, why did you put them there? And your answer was?

A In the event I needed them should it become necessary to start a new company.

Q And then I went on and I asked you a series of questions about a whole lot of documents, Mr. Scully, and you basically told me that every document that you had in the car not only those that were on the internet, but those that should have been just in the company files were in your car, and isn't it true that you then, told me that you had them there in the event that you were going to start your own company?

A Yes, sir.

MR. MORGAN: May I approach, Your Honor.

THE COURT: Yes, sir.

Q Mr. Scully, I'm just going to ask you whether you recognize that document.

A Yes, sir, I do.

Q Okay. Can you tell the jury what that document is?
A It is the Mount Valley Foundation Repair Specialist and Allegro Inc employee handbook as co-employers dated February 04.
Q And was that done under your direction while at the time you were president of Allegro?
A Yes, it was.
MR. MORGAN: Your Honor, we would move that into evidence.
THE COURT: Any objection, Ms. Gaffney?
MS. GAFFNEY: No objection, Your Honor.
THE COURT: All right. What number is it now?
MR. MORGAN: I believe it is 33.
THE COURT: All right. Thank you.
(WHEREUPON, Plaintiff's Exhibit Number 33 was received into evidence.)
MR. MORGAN: May I approach, Your Honor?
THE COURT: Yes, sir.
Q Show you an Exhibit that has been previously entered as Exhibit Number 7. It is a list my client prepared in the -- this litigation. I would ask, Mr. Scully, if you recognize the names of those companies?
A Yes, I do.
Q Okay do you recognize those name -- the names of those companies as to have been clients of Allegro during the period of time that you were president of Allegro?
A Yes, sir, I do.
Q And can you tell me what company now is in a P.E.O. relationship

with those companies listed on that Exhibit 7?
A I'd say the majority of them are engaged in a P.E.O. relationship with Synergetic with the exceptions of Eastlan Investment Group, General School Supply, a number of the Magnolia Management Group Properties. I can't be certain which ones because most of those were summer contracts. I believe that's the extent of them.
Q Okay. And you did -- Synergetic did take a lot of the Eastlan work from Allegro?
A Yes, sir.
Q Okay. Has one of those Eastlan companies spun off?
A I don't know what happened to it.
Q Who is Ms. Janet Lay?
A She was our former benefit's manager.
Q And when did she become a former benefit's manager?
A Approximately 30 days ago.
Q Had she been employed by Synergetic from the outset of the company?
A Yes.
MR. MORGAN: If I might approach, Your Honor.
THE COURT: Yes, sir.
Q I'm showing you a document that we marked as Exhibit, I believe it is 16. Do you recognize that?
A Yes, I do.
Q Did you get the number right?
A It looks to be 12.

Q 12? Get my by bifocals working. What do you recognize that document to be?
A One of the two offer letters she received.
Q What is the date of that document?
A February 16, 2004.
Q And which company, Mr. Scully, made the offer to Ms. Lay on February 16, 2004?
A Neither company made an offer on that date. I sent Ms. Lay a document, this document as well as one for Allegro.
Q My question is, in that document that's been marked as Exhibit Number 12, what company's making her an offer of employment?
A It says Synergetic.
Q And what's the date of that document again, please, sir?
A February 16, 2004.
Q You had interviewed Ms. Lay sometime in January of 2004, is that correct?
A It was some time before February 16th, 2004.
Q Was it in the year 2004?
A Yes, sir, it was.
Q Okay. And during that period of time at least up to February 16 of the year 2004, you were the president of Allegro?
A Yes, sir.
Q And yet on February 16, you made an offer to Ms. Janet Lay to come work for Synergetic, is that what that letter says?
A Yes, it does.

Q When you interviewed Ms. Lay, you interviewed her on Allegro time, is that correct?
A I believe the first time we interviewed her was on a Saturday. But I do believe we used Allegro time to talk with her.
Q And you had other folks at Allegro, your wife involved in that interview process, is that correct?
A Yes.
Q And you had Ms. Yarborough involved in that interview process and she was an Allegro employee is that correct?
A Yes.
Q And all of that was done on Allegro time, correct?
A Yes.
Q And you offered her a job for Synergetic on February 16th, is that correct?
A Yes.
Q During the time that you were president of Allegro did you have an occasion to visit with a Ms. Cathy Jordan?
A Yes.
Q Did you have an occasion to present her with some information about Allegro?
A Yes, I did.
Q Did you ever have any more than one meeting with Ms. Jordan?
A No, sir.
Q Did you ever follow up with her when you left Allegro?
A Absolutely not.

MR. MORGAN: If I might approach?

THE COURT: Yes, sir.

Q Show you some documents that had been previously entered as Exhibit Number 9. There are a number of documents there. Those are documents from certain Allegro clients to Ms. McCarthy giving Allegro a 30 day notice of contract termination?

A Is that a question, sir?

Q Yes, it is.

A The answer is yes.

Q Okay. And you drafted those for those folks, correct?

A Yes, sir.

Q On, I believe it was the 28th of February of 2004, Saturday before March 1, assuming 2004 was a leap year, you had a meeting at your house. Didn't you? With certain folks? Ms. Yarborough? Did you have a meeting?

A Yes, I did.

Q And Ms. Lay was there?

A Yes, sir, she was.

Q Ms. Millikin was there.

Q Yes, sir.

Q And your wife was there?

A Yes, sir.

Q At the time that you had that meeting on February 28th, was Ms. Yarborough still an employee of Allegro?

A Yes, sir.

Q And was Ms. Millikin still an employee of Allegro?
A Yes, sir.
Q And you had already offered Ms. Lay a job for Synergetic on the 16th of February, correct?
A I made that offer, a final offer to her on that Saturday the 28th.
Q But you had already made the offer on the date of the letter dated the 16th?
A I sent her that document, yes.
Q And on the 28th you had discussions about the new business, correct?
A Yes, sir.
Q And you mentioned that there would be a number of clients that would be leaving including Merritt Vet, correct?
A Yes, sir.
Q And in fact, the letter from Merritt Vet is dated February 27th· is that correct, if you look at the Exhibit in front of you?
A February 27, 2004.
Q And that was the day before you met with Ms. Yarborough, Ms. Lay, and Ms. Millikin at your house, correct?
A Yes, sir.
Q Isn't it true, Mr. Scully, that Ms. Yarborough resigned on March 1?
A I believe that was the date, yes, sir.
Q And you have seen in this litigation that on March 1, after having met with you and other folks at your house on the 28th, that almost immediately before she walked into Ms. McCarthy's office and said I'm

quitting, she sent a ton of information on over to Merritt Vet's person who worked with Mr. Corbin, Ms. Joan Gathers, isn't that correct?

A I don't have any evidence of that.

Q My question is in this litigation, was there information that came out that you became aware of that Ms. Yarborough sent a bunch of Merritt Vet information after your meeting on the 28th to Merritt Vet?

A Yes. It was very common for Ms. Yarborough to send Ms. Gathers information on a daily basis and it was an incredible volume of information that she would send them.

Q And that normally happens right before someone walks out?

A It happens every day.

Q My question was, does that normally happen before someone walks out?

A I don't know the answer to that, sir.

Q And you knew she had pushed the delete button on that too, didn't you.

Q Absolutely not. I would never condone that kind of behavior ever.

Q I didn't ask that. I asked you whether you knew about it?

A The answer is absolutely not.

Q You found out about it later though, didn't you?

A Through you.

Q Through this case, right?

A Through you, sir.

Q Now among the information that you had in your car, was information concerning how to put together a worker's compensation

package for employees of P.E.O., is that correct?
A I believe a copy of that was in my car.
Q And in fact, you had asked at some point in 2004 of Ms. Cress to download on to some disc information that would provide you with that information and Pay Plus information and other information relevant to the P.E.O. industry and Allegro in particular, is that correct?
A Yes, it is for safe keeping.
Q And how many discs did you have in your car?
A I would say about five or six.
Q But you had a back up system for both of your systems already in place right?
A Absolutely.
Q And that information was in your car in the event that you needed to start your own P.E.O. because that's what you told me isn't it?
A No, sir. Not the discs. The discs were returned to Allegro. Any discs that I had in my home the day after I resigned I took back to Allegro. I took actually to Executive Staffing. I took a car load of things of personal property of Allegro back to the company.
Q My question is this, Ms. Scully, when I ask you the question, I asked you why you had all of that information including the discs in your car and you said it was there in case you had to start your own business, correct? I'm not saying you didn't return it. I'm saying did you have it in your car?
A I had it in my car. Yes, sir.
Q And you told me at your deposition that it was there so you could

start your own business?
A When I told you in the deposition, my recollection in the deposition, Mr. Morgan, was that it was the documents I had put in my car but not the discs.
Q But they were in your car?
A Yes, sir, they were.
MR. MORGAN: If I could just have a minute to check?
THE COURT: Yes, sir. Take your time.
MR. MORGAN: May I approach, Your Honor?
THE COURT: Yes, sir.
Q I show you an Exhibit that's been marked as Exhibit Number 17. It is a series of documents. Do you recognize those documents, Mr. Scully?
A I do.
Q Did either you or your wife prepare those documents?
A We did together.
Q And they have certain financial information about your family finance. Is that a fair statement?
A Yes, it is.
Q Okay. And you provided those to me in this litigation?
A Yes, I did.
Q And you believe those to be true and accurate at the time that you prepared them?
A Yes, sir.
Q Okay.

MR. MORGAN: Your Honor, we would move that into evidence.

MS. GAFFNEY: Without objection, Your Honor.

THE COURT: Seventeen without objection.

(WHEREUPON, Plaintiff's Exhibit Number 17 was received into evidence.)

Q I show you an Exhibit I believe has already been entered as Exhibit Number 20, Plaintiff's 20. Do you recognize that document?

A I do.

Q Just tell the jury what that document, the substance of what it is.

A This is the document we talked about this morning where I talked to Kay Cress about disclosing confidential Allegro information to any one outside of the company and I prepared this as more so she would understand exactly what I meant in terms of not sharing information with any one, specifically her husband. And that I thought she was doing a wonderful job. I didn't think this was going to be a problem because I thought it was in everybody's best interest to lay out my expectations in writing.

Q Now her husband now is Matt Wolf, right?

A Yes, sir.

Q And you and Mr. Wolf spent a lot of time running together over a number of years. Do you recall that?

A Yes, sir.

Q And during those runs you and he had a lot of discussions, didn't you?

A Yes, sir, we did.

Q And a among those discussions that you had included conversations about Allegro and Allegro's business, right?
A Correct.
Q And Mr. Wolf at the time that you had those discussions with him was in no way associated with Allegro, correct?
A Correct.
Q Help me understand, Mr. Scully. It is okay for you to have discussions with a third party and that's good but an employee can't talk to his or her wife about what's going on at the office?
A There was a big difference, Mr. Morgan, between what Ms. Cress might tell her husband and what I would tell Dr. Wolf because I was very conscious of what I told him and at least identifying the parties from a privacy point of view.
Q And did you have any -- ever any concern that Ms. Cress had ever divulged at any time any company confidential information to any third party?
A Absolutely not and I made that very clear in this document.
Q But you sure gave her a memo didn't you?
A I wouldn't call it gave her a memo. I would say I articulated my concerns and expectations.
Q What does it say at the top of that Exhibit, Mr. Scully?
A April 28th.
Q And what is the next?
A 2003 memo for the record.
Q Memo for the record. Thank you, sir.

MR. MORGAN: May I approach, Your Honor.

THE COURT: Yes, sir.

Q Do you recognize that Exhibit 26, Mr. Scully?

A Yes, sir.

Q What is that document?

A It is an e-mail from Kay Cress to Yvonne with a copy of -- Yvonne Yarborough with a copy to me.

Q What was the topic of that e-mail?

A Subject was Long Term Care, Long's, and Long's Thomson check request.

Q Okay. Was that part of a transfer of getting off of your work's comp insurance to your own worker's comp insurance?

A Yes, it was.

MR. MORGAN: Your Honor, we would move that into evidence.

MS. GAFFNEY: Without objection.

MR. MORGAN: It was the date to have that, Mr. Scully.

A January 30, 2004.

(WHEREUPON, Plaintiff's Exhibit Number 26 was received into evidence.)

Q And there was an earlier document if I could show you that please? Is that another e-mail about the same topic?

A It is.

Q What is the date of that please?

A January 28, 2004.

Q Did you receive copy of that?

A Yes, I did.
Q And that was with regard to that movement of the worker's comp insurance offer to the Allegro plan?
A Yes, sir.
MR. MORGAN: Your Honor, we would move that into evidence.
MS. GAFFNEY: Also with no objection.
THE COURT: All right.
(WHEREUPON, Plaintiff's Exhibit Number 27 was received into evidence.)
MR. MORGAN: May I approach again?
THE COURT: Yes, sir. For future references, both of you all, approach any time you'd like. You don't have to ask me. It's all right. I understand.
MR. MORGAN: Some Judges, if you get out of your chair.
THE COURT: I know. It is all right.
Q Mr. Scully, do you recall at some point in this litigation a judge issued an injunction asking you not to take any more clients from Allegro?
A Yes, sir.
Q And do you recall that that order required you to maintain the core assets of that movement of that business?
A I'm not sure I understand what you mean, the follow up question.
Q I would be happy to do that. As part of that injunction, didn't that injunction say that you had to continue to try to operate those and not deteriorate that business that had moved to Synergetic?

A I don't recollect that being the case.
Q Did you recall receiving a copy of that order granting the injunction?
A Yes, sir, I do.
Q I show you a document that's been marked as Exhibit Number 42. Do you recognize that as a copy of the injunction?
A Yes, sir, I do.
MR. MORGAN: Your Honor, I would move that into evidence.
MS. GAFFNEY: I would object.
THE COURT: I think subject to your earlier objection, is that fair enough, that I've already ruled upon?
MS. GAFFNEY: Yes.
THE COURT: Very well. We might go into a little more detail later but it is over your objection. 42 part of the case file.
(WHEREUPON, Plaintiff's Exhibit Number 42 was received into evidence.)
Q This is an Exhibit that's been marked as Exhibit 36, sir. Do you recognize that document?
A Yes, sir.
Q What is the date of that document?
A Tuesday, February 11, 2003.
Q Who is it from?
A From me.
Q And who is it to?
A Maria Diaz.
Q And who is Maria Diaz?

A She was a former employee of Allegro.
Q What is the topic of the e-mail?
A Merritt Vet Supply.
Q And what specifically is the subject that you discussed with her?
A Having to sign a contract.
Q With what company?
A Merritt Vet Supply.
Q Is that a document that was an Allegro document during the term that you were the president of the company?
A It was.
MR. MORGAN: Your Honor, we would move that into evidence.
MS. GAFFNEY: No objection, Your Honor.
THE COURT: And what Exhibit was that? What is the number on it, Mr. Scully.
THE WITNESS: 36, Your Honor.
THE COURT: Thank you sir.
(WHEREUPON, Plaintiff's Exhibit Number 36 was received into evidence.)
Q I show you a document that's been marked as Exhibit Number 27.
A 29?
Q 29, my bifocals aren't working today. Do you recognize that document?
A Yes, sir.
Q What is that document?
A It is the audited detail statements of operation for period 12-31-04

for Synergetic.
Q Is that a balance sheet?
A Yes, sir.
Q Profit and loss statement?
A Yes, sir.
Q Your Honor, we would move that into evidence.
MS. GAFFNEY: I'm sorry, Mr. Morgan, which number was that?
MR. MORGAN: 29.
THE WITNESS: This says 29.
MR. MORGAN: 29.
MS. GAFFNEY: Without objection, Your Honor.
THE COURT: Balance sheet for Synergetic was it?
MR. MORGAN: Yes.
THE COURT: Without objection number 29.
(WHEREUPON, Plaintiff's Exhibit Number 29 was received into evidence.)
Q I will get this one right, 32. Do you recognize that document?
A Yes, sir.
Q What is that document?
A It's a U. S. income tax return for escrow for Synergetic for 2004.
Q Were you -- did you provide information to your accountant so that the accountant could prepare that tax information?
A Yes, sir.
Q And do you recognize that to be the 2004 tax return for the company Synergetic of which you are the sole owner and president?

A Yes.

MR. MORGAN: Your Honor, we would move that into evidence as well.

MS. GAFFNEY: No objection.

THE COURT: All right that's the tax return for Synergetic and what year?

MR. MORGAN: 2004.

THE WITNESS: 2004, Your Honor.

THE COURT: All right. Thank you, sir. 2004.

(WHEREUPON, Plaintiff's Exhibit Number 32 was received into evidence.)

MR. MORGAN: May I have a moment with my client?

THE COURT: Yes, sir.

Q I show you a document that's been marked already and entered into evidence as Plaintiff's 2. Do you recognize that document?

A I do.

Q What is that document?

A It is a weekly letter I wrote to my children dated February 14, 2004.

Q I had Ms. McCarthy publish it and I would like for to you to publish it as well for me, the third, fourth, and fifth paragraphs of that letter, please, sir?

A I will then go to the lawyer's office and we will incorporate Synergetic Inc. Once that happens I need to call Janet. She will give notice and make formal offers to Yvonne and Lisa, and then get to call each of our customers. I want to take and see if they will move with me. Out of 88, I

only want 25 with about 700 lives. I arranged to take over half the suite, half of the suite below us on the first floor. We will go from 4,986 to 2900 square feet. That space will be available March 1st so I will work out of the house until then. Carolina Care Plan is in the final stages of letting me know if they will offer me health insurance. If they don't I have another carrier who may be able to help us out.

Q I may have miscounted the paragraphs but I counted happy birthday is one, Saturday is two, and then I will meet with her on Monday as three?

A Okay. My error. I apologize. I will meet with her on Monday morning after this staff meeting and reaffirm my last offer to her. If she does not accept it on the spot, I will tell her my plans about taking over the forms and paper work and approaching Yvonne and Lisa and soliciting our customers. Then I shall resign along with your mother. I will have all of my stuff out of there except what is on the walls and shelves. It won't take but 30 minutes to pack it up.

Q You had already taken everything out of the office except what's on the walls and shelves prior to February 14 of 2004, correct?

A Yes, sir.

Q And you told your kids that?

A Yes, I did.

Q And you also told your kids that you were going to be in the same building that Allegro was going to be in except you were going to take a suite on the first floor instead of being up on the third floor?

A For either Allegro or Synergetic.

Q And you told your kids on the 14th?
A For either Allegro and Synergetic, Mr. Morgan.
Q You also told -- you told your kids that you were going to give notice if she didn't take your last and final offer on the 16th right?
A Yes, sir.
MR. MORGAN: I don't have any more questions.
THE COURT: All right. After the break, before we do anything else, Mr. Scully has been on the stand about 90 minutes, give you all a break. Just don't talk about the case. You have plenty of time to refresh yourselves. But just don't talk about the case and I will give you 10 or 15 minutes to refresh yourselves.

(Jury exits the courtroom.).

(Whereupon a recess was taken commencing at 3:58 pm. and concluding at 4:20 pm.)

(Jury enters the courtroom.)

THE COURT: Welcome back, madam forelady, members of the jury. The first question is how is the coffee? At least it was strong enough for the Defendant's side. Mr. Morgan had actually crossed the Defendant, Mr. Scully, in his examination. Now, Ms. Gaffney will ask some questions. I will give you a little bit of leeway. I know it is not really a redirect but since it is a good foundation I might let you shorten it a little bit in terms of leading.

MS. GAFFNEY: Thank you, Your Honor. May it please the court.
THE COURT: Yes, ma'am?

CROSS-EXAMINATION

BY MS. GAFFNEY:

Q Mr. Scully, you were asked some questions about communications you had with George Corbin in the spring of 2003. Do you recall that line of questioning?

A I do.

Q And you were presented Plaintiff's Exhibit Number 3 for your review. First of all, will you explain for the jury what your relationship, not Allegro's, but what your relationship was with George Corbin in the spring of 2003?

A My personal relationship?

Q Yes.

A It was one of trust and confidence. I had established a relationship with Mr. Corbin and I valued his judgment and his counsel.

Q By March 2003 when Plaintiff's Exhibit Number 3 was created, what was Mr. Corbin's relationship, if any, to Allegro?

A At that time, I think he was probably in an employee of Allegro through Merritt Vet.

Q Okay. And just to make sure the jury understands, Mr. Corbin, Mr. Corbin's paycheck that he would have received as an employee of Merritt, what would have been the pay or payor on that?

A It would have been through Allegro but it would have been Merritt. It would not have been Allegro.

Q Okay. So, just again to make sure it is clear the check itself would say "Allegro"?

A Yes, it would.

Q But the money to fund Mr. Corbin's salary would have come from Merritt?
A From Merritt.
Q So, you say that Mr. Corbin was an employee of Allegro? Is that exactly accurate?
MR. MORGAN: Objection. Cause for legal conclusion.
THE COURT: Well, not necessarily legal. I don't know whether he worked for him or not. Does he know the question? Overruled. I'm going to let him answer that.
A We were in a relationship which means --
THE COURT: The question was, was he an employee? That's what you need to answer. Yes or no.
Q Was he an employee of Allegro? In other words, did he provide services for Allegro?
A No, ma'am.
Q Had he in the past before 03 provided services for Allegro?
A Yes, he had.
Q And in what capacity had he provided services?
A As an accountant.
Q And when did he stop providing accounting services for Allegro?
A When Merritt became a customer of Allegro.
Q Okay. So at the time he wrote you that letter, was he providing any accounting services for Allegro?
A He did this as a personal favor to me.
Q Okay. I'm going to show you a document, Mr. Scully, marked as

one of the updated numbers that is the reason I asked for the quote.

Q As a matter of fact, after you received that e-mail, the information about Pay Plus, did you increase your offer to Ms. McCarthy?

A I believe I did.

Q As far as the documents that were in your car as of February 23rd, were all of those documents left at Allegro on February 23rd when you departed in a taxicab?

A Yes, ma'am, they were.

Q And so, did any of those documents leave Allegro physically with you and ever get to Synergetic?

A No, ma'am.

Q And the discs that were found in the car, the back up discs, you talked about September 11th. Is it your practice today to carry with you back up disks in your car?

A Yes, ma'am, it is. It is in my car today.

MS. GAFFNEY: That is all of the questions I have, Your Honor.

THE COURT: Yes, sir?

MR. MORGAN: May it please the court.

REDIRECT EXAMINATION

BY MR. MORGAN:

Q Mr. Scully, in the context of a P.E.O. in that business now since what 1997, is that correct?

A Yes, it is.

Q That when you operate a P.E.O., those client companies of the P.E.O. are also employees of the entities such as Allegro. Isn't that

correct?
A Co-employers.
Q Co-employers?
A Yes, sir.
Q So Mr. Corbin was an employee of Allegro, correct?
A He was a co-employer.
Q Co-employer? And as to the amount of Pay Plus, that quote that you had, I think I heard you say that if you didn't have to spend that you could up your offer. Isn't it true, Mr. Scully, that the only reason that you would have to spend that money is if you set up the new company?
A Yes, sir.
Q I have no further questions.
THE COURT: Anything further? You may step down sir.
THE WITNESS: Thank you.
MR. MORGAN: I call Daniel McHenry, Your Honor.
THE COURT: All right.
Daniel HcHenry, after being duly sworn, testified as follows:
CLERK: Please take a seat. Please state your full name for the record.
THE WITNESS: Daniel S. McHenry.

DIRECT EXAMINATION

BY MR. MORGAN:
Q Mr. McHenry, could you tell the jury a little bit about your educational background?
A I had my undergraduate degree from West Virginia University and my master's degree from the University of West Florida. Both degrees

were in accounting.

Q Do you hold any certifications, Mr. McHenry?

A Earlier in my career I was a C.P.A. and C.M.A. and C.P.A. for Price Waterhouse. I currently – I don't hold any designations.

Q And could you tell the jury what a C.M.A. is, please?

A A Certified Managerial Accountant. It is someone who does the audit books but is more related to the financial books of the company internally.

Q If you could, please for the jury, walk through your general employment history, starting with your most current position.

A I'm currently the president of McHenry Consulting. A firm with – I have three other partners and we deal primarily in the P.E.O. business or employee leasing company business. And also a little bit in staffing companies. But that's a majority of where our work is. I have been doing that for the past four years. Prior to that I was the president of Oasis Out Sources which is one of the ten largest P.E.O.s in the country. I had left that company when the parent, which was New York Stock Exchange Company was sold to a European company.

THE COURT: I'm sorry, Mr. McHenry, are you all having trouble hearing at all? Are you all having trouble hearing at all? Maybe it's just me.

MR. MORGAN: He is very soft.

THE COURT: That's what I'm saying. I just want to make sure they can -- as long as you all can hear. That's fine. I'm sorry. Go ahead, Mr. Morgan.

Q If you could continue with your work background, please, Mr. McHenry?

A Prior to founding Oasis Out Sources and for, I was the C.F.O. for a medical service company in Tampa Bay Florida for three years. And prior to that I was a C.F.O., a Chief Financial Officer for another P.E.O. That -- as co founder of. So, I actually started two P.E.O.s which are now I believe, both of them are in the ten largest in the country. Before that, I spent a year working with Silt Greenhouse (phonetic), a regional retail firm, doing, you know, that did plants and the year prior to that an assistant controller with Waste Management, which is a large, I think most of us know, as a garbage company because they do other things, the land fields and the insecticides, and then before that where I started my career was Price Waterhouse, which is an international accounting firm. And that kind of concludes my post college work history.

Q Do you -- do you do any teaching?

A Yes, I do. I -- for the last six years I've been on the management and accounting faculty for Florida Atlantic University in -- I lectured there when I was with Oasis. Now I'm a consultant and on the road. I do internet classes so I'm able to reach where ever I'm able to get in and teach the classes.

Q Are you a member of any organizations related to the P.E.O. industry?

A Yes. I'm a member of the N A.P.E.O., the National Association of Professional Employer Organizations. And I actually serve on their accounting and finance committee, so I'm familiar with the surveys that

they do with P.E.O.s around the country the metrics that's of the P.E.O.s.

Q Have you ever been asked to speak at any N.A.P.E.O. events?

A Have been especially on the consulting side the last four years. I have been a fairly regular speaker of both the annual conference and P.E.O. conference each year.

Q Have you written any articles about the P.E.O. industry.

A I have.

Q Can you tell the jury a little bit about that please?

A Over the years they have asked me to talk about different disciplines within a P.E.O. Sometimes it could be related to accounting, it could be related to client retention, worker's comp. Different topics of time they get contributors from all over the country to do that. So I have been, I have been fortunate, I guess, that they have asked me to do that. And the reason they have is because I've started two P.E.O.s from the ground up. You know from, you know, day one when they had zero employees until they became very large. So, I have seen many of the conventions of you know how the P.E.O. would grow over time.

Q Have you ever been asked to serve as an expert witness in any other cases?

A Yes, I have.

Q Have you ever been qualified as an expert in a case involving a P.E.O.?

A I have never been asked to be qualified but no one's ever challenged my knowledge in that area.

Q Have you ever had to testify in court with regard to providing an expert opinion?
A I have.
Q Okay. How many occasions?
A There has been two occasions.
Q Had those occasions been recent?
A Within the last year it was, I testified in a federal trial in Tampa, a P.E.O. versus an insurance carrier. And the other one was related to a consulting firm with a software vendor that is related to P.E.O. clients.
Q Have you been retained by Allegro to provide a damage assessment in this case?
A I have.
Q Have you been paid for that?
A I have.
Q Can you tell the jury how much you have been paid for your services?
A Related to the report assessing the damages I was paid $5,000 and for testimony this week I'm being paid $300 an hour.
MR. MORGAN: Your Honor, at this point I would move to have Mr. McHenry qualified as an expert to testify in this case.
THE COURT: On evaluation of P.E.O.s?
MR. MORGAN: On the damages.
THE COURT: Which goes to the evaluation of P.E.O.s?
MR. MORGAN: Yes.
THE COURT: Voir dire?

MS. GAFFNEY: Yes, may we approach on that?

THE COURT: Yes, ma'am.

(Thereupon, a bench conference was held.)

THE COURT: All right, members of the jury. When I asked Ms. Gaffney if she wanted to voir dire Mr. McHenry that goes to questioning him about his background and qualifications, you may do so now.

MS. GAFFNEY: Thank you, Your Honor. May it please the court.

CROSS EXAMINATION

BY MS. GAFFNEY:

Q Good afternoon, Mr. McHenry, you said you never testified in the state of South Carolina, correct?

A Not in South Carolina.

Q All right. You have testified in the state of Georgia and in Florida, is that correct?

A Yes.

Q And in one of those matters I believe you said that you testified in Tampa in a case against an insurance company?

Q Yes.

Q And was that the Professional Employer Plans versus the Hobb's Group case (phonetic)?

A Yes.

Q In the district court did I hear you say?

A It was federal court.

Q All right. And what was the issue upon which you rendered an

expert opinion in that case?
A It was damages that occurred to the company related to the issue of worker's comp or not having the worker's compensation.
Q In other words, damages that the P.E.O. sustained as a result of not having worker's comp insurance?
A That is correct.
Q All right. And you have no background in -- you don't have a background in economic, correct?
A I do not.
Q And I think you testified that your undergraduate and graduate degrees were in accounting?
A Yes, it is. In West Virginia they have a particular major but it was a Bachelor of Science and Business Administration and it was an Accounting Degree.
Q B.S. in Business Administration?
A Yes.
Q And your master accountancy is from, or master of accounting information?
A Master's in Accounting Information Systems from West Florida.
Q All right. Is that a credited college?
A It is.
Q In terms of your testimony again, in Florida in Tampa, again, that was on the topic then of the damage to a P.E.O. when it did not have worker's comp insurance, correct?
A Yes. A broker brought a non-rated carrier to a P.E.O. and they

bound the insurance and then the insurance later they found out that it did not exist.

Q Okay. So damage to the company sustained because it's worker's comp insurance wasn't what it was originally bounded to be?

A Yes.

Q All right. And then the other instance in which you have given expert testimony was also in the State of Florida?

A Well, there was one and I didn't mention to Mr. Morgan but I know it was report was Georgia.

Q Okay. That is the Ramstar versus Skill Staff case (phonetic)?

A Yes.

Q And I'm referring to your C.V.?

A Yes.

Q Let's go back then to the Dendo Investment case versus a software company (phonetic). What was the specific issue or damage on which you rendered an expert opinion in that case?

A Repeat the question please?

Q Sure. In the Dendo case, again, it says Dendo Investments versus Lawson Software?

Yes.

Q You were retained by which of those entities to render --

A Dendo Investment.

Q And what kind of company is Dendo Investments?

A It was a consulting firm that used the software of the software company.

Q Okay.
A And the contract was conditional upon the condition of the P.E O. industry at the particular time or how much business they could do.
Q What kind of company is Dendo Investments?
A It was I believe a consulting company.
Q It is not a P.E.O. though?
A No.
Q And of course Lawson's Software is not a P.E.O.?
A No, but what the group was doing was marketing to P.E.O. clients.
Q Okay. But in that case you didn't testify about the loss to a P.E.O. perspective or a current clients perspective losses as a result of clients, correct?
A I did not.
Q And also in the Professional Employer Plans case (phonetic) out of Tampa, you did not testify to the loss that a P.E.O. sustained as a result of client departures, correct?
A I did.
Q In the case of the one in Tampa?
A Yes.
Q All right. And that's the case, the Hobb's case?
A Yes. Hobbs Leading and Professional Employer Plan (phonetic).
Q And again, that's the worker's comp case?
A Yes.
Q All right. How then did the absence of worker's comp insurance have to do with the damage that P.E.O.s sustained when the clients

left?
A Worker's compensation, any business in the United States there's two or three states, you know that may have some different rules. But if you don't have worker's compensation, you cannot be in business as an employer. So, if your client base all of a sudden finds out that they are not covered with worker's compensation, normally there's going to be a very quick departure.
Q All right then in that case that's what happened? The clients left because worker's comp insurance was not what it was purported to be?
A Yes.
Q How about in the Georgia case?
A The Georgia case was related to a particular embezzlement.
Q All right.
A In which a -- in which a client said because they were a P.E.O. client and because their internal employees were embezzling from them that the P.E.O. should have to pay.
Q Okay but did that case at all involve allegations that clients had left a P.E.O. and then you were called upon to value the loss or value the damage to the company as a result of the clients leaving?
A They did not.
Q So, out of the three times that you testified, the only time that you have been called upon to render an expert opinion about the damage to a P.E.O. as a result of client exodus was one occasion?
A That is correct.
Q And that again is the case in Tampa as I recall?

A Yes.

MS. GAFFNEY: Your Honor, that would be --

THE COURT: All right. Any motions or anything further?

MS. GAFFNEY: At this time we would just move to not have Mr. --

THE COURT: I'm going to admit him as an expert. Rule 703. He's so admitted. You may continue, Mr. Morgan.

MR. MORGAN: Thank you.

DIRECT CONTINUED BY MR. MORGAN:

Q As a result of your retention by Allegro, Mr. McHenry, were you asked to prepare a report?

A Yes.

Q I'm going to show you a document that we marked as Exhibit Number 6 if you will take a look at that report for a moment? Do you recognize it? Excuse me, do you recognize that report that's been marked as Exhibit Number 6?

A Yes.

Q Let me show you one other document if I might, Exhibit Number 44. Do you recognize that document?

A Yes.

Q Can you tell me what Exhibit Number 44 is first, please?

A Exhibit Number 44 is one of the Allegro prepared spread sheets that I used in making the computations. In fact, of the attached spread sheets, this one was omitted from the report even though it was the one used. The ones in the report actually were the original ones that were

given to me that didn't have totals on the columns of each month that I re-requested them to add those computations. And this is what I prepared. One of the components of the report from or the damage analysis.

MR. MORGAN: Your Honor, we would first move Exhibit 44 into evidence.

THE COURT: Is it already in?

MR. MORGAN: Not 44.

THE COURT: Any objection?

MS. GAFFNEY: Based on the matters that we discussed in camera.

THE COURT: Okay. Overruled.

(WHEREUPON, Plaintiff's Exhibit Number 44 was received into evidence.)

MR. MORGAN: And, Your Honor, we would also move Exhibit Number 6 into evidence at this point.

MS. GAFFNEY: Same objection.

THE COURT: All right. Same ruling.

(WHEREUPON, Plaintiff's Exhibit Number 6 received into evidence.)

Q Mr. McHenry, could you explain to the jury if you would what the scope of your engagement was to prepare for Allegro in this matter?

A The scope of the engagement was to prepare a financial damage report and I was to compile information that I received from Allegro. There was probably -- so any of the information that I used as a part of

these computations were provided by Allegro. And I went through them, compiled them into a usable report.

Q And among the information that you reviewed include Allegro balance sheets?

A Yes. It was two years worth of financial statements here.

Q What about cash flow information?

A On page 5, I show a list of Exhibits that were used in preparing the report. And if you would like I can certainly read from those.

Q My question is, was among those cash flow statements?

A Yes.

Q If you could turn to Exhibit B of your report, please? Do you have that in front of you?

A I do.

Q And can you tell the jury what Exhibit B is?

A Exhibit B is a summary of my computation. It breaks down into three separate components, the damages. The first section is related to business that was lost due to this matter of proceeding, the issues at hand. The second portion of it is --

Q If you could point, where does that appear? This is a little fuzzy. Is that up on the top part?

A It is. In fact there --

THE COURT: You know, Mr. Morgan, I'm having trouble seeing it. The witness may step down.

MR. MORGAN: Would you like to step on down?

THE COURT: Do we have an easel or something we can put it

up? I'm not trying to tell what you to do. It might be a little bit easier to see.

MR. MORGAN: I agree. Thank you. (Pause).

THE COURT: Mr. McHenry, I would ask that you stand to my left and talk back toward the court reporter if you don't mind, sir.

THE WITNESS: Yes, sir.

THE WITNESS: The report is based on three different components.

THE COURT: I'm sorry. Can you see sir?

THE JUROR: No, sir, I cannot.

THE COURT: About 10-degrees to your left and back it up just a little bit, about a foot or so. All right. Can everybody see now

THE JUROR: Yes.

THE WITNESS: Can you see?

THE JUROR: Yes.

A The first section up here represents the business that was lost associated with this matter, the business, the company already had. So, in 2004 a portion of the business left at different times during the year. And that's why you would see in this row there's an amount less than all of the rest of the years. There's a client report that shows this total of 330,800 representing these clients and their different departure dates during the year that add up to that.

Now to compute the amount of the business representing the whole year meaning if we lost it in 2004, each year you still, you know the business is still going. So, since some of the business left,

throughout the year, I took the month of December, which was $40,000 worth of profits and multiplied that by 12 to come up with the 480,000 that I used each of these years until 2011.

Now why is this amount, why am I taking out the second amount? Well that represents client attrition rate on what a P.E.O. would have if they had ten clients how many clients would we normally have at the end of the year. Some times clients, you gain clients, you lose clients. So what was in Mr. Scully business plan his attrition rate that he used was 15 percent rate. So very simplistically, I took 15 percent of that business each year and subtracted it so over time that business would have left the company.

So, the losses begin occurring in 2004 when the clients started leaving. In 2005, if all those clients had been there for a year, the reports represent that's $480,000 worth of administrative fees that the company loss because of the issue. And so yet that 480 over each of the years but each year I add another 15 percent away from it. So that's why you can see these totals they are being that we're computing for the damages decreases each year. Until finally over time you know, there's no business left in that book. It is a fairly conservative route. Now the 15 percent attrition rate that Mr. Scully used in the business plan that's not right. If you look at the N.A.P.E.O. averages in one of my Exhibits is from the national trader association where you can see that nation wide P.E.O.s lose business by that much. I guess I should say keep their business.

So this number here is 85 percent of the hundred percent. And

70 percent of the hundred percent. And then 55 percent of the hundred. But that's the retention rate. So this first section right here is related to the business we had that we lost because of that issue. So that's the first component. I know it is hard to see there.

Q What is that number, Mr. McHenry, that you came up with?

A In just rounding it, it is 1.7 that component. Now the second section right here is the same kind of methodology using attrition. What I did is I took Mr. Scully's business plan where he is estimating a 20 percent growth in the business each year. So, according to their documents they had roughly a thousand employees. From their paperwork, so 20 percent each year just very simplistic is 200 employees each of those two years. And the business plan said that it would only that you know, they were only doing it two years at a time. So that's why I only used two years worth of increased business if they would have been running through what their plan was. So, I took 200 employees in 2004 and multiplied it by the national ratios across the country and that is one of the Exhibits in the package which I believe is $1,281 so that's how you get the 256,000 and I did that for two years so you can see this happened in the loss year of 2004 and then another book started the following year two years worth. And then each year I took 15 percent off just like I did up here. Because of client attrition we are not best business we are going to get some but we are going to lose some. So this section here is year one, that 200 employee and this year is year two. The 200 employees over time minus us losing that business over time until it phases out. It phases out. So that's category

two of losses.

Q How much is that category two, Mr. McHenry?

A The computation is 1,972,000, it is to the nearest thousand. Now on the third section this is just cost that were associated with this issue, you know of getting a consultant to do did report, you know having to go back and trace this stuff for gathering documentation and information. And the data is within the report but of the these sections here of these direct cause you have 5,000 from my report, you have internal cost of benefits, you have some .E.N O., some labor costs of gathering the information, data recovery cost, and then also interest because they had to take out a working capital loan when the business was gone. They had to get cash to keep the business a float. Now the only reason I have it in 2004, 2005 is I did this report last year. So, I had the information of February of that report.

You know, I personally, I don't know what, you know -- I don't know what cost were after that. So I didn't put it in. And also in here I don't -- I don't compute any of the legal cost in this matter. And of category three at that time was 132,000 approximately. Now that totals to $3.8 million that is different than what we have down here which is a little bit less than 3.6 and at that time what we did was use a very simplistic analyzed nothing, any compounding involved but we just took the present value we had, you know, if we got the cash today for some dollars out in the future. So it is kind of like, you know, it is kind of like, you know, if you are able to collect a hundred dollars three years out, maybe you can probably get the cash today for $90.

So, even though we didn't get the cash here and I realize that some of these computations on the interest are off we haven't gotten the money so you have 2004, 2005, in which each of these categories these three, one, two, three, total then we discounted by six and a quarter percent, the only reason we did that is that is what Allegro was borrowing the money for.

So the discount of that money back at that time was very simplistic. You could compute it different ways it is about as close to 3.6 million. (Goes back to the witness stand).

Q Mr. McHenry, based upon your review of the company documents, based upon your experience and qualifications as an expert here today, what do you believe the damages to be based upon the departure and loss of business that Allegro had from Mr. Scully and others leaving the company Allegro?

A Of all of the categories?

Q Of all of the categories?

A 3.6 million. Approximately.

Q Based on your experience and qualification as an expert, do you have an opinion as to the damages suffered by Allegro as a result of Mr. Scully's and others action as set forth in the complaint in this case? Would that be the same number?

A It would be the same number.

Q Please answer any questions that Ms. Gaffney has, please?

THE COURT: Do you want that down, Ms. Gaffney, or you might use it yourself? May be --

MS. GAFFNEY: I don't think I'm going to use it, Your Honor.
THE COURT: Beg your pardon?
MS. GAFFNEY: I don't think I'm going to use it.
MR. MORGAN: I'll take it back.
THE COURT: Okay. Take it back.
MS. GAFFNEY: Thank you.

CROSS-EXAMINATION

BY MS. GAFFNEY:

Q Mr. McHenry, if I understood your testimony correctly one of the items that you relied upon formulating your opinion was a business plan that Emmett Scully created, correct?

A Yes.

Q And in that business plan, Mr. Scully set forth a number of items of things that is he wanted to achieve over the next couple of years with Allegro, correct?

A Yes.

Q And of course you are familiar with business plans, correct?

A Yes.

Q You probably create a business plan with any number of the businesses that you have been affiliated with?

A I have done that before.

Q And a plan you will agree with me is nothing more than an expression of what your hope is to happen in the future, correct?

A Yes. It is a compilation of assumptions that you hope to execute.

Q Correct. Assumptions but there's nothing guaranteed in your

business plan?
A There is nothing guaranteed in business plan.
Q In fact there is nothing in Emmett Scully's business plan that guarantees that he's going to have client accumulation of 20 percent a year, correct?
A I'd probably leave that to you attorneys to decide that.
Q Well, have you reviewed his business plan?
A I have.
Q And in fact you reviewed it as part of your being retained in the present case, correct?
A Yes.
Q And the information in that business plan was part of which you relied upon in formulating your expert opinion?
A It was. But I'd like to review it again.
Q Certainly.
A If we want to discuss his business plan.
Q Do you have your report with you?
A (No response.)
Q His business plan in my copy of your report is I believe Exhibit D. Do you have it before you, Mr. McHenry?
A I have it right here.
Q Okay. And as I understood your testimony a moment ago, the chart that you and Mr. Morgan just reviewed for the jury speaks to in the second group of categories, the information from that business plan, correct?

A Components of it, yes.
Q Okay. And you might also want to pull that. It is your chart, the Allegro financial damage summary?
A Exhibit B.
Q I'm sorry?
A Exhibit B.
Q That's correct. Do you have that?
A I do.
Q Okay. Looking then at Exhibit D., the business plan, that was created in the year 2003?
A August, I believe of 2003.
Q Okay. Turning to page 6 of that, Exhibit D, do you see where Mr. Scully, point number four states the growth of Allegro has been sporadic?
A Yes.
Q The second, third sentence, once Allegro reached the 1,000 work site employee threshold growth has remained flat. Do you see that?
A Yes.
Q And it goes on to speak to certain factors that have attributed to that flat growth including problems with their sales staff, a hardening of the worker's comp market, and a higher turn over rate than anticipated, do you see that?
A I see that.
Q And you have been a part of the P.E.O. industry you agree that there was a point in time when there was a hardening of the worker's

comp market, correct?
A Yes.
Q Now Mr. Scully goes on to state at the end of that paragraph ideally, ideally we would like to maintain a growth rate of 20 percent per year, correct?
A Correct.
Q Have you seen anything in the records that would show that historically Allegro had enjoyed a 20 percent growth a year?
A Actually, yes, in that same section four.
Q For instance --
A For instance in 1998 and going to 99 you go from 2.2 million to 16.6. That is greater than 20 percent.
Q Certainly.
A Going from 16.6 from 99 to 2000.
Q Right.
A Is actually doubling in size.
Q And what happened in the next year?
A It only increased by 33 percent.
Q All right. And then the market dropped off after 2001, correct?
A Yes.
Q And that is about the time that the worker's comp market hardened, correct?
A Yes.
Q Now you are aware, Mr. McHenry, that Mr. Scully did not have a non-compete agreement with Allegro, correct?

MR. MORGAN: Objection. No foundation. It wasn't part of the initial questioning.

THE COURT: He's an accountant so you all ...

(Thereupon, a bench conference was held.)

Q My question is, there is no question that these clients left Allegro in 2004, correct? That they left?

A Well, yes.

Q All right. And there's no question that as a result of the loss of clients there was a resulting loss of income to Allegro, correct?

A Yes.

Q But you have no information before you that those clients that left Allegro left because of Emmett Scully, correct?

A I do not.

Q In fact, you don't know of anything in permissible or anything that led them to leave Allegro?

A The information that I was given was from Allegro.

Q Okay.

A And I do understand that, that all of the clients that left may not have gone with Mr. Scully. But the impact of not having the income or taking the human capital from the organization can certainly leave one in disarray but that is not my part of this hearing. That is for you and Mr. Morgan to discuss at other times.

Q Certainly and you know from your own familiarity with P.E.O. industries that clients come and go at any time, correct?

A Yes, I do. But I do want to go back to one point that you had asked

about you know when guaranteeing the growth and during that time many P.E.O.s had a difficult time, let's just say. You know, after the hardening of the insurance markets but if you go to Exhibit C, and granted this is only a survey of the P.E.O.s in the United States, and if you will turn with me to the first section of the top under volume.

Q Yes, sir?

A In the statistical and you look at the annual revenue growth, now 9/11 was in the fiscal year of 2001. But you can see of the company's survey which is a greater and greater number, you can tell the participants at the bottom there was still revenue growth within the industry. So, yes, certainly you know acknowledge that certain clients had difficulty but of the one survey there was still growth in the industry.

Q Right. But --

A And of the assumptions used, we used 20 percent, you know, estimating that a thousand employees was the base mark from the information I saw.

Q Right.

A Times the 20 percent that Mr. Scully had used for his business plan. So 20 percent as you could see is below the median of the P.E.O. industry in 2003. Now granted, I put this in last year. There was another year after that for 2004 but the one year that we have right there that is still less or it is conservative.

Q Sure. And that was his ideal, the 20 percent growth?

A Yes.

Q And in Exhibit C you said this is what's based on the national

survey?
A Yes, for P.E.O.s of that size. If you go to the volume section at the top the third row.
Q Right. These figures, this 1281 that you mentioned on direct examination?
A Yes.
Q That figured into your computation of Allegro's damages in this case correct?
A Yes.
Q And what you did was you took the number of worksite employees times a revenue per employee of 1,281, correct?
A I did.
Q And you said that was the national average or that was an average paid for worksite?
A Of this group of this type of P.E.O.
Q Okay. Now, you understand though that Allegro only paid its worksite employees between $800 and $900, correct?
A I do.
Q So the 1281 would be inflated over what actually Allegro was paying to worksite employees.
A It would be higher than what they averaged in that last year.
Q So those numbers in your report that you went through with Mr. Morgan would be inflated because of that number 1281 which was not actually what Allegro paid its employees?
A You are talking about existing business not future business.

Q I understand but the number that you used, the 1281, factored into the second category of net new business from the Scully business plan, correct?
A I would agree that it wasn't what it was historically.
Q All right. Because you said that in the net new business, you took 256 – 256,200 was based on a 1,281 per worksite employee computation?
A Yes.
Q And again, that's inflated over what Allegro actually paid.
A No. That's -- that's inflated over what they had historically.
Q What they had paid and you don't have any information that today they pay their employees $1,281, do you?
A I do not.
Q So again, that 1,900 number, I'm sorry, 1,972,000 would not be accurate based on what Allegro has paid historically or any information that they paid today? That they paid their employees today?
A If you adjust it then obviously it is not the same number.
Q Okay.
MS. GAFFNEY: Your Honor, bear with me just one moment, please?
THE COURT: Yes, ma'am.
Q Mr. McHenry, you never spoke with any of the departed clients, the 30 or so that left Allegro, correct?
A I did not.
Q So, you have no information about the reason for the departure?

A I do not.
Q And just again to recap, you have no information to present to this jury that the reason that they left Allegro was because of or in any way related to Emmett Scully, Yvonne Yarborough, or George Corbin correct?
A I do not.
MS. GAFFNEY: That's all I have.
THE COURT: All right. Redirect?
MR. MORGAN: No redirect from this witness, Your Honor. If Mr. McHenry could just step down and if we might excuse him. I don't believe I will be recalling him.
THE COURT: He's got to catch a plane?
MR. MORGAN: Not today but come first thing tomorrow morning.
THE COURT: Okay you may step down, Mr. McHenry. Can I see you all for just a second?
(Thereupon, a bench conference was held.)
THE COURT: Well, ladies and gentlemen, we will resume at 9:30 in the morning. How is that? You all are not ready to go home yet are you?
THE JURY: Yes.
THE COURT: Listen up, thank you for your patience. Please don't talk about the case. I hope you have a pleasant restful evening and we will resume tomorrow morning at 9:30. You all have good evening.
(Jury exits the courtroom.)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF COMMON PLEAS
2004-CP-40-01915

ALLEGRO INC., PLAINTIFF)
VS.)
GEORGE CORBIN, EMMETT J. SCULLY, SYNERGETIC INC., AND YVONNE YARBOROUGH, DEFENDANTS.)

TRANSCRIPT OF RECORD

MAY 3, 2006
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE L. CASEY MANNING, JUDGE AND JURY.

A P P E A R A N C E S:

RICHARD J. MORGAN, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

AMY L. GAFFNEY, ESQUIRE
ATTORNEY FOR THE DEFENDANT

CRYSTAL T. JACKSON

OFFICIAL COURT REPORTER

by deposition. It will be a joint trial deposition designations as agreed upon by Ms. Gaffney and myself.

THE COURT: Who is the actor.

MR. MORGAN: Ms. Bacon will be the actress.

THE COURT: Members of the jury, I told you all what a deposition was yesterday and the force and effect of its purposes of this trial testimony from this witness is just as important and as equal by it as if the person was here live testifying from the stand. We'll play act. Come on up, ma'am, and Mr. Morgan, I'd invite you to sort of identify the party, their connection. Let us know who she is.

MR. MORGAN: Your Honor, this is Terry Bacon. Terry is a paralegal with our office who works with me and she will be reading from the deposition transcript of Ms. Kay Cress Wolf. The purpose of the deposition being read is Ms. Wolf has had a stroke and is unable to be with us today. So we will use her deposition testimony pursuant to joint stipulation with Ms. Gaffney.

DIRECT EXAMINATION

BY MR. MORGAN:

Q Okay would you state your full name for the record please?

A My name is Teresa K. Wolf. W.O.L.F. I have taken my husband's surname but for business purposes everyone knows me as Kay Cress.

Q Okay.

A C. R. E S. S.

Q What is your date of birth, please?

A

Q And your social security number?

A

Q And your address?

A Ridgeway, South Carolina 29130.

Q Is there any written policy with regard to what Allegro clients can request and cannot request?

A No, sir. Not to my knowledge.

Q Is there any specific Allegro written policy whereby an Allegro client is limited in some manner with regard to the information that they can request?

A No, sir. A client could ask for anything.

Q How long have you been employed with Allegro, Ms. Cress?

A Since October 2nd, 2002.

Q Before February 23, 2004, who did you report to directly?

A Emmett Scully, our president at that time.

Q Before February 23rd 2004 what was Mr. Scully's position?

A He was our president.

Q If you could, read the beginning with17, line three the answer?

A But what had occurred the first six months I was at Allegro we had worked very, very long hours. I had inherited a situation that was pretty unstable in the benefits area and I had been working seven days a week. And my husband at that time, he died. He was terminally ill. He died. And as a result of a decision I made to see Matt Wolf, who was a friend of Emmett's, Matt and I became very close. And Matt got a new car, an S2000 on like April 26 or --

Q I don't know what an S2000 is?

A That is a Honda. It is a little sport's car. A lot like Emmett's Miata.
Q Okay.
A It's a little sporty car and Matt was so excited about this car. He and I were seeing each other, going to the movies doing those kind of things at that point in time. He was so excited about this car. He wanted to drive by his best friend's house. He and Emmett had run together four days a week for years about four or five years I think at that point. And he wanted Emmett to see his car. He was just so excited. His wife had died. He had been, you know, suppressed and I said, Matt, I don't think that is a good idea. And he said ,oh, Emmett would be happy. He would be tickled. And I said, I really don't think that's a good idea. To the point I said let me out at the corner if you want to ride by Emmett's house. I will wait here.

Matt said no, no we won't go in. Well, we pulled literally in the middle of the road and Cathrine Scully, Emmett's wife, was out in the yard working on some roses or something, one of her plants, and she came over and was very gracious. She just was looking at the car and she said, oh, Emmett will want to see this. Let me go in the house. And Emmett came out. Emmett was very displeased. You know, you could just tell that he was not happy that we were there. We did not get out. We didn't even park in front of, you know, we were in the middle of the road.

So we leave and I said, Matt, I told you this was not a good idea. The next morning, this was on a Sunday afternoon, the next morning, which was April the 28th, I go into work. I typically get there early.

Emmett calls me down to his office. Emmett also gets there early and tells me, shut the door. I want to talk about Matt Wolf. I said, okay. So I shut the door. And then what occurs is Emmett goes into a conversation about breach of confidentiality and tells me that if he ever suspects that his name crosses my lips when I'm with Matt Wolf he said, quote, honey, I will throw your ass out this window so fast you won't know what hit you. You just try me. You try me. You try and sue me, he said, and I'll bring -- and I will prove 23 cases that Allegro has done nothing wrong.

I said Emmett, I have not breached your confidentiality. I have not done that. I'm hurt. I'm beginning to cry because I'm again hurt because this is happening. He didn't say anything at all about my performance. The conversation was I want to talk about Matt Wolf. I said -- he said, and I want you to know now, that I'm going to give Matt Wolf a copy of -- and he had this document, this reprimand that I had to sign and he signed and he said I'm going to give Matt Wolf a copy of this and I'm going to call him and tell him the same thing I'm telling you. I said, Emmett, I suggest you don't do that. Matt has no legal right to that. And he said, I'm going to call him and talk to him. And I said, I suggest you don't do that. And I said, I also suggest that the next female that you bring in to reprimand that you don't call them honey. And I signed this document. I was very upset.

I had been working all these years. At that point in time, Emmett and I had nothing but, I thought, a good relationship. Emmett knew what he was doing was not -- he didn't talk about my performance. This

had to do with Matt Wolf. And that was his phrase, not mine. And he said specifically that Matt had loose lips and couldn't keep his mouth shut and he had shared personal things with Matt and business things with Matt and that he was afraid that Matt would tell me something or either I would tell him something and he was a very private person. He also said, if you think that you and Matt are ever going to be friends with Cathrine and me, you are not. He said you are never coming over to the house for dinner.

I said, Emmett, I understand that. But I kept repeating to Emmett that I had not done anything to violate any confidence and I had not. I kept telling him that repeatedly. I became very upset. I went home for the rest of the day crying. Later on in that afternoon Matt Wolf called me. I said, how did you know I was at home? He said, Emmett called -- you didn't -- because I did not call Matt. And he said, yes. Then Matt said to me as recent as, I don't know, three weeks ago, I guess it was, that he said to me that that particular day that I was so upset and sick that Emmett had while they were running chewed him out for an hour. He did not share with me the content of that conversation. That -- and I took so much of your time to say that because that changed mine and Emmett's relationship.

From that point on Emmett began to treat me differently. He and I interacted with each other differently. The staff, he treated me differently in front of staff than he did Yvonne. He and I addressed that several times. Emmett felt like there was not a problem with the way that he was handling things. There wasn't an issue. That continued on

into December of 03 when I had a conversation with -- because I had numerous conversations with Emmett with Yvonne and or Emmett about this because he would from that point on he would -- he would yell at me, he would scream at me, he would just humiliate me. He would yell at me in front of clients, specifically George Corbin is one I can think of. It was a different kind of relationship.

Now you have to remember my husband had just died. He'd been terminally ill for six and a half years. I was left with this enormous debt. I could not lose my job. I could not do that. At my age, finding another job at a comparable salary when you are left with all this debt was virtually, you know, impossible to do. When I came to Allegro I had taken a pay cut kind of thing so I just wanted you to understand the circumstances that all of this happened. And I love Allegro. I have told Yvonne that, I have told Emmett that. You know P.E.O. business if it gets in your blood, man, it's in there. It is kind of like the circus. And what you do, you get to have all kinds of different things go on everyday, you know. Prior to that, my H.R. experience had been virtually in one industry or another not as diversified. So I loved that challenge.

Q So?

A So that changed our relationship. I'm sorry I took so long to tell you that.

Q That's okay. As a result of that, you -- did you resign actually resign in early January of 2004?

A Yes, I did. I resigned. That was one reason.

Q I want to go back to try to fill in some of the blanks provided by -- I

don't want to say blanks provided by, but some of the issues suggested by Ms. McCarthy. She said that there was some meetings. That you attended some meetings in as early as March 1st with Mr. Scully and Ms. Yarborough regarding setting up the new company. What is she referring to there?

A Actually, a series of meetings began in early spring or what I would call early summer. Like in the May timeframe. All the way through well, up until the -- the mid February of 04. And what was discussed in those meetings most of the time it was just Emmett, Yvonne and myself. There were a few occasions where Cathrine Scully would be in there. But most of the time it was just the three of us. And what we discussed was Emmett was making an offer initially to Mary Etta to buy out her portion of Allegro. And from very early on we started talk about plans for if the buy out did not go through or if she did not take his price, the formulation of a new company and that began in early summer, late spring all the way through and in these meetings we talked about identifying who was not on our worker's comp. Twice I gave Mr. Scully a list of who was not on our worker's comp.

Q When did you give him those lists?

A I gave him one in November of 03. I can't tell you the exact date in this. And then later on I remember the end of January, something like January the 30th, he asked me for that list again. I circled on that list the clients that were not on our comp and Yvonne at the same time did like this handwritten -- we used the top of check stubs the blank top of check stubs as I write it on notes to save you know paper and trees. And she

had written down a list of who she thought was not on our comp and Emmett took my list and wrote the number of employees per company that wasn't on in the circled ones and what the profit was for that. And that was going to be with a new company the target group.

Ms. Yarborough said to me -- she remained with us for a week after Mr. Scully left on February 23rd, 04. And Yvonne said to me that they had decided to take only the companies that did not have their own comp. Meaning our comp. They had their own comp. We talked about which companies would be targeted. Everything from Merritt Veterinary Supplies to Cherokee Kenworth, Mid Carolina Steel, Hawthorne, Longs, all of Long's Drugs. We talked about the ones that, you know, would be gone after. All -- all of those. And who else was there? Capital Bus. He was going to try and get Capital Bus which is now at that time it was Capital Bus Lines Inc and now I think they call themselves Capital Bus Tours. We talked about the little ones you know that he was going to go principally after the big ones and principally after the ones that had their own comp. We talked about that. We talked about -- now this is over a series of meetings. All of this didn't occur.

Q How many meetings?

A My best guess is, we talked about this at least a minimum of once a week. Some times on a daily basis. It was during --

Q And when did you say this started? I apologize. You said?

A It started like what I would call early summer, late spring.

Q Of 2003?

A Yes, sir.

Q Okay.
A And it was all the way through. The very last conversation I had at all about this was the morning of February 23rd. Literally. We talked about that. We talked about you know, being able to offer comparable benefits. We talked about who would go with a new company. We talked about – when I say who would go with the clients, there were conversations about Emmett having a meeting with Frank Brown who is on the Allegro board. He was trying to – now he reported that Mr. Brown was on his side. I was not in that meeting. I don't know that for a fact. But he was trying to talk to Mr. Brown. There was a --
Q Can I back up?
A Yes, sir.
Q Just ask you a couple of specific questions?
A Yes, sir.
Q Sorry for interrupting you. You talked about that you made a list for Mr. Scully. You said you made a list and you burned some C.D.s.
A Yes, I did.
Q What list did you make for Mr. Scully?
A The list was simply we have in our computer system a, you know, a standard little spread sheet that says -- and it is just a tracking internal tracking mechanism for us that says okay, let's pick on Eastlan. Eastlan Management is not on our comp. Who is their comp with, you know, who is their carrier because we administer their claims. Let's pick on somebody that is Executive Staffing. They have Cedar Hill comp. They have their own policy. So it is an internal tracking mechanism and what

I did was simply circle for him the names, you know, like that of each client that was not on our comp. And I think I put something, I usually just sign my stuff with like a K so there may have even been a K on that document, as requested, something like that.

Q And why did you make this list for Mr. Scully?

A Because he asked me for it.

Q And what did he tell you he was going to do with that list?

A He did not tell me at the request time what he was going to do with it. He just said -- I do know that we had conversation as soon as I brought the list back. He began to -- Ms. Yarborough, Mr. Scully and I were talking about which clients would be taken should this buy out or this sale not go through and that is the point in time where he began, he would say how many employees is that, you know? And one of us would say, whichever one knew how many particular it is 42 or 12 or whatever the number was. And he would say to Yvonne, how much profit is that and about how much profit? And so he marked this list.

Q Well, at the time did you know that he would be using this list if he left Allegro.

Q Yes, sir, I think -- did I know that for an absolute fact, no. But yes that's what I believed.

Q Well, did you report that to Ms. McCarthy?

A No, sir.

Q Why not?

A I did not report any of this to Ms. McCarthy. I'll tell you that up front. Emmett was my boss. I just told you I was afraid of my job. I did not

have any alternative job. I did not have another source of income.
Q Did Mr. Scully tell you that he would fire you if you did not give him this information?
A No, sir. He did not.
Q Did Mr. Scully tell you he would fire you if you reported this to Ms. McCarthy.
A No, sir, he did not.
Q You created a list for him about which clients of Allegro did not have worker's compensation through Allegro. Did I state that correctly?
A That is correct. Through Cedar Hill, our carrier.
Q What other information did you gather for Mr. Scully?
A Six C.D.s.
Q And when did you do this?
A I did in a point of time in January there were like three C.D.s, four C.D.s, and then two added to that. The C.D.s had -- are you asking me what was on them? Do you want to know?
Q Yes. I want to make sure I understand. First of all when you created the C.D.s and then what was on them. Yes, ma'am.
A Created the C.D.s in January of 04 after -- right after Emmett came back from holiday so it would have been like January, 4th, 5th, that timeframe.
Q Did he tell you why he wanted these C.D.s?
A Again we were having a conversation about the buy out and the formulation of a new company. We were talking about -- he called the access data base information, he called, referred to all those things as

the Tammy Wolf reports because Tammy Wolf was the consultant that had written, you know, the access programs for us. And he said, do you have the Tammy Wolf reports on a disc anywhere? And I said no, sir. He said, would you copy those for me, please? And I said, do you want all of the Tammy Wolf stuff? And he said he needed it all. It was --

Q Just a kind of short change?

A Sure.

Q Short circuit this procedure, the information that was on the reports the C.D.s that you are referring to, would those be Allegro's client master listing, and I'm referring to Mr. Morgan's discovery responses which are attached to Exhibit 4 to Ms. McCarthy's deposition.

A All of Allegro's clients are listed on those C.D.s., yes. I just don't know your reference master list. But yes, they are.

Q Well here. I will tell you. May I see Exhibit 40 of Ms. McCarthy's deposition just a minute?

A That also included termed clients.

Q I'm showing you what has been list to Ms. McCarthy's deposition as being Exhibit 40. See at the bottom of page three?

A Uh-huh.

Q Parenthesis, it has affirmative response. It said, identify the specific property and confidential information that you contend the Defendants converted to their legal breach and Ms. McCarthy testified that there were several C.D.s burned with the information. I believe she said was the information listed on the answer for Exhibit 40.

A This is correct.

Q Okay. Is that the information, if you read through that list would you please under -- answer for number three, is that the information that you put on the C.D.s for Mr. Scully? Is that what you are referring to?
A Yes, sir.
Q Okay. Anything else other than what's on the list?
A No, sir. That's what's on those C.D.s.
Q Okay. That you burned for Mr. Scully. Right?
A Yes. But now in the worker's comp certification, you have to keep in mind that when it says data base in forms, that also includes policies. I just want to be sure. You see where it says Allegro's worker's comp and certification data base and forms?
Q Yes, ma'am. If you would go to page 42, please? On C. D.s excuse me and when did you burn those for Mr. Scully?
A In early January 04.
Q Okay.
A We received notification when I burned the original and the reason I say there are two additional discs, when I burned the original four discs we had not received at that point in time notice from the worker's comp certification institute I think you referred to that earlier as W. C. C. I. that we had been provisionally certified. We were in the process of tweaking the last section. The claims. And so from the point in time when I burned the original C.D.s to a week or so later we received notice of certification. So I burned an updated C. D. of the worker's comp portion that would have you know the updated information in section five because that was the section I was working on. Also, the Carolina Care

Plan billing package is not included here. But that was on a separate C.D. The billing reconciliation that I referred to, in the original C.D.s, the first four that billing program was not working correctly and it later in the month of January began to work correctly and so that was burned on a separate C.D.

Q So you were aware as Ms. McCarthy testified that C.D.s were found in Mr. Scully's car when he left on the 23rd?

A Yes, sir, I am.

Q Did you recognize those C.D.s as being the C.D.s that you burned for Mr. Scully?

A Yes, sir, I did.

Q Are there any C.D.s that you burned for Mr. Scully that had not been found.

A No, sir. Those are the only six that I have burned. Now I do know that Ms. Yarborough told me again in February that because after Emmett -- things happened and Emmett left like he did, I asked her that week, I said, Yvonne, what about those C.D.s that Emmett had me burn and she said, he's decided -- he's brought those back. He's not going to use them. But they weren't in the office, is my point.

Q But they were in Mr. Scully's car?

A Yes, sir, but along with all that other stuff that, you know, lists this kind of stuff.

Q Okay. Go to 44 and pick up with the answer on line 22.

A When if Mary Etta did not meet Emmett's price or his offer, the plan was all along from day one to have a new company ready to go, okay?

And that's what I mean by go after.
Q Okay.
A And in other words which clients would be the first ones to be taken in the start up of the new company.
Q Well, did Mr. Scully tell that you -- that he was going to go after any clients before he left Allegro?
A Yes.
Q Okay. What clients did he tell you he was going to go after?
A He said that he had had meetings with Hawthorne, Gary Jones, specifically and then the week that Ms. Yarborough was still there, after Emmett left and I asked how is Emmett, what's he been doing and she said, he had to go see Gary again because he wasn't quite sure Hawthorne was on board but it is okay now. Gary's coming with us.
Q Anybody else other than Gary Jones of Hawthorne?
A That Emmett directly told me?
Q Yes, ma'am.
A That he was visited or --
Q Yes or talking about going after?
A Oh no. He said -- he said he was going to go after Mid Carolina, Merritt, Hawthorne, Long's, Capital Bus, Mid Carolina Steel.
Q I apologize. Maybe I wasn't clear?
A I'm sorry.
Q I was referring to who he was going to -- did he tell you he was going to go after anybody before he left Allegro? I'm trying to, you know, get a time line.

A Did he tell me before he left Allegro? Or did he tell me he was going to have conversations before he left Allegro?
Q The term you used was go after. The clients he was going to go after. Did Mr. Scully tell you that he was going to go after Allegro clients before he left Allegro?
A Yes, sir.
Q Okay. Who were those clients?
A Hawthorne.
Q Okay. Okay. When you burned these six C.D.s, what was your understanding? Mr. Scully was going to use these -- those C.D.s for?
A It was my understanding that he needed that information for input into his new company so that he wouldn't have to start from scratch.
Q Did you then tell them you had created those C.D.s for Mr. Scully?
A I did not know they had discovered them in the car at that particular day. And no, I did not is the answer to that.
Q When did you?
A I told them a few days later.
Q During these conversations that you took part in starting in the spring of 2003, about starting the new company, did you ask Mr. Scully if you could become an employee of the new company?
A An offer was made to me. Yes, sir.
Q When was an offer made to you?
A Well let's see. Gosh in the original conversations over the first few months we were talking about who -- who Mr. Scully was going to take to the new company. Who was in or out. And originally it was going to

be offers were going to be made to Yvonne, Lisa Millikin, who is a payroll administrator, myself, Cathrine Scully, of course was going to go. I asked the question about, well, what about our employment agreements because we all have employment agreements. All of the way back to gosh, if you go back to September of 02 when I was recruited for Allegro, Ms. Yarborough is the person that originally contacted me. Because of the work situation I had at that time, I asked specifically do we have employment agreements when I began this interview process? And does it include a non-compete? Because I was locked into one where I was working. I was working at that time at D. P. Professionals. She said, yes. All of us have employment agreements. All of us do. And yes they include a non-compete, so I asked, you know, well, what about our employment agreements. He said that he was going to take all of the employment agreements out of the personnel files. The personnel files were kept in Mr. Scully's desk drawer and that he was going take all of them out and remove them all from the system meaning the computer system. There would be no employment agreements

Q Did you know if he did that?

A Did I personally see him do that? No. I know that Ms. Yarborough told me after Mr. Scully left we didn't have keys to get in that week. The locks were changed. And like the next morning we were coming up the stairs up the elevator and she said, oh, by the way, Emmett, I talked to Emmett. He only pulled my employment agreement and Lisa Millikin's. He decided to leave all of the rest of them in there. And I made the

comment, I said, why? And she said I don't know. He just decided to do that. So he, according to Emmett, Emmett himself said he was going to pull them. Now he also said I do not lie. But even in court I would lie. These conversations have never occurred.

Q Which conversations?

A He was talking about these conversations that we were having about starting the new company, pulling the employment agreements, which clients we'd take all of those. They wouldn't -- he said I would lie even in court and say they did not occur.

Q Okay. Did you ever see Ms. Yarborough's employment agreement?

A No, sir.

Q Okay. Do you know if Ms. Millikin had an employment agreement?

A Yes, I do. I know she did because Ms. Millikin came on board in January of 03. I think it was like second or third week of January. And to my knowledge that was, I mean, everybody had an employment agreement. Did I ever see personally Ms. Millikin's, no, sir. If that's your question.

Q Did the forensic search discover a draft employment agreement with a non-compete for Ms. Millikin?

A Not to my knowledge. No, sir.

Q Do you know if Mr. Scully had, I'm going to just call it a non-compete just for the shorthand. Do you know if Mr. Scully had a non-compete agreement?

A I don't know that. I did hear Ms. McCarthy say in her deposition, he did not.

Q Okay. How about Cathrine Scully? Did she have an employment agreement or a non-compete agreement?
A I don't know that.
Q Was it your understanding based on your previous conversation with Mr. Scully that Mr. Scully was going to pull your non-compete agreement?
A Yes, sir.
Q Did you tell Mr. Scully not to do that?
A No, sir.
Q Okay. We talked about the meetings that you have with Mr. Scully, Ms. Yarborough, sometimes Cathrine Scully?
A Yes, sir.
Q Starting in the spring of 2003 about starting the new company anything else, any other meetings, conversations other than what we have already discussed today, any information, do you have about activities undertaken by either Mr. Scully or Ms. Yarborough to leave Allegro and start a new company other than what you have told me today?
A Ms. Yarborough said to me the last week that she worked, I think I referenced earlier we didn't have keys.
Q Yes.
A That if we had had keys, and she could have gotten what she needed to do, and could have gotten out of there on Friday like she was supposed to. I'm the person that actually checked Ms. Yarborough's computer when she left and found the deleted Merritt Veterinarian

documents that you referred to several times already in the depositions.
Q I'm going to ask you about those. Okay. Did you tell Ms. McCarthy that these interviews were going forward?
A No, Angus, we weren't, we weren't allowed to talk to Mary Etta McCarthy. No, sir.
Q Why were you not allowed to talk to Ms. McCarthy?
A No, sir. We were not. We were told to stay away from her. He did not want her up there. He did not want us answering any questions for her. If there were any questions posed by Mary Etta McCarthy we were to come to him let him know those questions. He even said to Yvonne, I don't know if I can do this or not. But I'll -- she told me this, he said she showed his ass one day and that was over Mary Etta's grandchildren being upstairs, that was the week of like December 22nd before Christmas. We put up the Christmas tree and I love children and these are two little two year old twins and they were upstairs. We were under the Christmas tree. I was reading them the Night Before Christmas book. And this was at lunchtime. They had come up to visit. And Emmett comes back, Mary Etta's grandchildren go away with Mary Etta's daughter and her son in law. Emmett calls me down the hall and starts screaming at me. What the hell is going on up here. I've been to the attorneys working on this deal. I come back and here you are. It's a circus and he was yelling at me about playing with these two children. And I said, Emmett, I will not mistreat these children. They have nothing to do with what is going on between you and Mary Etta. And he said, I want that woman to have no warm and fuzzies up here whatsoever.

That's sort of the short version of that conversation and he later, according to Yvonne, told her I really showed my ass to Kay today.

Q Looking at the documents we have marked as Defendant's Exhibit Number 13 of Ms. McCarthy's deposition, please, Ms. Cress, I asked Ms. McCarthy to list those terminated clients who she believes Mr. Scully or Ms. Yarborough contacted before February 23rd of 2004. I know you were here for that testimony which was last week. But I can't expect you to remember what was said. Do you have -- can you tell me -- do you believe either Mr. Scully or can you tell me who you believe Mr. Scully contacted before February 23rd, 2004?

A Who I believe Mr. Scully contacted?

Q Yes, ma'am?

A I do not believe that Mr. Scully contacted Jones School Supply. I do not believe he contacted Johnson and Leslie Construction directly. He would have done that through Business Development Corporation. That's owned, J and L is actually owned by Edwin Leslie's son so it was likely that way Jones School Supply. I don't believe Jones School Supply left us because they wanted a, you know, a different payroll kind of thing. Digital Media I know is written in here. Digital Media is still our client. I believe this probably should be Digital DNS which I referred to a little bit earlier as someone that I believe Emmett had visited. Digital DNS actually left us. Not Digital Media.

Q Okay. Has Digital DNS gone too?

A Yes, sir.

Q Synergetic?

A Yes, sir, I believe so.
Q Do you believe that Mr. Scully contacted them about going to Synergetic before he left Allegro?
A Yes, sir. I believe in December.
Q Why do you believe that?
A Because he made several visits to Al Gossett (phonetic) in December.
Q Okay.
A And Al Gossett is the owner of the Digital DNS
Q Who else do you believe Mr. Scully contacted about going to Synergetic before February 23rd, 2004?
A I believe Hawthorne, and I told you earlier that Yvonne told me he had to go see Gary again.
Q Okay. Anybody else?
A So, I know that. I believe Business Development Certified, Cherokee, I know, C.M.M because I got a separate worker's compensation quote for C.M.M. Mr. Scully had me get quotes for several current Allegro clients to move them off of Cedar Hill. C.M.M was one those. Collards I believe because Collards requested directly from our carrier some loss runs, he would not have known to do that. He'd always ask us. Eastlan we have alluded to. Hawthorne I just talked about. J and L we talked about. Irmo, who is part of Mobley.
Q Okay.
A Irmo Family Pharmacy and Jones I do not believe. I believe all of the Long's, Ken Long and Dewey Roof were even at the November 03

golf bash. I believe Magnolia, Merritt. That's been, I think, you know, rehashed and rehashed.

Q Discussed?

A Yes. Mid Carolina Steel I believe that was the case. Even after Emmett left, Gloria Hunt, who is their Mid Carolina payroll rep, called us, wanted something, a piece of information and she said Kay, I will have to call Yvonne and call you right back. Now Yvonne was already with Synergetic. I said, okay, do what you need to do. Sleep RX is a part of Long's, Mount Valley. Emmett had me -- that's one of the firms that Emmett had me get a separate worker's comp quote on in December because they did have an issue. So I believe he talked to them. It was also one of the company's that Mary Etta and Jim visited that very first week and came back and said something is going on here. This is, you know, it is not comfortable. Vet Med, David Fudge (phonetic) himself told me that, who is the warehouse manager for Vet Med, that they had just come out of a meeting and they had been told that we were being fired. We, Allegro, were being fired because we couldn't do our jobs. That they were going Synergetic with Emmett.

Q When did he tell you that?

A This was immediately after Emmett left. Literally.

Q Okay. What about V. Palmetto Builders?

A I believe he contacted them also.

Q Are there any other terminated clients other than Digital DNS?

A No, sir. Not to my knowledge.

Q That is not on this list. Okay?

A No.
Q All right. Let me show you this. Let me show this document to you, Ms. Cress, and the first question is do you recognize it? Second, if you recognize it, do you know how it is related to the claims against my clients for a breach of their duty of loyalty?
A Yes, I recognize this. In that -- in January.
Q I'm sorry. Just to try to keep it.
A I apologize.
Q That's okay. Do you know how this document is related to the claims against my clients for a breach of duty of loyalty?
A Yes, sir.
Q All right. Would you hand that to the court reporter, please. I just want to get it marked. It will be marked as Defendant's Exhibit Number 7. Defendant's Exhibit Number 7 is marked for identification purposes.
(WHEREUPON, Defendant's Exhibit Number 7 was marked for identification.)
A I'm sorry. You were asking me the double question again.
Q I was. I'm sorry?
A I violated the answer.
Q No, not at all. How is this document related to the claims for breach of duty of loyalty against my clients?
A Long Term Care is -- was on along with the other Long's companies such as Long's South Carolina, Long's Thomson, was on Cedar Hill, our worker's comp carrier insurance. Long Term Care has because they have drivers and that sort of thing, and they pick up these heavy Helios

tanks. They had a lot of accidents. So in 02, if I recall, Cedar Hill had conversations in the renewal process with Yvonne about, you know, Long Term Care is getting out of hand here in the accident department. So then in the 03 process of renewal again Yvonne handled the renewals at that point. Cedar Hill preferred that we remove Long Term Care from our worker's comp. They would like it much better. I was told that they weren't going to cover them after 12 - 31 - 03. So Emmett asked me to shop or look for alternative coverage for Long Term Care. He also said while you are at it look for coverage for the rest of Long's, meaning Long's Thomson and Long's Pharmacy of South Carolina. I did that. We could not get that comp bounded in time for the 12 - 31 deadline so we requested of Cedar Hill an extension for Long Term Care. We told them that we were in the process of getting Long Term Care moved and would they grant us the extension while we did that. They did. So what you see here is Emmett just said, go ahead and move all of Long's again. This is part of the -- and so that's what this is. We actually moved Long's, all of Long's, effective January 31st through the common wealth. This was about the same time, I think I mentioned, I had started getting worker's comp quotes for C.M.M. management. We moved Eastlan Construction in December. When I was getting these quotes I was also getting quotes for all of Hawthornes, and Mount Valley Foundation Repair and C.M.M Management. So that's what this is.

This says, okay, we're ready to bind. These are the checks. This is the annual premium. We need to get checks issued. Separate

checks.
Q How is this related to the claims against my clients?
A Because I believe that from an Allegro business standpoint we should have moved only Long Term Care. I believe that we moved all three of these all of Long's in preparation for Long's to have its own comp with Synergetic. I think that there was no reason for us to, from Cedar Hill's perspective, moved all of Long's. Same thing I think about the other quotes like Hawthorne, etcetera.
Q Now Cedar Hill was the carrier that provided worker's compensation coverage for Synergetic clients is that right?
A No, sir, for Allegro.
Q For Allegro clients. I'm sorry.
A It still is. Yes.
Q Okay. Cedar Hill is Allegro's worker's compensation carrier?
A Yes, sir.
Q Okay. And Cedar Hill was Allegro's worker's compensation carrier in 2003 and 2002?
A Yes, sir.
Q Okay. And Cedar Hill made the determination who they would provide worker's compensation coverage for. Is that what you are telling me?
A That is correct.
Q Okay so Cedar Hill said they would no longer provide worker's compensation coverage for Long Term Care?
A Long Term Care effective 12-31-03.

Q Okay, did Cedar Hill say they would no longer provide worker's compensation coverage for any other of Allegro's clients before February 23rd, 2004?
A No, sir.
Q Did they tell you they were not going to provide – you had mentioned earlier I believe you mentioned Mount Valley Repair?
A That is correct.
Q Did they say they would cease providing worker's compensation coverage for Mount Valley?
A No, sir. Not to my knowledge.
Q Okay. So, the only group that they said that they were not going to cease -- let me back up. Okay, so the only group that they said they were going to cease providing coverage for was Long Term Care, is that right?
A Yes, sir. The issue with Mount Valley was not Cedar Hill. The issue was Mount Valley had a team leader or a leader of their -- they're in the business of going out and repairing foundations on houses and chimneys and that sort of thing. His name was Raymond Dunhull (phonetic). Mount Valley has a drug testing policy. Raymond had positive results on a drug test. He was referred to our E.A.P, Employee Assistance Program. He tested positive again. One of the conditions of his continued employment was that he would have to be drug tested once a week. He tested positive again. The E.A.P. recommended that Raymond go into an inpatient facility or at least an elongated out patient facility. Allen Gantt, who owns Mount Valley, didn't want to give up the

services or Raymond being away from his team to do that.

So he refused. He said if it came down to a choice between -- and Emmett told me -- this is what he said to Emmett, if it comes down to a choice between Allegro and Raymond, I'll take Raymond. So my opinion is, that I got the Mount Valley quote because see, we have an obligation that if someone is testing positive, their recommendations, they don't follow the E.A.P., you know, they don't, they're not eligible to continue employment, and if that client doesn't follow our worker's comp safety practices and all of those things that you would guess, then we have a fiduciary responsibility to either sever that relationship with the client or report it to Cedar Hill or both. So I believe that we got the quote on Mount Valley so that Mount Valley could move with Synergetic but beyond their own comp, you know, not be -- Emmett wouldn't have that liability or that co-liability.

Q And what do you base that belief on?

A I just base it on standard business practices in H.R. and in worker's comp and what happens when someone violates, you know, if you test positive, our safety practices and our worker's comp policy say, okay, you have got one shot. You can go into -- if it's recommended you can go into a facility. The company would pay. Meaning in this case, it would be Mount Valley would pay your inpatient treatment. And then if you are out patient, if that's what's recommended.

Then if you continue to test positive then you will be terminated. You are subject to immediate dismissal.

Q Other than that general business policy, do you have any other

basis to believe that's why Mr. Scully wanted to move Long's Thomson, Long Term Care, and Mount Valley from Cedar Hill in preparation of the move to Synergetic? Do you have any other basis for that belief?

A About those specific clients?

Q Yes, ma'am.

A No, sir.

MR. MORGAN: Your Honor, that completes the joint trial deposition designations for Ms. Cress.

THE COURT: All right. Any part you would like to publish counsel?

MS. GAFFNEY: No, sir, Your Honor. They were jointly published.

THE COURT: You may step down, ma'am. Call your next witness.

MR. MORGAN: Ms. Yarborough.

THE COURT: All right, Ms. Yarborough.

Ms. Yvonne Yarborough, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MORGAN:

Q Ms. Yarborough, would you tell the jury a little bit about your education background please?

A I have a Bachelor of Science in Business Administration in the College of Charleston.

Q Other than that, do you hold any other degrees?

A No, I don't.
Q Prior to becoming employed, an employee of Allegro, could you please tell the jury a little bit about your work history.
A Sure. After I graduated in 1983 in Charleston, I stayed there about ten years, worked for several companies. All of the, excuse me, accounting arena. First one was Port Oil Company. The second was a company called Hawthorne Corporation and then they had several entities. And then the third company they sent me to Charleston was the Trident Board of Realtors, Charleston Trident Board of Realtors and that is at the point where I started beginning to do payroll and it was a manual payroll probably less than ten people.

I then moved back to Columbia in1988 and I started working for a company called Ampro Protective Agency. They are a security, were a security company at that time. And that's where I really started to get into the payroll arena because that's a service industry. And it was multi state. In fact, it was international. So at that point I began to get into a lot of payroll taxes, payroll issues that come up, you know, along with payroll. And that kind of became my net job. I was their accounting manager. And that was the first management position that I held. The next position that I took in Columbia was with a company called U. S. Personnel and they were actually a temporary staffing agency. At that time, they subsequently sold that company and I went to work for one of their subsidiaries, U. S. Personnel Employer Services Group, which was a small professional employer organization.

The next job that I had was the Allegro position.

Q And when were you hired by Allegro, Ms. Yarborough?
A Yes, it was February 7th of 2000.
Q What was the position that you were hired into at Allegro?
A Payroll Manager.
Q And did you continue to hold that during the entire time that you were employed by Allegro?
A Yes, I did.
Q Okay. And during the time that you were employed by Allegro, isn't it true that you knew that it was the company policy to have employees sign a non-compete agreement?
A Yes, I did know that.
Q And during employment with Allegro isn't it also true that you never told Ms. McCarthy that Mr. Scully did not have you sign one?
A That is correct. I did not tell her.
Q During your employment, isn't it true that you reported directly to Mr. Emmett Scully?
A That is correct.
Q And during your employment with Allegro, isn't it true that you were always paid for all of the work that you did?
A Yes, sir. That is true.
Q And you received all of the benefits that the company offered to persons in your position during the entire period of time that you were employed by Allegro. Isn't that true?
A Yes, sir, that is true.
Q And isn't it true that you learned about this potential buy out in the

spring of 2003?
A Yes, sir.
Q And isn't it true that you went to Mr. Scully yourself after Ms. McCarthy had asked you for some financial information and said, are you getting ready to leave the company, Mr. Scully or Emmett?
A I don't recall saying exactly that. But I said something to the effect of what was going on.
Q Okay. And Mr. Scully said, I'm getting ready to make Mary Etta an offer, right?
A Yes.
Q And you said, well, I want to be with you, right?
A No. Not at that time.
Q But at some point you did say that, right?
A Not exactly -- those exact words, no.
Q What exact words did you use?
A As far as to my best of my recollection, of what I said was, after he told me that he was going to offer her, at some point days later I asked him, what would you do if she won't sell to you? And he kind of just got a funny look on his face like I really hadn't thought about it. And he said, I guess I will go down the street and open another P.E.O. And I said, well don't think you are leaving me behind. And that's how it was done.
Q So you knew pretty early on in the spring of 2003, two things. One, that Mr. Scully was going to try to buy Allegro from Ms. McCarthy and two, that if he was unsuccessful he was going to set up his own P.E.O.?
A Yes, I know -- knew that.

Q And at no time in 2003 did you disclose that information to Ms. Mary Etta McCarthy, correct?
A No, I did not.
Q And in 2004 up to the point in time when you left the company, you never told Ms. McCarthy that you knew Mr. Scully was going to set up his own P.E.O., did you?
A No I did not.
Q And during that entire period of time, you were a principal player in Allegro, weren't you?
A I was mid level management beneath -- Emmett and Kay would have been my peer.
Q And you reported directly to Mr. Scully?
A Emmett Scully.
Q During the discussions that you had in 2003, in your discussions with Mr. Scully, the name Lisa Millikin came up, correct?
A At some point. Yes.
Q And you knew in 2003 that if Mr. Scully set up his own company that Lisa Millikin would be one of those Allegro employees that would be leaving Allegro and going to this new company, correct?
A Could you repeat the question please.
Q Yes, ma'am. I will be happy to. At some point in 2003 the discussions that you had with Mr. Scully, you knew that Ms. Millikin was one of the Allegro employees that would be going to a new company if Mr. Scully's set it up?
A No, I did not know that.

Q When did you first know that Ms. Millikin was one of those employees?
A On the Saturday of February 20th -- I'm sorry. I'm having to remember dates. Emmett was fired on the 23rd, excuse me. Yes, the 23rd. That was the, I believe it was -- excuse me it was Saturday the 28th. I'm guessing dates. I think that was leap year.
Q Turn with me to page 30 of your deposition that was taken on July 22nd of 2004.
A Yes.
Q I asked you a question beginning on page 30, line 9, tell me what -- and I want to know as specifically as possible, what you talked about and I will focus in on the year 2003 to begin with and your answer to me was?
A The year 2003 specifically, I know one of the questions Emmett asked me was did I think Lisa would come. And I said well, I would think so, I said, but I can't really answer that question. And I made the comment, do you want me to ask her? And he said, absolutely not. Don't say anything to her. And I did not.
Q And that was 2003?
A That is correct.
Q But you knew in 2003 that Mr. Scully had in mind to take Lisa Millikin as one of the employees if he set up his own company?
A I knew he had in mind to ask her. Yes. But I thought you asked me did I know for a fact she would come. No.
Q But you knew that Ms. Millikin was on the short list?

A Yes. Yes. I did know that.
Q While you were employed, an employee of Allegro, you did attend the meeting at Mr. Scully's house on the 28th of February?
A Yes, I did, at 1:00 p.m.
Q Okay. And in attendance at that meeting was Ms. Millikin?
A That is correct.
Q And Janet Lay?
A Yes.
Q Mr. Scully?
A Yes.
Q Ms. Scully?
A Yes.
Q And you had full discussions about Synergetic on that date, right?
A Yes. Emmett was telling us about his future plans.
Q And in the discussions that you had leading up to that meeting on February 28th and the meetings that Ms. Cress, Mr. Scully, and you had and possibly on occasion Ms. Scully, you had discussions about potential clients that would go to the new company, isn't that correct?
A No.
Q Never ever, ever discussed new client -- the clients of Allegro that would go to a new company?
A No. Not that I recall.
Q Prior to the March 1 date of your resignation, specifically during the week of 2-23, you knew that Mr. Scully was setting up his own business, correct?

A Yes, I did.
Q Did you inform Ms. McCarthy at any time while you were employed that week at Allegro what Mr. Scully was doing?
A No, I did not.
Q When he was no longer there, from the 23rd on, she being an owner, you being paid by the company, you didn't think that that was important information to share with the chairman of that organization?
A Based on the knowledge that I had that they were having discussions I would of thought she knew.
THE COURT: The question was, did you think it was important, I do believe, and you do need to respond to that question and have an opportunity to explain your answer later on.
MR. MORGAN: Thank you, Your Honor.
THE COURT: You are welcome. So answer the question yes or no and then you can explain.
THE WITNESS: Okay would you repeat the question. I'm sorry.
Q The question was during the period of that week of February 23rd, while you were on the Allegro payroll having the knowledge that Mr. Scully was setting up a competing company, did you think it was important to tell Ms. McCarthy about that fact?
A No.
Q Do you recall at some point during that week of February 23rd until the date of your resignation while you were still an employee of Allegro, that Janet Lay is on board?
A Could you repeat that again? I'm sorry.

Q Yes, ma'am. I will be happy to. At some point from February 23rd until March 1, did you inform people that Janet Lay is on board?
A On board for what, sir?
Q Well, let's go to your deposition page 49, if you would please?
A I want to answer your question. I just want to --
THE COURT: Stop. Relax. Explain to the witness what on board means. That means go into what.
Q Go into Synergetic?
A Yes, I did.
Q And you didn't tell Ms. McCarthy that did you?
A No, did I not.
Q And also at some point from February 23rd until through March 1, your date of resignation, you also informed people but not Ms. McCarthy that Lisa Millikin was going to be working for Synergetic?
A Say that again.
Q At some point from February 23rd through March 1 you informed people but not Ms. McCarthy that Lisa Millikin was going to be working for Synergetic?
A Yes, on March 1st.
Q And at some point on or before March 1st, 2004 you knew that Merritt would be the first Allegro client to go and that they, Allegro, would get their termination letter on February 27th of 04?
A Yes, I did know that.
Q And while still employed by Allegro you go to a meeting on the 28th, come back into work then on March 1, correct?

A Yes, sir, I did.
Q And also during the week of February 23rd through March 1, you informed people but not Ms. McCarthy, that Mr. Scully was going to be working out of his house, buying computers, and buying a car, correct?
A No, that's not correct.
Q Let's take a look at your deposition again. If you could turn to page 49, please?
A Sure.
Q Do you see line four on page 49?
A Yes.
Q Do you recall telling Ms. Cress that Mr. Scully was going to be working out of his house and your answer was?
A Yes, because I had spoken with him that evening.
Q Do you recall telling Ms. Cress that Janet Lay is on board?
A I could have. I don't -- I can't tell you that it was during that conversation.
Q Question, informing Ms. Cress that Janet Lay was on board, would that conversation or that information have been passed to Ms. Cress before March 1 of 2004?
A Yes, I would believe. Yes, prior to March 1st.
Q Question, on February 23rd, 2004, do you recall telling Ms. Cress that Mr. Scully was in the process of ordering computers and getting a car?
A I don't know that on the 23rd. If you say before March 1st, I can say that. But I can't say definitely on the 23rd.

Q So if I ask the question this way, then, before you left the employment of Allegro, did you have a conversation with Ms. Cress in which you informed her that Mr. Scully was ordering computers and getting a car?
A I told her that he was ordering computers but I did not say anything about him getting a car.
Q Ms. Yarborough, do you know an individual by the name of Ms. Tammy Wolf.
A Yes, I do. She is my best friend.
Q Who does she work for?
A She works for herself. She's self employed.
Q And what does she do? What is she self employed? What does she do?
A She does computer stuff.
Q What specifically kind of computer stuff does she do? That's a pretty broad term.
A I know she does access data bases, but I'm not aware of other things. Only reason I know that is because she's done that of course for Allegro. And she did some work for Synergetic.
Q Do you recall having lunch with Ms. Wolf?
A Yes.
Q Do you recall the date?
A No, I don't.
Q In February?
A No, I don't.

Q Do you recall the conversation that you had with her?
A Yes.
Q Okay. Do you recall telling her that Scully was setting up his own company and would like to probably retain her to set up a data base for him?
A I don't recall that exact discussion. No, sir.
Q Let's see if we can sort it out. If you could pick up your deposition?
A Sure.
Q Again please, go to page 47. If you could go to line 21 of your deposition?
A Line 1? Okay.
Q 21. 21.
A 21. I apologize.
Q Yes, ma'am. I'm sorry. Page 47?
A Sure.
Q Line 21. On or about the 26th of February 2004, did you have a meeting with Ms. Tammy Wolf?
A Did I have a meeting with Tammy?
Q Yes, ma'am?
A Do you know what date that is, the 26th?
Q I don't have any – I'm sorry I don't have my calendar in front of me. It would be a Thursday.
A I went to lunch with Tammy sometime that week. I don't know what date but did I go to lunch with Tammy, yes.
Q Did you have -- did you and she have any discussions about doing

consulting work for Synergetic during that lunch?
A I know I told her that Emmett was no longer with the company. I did tell her that he was setting up another P.E.O., that I did probably say he might want to retain her services to do a data base for him.
Q And during that lunch on -- you were still an employee of Allegro, correct?
A That is correct.
Q Ms. Yarborough, I'm going to show you an Exhibit that's been previously marked as Exhibit 4?
A Yes, sir.
Q In about a third of the way down it has original message. Do you see that notation on the paper?
A Yes, sir. I do.
Q And it is from a Kim Eggington to you?
A That is correct.
Q And the date of that is February 5th of 2004 at 4:00, 4:40 p.m.?
A Yes, sir, that is correct.
Q And that is about Pay Plus and Easy Pay Plus pricing and demos, correct?
A That is correct.
Q And you got that and you forwarded it on to Mr. Scully that same afternoon at 4:46 on the 5th of February, correct.
A Yes, sir, that is correct.
Q And during the period of time that you were working at Allegro, in fact they already had a Pay Plus system in place, correct?

A That is correct.
Q And the hours, the general hours of work at Allegro during the period of time that you were there specifically in February of 04, was approximately 8 to 5:00 in the afternoon, right?
A That is correct. Yes, sir.
Q You secured this information during the work day while you were being employed -- an employee of Allegro, correct?
A Yes, sir. That is correct.
MR. MORGAN: If I might, Your Honor. I will just show her my copy of the Exhibit. I'll just show her my copy instead of trying to dig through the papers
THE COURT: Okay.
Q I'm going to show you a document that's been previously entered as Exhibit Number 5.
A Yes, sir.
Q And do you recognize that document? Has your name on it?
A Yes, I do.
Q Okay. What is the date and the time stamp on that document, Ms. Yarborough?
A It is March 1st, 2004 at 2:16 p.m.
Q And prior to your sending that, who is that information being sent to?
A Joan Gathers.
Q And that is at Merritt Vet?
A That is correct.

Q And you knew when you sent that that Merritt Vet had already made its decision to move over to Synergetic, correct?
A Yes, I do.
Q You just told me that right?
A (Nods head.)
Q And within minutes after sending that document you walked in and told Ms. McCarthy you were leaving, correct?
A That is correct.
Q And in fact, what you did before you left you hit the delete button on that, didn't you?
A No, sir. I did not.
Q Then how come it was deleted?
A I can't answer that, sir.
Q Let me show you another document that's been marked as Exhibit Number 7?
A Sure.
Q Do you recognize that document?
A Yes, sir, I do.
Q And I'm going to show you another document that has not been entered into evidence at this point but Exhibit Number 8.
A Yes, sir.
Q Do you recognize Exhibit Number 8?
A Yes, sir, I do.
Q Whose handwriting is that in?
A That is my handwriting.

Q Okay. Was that taken at your deposition that I took of you back in July of 2004?

A Yes, sir it was.

MR. MORGAN: Your Honor, we would move Exhibit Number 8 into evidence.

MS. GAFFNEY: Without objection, Your Honor.

THE COURT: All right. Without objection.

(WHEREUPON, Plaintiff's Exhibit Number 8 was received into evidence).

Q What I asked you to do at your deposition in July was to take that Exhibit Number 7, which is in front of you, and Exhibit Number 8 and asked you the question how many of those clients that are listed on that terminated client list are now clients of Synergetic? Do you remember that question?

A Yes, sir, I do.

Q And then you went through on the handwritten -- on Exhibit Number 8, and listed all of those that were then Synergetic clients.

A That is correct.

Q And other than with the exception of one, all of those that were former Allegro clients were then Synergetic clients? And if you want to compare...

A No. I'm just looking. I'm sorry. That is correct.

Q I'm going to show you an Exhibit that's been marked Exhibit Number 28.

A Yes, sir.

Q Do you recognize that? It is a number of pieces of paper. It is more than one single page. Can you tell the jury what that is?
A They are my tax returns, mine and my husbands for 2003, 2004, 2002, 2001, and I believe it stops at 2001.
Q And those are obviously things that you had to submit to the government but they report your income for those years.
A Yes, sir.
Q Currently you are employed by Synergetic, right?
A That is correct.
Q And you have been employed by Synergetic since March 2nd of 2004.
A Yes, sir, that is correct.
Q And you receive a salary from them?
A Yes, sir. I do.
Q What is your current salary?
A My current salary is $60,000.
Q And the time that you left the employment of Allegro your salary was what?
A Approximately 55,000.
Q So you received extra money since you have been over there?
A Yes.
Q Received any bonuses since you have been an employee of Synergetic?
A A Christmas bonus, yes, sir.
Q What was the amount of that Christmas bonus?

A I don't exactly recall, maybe 2500. I'm not real sure.
MR. MORGAN: Your Honor, we would move Exhibit Number --is that 28?
A Yes, sir.
MR. MORGAN: 28 into evidence.
MS. GAFFNEY: No objection, Your Honor.
THE COURT: All right. Without objection.
(WHEREUPON, Plaintiff's Exhibit Number 28 was received into evidence.)
Q I'm going to show you an Exhibit that's been marked as Exhibit Number 29?
A Yes, sir.
Q Do you recognize that?
A Yes. That's the period ending 12 - 31 - 04 financial statement for Synergetic Incorporated.
Q And in your capacity as an employee of Synergetic, did you have any responsibilities to assist in having that information pulled together?
A Yes, I did.
Q Would you have had the principal responsibility for doing that in your position with Synergetic?
A Yes, sir. I would.
MR. MORGAN: Your Honor, I don't know whether we have entered that into evidence or not. In case we haven't, I would move to enter 29 in as well.
MS. GAFFNEY: No objection, Your Honor.

mortgages on your home?
A Yes. Well -- yes. Yes, I did. I told them I wasn't sure about the third. But I told we had a second and that I was not sure if we had a third.
Q And are those second or third mortgages contained or included in the list of liabilities as of January of 2005?
A No, they are not.
Q While they may not be on the list you have testified about it nevertheless?
A I told them about it, yes.
MS. GAFFNEY: Your Honor, that's all of the questions I have of this witness at this time.
MR. MORGAN: Mr. Corbin.
THE COURT: Mr. Corbin, please come around, sir?
Mr. George Corbin, after being duly sworn, testified as follows:
CLERK: Please have a seat state your full name for the record.
A My name is George .L Corbin, Jr.

DIRECT EXAMINATION

BY MR. MORGAN:
Q Mr. Corbin, I believe you told me in your deposition that you have been to college?
A Yes, sir.
Q Received a degree?
A Yes, sir.
Q And you received that degree from what college or university?

A Georgia Tech.
Q And what did you take that degree in?
A Bachelor of Science in Industrial Management.
Q Do you have any other degrees beyond your bachelor's degree?
A I have post graduates studies. No degree.
Q Do you hold a Master of Science in Accountancy from the University of South Carolina?
A No, sir. I said I completed the graduate curriculum for a Master of Science in Accounting. I did not do a dissertation so, therefore, I do not have the degree.
Q But you went and secured additional course work after that, short of the dissertation?
A Yes, sir.
Q You did all of the course work to secure the Masters of Science in Accountancy from U. S. C.?
A Yes, sir.
Q And I believe you told me that you hold a C.P.A. license or you did at least at the time of the deposition?
A I did and I do.
Q Okay. And you have had that C.P.A. license since?
A 1971.
Q And beginning in or about 1971 you worked for a number of companies? You worked for accounting firms?
A Yes.
Q Which accounting firm did you work for, Mr. Corbin?

A I worked for 20 years with an accounting firm of Earnest and Earnest, Earnest and Win, and Earnest Young (phonetic), same firms, just kept changing names.
Q One of the real big ones at one time, correct?
A It is the largest, I believe. Yes, sir.
Q And you worked for them and then after that you went in to work for some different businesses along the way, correct?
A Yes, sir.
Q And you held positions as chief financial officer for certain corporations over the years?
A Yes, sir. I was a chief financial officer for Builders Transport Incorporated.
Q It is a large trucking company?
A Yes, sir. For Edens and Avant Real Estate Company (phonetic).
Q Large commercial real estate company?
A Yes, sir.
Q I consulted for several years off and on and I am currently the chief financial officer of Merritt Veterinarian Supplies here in Columbia.
Q And you have been in that position for how long, sir?
A Since November the 1st, 2000.
Q And at some point as you have held that, you became in a co-employment relationship with Allegro?
A Yes, sir.
Q And that was in or about?
A January of 2003.

Q Okay. And during the time that you are working for Merritt Vet for that 2000 period through 2003, when you became associated as a co-employee with Allegro, did you perform any services for Allegro?
A I did.
Q And you worked with a Philip Laughridge in that, during that time with Allegro?
A Mr. Laughridge and I had, were associated in the accounting and consulting business. Yes, sir.
Q And for the years about 1999, 2000, 2001, and 2002, you worked as an accounting advisor for Allegro, right?
A In the year 1999, I worked on a project to reconstruct accounting records for them, and to review the results of their operations and balance sheet for that year. In 2001, I did an independent audit and rendered an opinion on the balance sheet statement of operations and cash flows also safe statements and audit for 2002. Yes, sir.
Q And then when we move from January 1, 2003 forward, as an employee of Merritt Vet and Allegro, you did not do the audits but you continued in an advisory accounting role for Allegro. Isn't that correct?
A No, sir. That is incorrect.
Q Get your deposition, Mr. Corbin. If you could turn with me to page 10, would be line 4. Mr. Corbin, remember we asked you when you were sworn when you gave that deposition, right?
A Yes, sir.
Q And I asked you this question on page 10, line 4, after the issuance of your audit and audit opinion for the year 2002, did you continue to

provide any services to Allegro Inc. and your answer to me then was?
A I'm sorry, sir. After the issuance of your audit, answer, only as advisory service because I was effective January of 2003 an employee of Allegro, therefore, I was not independent with respect to doing another audit.
Q So, the answer to the question then is, Mr. Corbin, that you continued in an advisory role based upon what you told me in your deposition, correct? That's what you told me?
A No, sir. I don't think I said that. I said I did some services. The advisory role is an on going relationship. I did answer specific questions for them. One in particular during the year 2003.
Q Let me repeat your answer then, if I might, sir. Do you disagree with me that what you told me in your deposition, sworn to tell the truth, that when I asked you this question, after the issuance of your audit and audit opinion for the year of 2002, did you continue to provide any services to Allegro Inc. and your answer was, please correct me if I say this wrong, only as advisory services because I was effective January of 2003 an employee of Allegro, therefore, I was not independent with respect to doing another audit. Is that your testimony?
A Yes, sir, it is.
Q Okay. Thank you. Isn't it true, that as a result of the accounting work that you did for Allegro you were familiar with the Allegro client companies?
A In general, yes, sir.
Q And isn't it true that while you were performing your services as an

auditor in the independent audit capacity in 2002, you became aware of Mr. Scully's interest in buying out Ms. McCarthy's shares of purchasing the company?

A Yes, sir.

Q And isn't it true, Mr. Corbin, that when you became aware of that, in 2002, you never informed personally, Ms. Mary Etta McCarthy, of Mr. Scully's interest in the company?

A I did not.

Q And in fact in 2003 while you were providing those advisory services to Allegro, you did not inform Ms. McCarthy of any discussions that you were having with Mr. Scully with regard to his interest in the company. Isn't that true?

A Yes, sir. That is correct.

Q And isn't it true, Mr. Corbin that in 2004, again you had no conversations or never informed Ms. Mary Etta McCarthy of your discussions with Mr. Scully about the interest or your involvement with Mr. Scully and his desire to take over Allegro?

A That's correct.

Q And isn't it true, Mr. Corbin, that in the year 2003, you had specific knowledge in your discussions with Mr. Scully that if he was unable, if he was unable to purchase Allegro, he would set up his own competing business?

A Would you repeat the first part of that question, please, sir?

Q Yes, sir, I would be happy to do that. Thank you. Isn't it true that when you had those ongoing discussions with Mr. Scully in the year

2003 concerning his desire to purchase Allegro, that you became aware that if he was unsuccessful, he would set up his own independent competing company?

A I would answer the question by saying that I was aware that that was an option.

Q And in fact, I think you wrote a letter to Mr. Scully on or about March of 2003. Do you recall that?

A May I see it?

Q Sure. Absolutely.

A Yes, sir.

Q And was it at that time you became aware of the options available to Mr. Scully?

A I believe this letter outlines options.

Q And that is a letter from you to Mr. Scully?

A Yes, sir.

Q So you were intimately involved in all of these discussions almost from the get go with regard to what was happening in this whole deal of either Mr. Scully buying the business or setting up his own competing business, correct?

A Yes, sir.

Q And at no time did you ever disclose to the board of directors of Allegro your involvement in those discussions?

A Not personally.

Q In the multiple discussions that you and Mr. Scully had with regard to buying the business or setting up his own company, specifically, with

setting up his own company, you knew that Mr. Scully needed approximately 500 to 750 employees to break even in a new P.E.O., didn't you?

A Yes, sir.

Q And you knew that at some point in 2003?

A I'm sorry, sir?

Q And you knew that at some point in 2003?

A Yes, sir. But I knew that in 2002. Not 2002 year. I'm sorry. The year 2000.

Q And you knew that because of the work that you had done for Allegro.

A That is correct.

Q And it was Allegro who had paid you to perform the accounting and auditing work for the services that you rendered in 1999, in 2000, and 2001, and 2002, correct?

A That is correct.

Q And from 2003 on the paycheck that you received was an Allegro paycheck. Is that correct?

A Yes, sir.

MR. MORGAN: One moment, Your Honor?

THE COURT: Yes, sir.

MR. MORGAN: Your Honor, there was a document attached to this that shouldn't have been. I've removed that and I'm going to show him Exhibit 31.

MS. GAFFNEY: And there is no objection.

THE COURT: Okay.

(WHEREUPON, Plaintiff's Exhibit Number 31 was received into evidence.)

Q I have shown you a document that doesn't have a number on it, Mr. Corbin. It is going to be labeled Exhibit 31. Ask whether you recognize that?

A Yes, sir.

Q Okay. Can you tell me what that is?

A That's a sources of income that I had in years 2000 through 2004 prepared by my attorney.

Q Okay. Tell me where, what is your home address now, Mr. Corbin?

A It is Camden, South Carolina.

THE COURT: Where?

A Camden.

THE COURT: Oh, Camden. I thought you said Champion. Where's Champion?

THE WITNESS: Camden.

THE COURT: Okay. Oh, yes, yes. That's right.

Q You continued to reside in that house for how long?

A I only lived in that house since last May.

Q Had you moved from a house on Lyttleton Street?

A On Lyttleton Street.

Q Lyttleton Street. I'm sorry. Did you own that house?

A Yes, sir.

Q What was the value of that house when you sold it?

A $875,000.
Q That Exhibit Number 31, what was your income for the last year reported?
A The year 2004?
Q Yes, sir?
A $149,732.
Q And have you had a chance to prepare or submit your taxes for this year?
A No, sir -- well, I have obviously extended them.
Q You filed an extension?
A Yes, sir.
Q Okay. Do you have any idea what your income will be for this year?
A In the neighborhood of 140.
Q 140?
A Yes.
Q Okay. I don't have any other questions for this witness.
MS. GAFFNEY: Your Honor, no questions for Mr. Corbin at this time.
THE COURT: Okay. All right. You may step down, Mr. Corbin.
THE WITNESS: Thank you.
THE COURT: Anything further, Mr. Morgan?
MR. MORGAN: I'm sorry, Your Honor?
THE COURT: Anything further?
MR. MORGAN: The Plaintiff rests.
THE COURT: Okay. Members of the jury, we are in pretty good

shape. We are now at a part in this trial where there is a matter of law I need to take up with Mr. Morgan and Ms. Gaffney. We will do it in your absence so I have to send you out. We will make it real short, just cover everything, and we'll get your witness up. So please go to the jury room and don't talk about the case. Thank you.

(Jury exits the courtroom.)

THE COURT: Although I don't necessarily want you all to make extended arguments at this time, because we can revisit it, but it is at this point in the trial and sometimes you worry about what the Court's stand of scope might do to you all. I just want to make sure we've covered it logistically on the record. Issue motions you want to sort of generally say them, you can respond a little bit. I will probably just hold them in abeyance anyway but the time is now for you to make them.

MR. MORGAN: I would make my motion for directed verdict, Your Honor. I think the evidence is clear specifically when you look at the case in Moore versus Moore which deals with fiduciary duties. That case has been listed extensively and jury charges that I have submitted to the Court indicates that when you are in partnership relationship there is a duty higher even than that of a duty of loyalty that all employees have to do to act in their best interest of their employer. And clearly I would submit that the facts of this case show that during the period of time that Mr. Scully and Ms. Yarborough were employed by the company, they were acting for their own independent needs to set up their own company. They were aware of what they were doing. They were acting counter to the best interest of the company. So, first on

those as to a breach of duty to loyalty, I think the standards have been met there. We would point to such case as King versus Freeman Pontiac (phonetic) which I think is a 1956 case. There is a fairly new case Flux versus McAllister Towing (phonetic) where there is an extensive discussion of the breach of duty of loyalty. A matter when an individual is employed and then works to set up his own business. In fact in that case, Your Honor, the Court found that during the periods of disloyalty of the employees that the company was damaged and those wages had to be repaid. So I think on, if you take the King case going up through Flux versus McAllister Towing when you look at the one cause of action that we have, that certainly the facts have been met.

Second, you go to the fiduciary duty and the Moore versus Moore case is an absolute template for this case where there are higher duties for someone in Mr. Scully's position not as an owner and a partner and I think the evidence and the facts that have been entered in, it's just loaded up with the fact these two folks were partners and that there certainly was a duty for Mr. Scully to disclose when you look at the Moore case. It says those things of importance and clearly something of importance would be by the , I'm getting ready to take 500 to 750 of your employees and I'm getting ready to just undercut you by taking out two extremely key employees of this business.

I think when we look at the overlay of the breach of duty to loyalty, the breach of the fiduciary duty, I think those plug into the frauds, of the negligent misrepresentation causes of action that we have alleged in this case.

THE COURT: All right.

MR. MORGAN: As to Mr. Corbin, I believe there is a conspiracy claim in there. I think his testimony at the end gives me all of the elements necessary for including him in the claim in this case. The only damages that I have and I think will be put up or that were submitted by the expert yesterday. There's no expert opinion from the Defendants in this case. And that, with that, Your Honor, we would ask for a directed verdict on both liability and damages in this case for the Plaintiff.

THE COURT: Thank you, sir. Ms. Gaffney?

MS. GAFFNEY: Your Honor, may it please the court. With regard to two causes of action, I would draw the Court's attention to breach of contract and breach of contract with fraudulent intent. There's been absolutely no evidence that the Plaintiff introduced that there is any sort of contract that binds Mr. Scully and Ms. McCarthy. There's been no employee handbook. There's been a wealth of evidence that there was never an employment agreement.

THE COURT: How about the fact that they were partners?

MS. GAFFNEY: There is partnership agreement, Your Honor, but we submit that that does not bind them of such that it would create a cause of action for breach of contract.

THE COURT: You don't think there was an oral understanding between these two parties in this litigation, between Ms. McCarthy and Mr. Scully?

MS. GAFFNEY: There's been no evidence that there's been any oral understanding between.

THE COURT: So, are you saying there is no written contract? There is no oral contract?

MS. GAFFNEY: Exactly. Therefore, it can't be a breach of contract with fraudulent intent either. It was a derivative action. Also, Your Honor, with regard to the civil conspiracy cause of action against Ms. Yarborough and Mr. Corbin, as Your Honor's well aware, you have to show a combination of two or more people for the purpose of harming, in this case Allegro, and that there has to be some special damages, not just, the normal damages that are incident to other claims but special damages unique to that conspiracy and the Plaintiff has offered no evidence of any special damages other than the general damages that their expert testified to yesterday. So because of that absence we would submit the civil conspiracy claim should be dismissed.

THE COURT: All right. Anything further?

MR. MORGAN: Think the evidence --

THE COURT: All right. I just want you all to get it on the record. I'm thinking about it. I will let you know my decision sometime, probably at the end of your case. We will get to revisit everything anyway. Let me go ahead and hear everything before I specifically rule and I'll rule on the facts in a timely fashion where everybody can be prepared and what I'm going to let go to the jury and what I'm going to kick out. We'll talk about it a little bit more. So then let us take about five minutes. Where is your witness that's got to go on vacation?

MS. GAFFNEY: 1:00. He said that he would be here.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF COMMON PLEAS
2004-CP-40-01915

ALLEGRO INC., PLAINTIFF)
VS.)
GEORGE CORBIN, EMMETT J. SCULLY, SYNERGETIC INC., AND YVONNE YARBOROUGH, DEFENDANTS.)

TRANSCRIPT OF RECORD

MAY 4, 2006
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE L. CASEY MANNING, JUDGE AND JURY.

A P P E A R A N C E S:

RICHARD J. MORGAN, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

AMY L. GAFFNEY, ESQUIRE
ATTORNEY FOR THE DEFENDANT

CRYSTAL T. JACKSON

OFFICIAL COURT REPORTER

A I believe he deserves that respect.

MR. MORGAN: I don't have any other questions of this witness?

THE COURT: Anything further of this witness?

MS. GAFFNEY: Nothing further of this witness, Your Honor.

THE COURT: You may step down.

MS. GAFFNEY: May he be excused, Your Honor?

THE COURT: Yes.

MS. GAFFNEY: Your Honor, we would call Mary Young to the stand.

THE COURT: Come around, Ms. Young.

Mary Young, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. GAFFNEY:

Q Good afternoon, Ms. Young. Will you tell jury where are you employed?

A My husband owns Capital Bus Lines Incorporated.

Q Where is that located?

A In West Columbia, South Carolina.

Q How many employees do you have?

A Full time probably up to 20 and then we have some part time temporary, about ten part time employees.

Q Is that number roughly what it was in 2004?

A Yes.

Q Has your company ever had a P.E.O. relationship with a company called Allegro Incorporated?

A Yes, we have.
Q Do you know when your company formed that relationship?
A September of 1999 until December 31st of 2004.
Q And who does Capital Bus Lines have a P.E. O. relationship with now?
A Synergetic.
Q When your company was an Allegro client, who was your primary contact at Allegro?
A Emmett Scully.
Q At the time that you were an Allegro customer did you ever have any contact with Mary Etta McCarthy?
A I met her a couple of times in the office.
Q Were you satisfied with the services that your company received through Allegro?
A Yes.
Q Did Emmett Scully ever contact you prior to February 2004 and solicit your business for a new company called Synergetic Incorporated?
A No.
Q Prior to say the end of 2003, did your company have its own worker's comp insurance?
A Yes, we did.
Q Do you know when Capital Bus Lines got its own worker's comp insurance?
A We have, we are members of the American Bus Association and United Bus Association and through those memberships we can get

better prices with that and we talked that over with Allegro. That was no secret for us to get better clients to cover because not everybody covers workmen's comp with a bus company, okay? So we have been out on our own. We are still out on our own with workman's comp through one of the associate -- one of the associations.

Q Who at your company made the decision to switch from Allegro to Synergetic?

A My husband and I.

Q And what factors did you consider in making that decision?

MR. MORGAN: Objection, Your Honor.

THE COURT: Don't answer. You all approach?

(Thereupon, a bench conference was held.)

THE COURT: Members of the jury, please go to the jury room. Don't discuss this case. I will bring you out as soon as I discuss this issue.

(Jury exits the courtroom.)

THE COURT: Yes, sir, Mr. Morgan?

MR. MORGAN: Your Honor, my objection is on relevance. And the basis for that is premised upon the discovery responses as to what Ms. Young will testify to. And clearly there was her contact had been Mr. Scully at the time that he was there. That she met Ms. McCarthy on a couple of occasions. And this is what the response was to the discovery request. She will testify that Mary Etta on behalf of Allegro erroneously sent a Christmas card to an employee of her company, Capital Bus Lines, many months after the employee had been

terminated. She will testify that one of her employees was assaulted in Charleston and she went to Jim Everly for advice on whether it would be a worker's compensation issue or not and how dissatisfied she was with Jim's reaction and she will testify to the reaction of the Allegro personnel after she notified them that she was canceling in or around December 24th.

So, that's the basis of the testimony.

THE COURT: I understand that basis is relevancy. How about that, Ms. Gaffney?

MR. MORGAN: That's not on the list of the 30 clients that we had put up as part of the damages requested --

THE COURT: Let's see. What happened two weeks ago at Allegro is not relevant to this case we would all agree with that. His point has been from the very beginning of this trial his Motion in Limine went to the fact that after Mr. Scully departed Allegro, what has happened since then unless he put it in his specification of damages or he requested somewhere in his prayer for damages how would it be relevant? In other words, we got a situation, Mr. Scully's the president, the face of Allegro, he leaves. The fact that she might have left Allegro nine months later, after Mr. Scully departed, how is that relevant to whether or not Mr. Scully wrongfully left or breached his duty of loyalty or breached the contractor anything else? How can nine months later this lady not be dissatisfied with the services of Allegro be relevant to whether or not Scully should have left whether he left rightfully, wrongfully and how does that affect their damages? How is it relevant in

this lawsuit?

MS. GAFFNEY: Your Honor, if I might, that way that we submit it's relevant is that the Plaintiff's allegation is that he improperly solicited the clients of Allegro. Number one, it is my understanding of this witness' testimony that she was going to say, no, that she was not solicited by Mr. Scully. Secondly, that she's going to testify that after a series of problems in Allegro in the months that followed Scully's departure she made the decision along with her husband to switch their business to Synergetic. We have alleged as one of our defenses mitigation and it is our submission that Allegro acted irresponsibly toward its clients.

THE COURT: Well, let me ask you this question. Two week ago one of Allegro's clients decide to leave, they go to Synergetic. Now, should I let that testimony in this trial because it becomes a time factor in terms of relevancy?

MS. GAFFNEY: I understand that, Your Honor. This is during the months that followed Scully's departure. Certainly what happened in 2006 would be irrelevant.

THE COURT: And maybe and it is timelines just as relevance it could be just as irrelevant two weeks ago as two and half years ago, two weeks after he departed. The timing is a problem here. In other words, if she had left two weeks after Mr. Scully left, and joined Synergetic that is one thing but this is nine months later. Am I correct pretty much?

THE WITNESS: We, at the beginning of 2005, we became--

THE COURT: Now how is that relevant to whether or not Mr. Scully breached his duty of loyalty, breached the contract,

committed fraud or anything else in this particular lawsuit?

MS. GAFFNEY: And, Your Honor, I understand that.

THE COURT: And I haven't ruled yet but I'm asking you these questions because I have got to ask them in order to rule.

MS. GAFFNEY: I believe that it is relevant to the issue of whether Allegro has mitigated its damages. I don't think that Allegro can ride on, you know, all of these clients just departed and here we are left.

THE COURT: I thought there was a specific number of clients that he had targeted. I think they were 30 that's been introduced into evidence. I don't know. You help me out, Mr. Morgan. And trust, I'm not yelling at anybody but go ahead.

MR. MORGAN: Your Honor, the evidence that we have put in to the trial in this case are focused in on those 30 or so clients. The damages assessment was premised upon the loss of business caused by those 30 clients plus the Scully business plan for growth and expansion. Those are the two components, two of the three components of damages and then there was the third component, the special damages created by some of the work that had to be done in the background to gather all of that information, to get it. So we're not claiming in the damages that we have put up in this case, that the departure of a client, this specific company in December or January of 2005 was part of the damages that we have requested. We targeted the specific list of terminated clients that went immediately and I say immediately within, you know the first 30 to 60 to 90 days of his departure, and who moved over at that point in time. And that's the

evidence that we have put in, in the record. And I believe that was born out by the testimony in the documents. And our damages are premised upon that fact. So the relevancy, the relevancy, is nil with regard to all of these host issues in the case that we put before the Court. So I think it is irrelevant.

THE COURT: All right, Ms. Gaffney?

MS. GAFFNEY: Your Honor, again I believe it goes to the issue of mitigation that we should be able to develop. This testimony is not going to be lengthy.

THE COURT: How far in the future should I let you go when you talk about Plaintiff's mitigation? Nine months later or two years later? Or two weeks later. I'm asking you.

MS. GAFFNEY: I understand that.

THE COURT: Give me a cut off point.

MS. GAFFNEY: I think this will be the cut off point because any other witnesses --

THE COURT: How many other witnesses along this line is cumulative to a certain extent that you intend to offer? And they are not specifically on the list. Is she on the list? I don't know?

MS. GAFFNEY: Yes.

THE COURT: Is she? He says no, you say yes. I don't know.

MS. GAFFNEY: I thought you meant on the witness list. I'm sorry.

THE COURT: The list that forms the basis of the alleged wrong doing and damages that was suffered by Allegro.

MR. MORGAN: Capital Bus Line is not on Exhibit Number 7,

Your Honor.

MS. GAFFNEY: Your Honor, she has already testified that she left Allegro because of Emmett Scully, because he was the contact person. It just seems for the limited purpose of explaining why she made that decision.

THE COURT: I agree with the motion that's granted. It is irrelevant. Let's take a break.

(Whereupon a recess was taken commencing at 2:47 pm. and concluding at 3:30).

THE COURT: You may invite them in, Mr. Bowen.

THE BAILIFF: All right.

(Jury enters the courtroom.)

THE COURT: All right. Welcome back, madam foreperson, members of the jury. I have talked to you all so much this week I'm beginning to feel like we're kin to each other almost. I want to thank you all once again for your patience and understanding in this case and we will resume. Ms. Gaffney, you may continue with your direct of Ms. Young.

MS. GAFFNEY: Thank you, Your Honor, may it please the court.

Q Ms. Young, during the time that your company was a client of Allegro did you have occasions to -- and this was during the Emmett Scully time, did you have occasions to request information about your employees from Allegro?

A Yes.

Q What kind of information would you ask for?

A Anything pertaining to benefits, payroll, maybe not, if they did not all have payroll which I used to do in our office, payroll records.
Q Who at Allegro would you contact to get that information?
A Usually payroll department.
Q Who managed that?
A Yvonne.
Q Did you ever have any trouble getting that information from Allegro while Yvonne was there?
A Not while Yvonne was there.
Q That's fine.

MS. GAFFNEY: Thank you, Your Honor. That's all of the questions for this witness.

MR. MORGAN: No questions, Your Honor.

THE COURT: All right. You may step down, Ms. Young. Thank you, ma'am.

MS. GAFFNEY: Your Honor, the Defendant would call Mike Holmes to the stand.

THE COURT: Holmes?

MS. GAFFNEY: Yes, sir. H.O.L.M.E.S.

Mike Holmes, after being duly sworn, testified as follows:

CLERK: Please have a seat. State your full name for the record.

THE WITNESS: Michael David Holmes.

DIRECT EXAMINATION

BY MS. GAFFNEY:

Q Mr. Holmes, where are you employed?

BY MR. MORGAN:

Q Ms. Hunt, your company is Mid Carolina Steel, is that correct?

A Yes, it is.

Q And your contract ended with Allegro on 4 - 30 - 04?

A Correct.

Q And as Ms. Gaffney said, Mr. Scully left on February 23rd of 04.

A Uh-huh.

Q And so there was a period of about 40 days between the time Mr. Scully leaves and the time that your contract ends?

A Yes.

MR. MORGAN: I have any other questions of this witness.

THE COURT: Anything further?

MS. GAFFNEY: Nothing further, Your Honor.

THE COURT: You may step down now, Ms. Hunt.

MS. GAFFNEY: Defendants would call Lisa Millikin.

Ms. Lisa Millikin, after being duly sworn, testified as follows:

CLERK: Please have a seat and state your full name please for the record.

THE WITNESS: My name is Lisa K. Millikin.

DIRECT EXAMINATION

BY MS. GAFFNEY:

Q Ms. Millikin, where do you work today?

A Synergetic.

Q Were you formerly an employee of Allegro?

A Yes.

Q When did you start working with Allegro?
A In January of 2003.
Q And what were you hired to do there?
A I was the Payroll Administrator?
THE COURT: Excuse me, could you speak up just a little bit please?
THE WITNESS: Okay, I will try.
Q I'm sorry. What was your job at Allegro?
A Payroll Administrator.
Q Who was your supervisor?
A Yvonne Yarborough.
Q When you were hired at Allegro were you asked to sign an employment agreement?
A A day or two or three after I started. Yes.
Q What specifically was presented to you?
A An agreement that said I wouldn't work for a P.E.O. for a period of 12 months after termination.
Q What was your response when you were asked to sign for that employment agreement?
A I told them I had a problem with it.
Q Why?
A My husband had had an employment agreement with a non-compete clause at two previous jobs and whenever he considered -- he had a job, we had to relocate. We moved to Mississippi to Louisiana and from Louisiana to South Carolina. And we just were not comfortable

with either of us having one and to this day neither of us has one.
Q Were you asked to sign an employment agreement again after Emmett Scully was departed from Allegro?
A Yes, I was.
Q And on that occasion did you sign an employment agreement?
A No, I did not.
Q Do you have an employment agreement today with Synergetic?
A No, I do not.
Q Going back in time to the period when Emmett Scully was the president of Allegro, did you have regular Monday morning meetings there?
A Yes, we did.
Q Was Ms. McCarthy part of those meetings?
A Not on a regular basis. No.
Q All right. When did you first learn that Mr. Scully had some plans to buy Ms. McCarthy's shares in Allegro?
A It was February 16, 2004. I had been there a little over a year and it was the day of my review and when we walked into Emmett's office for my review we sat down, me, Yvonne, and Emmett, and he said, we'll start this off and let you know that Mary Etta has agreed to sell the company and I said, oh, that's great.
Q Had you before that date, February 16, had any understanding that Mr. Scully was trying to buy out Ms. McCarthy's shares?
A No, I did not.
Q A week later on February 23rd, 2004, how did you come to learn

that Mr. Scully was not going to be with the company any longer?
A That Monday morning I walked in and Mary Etta had called a meeting in the conference room and all of the employees walked in the conference room. And Mary Etta was there with Jim Everly and they said -- Mary Etta said, this is our new president, Emmett has resigned.
Q Had you ever known Mr. Everly before?
A Never.
Q Between February 16th when you heard that Mr. Scully was buying out the company and February 23rd did you have any understanding that Mr. Scully planned to resign from the company?
A No, I did not.
Q What happened at Allegro in the next few days that followed?
A The next few days in that first meeting they said that they would meet, find out what each of us did, and get back to us. Then Thursday they called us all back into the office -- into the conference room and said that it was going to be a new day and they wanted every one to sign an employment agreement.
Q All right and you have already told us that you refused to sign an employment agreement?
A Yes.
Q When she said it was going to be a new day, did Ms. McCarthy articulate or expound any on how clients were going to be handled or any changes in the relationship of clients?
MR. MORGAN: Objection, relevancy.
THE COURT: How about that, Ms. Gaffney?

MS. GAFFNEY: Your Honor, just goes again to the mitigation.
THE COURT: How is it relevant?
MS. GAFFNEY: It goes --
THE COURT: You all approach.
(Thereupon, a bench conference was held.)
Q Ms. Millikin, my question was whether or not Ms. McCarthy expounded on what she meant by a new day or how relationships might change with the clients there?
A There wasn't going to be anymore hand holding the clients. There was going to be information that we would no longer give the clients.
Q Did you have a meeting with Mr. Scully on Saturday, February 28th at his house?
A Yes.
Q When did you resign from Allegro?
A March 1st.
Q And did you give a notice period?
A Yes, I did.
Q What was Ms. McCarthy's response when you gave her your two week's notice?
A Well, they asked me to reconsider signing the non-compete.
Q When you say they?
A Ms. McCarthy and Mr. Everly. When they had presented it to me on Thursday I asked them plain and simple what happens if I don't sign and they said we haven't thought about that. Think about it over the weekend, come back on Monday, and let us know. So Monday morning

when I got there I walked in and I said, I'm not going to sign. I'm giving you my two weeks notice. You know, you guys can take it because in a payroll position you don't know if they're going to let you stay or go. But I'm not -- I'm not going to sign a non-compete and here is my two weeks notice. They said to reconsider it, not to tell anyone that I was resigning, and to go back to my desk. And that's what I did.

Q Okay. Was there further conversation with Ms. McCarthy about your resignation?

A There was that afternoon Yvonne Yarborough resigned. And they called me back into the office the next morning and said, would you reconsider? And I said, no. I'm not comfortable here. I'm not going to stay. No. I won't reconsider. I met with Mr. Everly again. And he asked me, you know, what would it take to get to you stay? And I said, I'm not staying. He offered me more money. I said, I'm not staying. I'm not comfortable here. He then asked me -- that was on a Wednesday, he then asked me well, will you do your two weeks from today and stay through two weeks on Wednesday and I said, okay, sure.

Q And is that what did you?

A Yes.

Q Why didn't you feel comfortable at Allegro?

A Everything had changed as far as Mary Etta. I didn't know her. Other than every once in a while she would come to the staff meetings and I would talk to her occasionally about her Executive Staffing payroll. And I wasn't comfortable. Emmett had told me that she had agreed to sell the company and she said he's resigned. I thought that if she could

let Emmett go she could let any of us go.

Q How close did you work in terms of your workspace with Yvonne Yarborough?

A She was two offices down.

Q Okay, but she was your supervisor during that time?

A Yes, she was.

MS. GAFFNEY: Beg the Court's indulgence, Your Honor. Your Honor, that's all of the questions that I have of this witness.

THE COURT: Mr. Morgan?

MR. MORGAN: May it please the court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. MORGAN:

Q Ms. Millikin, while you were an employee at Allegro did you know that it was standard company policy to have every employee sign an employment policy and non-compete?

A While I was there, yes.

MR. MORGAN: I have no further questions.

THE COURT: You may step down, Ms. Millikin.

MS. GAFFNEY: May she be excused, Your Honor?

THE COURT: You can stand up at the same time. Yes, she may be excused.

MS. GAFFNEY: Your Honor, we're at a point where we would be calling Mr. Scully. His testimony might be lengthy.

THE COURT: Well, you better get started.

DIRECT EXAMINATION

BY MS. GAFFNEY:

Q Mr. Scully, explain to the jury how Ms. McCarthy initially contacted you back in 1997?

A We had a neutral friend and that person facilitated our original discussions.

Q Were the initial discussions by telephone? How did you communicate with her?

A Yes, we had multiple telephone conversations.

Q At some point in time did you come to visit her in South Carolina?

A Yes, I did.

Q Do you recall when that was?

A Possibly May or June of 1997.

Q Over what period of time did you and she negotiate what the terms would be of your coming on with Allegro?

A Approximately two months, three months.

Q All right. And during that time were there several meetings back in South Carolina?

A There were, I believe, two initial, one that came for approximately three days and then I went back to Saint Louis and, I believe, I returned with my wife in another day or two.

Q Did you ultimately have some sort of partnership agreement drawn up or something memorializing your relationship with Ms. McCarthy?

A Yes, we did.

Q Who created that document?

A I believe Ralph Robinson did.
Q On whose request?
A Both of our request. I think Ms. McCarthy initiated that.
Q And who is Ralph Robinson?
A He's a local attorney.
Q Was there ever any discussion during that negotiation with Ms. McCarthy about you having what we have been referring to as a non-compete agreement?
A No, ma'am.
Q What is the type of agreement that you do have with Ms. McCarthy?
A I believe it is a partnership agreement slash buy sell agreement.
Q All right. Did that ever change over the six years that you continued to partner with Ms. McCarthy at Allegro?
A That document itself did not change but we created a document for changing ownership, percentage of ownership.
Q Over time as you began to have a greater share of ownership with Allegro--
A Yes.
Q During the six years that you were with Allegro was there ever an Allegro employee handbook.?
A There was an Allegro employee handbook that was used for customers but there was never one used to issue internal Allegro employees and not signed or acknowledged.
Q So other than this buy sell agreement what you have described you and Ms. McCarthy had, did you ever have any sort of contract with Mary

Etta McCarthy or with Allegro?
A No, ma'am.
Q Once you became president and sort of assumed duties at Allegro, what would be your day to day contact with Ms. McCarthy?
A Initially it was on a regular and consistent basis but as further into the relationship we became further and further apart.
Q And as your relationship became further and further apart was Ms. McCarthy spending most of her time with Allegro or with Executive Staffing?
MR. MORGAN: Objection. Leading.
MS. GAFFNEY: I'm just trying to move it along.
THE COURT: I understand but it's still leading. Sustained.
Q Where was Ms. McCarthy spending the bulk of her time?
A She devoted most of her time to Executive Staffing.
Q At that time where Allegro -- when you're talking about the beginning of the relationship, where were Allegro's offices in relation to where Executive Staffing's office were?
A They were in the Executive Staffing office suite.
Q Was that at the 1331 Elmwood Avenue location?
A No. That was at 4015 Forest Drive and then subsequently we took a suite upstairs at 4015 Forest Drive. And then some 18 or 24 months later we moved to 1331 Elmwood and we were together in that suite for may be 6 months or 8 months. And then we moved upstairs.
Q Allegro moved upstairs?
A Yes.

Q And that is the space that Mr. Small has referred to earlier?
A Correct. Suite 305.
Q Now, other than the Department of Health and Human Services client over the six years that you were with Allegro, was Ms. McCarthy ever responsible for securing any other clients for Allegro?
A I believe she brought Mr. Frank Brown as a customer who is our other director and she may have been involved with one other prospect. Other than that, she did not.
Q And at the time you left Allegro in February of 2004, how many clients did Allegro have by that point?
A Approximately 88.
Q 88?
A Yes, ma'am.
Q Ms. McCarthy talked about being involved in N.A.P.E.O. and C.A.P.E.O. and that's what the national and state organizations?
A That's correct.
Q Were you also a member of those organizations?
A Yes, I was.
Q How frequently during the times you were with Allegro would N.A.P.E.O. meet for example?
A N.A.P.E.O. had approximately three large meetings each year. There was a sales meeting, there was a legislative meeting, and an annual meeting and we would normally attend all three of those. They would be in distant out of state locationS.
Q Would that be the same for C.A.P.E.O.? Three meetings a year

think this was, it was clearly not discipline, it was not, and I did compliment Ms. Cress on her performance.

Q Was there ever a signed copy of the document Exhibit 20?

A Yes.

Q Changing here, we have heard a lot about non-compete agreements. Did you have a non-compete?

A No, ma'am.

MR. MORGAN: Objection, asked and answered.

THE COURT: Sustained.

Q Did Yvonne Yarborough at any time that she was at Allegro have a non-compete?

MR. MORGAN: Objection, asked and answered.

THE COURT: I think it has been established. Maybe I'm wrong that nobody has signed a non-compete, is that correct.

MR. MORGAN: The only three people -- the only people that didn't sign a non-compete were Mr. Scully, Ms. Yarborough, Ms. Millikin, and I think Ms. Scully is what the evidence is.

THE COURT: Okay, well then, it is asked and answered.

MR. MORGAN: That is correct.

THE COURT: Ask one more time. Go ahead.

Q Was there ever a signed non-compete for Yvonne Yarborough?

A No, ma'am.

Q Or for Lisa Millikin?

A No, ma'am.

Q At Synergetic do any of the employees have non-competes?

A No, ma'am.
Q Did you have a company car while you were with Allegro?
A Yes, I did.
Q Who was -- who was the car titled to?
A I believe it was, it's a company car but I had to personally be the guarantor.
THE COURT: The question was who was it titled to, sir?
THE WITNESS: I don't know the answer to that.
THE COURT: All right.
Q You have heard testimony about a golfing outing in November of 2003. Who provided the tickets to Allegro customer's for the golf outing?
A I did.
Q Did you have any sort of contact with the customers while they were at Kiawah for the golf outing?
A Absolutely not.
Q We heard testimony yesterday about the beach house. Do you and your wife have a beach house?
A We do.
Q Where is that located?
A Seabrook Island and John's Island.
Q How long have you had it?
A 1999. We bought a dilapidated dwelling in 1999 and rehabbed. And we subsequently purchased it and we got a low end at the very bottom of the market home, three bedroom home, and we gutted that ourselves.

Q And you presently own that?
A Yes.
Q Monday morning meetings at Allegro who presided over that, you?
A I did.
Q Did Ms. McCarthy take any part in the Monday morning meetings?
A Yes.
Q Would you and she have meetings after the meetings with the staff?
A Yes, we would.
Q Did she regularly attend those?
A She regularly attended them. There were periods when she, for a variety of reasons, she wouldn't attend but on habit she regularly attended.
Q Did you have a cell phone while you were with Allegro?
A I did.
Q What did you do with that cell phone when you were departed from the company on February 23rd?
A I returned it to the company.
Q Did Ms. McCarthy ever contact you on the cell phone?
A Very infrequently.
Q You have heard testimony about the worker's comp. What was your observation of what happened with the worker's comp market in the 2002, 2003 time period?
MR. MORGAN: Objection. That's been asked and answered.
THE COURT: I will let him answer it again. Go ahead. Answer the question.

THE WITNESS: Thank you, Your Honor.

A What happened was that we, Allegro, had moved our worker's compensation coverage to a company in Georgia. And that company went bankrupt. And as a result, we had to go back to a company called Cedar Hill in Arizona. At that time after 9/11 they were very particular about the risk that they would underwrite. And it was truly a struggle to get them to take us back on as a customer. I had to fly out there at our expense and basically spend the whole day with their entire staff with a power point presentation begging them to take us back. They ultimately agreed to do so but they charged us an administrative management fee of $40,000 for the privilege of underwriting our comp. That cost had to be amortized out of the rest of our customer base. That was in 2002.

In 2003, they assessed us an additional $15,000 and in 2003 an additional 15,000. The cost of worker's comp for these small companies was absolutely astronomical. It was much cheaper for people to go out and get their own individual policies than for them to have our policy. I was doing everything in my power to get everybody off of the Cedar Hill policy because it wasn't cost effective for them and we had an obligation to our customers to provide them with the lowest and most cost effective worker's comp policy and I couldn't provide that. And that's what I was doing across the board. And ultimately, as I understand it from the others, Allegro did the same thing.

MR. MORGAN: Objection.

THE COURT: Sustained. Just answer the question. Don't go there with the evidence please.

THE WITNESS: Yes.
Q Did you recommend to Allegro's clients that they should start shopping for their own worker's comp?
A Yes, ma'am.
Q In 2003, did you create a business plan for Allegro?
A Yes, ma'am.
Q And what was the reason why you did that?
A In order to comply with the Worker's Compensation Certification Institute, again a worker's comp issue.
Q At that point had the sales for Allegro been upwardly moving, was there any decline? How were the sales going?
A The sales for about three or four years were almost flat. It was a struggle every year to try and to get in customers for the ones that we would lose. We were essentially flat for about four years.
Q In early 2003 what brought you to the point that you wanted to offer Ms. McCarthy some amount of money to purchase her shares?
A Our relationship had deteriorated over the years. Primarily for three reasons. Number one, our business management styles were just completely different. Number two, that she was getting correspondingly more money for putting in less and less time, and number three, she was very dismissible of my way.
Q And did you approach Ms. McCarthy at some point in April and tell her that you wanted to buy her shares of Allegro?
A Yes, I did.
Q What steps then did you take to sort of further along the discussions

about buying her 51 percent?
A On a regular consistent basis I would ask her about it.
Q For example, what I mean, you would just ask her if she was interested in buying?
A I would go and ask her if she was willing to sell and what could we do to facilitate that process.
Q At any time did you ever approach Ms. McCarthy, did she ever say to you that she just wasn't interested in selling?
A No.
Q At some point you retained for Allegro, retained a company to value, to perform an evaluation, is that correct?
A Yes.
Q All right. When do you think that that was done?
A It was done, probably the, you know, July timeframe of 2003.
Q That was the Geneva Company?
A It was.
Q How long did it take Geneva to get the information and furnish you with some sort of evaluation for Allegro?
A I didn't receive an evaluation until December, mid December of 2003.
Q Do you recall what Geneva valued Allegro at that point?
A Approximately $450,000.
Q Did you use that information to come up with an offer that you presented to Ms. McCarthy?
A I did.

Q I show you a copy, Mr. Scully, of a document that's been marked as Exhibit Number 24.
Q Is that a document that you created, Mr. Scully?
A It is.
Q Prior to presenting that to Ms. McCarthy had you discussed with George Corbin your interest in purchasing Ms. McCarthy's shares of Allegro?
A Yes, I did.
Q On how many occasions?
A Multiple.
Q Why did you approach Mr. Corbin and talk to him about your intent?
A He was an accountant and a C.P.A. He knew the finances of Allegro intimately and he had been involved to my knowledge in doing this kind of thing before and I trusted his opinion and his counsel.
Q Before presenting the document that's been marked as Exhibit 24 to Ms. McCarthy, did you run it by Mr. Corbin?
A I believe I did.
Q Why did you give Ms. McCarthy this letter on December 23rd or 24, 2003?
A I wanted her to think about it over the Christmas holidays and give her 30 days to consider it.
Q And how much were you offering her for her 51 percent ownership?
A I don't remember specifically at that time. The offer progressively went up. Ultimately it ended it up being 130 percent of her 51 percent of the company.
Q In that letter that you presented to her, how much time did you give

her to respond?
A 30 days.
Q Did she respond within the 30 days?
A I believe she did.
Q What was her counter proposal to you?
A I don't remember.
Q During that time, meaning December 24th to whenever it was she responded, did you and Ms. McCarthy have any other conversations about your interest in buying her out?
A If there were they were very brief.
Q Did she ever come back with a counter proposal other than the one there?
A There was a second one I think after I left the company.
Q Okay. What was her counter to you though?
A I don't remember.
Q Does 300,000 sound familiar?
A (Shakes head.) I don't remember.
Q I'll show you a copy of a document that's been marked as Plaintiff's Exhibit 25.

MR. MORGAN: Your Honor, we stipulate that there are documents of evidence for the jury to review to set forth those figures of negotiation.

THE COURT: I understand. I think she wants to refresh Mr. Scully's recollection as to the exact figure.

MS. GAFFNEY: We will stipulate to that if --

THE COURT: Okay. It is in there somewhere. He just hasn't recalled but we all have heard it.

MR. MORGAN: The documents are in evidence.

MS. GAFFNEY: Right.

Q Did you have a conversation with Ms. McCarthy early in February about the final offer that you were making to her for the purchase of?

A Yes.

Q What at that time did you offer her?

A I believe it was $250,000.

Q What was Ms. McCarthy's response to that?

A I think she accepted it.

Q And that was what, February 16th?

A Yes, it was.

Q What, that was a Monday?

A Yes, it was.

Q That week, what did you do with Allegro?

A We had a very sensitive sexual harassment issue that happened in a customer's office in Birmingham, Alabama and Mr. Corbin and I drove to Alabama and spent several days there resolving that conflict.

Q Do you recall which day that was?

A I would say it was -- I think we left on Tuesday and came back on Wednesday or Thursday.

Q And at any point during the time you were on your way to Alabama, on your way back to South Carolina, did Ms. McCarthy contact you about the agreement to purchase Allegro?

A No, ma'am.
Q Did she ever tell you that she had gone to Charlotte that week to interview Mr. Everly?
A No.
Q Did she ever tell you that she --
MR. MORGAN: Objection. Leading.
THE COURT: Sustained.
Q Did she have any conversation with you prior to Monday, February 23rd, about your proposal to purchase out the rest of Allegro?
MR. MORGAN: Objection. Leading.
Q Did she have any conversation with you at all prior to Monday, February 23rd?
A No.
Q What was your first awareness then of Mr. Everly's having been hired?
A Sometime later that week. It was after the 23rd.
Q When you came to work on Monday, the 23rd of February, what was your first contact then with Ms. McCarthy?
A She asked me to come down to her office.
Q What happened when you got there?
A She asked me for the car keys and told me that there was a police officer in the next office and told me that there was a cab waiting for me.
Q At that time had you had any premonition that you were being -- your resignation was being accepted?
A No, ma'am.

MR. MORGAN: Objection. Leading.

THE COURT: Sustained for leading.

Q What, at that point in time, what possessions did you have in terms of laptops or cell phones or anything that you had that was Allegro property?

A I took everything back the next morning.

Q Did that -- that was your cell phone, your laptop?

A It was a laptop. Everything I had, I had a lot of stuff because we kept it in our son's room. He was at Columbia College. We moved down there, so we used that as a storage area so I had a lot of things that I returned to the company.

Q After Ms. McCarthy told you that she had accepted your resignation, then what did you do to get Synergetic up and running?

A For the balance of that Monday the 23rd, the 24th and the 25th, I went to see each of our customers and I called them. I went to the Department of Consumer Affairs and let them know what had happened because they are our regulatory body. I went to the bank to see if I could get financing. I went to Carolina Care Plan to find out if I could get a health plan, went to a lawyer, incorporated, did everything that I needed to do to start that business.

Q You heard testimony from Cathy Jordan from the stand. Do you recall your meeting with Cathy Jordan?

A I do.

Q What do you recall specifically about that?

A Ms. Jordan asked me to come to her office. I did. We spent

probably less than 45 minutes talking about Allegro services, what we could provide, what we couldn't do, and what we did for General Mortgage Company that she was associated with and at that time I told her that as a courtesy, and only as a courtesy, that I was in the process of trying to buy out my partner and that if that -- if I wasn't successful that I might have to start my own firm.

Q Did you ever have any other conversations with Ms. Jordan or with any one from General Mortgage to solicit their business for Synergetic?

A No, ma'am.

MS. GAFFNEY: Beg the Court's indulgence, Your Honor.

THE COURT: Yes, ma'am.

MS. GAFFNEY: Your Honor, that's all of the questions I have of Mr. Scully at this time.

THE COURT: Mr. Morgan?

MR. MORGAN: I'm sorry, Your Honor, may it please the court. I guess I don't hear ...

THE COURT: It is all right.

MR. MORGAN: It's been a long week for all of us.

CROSS-EXAMINATION

BY MR. MORGAN:

Q Very briefly, Mr. Scully, I understood your testimony the other day and today, Mr. Corbin was intimately involved in the whole process of the negotiations and knowledge of your then setting up your own business if you were unsuccessful in buying Allegro, is that correct?

A Yes, sir.

Q Just so I can understand Exhibit 2, a letter to your children. You remember that?

A Yes, I do.

Q Let see if we can find it here. Do you remember that date of that letter?

A I believe someone told me February 14.

Q Let me just show you.

MR. MORGAN: I have it marked, Your Honor, so you can see.

Q Is that the letter?

A Yes, sir, it is.

MR. MORGAN: Okay. May I go around the other side just for a second?

THE COURT: Yes, sir.

Q Mr. Scully, I'm going to read a sentence and it's underlined here to be on the one, two, three, four, fifth paragraph. And it says, I have arranged to take over half of the suite below us on the first floor. We will go from 4986 square feet to 2900 square feet. The space will be available March 1. So I will work out of the house until then. Then Carolina Care Plan is in the final stages of letting me know if they will offer me health insurance. If they don't, I have another carrier who can help us out.

So you had already been in touch with Carolina Care Plan well in advance of the date of February 23rd, isn't that correct, Mr. Scully?

A I had one conversation with her.

Q And Carolina Care Plan is in the final stages as of the 14th in letting

MS. GAFFNEY: Your Honor, that's all of the questions I have.

THE COURT: All right. Mr. Morgan?

MR. MORGAN: Your Honor, no questions for this witness.

THE COURT: Well apparently, Ms. Yarborough's testimony --

THE WITNESS: I'm sorry. I apologize.

THE COURT: You may step down. Let me guess, Mr. Corbin? Is he next?

MS. GAFFNEY: He might be a little lengthy.

THE COURT: So. The jury is prepared to stay, are you not? But you all want to take a little ten minute break. I think he is the last witness you have at least for the day, is that correct? Come on up, Mr. Corbin, and for the purpose of this trial sir you are still under oath.

THE WITNESS: Yes, sir.

THE COURT: I like you all's attitude. That's good.

DIRECT EXAMINATION

BY MS. GAFFNEY:

Q Mr. Corbin, there was some testimony about your beginning auditing services with Allegro. When do you recall you started as an auditor for Allegro?

A As an auditor it would be for the year ended December 2001.

Q Prior to that, what work had you done for Allegro?

A I helped reconstruct some accounting records during 1999. After the year 1999 I did a review, which is not an audit. It is a lower level statement, if you will.

Q There was some testimony about you setting up books for Allegro.

Did you do anything to set up books for Allegro?
A No. I never set up any books for Allegro.
Q Now was there an issue at some point in say 99 about a receivable that Allegro claimed to be due from Executive Staffing?
A There was amounts owed to Allegro by Executive for several different things. Primarily one was a worker's comp premium paid by Allegro for Executive which covered the Executive regular employees who worked in the office of Executive and for the temporary -- the employees who went out as temporary employees for hire for Allegro, excuse me, for Executive. I'm sorry.
Q And that amount was about $16,000?
A No. That amount -- that amount, I believe was close to $37,000.
Q Did that encompass also some fees that related to the D.H.H S. contract?
A That was an additional amount. The total amount that was determined to be owed was approximately $52,000. About 37 of that was worker's comp. Then there was an amount for some health care insurance that failed to be billed by Allegro to Executive. And there was another, it was a little payroll matter that's also included in there. But the primary thing was the worker's comp. Subsequent to that Executive did pay for the items other than the worker's comp.
Q Explain for the jury why that was significant that Allegro had money owed to by its sister company?
A Well they were separate companies although they were sister companies, and it was important because in a relationship like this to

keep the amounts owed and services rendered straight between the two. The other reason that it was important was that there was a minimum requirement of net worth for the P.E.O. and the receivable, although it was only one of many assets of Allegro at the time, would allow it, if you will, to have a net worth of $50,000. If indeed that had not been a receivable, which it was, they would have had a net worth of less than $50,000 at the end of the 1999.

Q Did you ever explain to Ms. McCarthy that there was this issue of the receivable to Allegro?

A Yes. At the end of -- well several times during early 2000 when we were finally getting to the numbers, we had meetings with Mr. Scully as well as Ms. McCarthy, I'm sorry. And went through the items on the balance sheet, answered questions that she had. Among them indeed was this receivable. Additionally, I wrote a memo of record of the amounts and what they represented and presented it to Mr. Scully, with my understanding that he would deliver a copy of that to Ms. McCarly (sic).

MR. MORGAN: Ms. McCarthy.

THE WITNESS: I'm sorry. Ms. McCarthy.

Q Did you ever speak with her though personally about this debt?

A Not per se.

Q All right. Did you -- she ever communicate to you in any way that she disputed that the amount was in fact owed to Allegro?

A Not at that time. In fact, the first time I realized it wasn't a legitimate in her eyes, receivable, was at this trial.

Q Through your work in either reviewing the books of Allegro when you were doing the audits or at any time you were involved in Allegro's accounting work, were you aware of any sort of liability for deferred compensation for Ms. McCarthy?
A No, I am not.
Q Have you ever done accounting services or provided accounting services for a staffing company?
A Yes, I have.
Q And of course you have provided accounting services for a P.E.O., correct?
A Yes, I have.
Q Is there anything different about the finances or the way the money operates through a P.E.O. that makes it unique from like a staffing company?
MR. MORGAN: Objection to relevance.
THE COURT: Okay. Why is this relevant to this particular case?
MS. GAFFNEY: May I approach, Your Honor?
THE COURT: Sure.
(Thereupon, a bench conference was held.)
Q Mr. Corbin, the question we're asking is about the finances and the bookkeeping work for a P.E.O. You have done that kind of bookkeeping and accounting services, correct?
A Yes, I have.
Q With a P.E.O., can you go in based on your knowledge and understanding of the bookkeeping, can you go in on any given day and

be able to take a look at the accounting records and come up with an amount that you have in the bank that day?

A That's not an easy question though it may sound like it is. You can certainly determine the amount in your general ledger that says cash and bank. However, that may or may not be what's really in your bank account because there are lots of transactions in transit. One of the biggest differences between those two industries is that in the --

MR. MORGAN: Objection. Not responsive to the question.

MS. GAFFNEY: I was asking him about being able to tell how much was in the bank. He's explaining why you can't.

THE COURT: He was about ready to give an example.

THE WITNESS: I'm going to try to. In the temporary employment business, they have employees that go out and work for a specified amount. They will get billed -- their customers get billed for it and if the cash comes in, it is coming in, in response to this billing and it is always the companies and the only thing that wouldn't be the companies would be some checks that had been written to pay expenses that were in transit if you will.

THE COURT: Just like anybody's regular bank account.

THE WITNESS: Yes, sir, exactly.

Q In a P.E.O., what comes into their bank account are payroll amounts for their customers which are not their cash and it comes in very large amounts and then they may write checks on it or they make wire transfers out so when these transactions occur, you don't really know that as a company. Therefore, I'm saying you really can't answer that

question with a very simple answer. That's all I'm trying to say. Does that help you, sir?

THE COURT: That's fine. All right.

Q Mr. Corbin, when Ms. McCarthy, when you were providing accounting services for Allegro, would she come to you and ask for cash balance in the account?

A No, ma'am, Ms. McCarthy never asked me for anything like that.

Q Time to 2003. First of all, you are still C.F.O. with Merritt Veterinarian, correct?

A Yes, ma'am.

Q And Merritt Veterinarian became a client of Allegro in a P.E.O. relationship in 2003?

A 2003, yes, ma'am.

Q Do you recall that it was the beginning of the year?

A Beginning of the year?

Q The last audit you performed for Allegro was what year?

A 2002.

Q When did Emmett Scully first tell you that he had some interest in buying out Ms. McCarthy's shares?

A Again, I have got -- if I could expand a little bit. I'll try to be brief.

THE COURT: Take your time, Mr. Corbin. Mr. Morgan will have an objection. And he should.

MR. MORGAN: I'm an objectionable guy.

THE COURT: We all try our best and, you know, nobody's trying to do anything purposely but there are certainly rules you have to follow

so start with the answer. If there is a problem, Mr. Morgan will let me know about it.

A The reason that I'm saying this is probably in 2002, while doing the audit, Mr. Scully, in general business conversation indicated to me that he had some major frustrations with Ms. McCarthy and her -- their different business styles. And that was really all that happened in 2002. Later on I believe it was in 2003, I know that it was. I was probably finishing the 2002 audit, sir. He was again going through his frustrations and he said --

MR. MORGAN: Objection, hearsay.

THE WITNESS: Excuse me.

A I was asked what are my options. And I said to him, Emmett, you can either buy out Mary Etta, Mary Etta can buy you out, or you can start your own business. Those are the three options. Now, that was in a conversation. And that was the end of that conversation. I really didn't -- wasn't asked a specific question that demanded anything more than that until probably late March of 2003 when I was asked, will you tell me about some options. Explain them to me, if you would.

The answer to that question became an e-mail which has been presented I believe as evidence in this case.

Q I will show that to you, Mr. Corbin. It's been marked as Plaintiff's Exhibit 3. That's your letter to Mr. Scully, correct?

A Yes.

Q If you would publish for the jury the second paragraph of that letter please?

A Yes, ma'am. Starting with the average?
Q Yes, sir.
A The average of each approach is $171,388. I do not think she would sell for that. I think it would be a reasonable deal for each of you at $200,000. At 250,000 is a great deal for her and tolerable at best for you. And anything above that I would say you are making a bad decision.
Q And I think it's been stipulated to, did you hear that the final offer was 225 for Ms. McCarthy's shares?
A I thought it was 300 but I may have misheard something.
Q The record will clear out on that. Turn, Mr. Corbin, to the second page of your letter of March 27th Exhibit 3. The next to the last paragraph that begins with the overall issue. If you would publish that for the jury please?
A The overall issue here is that something needs to happen. The ongoing tension between you and Mary Etta is obvious. That has to be tiring on both of you. It is also probably obvious to employees. Either way, it is not healthy for the business. The business has a better chance of success without that tension. If one of you has to sell out to relieve it, then that's what needs to happen.
Q In preparing this letter, Mr. Corbin, it's been marked as Exhibit 3, did you have any intent to harm Mary Etta McCarthy?
A Absolutely not. In fact, my concern was for the business, which I so stated.
Q And by that point, your business, Merritt, was a customer of

Allegro's correct?
A It absolutely was and I have a vested interest in Allegro's success because of that.
Q Did Mr. Scully ever e-mail to you an offer that he was going to present to Mary Etta for her -- for his purchase of her shares?
A Yes, ma'am.
Q Did you contact him or have any communication with him about that letter that he was about to present?
A Yes, ma'am.
Q What did you tell Mr. Scully about that offer?
A I told him that that offer was within the range that we had previously talked about, about what an offer might be. And that I didn't see anything out of the ordinary in it. And that was the conversation.
Q Did you ever look at the Geneva evaluation of Allegro?
A Yes, ma'am.
Q And we have heard testimony that was 450,000?
A I think that's correct. Yes, ma'am.
Q Did you ever provide any sort of feedback to Mr. Scully about the Geneva evaluation?
A Yes, ma'am, I did.
Q February 16, 2004, did you accompany Mr. Scully to Birmingham during that week?
A Yes, ma'am.
Q What was the problem that had you all going to Birmingham?
MR. MORGAN: Objection. Relevance. It's been asked and

answered.

THE COURT: They were going there to investigate a sexual harassment suit with some company. I think that's in there.

THE WITNESS: Actually it was my company, sir.

THE COURT: Okay. What is your objection again?

MR. MORGAN: It is already in the evidence.

THE COURT: Well, some of it came in through your adverse examination of these witnesses. She has a right to put up her case. I'm going to allow her to do that, Mr. Morgan. You may proceed, Ms. Gaffney.

Q During that trip to Birmingham, did Mr. Scully tell you anything about his conversation with Ms. McCarthy when she agreed to purchase or she agreed to the purchase, he had proposed --

A Yes, ma'am.

MR. MORGAN: Objection. Hearsay.

MS. GAFFNEY: I think he can testify to what Mr. Scully told him.

THE COURT: What was the question again please?

MS. GAFFNEY: Whether Mr. Scully told him about Mr. McCarthy's agreement to purchase.

THE COURT: All right, and --

MR. MORGAN: I heard the discussion.

THE COURT: It is all right. That's why you don't want to work too late and too long. So you know, that question is fine. Because your ears pop up when you -- you try to keep something from happening you don't know what it is going to be. That's the way lawyers work

sometimes. I understand. We all understand.

MS. GAFFNEY: Thank you, Your Honor.

THE COURT: All right.

Q Mr. Corbin, the trip to Birmingham, did Mr. Scully tell you about his conversation with Ms. McCarthy where she agreed to purchase her shares of Allegro?

A He actually told me before we left.

Q What did he tell you?

A He called me on the phone and said she accepted my offer and that was before he picked -- I believe I picked him up and drove that day. So he was excited. You know it was an issue of something that he had worked for for nine months.

Q In some point you came to learn that he, Mr. Scully, had been departed from Allegro, correct?

A Yes, ma'am.

Q Did Ms. McCarthy meet with you in the days that followed his departure to talk with you about Merritt's relationship with Allegro?

A Yes, ma'am.

Q What do you recall of that meeting?

A That was on the very next day. She called and said she and Mr. Everly would like to come meet me and I, of course, said fine. We met at Merritt Vet. I was introduced to Mr. Everly. And Ms. McCarthy and he presented what they could do for Merritt and wanted to make sure I was comfortable and would do what was necessary to continue good service.

Q All right and what was your feed back to them?
A I said, you know, I'm in my opinion, that Mr. Scully was Allegro. However, they had some time before a final decision had to be made. And they had an opportunity to change my mind. That's what I said.
Q Did Merritt ultimately switch over to Synergetic?
A Yes, they did.
Q Did you submit a 30 day letter to Allegro?
A Yes, I did.
Q I'm going to show you a document, Mr. Corbin, marked as Defendant's Exhibit Number 10. Is that a document that you received from Allegro?
MR. MORGAN: Objection, Your Honor, on this document. May we approach?
THE COURT: Yes.
(Thereupon, a bench conference was held.)
Q Mr. Corbin, have you had a chance to review this letter dated March 16, 2004?
A Yes, ma'am.
Q It is addressed to you, correct?
A Correct.
Q What was the issue behind this letter that you received from Allegro on March 16?
A The issue was that I was -- my controller had requested records of our personnel that we didn't think we had all of just like she had been doing since the very beginning with Allegro.

THE COURT: When you say she, who are you talking about?
A Ms. Gathers. I'm sorry.
Q That is who we heard from earlier this afternoon?
A And she had made several requests which was not honored and I actually had requested of Mr. Everly to get these records. I was extremely surprised with the answer. Because I had assumed and thought that personnel records of my personnel were the company's and they were simply my H.R. department which had been out sourced so I was quite honestly very upset at this. And by the way, never got these records.
Q When Merritt switched its business from Allegro to Synergetic, how did Merritt get its employee information to Synergetic?
A They came out and rolled our personnel. Started over with forms that you do when you -- when you change insurance carriers or any other payroll service, that's how.
MS. GAFFNEY: Your Honor, that's all of the questions I have for Mr. Corbin.
THE COURT: All right. Mr. Morgan?
MR. MORGAN: May it please the court.
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. MORGAN:
Q Just a couple of questions, Mr. Corbin. You met with Ms. McCarthy and Mr. Everly on the 24th of February?
A Yes, sir.

Q You were going to give them time to convince you and on the 27th you sent the letter of termination for the 30 day notice, correct?
A Yes, sir. There was a reason.
Q Okay. Now you indicated you had a vested interest in Allegro's success?
A Yes, sir.
Q But from on or about March 27th of 2003, if not before, you had had detailed -- an ongoing discussion, one part of which was Mr. Scully starting up his own business and you knew that he would need clients, right?
THE COURT: Try to answer it in two parts. That's no compound.
THE WITNESS: No, I would, I would like to try to answer; if I could really answer the question, sir.
MR. MORGAN: Let me rephrase it if I could, Your Honor.
THE COURT: Just relax.
THE WITNESS: I apologize.
THE COURT: It is all right.
Q You knew at least from 2002 forward, Mr. Scully had an interest in buying out Ms. McCarthy, correct?
A I wouldn't say from 2002. No, sir.
Q Okay. You were intimately involved in all of the discussions with Mr. Scully and all of the financial discussions about that sale and purchase beginning on or about March 27 if not before of 2003 going forward, isn't that correct?
A No, sir. What is correct is that I had several conversations with Mr. Scully as a friend of his because he asked me if I would give him a

hand. And I said, yes, I would. So there were several discussions with him over his trying to work out a purchase of Allegro. I'm sure that there were hundreds of hundreds of other things that he did with respect to that that I had no input in at all.

Q But you have key core financial information and were providing him that advice as he tried to purchase out Ms. McCarthy, correct?

A I gave him advice when asked. Yes, sir.

Q And that was on more than one occasion?

A Yes, sir. It was on more than one occasion.

Q And you also knew, Mr. Corbin, that if he was unsuccessful in making that, he was going to set up his own business?

A I did not know that on March 27th, sir. No.

Q But you knew it before February 16th?

A Yes, sir, I did.

Q Of 2004?

A Yes, sir, I did.

Q And at no time did you ever inform either the board of Allegro or Ms. Mary Etta McCarthy of what Mr. Scully's plans were if he was unsuccessful, correct?

A Because I had no obligation to do so, sir.

Q Sir, are you an accountant?

A Yes, sir, I am.

Q Do you have any ethical responsibilities of which you are aware?

MS. GAFFNEY: Objection, Your Honor.

THE COURT: Wait stop. Basis?

MS. GAFFNEY: Relevance.

MR. MORGAN: Should we approach, Your Honor.

THE COURT: Sure. I'm not going to stop you now.

MR. MORGAN: I will withdraw the question, Your Honor. No further questions for this witness.

THE COURT: All right.

MS. GAFFNEY: Very briefly, Your Honor.

THE COURT: Sure.

REDIRECT EXAMINATION

BY MS. GAFFNEY:

Q Mr. Corbin, you were about to say that there was a reason why in February you notified Allegro that you were discontinuing your services at P.E.O. What was that reason?

A After the conversation with Mr. Everly and Ms. McCarthy and they left, I went back and reviewed the contract with them that I really hadn't reviewed for some time. And realized when I read it that there was a 30 day notification requirement. And because I realized that and it was the 24th or fifth, I had, I felt in my mind if I wanted to, if I wanted to leave, I had to give them notification to legally do so at the end of March, which was at that time what I thought we were doing -- going to do. Now, I didn't have to do that but I did have to give them the letter. In other words, if they changed my mind, I didn't have to leave. But if I didn't give them the letter, I couldn't leave. And that's the reason I wrote the letter.

Q Had you always been satisfied as an Allegro client that the services

that you paid for were what you received while Emmett Scully was there?

A Yes.

Q Did you have any concern about continuation of those services post Scully?

A Yes, ma'am?

MS. GAFFNEY: That's all of the questions I have.

RECROSS EXAMINATION

BY MR. MORGAN:

Q Do you recall Mr. Scully's testimony that in fact he wrote those letters of termination?

MS. GAFFNEY: Your Honor, objection.

THE COURT: Basis?

MS. GAFFNEY: Pitting the witnesses.

THE COURT: No. Pitting, that is not pitting. You may continue with that question. You are required to answer, sir.

THE WITNESS: Yes, sir.

A He did not write my letter, sir.

MR. MORGAN: I don't have any more questions.

THE COURT: All right. Now I'm going ask both of you. Can Mr. Corbin step down?

MS. GAFFNEY: Yes, sir.

THE COURT: You may step down, Mr. Corbin.

THE WITNESS: Thank you, sir.

THE COURT: What else this afternoon, Ms. Gaffney?

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF COMMON PLEAS
2004-CP-40-01915

ALLEGRO INC., PLAINTIFF)
VS.)
GEORGE CORBIN, EMMETT J. SCULLY, SYNERGETIC INC., AND YVONNE YARBOROUGH, DEFENDANTS.)

TRANSCRIPT OF RECORD

MAY 5, 2006
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE L. CASEY MANNING, JUDGE AND JURY.

A P P E A R A N C E S:

RICHARD J. MORGAN, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

AMY L. GAFFNEY, ESQUIRE
ATTORNEY FOR THE DEFENDANT

CRYSTAL T. JACKSON

OFFICIAL COURT REPORTER

in the jury room at 11:00. Okay? Thank you all so very much.

(Jury exits the courtroom.)

THE COURT: All right. Mr. Morgan?

MR. MORGAN: Excuse me, may it please the court.

THE COURT: Yes.

MR. MORGAN: We would renew our --

THE COURT: Wait, wait. What? (Brief pause) Yes, sir. Go ahead.

MR. MORGAN: At this point we would renew our motion for directed verdict in this case. If I might, Your Honor, I think there are a number of causes of actions.

THE COURT: All right, sir.

MR. MORGAN: Breach of duty of loyalty, violation of the South Carolina Code 33-8-420, breach of common law fiduciary duty, breach of contract with fraudulent intent, breach of contract fraud gross negligence, negligent misrepresentation, and another code violation all against Mr. Scully. The breach of duty for Ms. Yarborough and the conspiracy claim against the parties.

Your Honor, I think the facts of this case that have been before by way of the evidentiary information include the following, and I think many of these are without any dispute in the evidence.

At the time of the resignation, Mr. Scully has 49 percent ownership interest in Allegro. As an owner of Allegro prior to his resignation, Mr. Scully held a seat on the company's board of directors. As president of Allegro, Scully had full responsibility to handle the day to

day operational functions of the business and trust responsibilities to manage the company in the best interest of the corporation. As president of Allegro, he had financial oversight responsibilities for the company and responsibilities to insure that the company's on financial footing and to disclose known facts and known information relevant to the operation of the company, to Ms. McCarthy and to the board. As president he had a responsibility to act in a good faith manner for the benefit of the company. Think all of those facts are in evidence. And I believe they are undisputed.

We have Ms. Yarborough, who is hired as the payroll manager. As the payroll manager, she reports directly to Mr. Scully. The evidence further reveals, and I think this is undisputed at some point in time, different people found out different information. Mr. Corbin, beginning in approximately late 2002, we had the evidence that he's in an audit capacity at that time about Mr. Scully's interest in buying out Allegro.

Mr. Scully then has on going contact with Mr. Corbin over a period of any number of months. I think the documents show that as early as March 27 of 2003, Mr. Corbin even wrote a letter laying out the options that were available to Mr. Scully and his desire to purchase the business from Ms. McCarthy.

At some point, whether it was on the 27th of March or some point thereafter he also is knowledgeable about whether -- about setting up a new business. I think all of this is undisputed in the evidence. I think it is undisputed in the evidence at some point in 2003 those same disclosures are made to people within the company but not

Ms. McCarthy, Ms. Cress, Ms. Yarborough, and persons outside of the company, Dr. Matt Wolf, who has no involvement at all with Allegro. And those facts are, I want to buy Ms. McCarthy's interest in Allegro out, and if I don't I'm going to set up my own business.

At no point when those discussions begin, is there any disclosure at all to Ms. McCarthy about the setting up of the new company. There is then the negotiations that go on over the period of time. And to try to, you know, collapse that down a little bit we get to a point after a number of months where there is an offer of resignation that is submitted on February 16 of 2004. And initially, as I said in my opening statement, Ms. McCarthy initially accepted that.

She got up on the stand and she went through in pretty great detail as to what went on over the next week and she changed her mind. There was nothing in writing. There was, I'm going to accept your offer. She changed her mind and accepts the resignation of Mr. Scully the following week because she didn't want to see her Allegro family torn apart. I think that's the testimony. I think there's probably a dispute there. On that issue, it's probably going to be a jury issue. I don't think that that is an undisputed fact in this case.

There is evidence in the record that there were target companies, then set up to change and move worker's compensation insurance from the Allegro coverage over to individual coverage. And I think the evidence is clear that a lot of the companies that then actually transfer from Allegro and move with Scully to Synergetic, in and around December of 2003 and January 2004, actually have that process under

taken so that the move can be made to Synergetic when Mr. Scully sets up his competing company in the event that Ms. McCarthy doesn't sell it out. I think there's then evidence in the record of the following types of things. We saw Ms. Cathy Jordan, perspective customer. He tells her, you know, I'm in a transition myself. I am setting up my own company. If I can't buy out Ms. McCarthy, and I think there's an importance there when we look at all of the evidence and we have the circumstantial and what not, she goes back to the place where he tells her his new business Synergetic is going to be and can't find it.

His own letter to his kids.

THE COURT: Mr. Morgan, I hate to stop you but there is a fine factual recitation of the evidence in the record but -- and I assume you are going to get to the point where because of these facts then you are entitled to directed verdict on which causes of actions and maybe I'm pre-empting you a little bit and I apologize if I am. But so far you have made a nice recitation of the facts and evidence but what is your motion in regards to your six or seven or eight cause of actions is what I need to hear from you, sir.

MR. MORGAN: I'll let the evidence stand for itself. I understand we have been at this a long time this week, Judge.

THE COURT: Go ahead.

MR. MORGAN: If I look then at the law issues that would apply, we look at breach of duty of loyalty issues.

THE COURT: And this is only as to Mr. Scully, is that correct?

MR. MORGAN: And Ms. Yarborough.

THE COURT: Scully and Yarborough?

MR. MORGAN: Yes, the breach of duty to loyalty, Your Honor.

THE COURT: Go ahead.

MR. MORGAN: Is a common law cause of action.

THE COURT: Uh-huh.

MR. MORGAN: And under -- and under that when you begin with the earlier cases, King versus The Freedom versus Pontiac and King case, you look at the Futch case, you look at Barry versus Good Year case and you look at the development of the law in this area. It's very clear that an employee has to always act in the best interest of his or her employer. And clearly when we look at the evidence that's in the record and we look at the things that were done during the business day, the conversations that took place with Mr. Scully, Ms. Yarborough, Ms. Cress, the securing of quotes, visiting perspective customers while on company business. I think some of the witnesses that came forward yesterday also indicated that they had knowledge about what was going on in this whole transaction. And that clearly cannot be in the best interest of Allegro as to telling someone I'm going to set up a competing company and doing things to get ready. And I think that goes beyond that part of the case law that says you have the right to prepare to compete.

THE COURT: Well, that's fine. That is not a factor or evidentiary issue that's in dispute. You got to tell me as a matter of law that you are entitled to a judgment. That's what I'm waiting for. That's what you are trying to convince me of. That it is a matter of law, the facts you recited.

Then you are entitled to a judgment.

MR. MORGAN: That is correct with regard to breach of duty of loyalty with regard to Mr. Scully and Ms. Yarborough. The common law fiduciary duty claims and statutory fiduciary claims, I believe that there is an even higher standard and, if you apply those, we have an owner and we have someone who sits on the board of directors. And clearly, Your Honor, when we look at some of the cases such as Moore versus Moore and other cases, those that we have set forth in our request to charge which I understand there have been no objections, all of the elements necessary for showing and proving that there had been the breach of the fiduciary duty, the common law, and the statutory have been reached. There's language in those cases that when you have a partnership agreement, there's a -- and without question, Mr. Scully testifies to that, Ms. McCarthy testifies to that, that an individual has the responsibility to disclose important information related to the company. And certainly nothing can be more important, I think, than I'm out there telling customers of the company that if I can't buy this business, I'm going to set up my own competing business.

Moore versus Moore, I think, is a case that supports us on that and would give us grounds for our motion for directed verdict. In the Moore case and in those cases that we set forth in the charges to the jury, there's language in those that says when you have those kinds of issues, silence on those issues can amount to fraud. And that then, would then transfer us to those causes of action dealing with the fraud issues as against Mr. Scully. And when we look at the various elements

that would be required to show the fraud, again, I think the evidence would support that fraud basis.

THE COURT: All right, common law fraud. Is this correct?

MR. MORGAN: There is a common law --

THE COURT: There are nine elements you have to meet. The test is nine elements to amount to common law fraud, correct?

MR. MORGAN: That is correct, Your Honor.

THE COURT: Yes.

MR. MORGAN: And when we look at all of the evidence that's in the record and you lay those aside of the elements for those nine, nine elements, the evidence would support that. And I'll get you a case in a second.

THE COURT: Go ahead. I'm not going to stop you.

MR. MORGAN: We have some, you know negligence issues, again against Mr. Scully. And where there are duties -- I think when you go to your common law fiduciary duties, there are duties to disclose information and when you have those duties and there's a failure of those duties which cause damage, which we have shown in each instance, that damage has been caused by the bleeding and the gutting of Allegro of the client base that was taken when Mr. Scully sets up his competing business Synergetic that, again all of those issues and elements have been met under the common law.

THE COURT: All right, sir.

MR. MORGAN: Then we have the civil conspiracy versus Scully, Corbin, and Yarborough. When we look at that issue, I think we can

start with Mr. Corbin's letter of the 27th of March of 2003. And his testimony in which he says, Mr. Scully, you know if you start down this road, this is where it's going to go and I know where it is going to go. And three things will happen. Either she's going to purchase you or you're going to purchase her or you're going to have to set up your own company. Those are the three options and then he --

THE COURT: So you are suggesting that this letter e-mail from Mr. Corbin and Mr. Scully has tantamount to a conspiracy to harm Ms. Mary Etta McCarthy?

MR. MORGAN: I'm saying that that is the beginning of the elements of a conspiracy claim. But it doesn't stop there, Your Honor. It then goes forward, going forward and it's really harming of the business of which Ms. McCarthy certainly is a principal party. But when you say I know that this is going to happen and it's going --

THE COURT: Well, knowing that something might happen, advice of somebody, how does that make me a co-conspirator along with Mr. Scully? Look. All right. Scully. I'm Corbin. If you do this, three things are going to happen. This, this and that. How does that make me a conspirator by giving somebody advice?

MR. MORGAN: Because he's involved in the process and the process ends up with the loss of clients of which, of which his company Merritt Vet.

THE COURT: Are you suggesting to me then, Mr. Morgan, there does not need to be an over act in a charge of civil conspiracy?

MR. MORGAN: The overt act is the moving of the business.

THE COURT: Okay. What part did Corbin or what part did the other young lady play, Ms. Yarborough? What did Corbin and Yarborough do? What overt act did they commit to further the conspiracy on behalf of Mr. Scully and Synergetic?

MR. MORGAN: On February 27th, Mr. Corbin writes the letter and moves the business knowing all along the plan.

THE COURT: All right. Stop. I'm not trying to be picky. He writes what letter?

MR. MORGAN: The letter moving the business of Merritt Vet to Synergetic on the 27th of February of 2004. That is his over act.

THE COURT: So his overt act in the conspiracy is changing his business from Allegro to another place?

MR. MORGAN: The whole process and the specific indication act would be the movement of the business. That is correct, Your Honor.

THE COURT: What is the evidence that suggest directly or indirectly that Scully, Corbin, and Yarborough had a meeting of the minds for the purpose of hurting Allegro and setting up Synergetic?

MR. MORGAN: I think you can take the letter first to the kids, of the 14th, where there's this very open admission.

THE COURT: Well, does the letter to his children on the 14th, does it mention Mr. Corbin and Ms. Yarborough?

MR. MORGAN: It does mention Yarborough. Yes.

THE COURT: All right.

MR. MORGAN: It does mention her.

THE COURT: Does it mention Mr. Corbin?

MR. MORGAN: It does not, Your Honor. It does not mention Mr. Corbin.

THE COURT: All right.

MR. MORGAN: To answer that part of the question, in a conspiracy claim, as I understand the elements, there will be some inferences that have to be drawn. We have the act. The act is the movement of the business.

THE COURT: So, it's a matter of how you interpret these acts is whether or not you can conclude that there was a meeting of the minds for the purpose of harming Allegro or something like that?

MR. MORGAN: And the harm we have shown, they have transferred the business.

THE COURT: All right.

MR. MORGAN: And then the question is going to get to then, the special damages as one of the necessary elements in a conspiracy cause of action. And we would suggest that the expert's opinion -- we have the one loss, which is the client base the 30 clients that left, we have the Scully business plan, and then the third component of the damages that we have presented were those extra things, those special things that we have to pull together to show how Allegro had been harmed.

So I think on each of the elements for the conspiracy cause of action, we have shown the act and we have shown the special damages. We have shown that there was some meeting of the minds. And with Ms. Yarborough, we have her still employed by Allegro during

the week of February 16th through the -- February 23rd through March 1 at which time, she's out during the lunch hour talking to friends. And we saw Ms. Kelly get up there yesterday saying that Emmett's going to need you to go ahead and probably help him set up his business.

THE COURT: What ties everything together, Mr. Morgan? What is the common thread that would suggest a meeting of the minds between Corbin, Scully, and Yarborough and this conspiracy claim that you have? You have got three people. Maybe doing the same thing, heading in the same direction but acting independently. Do we still have a conspiracy? Let me give you an example. Corbin is doing this. Maybe it's not heading in the same direction. Ms. Yarborough is doing it but not heading in the same direction. And we know what Mr. Scully is doing. How do we connect because three people are heading in the same direction that we have some common scheme, purpose designed for purposes of hurting Ms. McCarthy and Allegro? Just because you are headed in the same direction doing similar acts, does that equal a conspiracy is my question?

MR. MORGAN: If you go back to some of the testimony in the record -- I'll start with Ms. Yarborough with by way of example. I believe what she said was, you know, I went with him and if you are leaving, you will not leave without me. And then she gets hooked to the hip. And everything that Mr. Scully needs she's part and parcel of that whole plan of either buying it out or helping him set up the new business. So she's doing acts along the way to assist in moving the business. She's the one who secured.

THE COURT: I have enough on the conspiracy. Move to your next --.

MR. MORGAN: I believe, Your Honor, I tried to collapse those down because some of them will have the same basic elements and negligent misrepresentation and the light, the fraud, you know, the breach of contract of company by fraudulent acts.

THE COURT: All right.

MR. MORGAN: So unless the Court would like to hear any further specific case law.

THE COURT: No, thank you. All right, Ms. Gaffney.

MS. GAFFNEY: Thank you, Your Honor. May it please the Court with regard -- I'm going to start with the simple conspiracy since that's --

THE COURT: You can start any where you like, ma'am.

MS. GAFFNEY: -- which is with what we have just been talking about. Mr. Morgan is correct. A combination of two or more people for the purpose of causing harm does cause special damages. Number one, as, Your Honor, has recognized, there is no evidence of any acting in concert among the three of them.

THE COURT: I didn't say there was or was not any evidence. I was just asking some questions. So I can speak for myself. You make your argument. I understand.

MS. GAFFNEY: But there doesn't appear to be any sort of act -- in terms of some intent to harm, there is a complete absence of any evidence that George Corbin had any intent to harm Allegro. In fact, in the letter that he wrote is the start of the alleged conspiracy he says to

Emmett Scully.

THE COURT: Well, intent to harm has nothing to do with conspiracy. It is not necessarily intent as a result that you get. Is it not so?

MS. GAFFNEY: No, I believe that the --

THE COURT: You know, three people can get together legally for an illegal purpose.

MS. GAFFNEY: Sure.

THE COURT: You know, so that's just the classic definition of a conspiracy.

MS. GAFFNEY: I understand, Your Honor.

THE COURT: I get together with you, and the object is not necessarily kill somebody when you go to the drug store and rob it but somebody's killed.

MS. GAFFNEY: Correct.

THE COURT: You still got conspiracy to commit murder although they didn't intend to commit murder. They only went to rob but the result of what actually happened as a result of that combination is the true measure of whether or not there was conspiracy. It is not that, oh, we intend to go rob a bank. Somebody's killed. You are charged with conspiracy to commit murder. Not just conspiracy to rob a bank. It is the result, it is the end result of that combination that is a gravel man or the true test as to whether or not there was a conspiracy. Looking at hindsight. I'm sorry. But you go ahead.

MS. GAFFNEY: Your Honor, there has --

THE COURT: Anyway, go ahead. I get the definition of civil conspiracy.

MS. GAFFNEY: But the only evidence that George Corbin had any –

THE COURT: The damage as a result is what I said all right? I'm sorry. Go ahead.

MS. GAFFNEY: The only evidence that George Corbin had anything to do with this entire transaction is that he provided Emmett Scully information, an opinion. So, to say then that the culmination of his acting in concert in his taking Merritt Vet's business away from Allegro, I think is a misstatement because again all that Corbin did is gave opinion to Emmett Scully about the evaluation and the offer that Emmett should make. That's it. And there's no proof that there was any harm as a result of his giving that opinion to her. In fact, his opinion letter states the continued operation of this company with you, Emmett, at the helm and Mary Etta behind the scenes is unhealthy for this business. So he was obviously acting in the best interest of the business when he gave that opinion to Scully in March of 2003. That's the only evidence there is --

THE COURT: Well, there's evidence along those lines but your interpretation I beg to differ with. There's evidence in the record that something happened. How do you interpret that, those acts, is the question you are asking me to resolve. I mean, you see my point but go ahead.

MS. GAFFNEY: I do, Your Honor, and again the second element

of the conspiracy claim is there has to be a purpose of injuring the Plaintiff.

THE COURT: Civil conspiracy consists of three elements. A combination of two or more persons joining for the purpose of injuring the Plaintiff which causes special damages.

MS. GAFFNEY: Correct, and there is no evidence in the record before the Court that Corbin had any purpose or design to injure Allegro.

THE COURT: It is not what you intend. It's what actually results. Anyway go to the next, go to the next civil. I have heard enough about civil -- go to the next cause of action.

MS. GAFFNEY: In terms of breach of contract, Your Honor, there is a complete absence of any evidence in the records before the Court that there was any kind of contract even to accept that there is a partner --

THE COURT: Whether there's no written contract, there is an oral contract, there's certain duties that flow that results in certain contractual obligations from an employer to an employee and back and forth.

MS. GAFFNEY: Those are the common law duties of loyalty and fiduciary and statutory. There's no contract here. There is no hand book, there's no employment agreement, no non-compete that was breached, so it is the Defendant's position that the breach of contract and then the derivative breach of contract with fraudulent intent should fail. The Plaintiff has offered nothing on a contract. In terms of the fraud claim, Your Honor, there's been no misrepresentation that the Plaintiff

has introduced into evidence. In fact, if you look at the evidence in the record, Scully said all along, I intend to buy you out or I'm going to have to leave and start my own company. So where is the misrepresentation? He -- that's in all his letters to her. So I don't see where there's been any evidence offered by the Plaintiff that there was ever a misrepresentation, in fact, upon which Ms. McCarthy ever relied.

THE COURT: All right.

MS. GAFFNEY: So that would go both to the fraud cause of action and the negligent misrepresentation cause of action.

THE COURT: Okay.

MS. GAFFNEY: And with regard to the negligence cause of action, again, there's been no proof that there is any duty owed between Mr. Scully and Ms. McCarthy other than the duties that we have already talked about. The fiduciary duty, the duty of loyalty as an employee of the company, and the statutory duties.

THE COURT: All right.

MS. GAFFNEY: So that seems cumulative to the other causes of action.

THE COURT: Okay. Anything further?

MS. GAFFNEY: That's it.

THE COURT: Anything further, Mr. Morgan?

MR. MORGAN: Nothing further.

THE COURT: Thank you all. I had to give you an opportunity to put your positions on the record. My decision as to all motions, in terms of the Plaintiff's request with directed verdict, are denied. These are all

jury issues and I'm going to let these 12 people from Richland County community resolve all of them. If there is some problem, I can hear motions after trial but the bottom line is this, I can't say as a matter of law that you are entitled to the directed verdict. That is a jury question. That's why I'm denying it but we're going to let the jury resolve all of these issues as they should, in my humble opinion. But I had to give you a chance though to make your motion as specific as possible. We know that as lawyers. But it is a jury issue. My conclusion is we're going to let them resolve all of the issues. That's my ruling. What else do we need?

MR. MORGAN: Charge conference.

THE COURT: Let's go do that. What did I say, 11? And we are about there. But I appreciate your argument. It is denied.

(Whereupon a recess was taken commencing at 10:32 a.m. and concluding at 11:40 am.)

THE COURT: What I think 'm going to do when I come back is I'm going to go down the list of your causes of action on your pretrial brief and sort of set the stage and sort of refresh the jury's recollection and tell them each cause of action. The Defendants alleged that they didn't do anything wrong basically. But to put it in form -- that way when I give the charge, I can refer back to the specific causes of action and which charge applies to them. That's my intent. I think it's about the cleanest way to do it that I can think of. Anything further before I bring the jury in?

MR. MORGAN: Nothing from the Plaintiff, Your Honor.

case. I will give you enough time to go relax and refresh yourself. Madam forelady, when you are ready to come back in let me know. Okay? Thank you all.

(Jury exits the courtroom.)

THE COURT: We will be at ease. I anticipated this and so -- They're just taking a bathroom break and we will give them about ten minutes or so and we will come back and get that started.

(Whereupon a recess was taken commencing at 1:03 pm. and concluding at 1:14 pm.)

THE COURT: You may invite the jury to come in, Mr. Crumpton.

THE COURT: Welcome back, madam foreperson and members of the jury. As you recall madam forelady, members of the jury, at the very beginning of this case I gave you what I refer to as preliminary charge. I explained that the final arguments would be the attorney's way of trying to persuade you to agree with their version of the facts. That's what you have just heard, their final arguments. Of course, arguments by the attorneys are not evidence. The evidence you need to consider in this case is the testimony of the witnesses and the exhibits that have been introduced in this case. Now with that in mind, madam foreperson and members of the jury, you have heard the evidence and the arguments of both parties. I will now explain to you the law that applies to this action. Allegro Incorporated, Plaintiff, claims that it has been injured or damaged by the actions of Emmett J. Scully, Synergetic Incorporated, George Corbin, and Yvonne Yarborough, the Defendants in this case. Now during this lawsuit, Allegro, the Plaintiff, claims that

the Defendants should be required to compensate, that is the corporation, for the damages that they allege they have suffered. Of course, the Defendants deny that they have done anything wrong. Now, madam foreperson and members of the jury, under our constitution and code of laws, only you, the jury, can make the findings of fact in this case. I am not permitted to indicate to you how I may feel about the testimony and the evidence which has been presented and throughout this trial I have intended to be fair and impartial toward all of the parties involved. To determine the facts in this case, you will have to evaluate the credibility, which means the believability of each witness. Now some of the things you may consider as you decide whether or not to believe a witness' testimony about a particular matter include what was the manner and appearance of the witness who testified?

Was he or she straightforward or hesitant in answering? Was the testimony of a witness consistent or inconsistent? How did the witness come to know the facts that he or she testified to? Or what was his or her ability to know these facts? Is there some reason a witness would want to give testimony which would help or hurt one side or the other? In other words, was the witness biased or prejudiced? And was the testimony of a witness strengthened or weakened by other testimony or evidence? Now, members of the jury, you can believe as much or as little of each witness' testimony as you think proper. You may believe the testimony of a single witness against that of many witnesses, or just the opposite. Of course, there's no way to determine the truth merely by counting the number of witnesses presented by each side. Throughout

this process, you have one objective, to seek the truth, regardless of its source. Now ladies and gentlemen, the same Constitution of laws which designate to make you finders of the facts, as I have just explained, also make me the instructor of the law. Now, you must accept the law as I give it to you. If I'm wrong, there's another place and time for that error to be corrected.

But for this case, you must apply the law as I give it to you and this means that you should not be concerned with what you think the law should be and for that matter I can't be concerned with what I think the law should be. But you must only be concerned with the law as I tell it to you. Now, we start off with a concept of negligence. And let me try to explain this. As you recall there's -- I count 11 causes of action in this case. I'll attempt to go through each and every one of them, define and explain to you the different causes of action, and based on the explanation of the law as I give it to you, you take the law, you measure it against the facts that you have heard, and you reach a decision as to whether or not the Defendants were negligent, or willful or wanton in some way as alleged in the complaint or in the evidence that's been presented. And I'll go through each and every one of them and, like I said, define for example, breach of contractor civil and you take those definition to each of those causes of action and apply it to the facts in this case and make a decision on whether if a breach and whether or not the Plaintiff is entitled to any damages. Now the stated cause of action against the Defendants in this state, the law requires the Plaintiff to make three essential claims of their complaint. Now these three

essential claims first, and this is generally when we talked about negligence, and I will explain all of these terms as I go along.

The first thing is that the allegation must be that the Defendants were negligent or willful or wanton and one or more of a way stated in the complaint where it is alleged through the evidence presented by the Plaintiff. But I will explain what the term negligence. Second, that the Plaintiff was injured or damaged in some way because of negligent or acts on and I will explain all of this as I get to it, and, third, that the negligence or alleged wrongdoing by the Defendants was the proximate cause of the Plaintiff's damages or injuries. And in its Complaint Allegro has set up all of these things I have just mentioned to each of which has been denied by each and every one of these Defendants. Now, madam fore lady and members of the jury, the Plaintiff has the burden of proving its claims in this case and when I say he, I mean Allegro, and I'll explain the corporation as in difference from an individual later on and in this charge to you. The Plaintiff has the burden of proof and must meet this burden by proving their claims by the greater weight or the preponderance of evidence. What is meant by the greater weight of the evidence can be illustrated by imagining a traditional set of scales. I remember when I was a little kid growing up in Dillon county I used to go to the butcher shop with my father. It's the same set of scales we see on the statute of Justice. Now when the case begins, the scales are even. Now after all of the evidence has been presented, if the scale should remain even or if they should tip even slightly in favor of the Defendant, then the Plaintiff will have failed to meet his burden of proof

or its burden of proof and your verdict would be for the Defendant. Now, if on the other hand the scale should tip even slightly and favor the Plaintiff, then he or its corporation in this case will have met this burden of proof and your verdict would be for the Plaintiff.

Of course, members of the jury, there's no way to weigh evidence accept through the exercise of your good common sense and judgment. It is entirely a mental process. And the evidence you should give the most weight to is that which convinces you of its truth regardless of whom or what source it may come. I will now explain to you what the term negligence means. And parenthetically I will tell you that it is likely in this charge I might say some things twice. In terms of a definition or trying to explain to you a certain burden of proof whether it is negligence or gross negligence or clear and convincing. Now, negligence means that a person did not use the same amount of care that a person of ordinary reason and prudence would exercise in the same circumstances. The word careless means the same thing. It can be said that a negligent person has done something that a reasonable person would not have done if faced with the same situation or that on the other hand he has failed to do something that a reasonable person would have done or both.

To determine whether a particular act is negligent, you should compare that act with a manner in which a person of ordinary reason and prudence would have acted in similar circumstances. To recover in the case, the Plaintiff must prove that the Defendants were negligent in terms of a negligent burden, as I will explain this as we go along, and in

at least some way they don't have to prove all acts alleged negligence but they must at least prove one to you to recover on a theory of negligence. Now, but if you should find that the Plaintiff has not proved at least one act of negligence, then your verdict would be for the Defendants. Now even if you should find that the Plaintiff has proved the Defendants to have been negligent, it would or Allegro would not have to be entitled to a verdict unless you further found that the Defendants' negligence was the proximate cause of the damages claimed.

The law defines proximate cause of an injury or damages to be something that produces a natural chain of events which in the end brings about the injury. In other words, proximate cause is the direct cause without which the injury or damages would not have occurred. In South Carolina, persons are charged with the natural and probable consequences of their negligent conduct. Therefore, to establish liability, it is not necessary that the person charged with negligence should have foreseen a particular event which occurred. It is sufficient that he should have foreseen that his negligence would probably cause injury or damages to something or someone.

He may be held liable for anything which appears to be a natural and probable consequence of his negligence or his alleged wrongful acts. Now, members of the jury, there had been causes of action, there are causes of action in this case, a breach of duty of loyalty versus Mr. Scully, violation of the Code Section 38-8-420(a) versus Mr. Scully, breach of common law fiduciary duty versus Mr. Scully, breach of

contract with fraudulent intent versus Mr. Scully, breach of contract versus Mr. Scully, fraud versus Mr. Scully, gross negligence versus Mr. Scully, negligent misrepresentation versus Scully, violation of Code Section 33-8-310 versus Scully, a breach of duty of loyalty versus Yarborough, and civil conspiracy versus Scully, Corbin and Yarborough. Now, I need to go through and define all of these to you and in addition to that, I will have to define corporations and a lot of other things as we go along. So with that in mind, I ask that you listen carefully. It might be somewhat long. It is not necessarily that complicated but we have so many that I want to try to go through them one at a time and relate them back to the causes of actions alleged against each different Defendant. Now, members of the jury, a corporation under the law is a person but it can only act through its employee, agents, directors or officers. The law, therefore, holds a corporation responsible for the acts of its employees, agents, directors, and officers if but only -- if but only if those acts are authorized. Do you all understand that? I need to repeat that? Let me repeat it any way. A corporation under the law is a person, but it can only act through its employees, agents, directors or officer. The law, therefore, holds a corporation responsible for the acts of its employees, agents, directors, and officers if, but only if, those acts are authorized. An act is authorized if it is a part of an ordinary course of employment of the person doing it.

Whether a particular act was authorized is a question you must decide on the evidence. The fact that a Plaintiff or Defendant is a corporation should not affect your decision. All persons are equal

before the law and corporations whether large or small are entitled to the same fair and conscious consideration by you as of any person.

I charge you, madam foreperson and members of the jury, the Plaintiff has alleged that the Defendant, Scully and Yarborough breached the common law duty of loyalty owed by an employee to his employer during the period of employment. By his terms the duty of loyalty in any breach thereof arise out of and occurred during the employment relationship. But does not extend beyond the employment relationship absent some agreement or contract to the contrary. In determining -- this is still regarding breach of loyalty, okay? In determining whether Defendant Scully and Yarborough breached a duty of loyalty that they owed to the Plaintiff, Allegro, you should consider factors such as whether either Defendant solicited Allegro's customers, whether either Defendants solicited or encouraged co employees to come to work for the new company, or whether those solicitations were combined with other acts or plans aimed at competing with Allegro.

If the Defendants Scully and Yarborough were disloyal toward Allegro, the Defendants at a minimum thereby forfeit their right to receive compensation from Allegro at least during the period in which they were disloyal. However, if the Defendants' disloyal conduct was unusually egregious or reprehensible, then you can find they had forfeited the right to all compensation from the period of disloyalty through the end of the parties' employment relationship even if the Defendants properly performed their jobs.

Now, madam forelady, members of the jury, I charge you that

Plaintiff has alleged that Defendants Scully and Yarborough breached a common law duty of loyalty owed by an employee to its employer during the period of employment. By the terms the duty of loyalty and breach thereof arise out of and occurred during the employment relationship but does not extend beyond the employer employment relationship absent some agreement to the contrary.

At the same time, the employer has a duty not to do disloyal acts looking to future competition. I'm sorry. That's employer or employee?

LAW CLERK: Employee.

THE COURT: I'm sorry. Let me back up a little bit. By terms of duty of loyalty and breach thereof arise out and occurred during the employment relationship does not extend beyond the employment relationship absent some agreement to the or contract to the contrary. At the same time, the employee has a duty not to do disloyal acts looking for future competition. You, the jury, may consider acts inconsistent with promoting the best interest of their employer at the time when they were on his payroll, on Allegro's payroll. Members of the jury, all employees must at all times abide by and follow their employer's instruction and policies. Likewise, all employees owe a duty of loyalty to their employer to carry out those instructions and policies even if the employee considers those instructions and policies harsh and severe.

I charge you that you should find, that if you should find that Defendant Scully and Yarborough breached the duty of loyalty during their employment relationship, the appropriate remedy for such breach is damages which can include the salary or a portion thereof, earned

during the alleged disloyal period. Now, members of the jury, under South Carolina Code Section 38-8-420A, and this is in regards to fiduciary duty or corporate officer and it applies to Defendant, Scully. Under South Carolina Code Section 33-8-420, a corporate officer with discretionary authority shall discharge his duties as an officer.

One, in good faith, two, with a care and ordinary prudent person in a like position would exercise under similar circumstances and three, in a manner he reasonably believes to be in the best interest of the corporation and its shareholders. And in fulfilling these responsibilities every corporate officer owes duties of fidelity, honesty, good faith, and fair dealing to the corporation.

Members of the jury, a fiduciary relationship is founded on the trust and confidence reposed by one person and the integrity and fidelity of another. A confidential or fiduciary relationship exists when one imposes a special confidence in another so that the latter in equity and good conscious is bound to act in good faith and with due to regard to the interest of the one imposing the confidence to constitute a fiduciary relationship, a relationship must be more than a casual one. As a general rule, a fiduciary relationship cannot be established by the unilateral actions of one party. The other party must have actually accepted or induced the confidence placed in him. Any one acting in a fiduciary relationship shall not be permitted to make use of that relationship to benefit his own personal interest.

Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material. It is implicit in any

employment relationship that the employee shall remain faithful to the employer's interest throughout the term of employment. An employee has a duty of fidelity to his employer. An employer is duty bound not to act adversely to the interest of his employer by serving any private interest of his own in antagonism or opposition to the employer's interest. And thus is a rule not only of law but of common sense and honesty as well. In all cases, the employer is entitled to the best effort, an unbiased judgment of its employee. An employee is not permitted to assume too distinct and opposite characters in the same transaction acting for himself and pretending to act for his employer. It is a duty of the employee to further his employer's interest even at the expense of his own and matters connected with his employment.

A former employee cannot properly use in competition with his former employer information acquired from the employer by breach of duty as an employee. Thus, his use of information and properly acquired is a breach of duty to the former employer. A former employee has a duty not only to refrain from competing with the former employer by the unfair use of information, but also not to use such information to the former employer's disadvantage. As were he sales it to a third person or gives it general circulation. A former employee is subject to liability for lost cause to the former employer by any breach of duty.

Members of the jury, I charge you that when an employee leaves a job, he is entitled to take the skills and general knowledge he has either acquired or increased during his employment with him. Further, the right of an individual to follow and pursue the particular occupation

for which he is best trained is a most fundamental right.

Our society is extremely mobile and our free economy is based upon competition. One who has worked in a particular field cannot be compelled to erase from his mind all of the general skills, knowledge, and expertise acquired through his experience. These skills are valuable to such employee in the market place for his services. Restraints cannot be likely placed upon his right to compete in the area of his greatest worth.

It is implicit in a contract for employment that the employee shall remain faithful to the employer's interest throughout the term of employment. An employee has a duty of fidelity to his employer. Where one employee acts adversely to the interest of his employer he is disloyal. Unless otherwise agreed, an employee is subject to a duty to use reasonable efforts to give his employer information that is relevant to affairs and trust to him in which as the employee has noticed the employer would desire to have and which can be communicated without violating a superior duty to a third party.

The employment relationship is one of confidence and trust and places upon the employee a duty to use his best efforts on behalf of the employer. The fundamental duties of an agent are loyalty to the interest of its principal and a need to avoid any conflict between that interest and his own self interest. While acting as the agent or an employee of another, one owes the duty of fidelity and loyalty. Accordingly, a fiduciary cannot act inconsistently with his agency or trust by for example, soliciting his employer's customers for himself, enticing co

workers away from his employer, or appropriating his employer's personal property. And employers under a duty to disclose to his employer any information concerning the agency which the employer would be likely to want to know.

I charge you, members of the jury, that fairness dictates that an employee not be permitted to exploit the trust of his employer so long as to obtain an unfair advantage in competing with an employer in manner concerning the latter's business. However, it is important to the free competition basic to our national development as well as to the individual rights of employees who want to go into business for themselves that their spirit of enterprise be not unduly hampered. Thus, while employees may lay plans and take limited steps to begin competing with their employers, employees who go too far risk violating their duty of loyalty. The line separating mere preparation from active competition may be difficult to discern in some cases. The solicitation of employers, customers, likely will constitute a violation of the duty of loyalty in almost every case. However, merely preparing and submitting forms to create a new corporation likely can be seen as permissible pre-termination planning. Members of the jury, the nature of an employment contract is such that the employee promises either expressly or by implication that he or she will perform the work in a diligent and reasonably skillful manner. It is implicit that any contract for employment that the employee shall remain faithful to their employer's interest throughout the term of employment. An employee has a duty of fidelity to its employer. You must render a verdict for Plaintiff if you find

Defendant Scully and Yarborough acted adversely to the interest of Allegro, the company. We all on the same page so far? All right.

Now, in order, under a breach of contract cause of action, in order to recover under a breach of contract cause of action, the Plaintiff must establish three essential elements by the greater weight of the evidence. And I'll explain what the greater weight of the evidence means. One, that the parties entered into a binding contract, and two, that the Defendant breached or unjustifiably failed to perform this contract, and three, that the Plaintiff has suffered damages as a direct and proximate result of the breach. Members of the jury, the word breach as it applies to contracts, is defined as a failure, without legal excuse, to perform any promise that forms a whole or part of a contract including the refusal of a party to recognize the existence of a contract or to do something inconsistent with its existence. In other words, a party breaches a contract when he does not perform as he agreed to perform under the contract. A breach occurs where one party to a contract fails to carry out a term, promise, or condition of the contract.

Now members of the jury, to establish the claim for breach of contract, accompanied by a fraudulent act, and this applies as to Scully, Defendant, Scully, one must prove that as the Plaintiff must prove, one, a breach of contract; two, fraudulent intent related to the contract; and three, a fraudulent act accompanying the breach of contract. Now I will repeat that, not for inferences but I just want to make sure that we understand these things as we go along. So to establish the claim of breach of contract accompanied by a fraudulent act one must prove

three things. One, a breach of contract; two, fraudulent intent related to the breach; and three, a fraudulent act accompanying the breach. Members of the jury, a statement or claim or a document is fraudulent if it was falsely made or caused to be made without a statement or claim or a document is fraudulent, if it was falsely made or caused to be made with the intent to deceive. Fraudulent intent can reasonably be inferred from circumstances relating to the breach which point to a dishonest design on the part of the Defendant.

Non disclosure becomes fraudulent concealment when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction. A fraudulent act is of like character to a fraudulent intention but imposes some definite act looking to the perpetration of the fraud. A misrepresentation made in reckless disregard of the truth will support an action for breach of contract accompanied by a fraudulent act.

A fraudulent act is one characterized by dishonesty and fact, unfair dealing of the unlawful appropriation of another property by design. The fraudulent act may be prior to contemporaneous with or subsequent to the breach of contract but it must be connected with the breach itself and cannot be too remote in either time or character. Where one promises to do a certain thing having at the same time no intention of keeping his agreement, it is a fraudulent misrepresentation of a fact and actionable as such. The breach and the fraud do not have to be the same act though they may be.

The fraudulent act may occur before the breach, which is required

in -- what is required is that they be logically connected the one being attended upon the other. Proof of fraudulent intent may or may not involve false representations. Members of the jury, to establish the claim for fraud, for fraud, a Plaintiff must establish each of the following elements by clear cogent and convincing evidence. Now, I have explained to you earlier why we mean the burden of proof by the greater weight of preponderance of the evidence. Okay? I have slightly this way, slightly that way.

Now when you talk about proof by clear cogent and convincing evidence, let me try to give you an example. By the greater weight of the preponderance of evidence is represented by my left hand. In a criminal case the burden of proof is by proof beyond a reasonable doubt. That represents my right hand. Okay, clear cogent and convincing evidence is more than preponderance but less than proof beyond a reasonable doubt. It falls somewhere in between. And I will get back to that later. It becomes important for a certain aspect of this case when I tell you the law in punitive damages. But proof of fraud it just cannot be by the greater weight or preponderance of the evidence. It must be by clear cogent and convincing evidence which is somewhat higher than by the greater weight but less than by proof beyond a reasonable doubt.

And that is what must be proven. One, a representation; two, it's falsity; three it's materiality; four, either knowledge of its falsity or reckless disregard of its truth of falsity; five, intent that the representation be acted upon; six, the hearer's ignorance of it's falsity;

seven, the hearer's reliance on its truth; eight, the hearer's right to rely thereon; and nine, the hearer's consequent and approximate injury.

So when you talk about fraud, and this pertains to Defendant Scully, you must prove, the Plaintiff must prove all nine of these elements I just told you about. And these nine elements must be proven by clear cogent and convincing evidence, members of the jury. Failure to speak when fair dealing requires one to do so, may amount to a suppression of a fact which should have been disclosed and constitute a fraud.

Now, I'm going to talk about gross negligence, that's one of the claims, another of the claims against Defendant, Scully. In order to succeed on a claim of gross negligence, the Plaintiff must establish the Defendant owed a duty, the Defendant breached this duty in failing to exercise a slight degree of care, the Plaintiff was injured, the Defendant's breach of duty proximately caused the injury, the fact that the Defendant could foresee the injury may -- the fact that the Defendant could foresee that injury may occur is irrelevant. The duty owed by the Defendant must be specific and the absence of a duty.

Now I'm going to define what we mean by the term negligent misrepresentation. This is also one of the causes of action once again against Defendant, Scully. To state a claim for negligent misrepresentation, the Plaintiff must allege one, the Defendant made a false representation to the Plaintiff; two, the Defendant had a pecuniary money interest in making the statement; three, the Defendant owed a duty of care to see that he communicated truthful information to the

Plaintiff; four, the Defendant breached that duty by failing to exercise due care; five, that the Plaintiff justifiably relied on the representation; and, six, the Plaintiff suffered a pecuniary loss as the proximate result of his reliance answer upon that representation.

Every corporate officer or agent owes duties of fidelity, honesty, good faith in fair dealing to the corporation. Standard of conduct for officers, corporate officers, this is a cause of action style against Scully and violation of Code Section 33-8-420. Now all of these causes of action I'm mentioning to you, members of the jury, they are contained in a verdict form that I will go over with you at the end and they will list everything I'm talking about so I don't want you to be concerned about all of this. They will all be laid out for you. I just got to go through them one at a time.

As to the cause of action, charging Mr. Scully with violation of Code Section 33-8-420, let me explain this cause. 33-8-420 Standard of conducts for officers. An officer with discretionary authority shall discharge his duties under the authority. An officer with discretionary authority shall discharge his duties under that authority one, in good faith; two, with the care and ordinary prudent person in a like position would exercise under similar circumstances; and, three, in a manner he reasonably believes to be in the best interest of the corporation and his shareholders. That comes under sub section A of this title. Under sub section B, in discharging his duties as officer. In discharging his duties as officer is entitled to rely on information, opinions, reports, or statements including financial statements and other financial data if

prepared or presented by one, one or more officer employees of the corporation whom the officer reasonably believes to be reliable and competent in matters presented; or, two, legal counsel, public accountants of persons as to matters the officer reasonably believes are within the person's professional expert confidence. Subsection C of this title, goes on to say, an officer has not acted in good faith if he has knowledge concerning the matter in question that makes reliance otherwise submitted in subsection B and wonder. Now, I'm going to tell you about the law of civil conspiracy and the elements required to prove such. Conspiracy and civil conspiracy is alleged against Scully, Corbin, and Yarborough. One of the other causes of action.

Now members of the jury, a civil conspiracy consist of three elements. One, a combination of two or more persons; two, joining for the purpose of injuring the Plaintiff; and three, which causes special damage to the Plaintiff. Conspiracy may be inferred from the nature of the acts. The relationship with the parties, the interest of the alleged conspirators and other circumstances. Civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence. Concert of action, that is acting together, a matter to conspiracy may be shown by circumstantial as well as by direct evidence.

And general the law forbids broad discretion and great latitude in the admission of circumstantial evidence to establish a conspiracy and to connect those advising, encouraging, aiding, abetting, and ratifying the overt acts committed for the purpose of caring and to affect the

objects of a conspiracy. In order to establish a civil conspiracy, direct or circumstantial evidence must be produced from which one may reasonably infer the joint assent of the minds of two or more parties to the prosecution of unlawful enterprise. A conspiracy is actionable only if overt acts pursuant to the common design proximately caused damage to the party bringing the action.

It is not necessary for the Plaintiff in a civil conspiracy cause of action to allege an unlawful act in order to state a claim although a civil conspiracy may be furthered by an unlawful act. An action for civil conspiracy may exist even though Defendants committed no unlawful act and no unlawful means were used. Lawful acts may become actionable as a civil conspiracy when the object is to ruin or damage the business of another. A conspiracy to injure may give rise to liability even though the end was brought about by conduct and acts which by themselves and apart from the element or combination or concerted action could not be regarded as a legal wrong.

If the acts are sufficient to accomplish the wrongful object of the conspiracy, it is immaterial whether singly those acts would have been innocent or wrongful in their combination brought about intended mischief. The essential consideration is not whether lawful or unlawful acts or means to employ to further the conspiracy but whether the primary purpose or object of the conspiracy or combination as to injure the Plaintiff. A combination of two or more persons -- a combination of two or more persons willfully to injure a man and its trade is unlawful and if it results in damage to him, it's actionable.

Where conspiracy is claimed the Plaintiff has the right to sue any number of the claimed conspirators it chooses. The Plaintiff may sue only one conspirator, all conspirators or it may sue any number of conspirators in between. The law does not limit the Plaintiff's right to sue only those conspirators it chooses. Members of the jury, if you should find in accordance with these instructions that the Plaintiff has failed to establish the essential elements of any of its causes of actions by a preponderance of the evidence, then your verdict should be for the Defendants. If on the other hand, you find that the Plaintiff has established essential elements of one or more of its causes of action by the preponderance of the evidence, your verdict should be for the Plaintiff and you should next consider the question of damages.

The fact that I have instructed you on the proper measure of damages should not be considered as any indication of any view of mind as to which party's entitled to your verdict in this case. Instructions as to the measure of damages are given only for your guidance in the event that you should find in favor of the Plaintiff and the question of liability by a preponderance of the evidence and accord with the other instructions that I have given you and shall give you.

Now members of the jury, it is a dictate of natural justice and the law of every civilized country that a man is bound in equity not only to perform his engagements but also to repair all damages that accrue naturally from their breach. Now members of the jury, actual damages are intended to compensate the injured party, that is to put it in this case Allegro, as nearly as possible in the same position that it would have

been in before the incident occurred. In other words, actual damages includes all losses and expenses that the Plaintiff has suffered because of the Defendant's actions.

Actual damages include pecuniary losses, that means money losses, loss of wages or loss of time. I'm including what's been given to me. I don't know whether I agree with all of them but I'm going to charge them. Actual damages can include one, pecuniary loss; two, loss wages or loss of time, pain, and suffering, physical injury or illness, loss of business or loss of employment, humiliation, embarrassment, mental anguish, inconvenience, discomfort, and general expenses. The burden of proof rest upon the Plaintiff to establish the amount of damages by the preponderance of evidence but this does not mean that it must prove damages to a mathematical certainty or a precise amount. It does, however, mean that the evidence produced by the Plaintiff must be such as to enable the jury to determine what amount is fair, just, and reasonable.

Now, punitive damages, members of the jury, are given by way of punishment and also to deter or discourage others from the like conduct. They are some times referred to as exemplary damages, meaning to make an example of. Punitive damages are awarded only if you find by clear and convincing evidence that the wrong committed by the Defendants was done willfully, wantonly or maliciously. Willful, wanton or malicious conduct signifies the conscious knowing, doing of a wrongful act without just cause or excuse.

If Plaintiff proves a willful, wanton, or reckless violation of his

rights, its entitled to an award of punitive damages. And you must award it punitive damages. Now, punitive damages do not apply to each and every cause of action in this case. The ones it does apply to, I will explain them to you as I go along okay? Sort it out for you. But this is the standard for the award of punitive damages.

If the Plaintiff proves a willful, wanton, reckless violation of his right, its entitled to an award of punitive damages and you must award it punitive damages. In determining an award of punitive damages, you should consider the following factors. The character of the tort or wrong committed, the punishment which should be mediated out, and the ability of the Defendants to pay damages award. There is no definite mathematical rule upon the assessment of punitive damages as to proportion to which the same should bear as to actual damages. The following factors are relevant to an award of punitive damages. Defendants' degree of culpability, duration of the conduct, Defendant's awareness or concealment, existence of similar conduct, likelihood the award would deter Defendants of others from like conduct or the award is reasonably related to the harm likely to result from such conduct.

Other factors deem appropriate and you may consider violation of a statute as evidence of recklessness. Now, members of the jury, when it comes to punitive damages, punitive damages must be proved by clear and convincing evidence. The same standard I told you about what is required to prove fraud. It is more than a mere preponderance or greater weight of the evidence. A preponderance or greater weight of the evidence is not as high as beyond the reasonable doubt. It's

somewhere in between. So, you might find on some of these causes of actions that the Plaintiff is entitled to actual damages.

That must be proved the standard is by the greater weight of the preponderance of the evidence. Now, punitive damages require something more. Clear and convincing evidence and the standard there is more than preponderance but less than beyond a reasonable doubt but standard of proof that we use there for criminal cases.

Now, you can only award punitive damages on any of these causes of actions, if you have first found that the Plaintiff is entitled to actual damages on that cause of action. In other words, if there's no actual damages, there can be no punitive damages. And like I said, punitive damage does not apply to all of these causes of action and I'll sort it out for you as to which ones that they do apply to. But remember, when it comes to fraud and the award of punitive damages, the standard of proof required by the Plaintiff is clear and convincing and that's more than preponderance but less than proof required beyond a reasonable doubt.

Members of the jury, punitive damages are separate and distinct from compensatory damages. Compensatory damages relate mainly to the situation and damages suffered by the injured party. Punitive or exemplary damages are in relation to the injured party in only one respect. To vindicate its right which has been recklessly, willfully, or maliciously invaded, one of the chief purposes of awarding damages of this class is to punish the wrongdoers not only to prevent them from an occurrence of wrongful act but to deter others from conduct of the same

or similar kind. Punitive damages are not intended for the sole good of the injured party but also for the good of society. Members of the jury, punitive damages are appropriate where there is clear and convincing evidence that the Defendants engaged in a wide variety of its conduct related to employment with the Plaintiff, acting recklessly or in conscious disregard of the Plaintiff's rights.

Members of the jury, in determining the amount of punitive damages as well as in deciding whether they should be given it all, you the jury, the tryer of fact, should properly consider not merely the act itself, but all of the circumstances including the motives of the wrongdoers, the relations between the parties and the provocation or one provocation for the act. Included in the harm to the Plaintiff may be considered the fact that the Plaintiff has been put to trouble and expenses and the protection of its interest as by legal proceedings in this or in other suits.

Now, members of the jury, if you find Defendants Scully and or Yarborough breached the duty of loyalty that they owed the Plaintiff you can award Plaintiff actual, compensatory, and punitive damages. Actual damages are intended to compensate the injured party to put it as near as possible in the same position it was in before the Defendants occurred. Actual damages include loss in expense the Plaintiff suffered because of Defendant's actions.

Factors to be considered in compensatory damage -- like I said, some of these things I may repeat. If I do please, it's not to add any emphasis to it but by the time I sort through the request from the Plaintiff

and Defendants some times we have duplication okay. And I told the lawyers I would explain that to you and I think we're all on the same page so far so if I mention something twice it's not that I'm try emphasize it twice. It's just that I have come to it twice.

Now here are factors to consider on compensatory damages. If you find that the Defendant, Scully and Yarborough's conduct toward the Plaintiff breached the duty of loyalty they owed to Allegro Incorporated, you can award to Allegro compensatory compensations for all injuries directly or proximately and resulting from the Defendant's breach of the Defendant's duty of loyalty including actual damages, compensatory damages, and punitive damages.

In determining the amount of compensation for injuries suffered by Allegro as a result of the Defendant's conduct, you may consider the expense, if any, that Allegro recently incurred in correcting and otherwise addressing the Defendant's breach, impairment and or damage to any Allegro's representation which resulted from the Defendant's breach. The impairment, if any, of Allegro's ability to timely meet it's business in staffing needs and a character of the injury and the amount that we have necessarily to make Allegro whole. Actual damages to put it in nearly as possible the same position it was in before the Defendant's breach occurred, you can award compensatory damage to Allegro only if the company proved that it suffered such damages in addition to suffering actual damages. In other words, if Allegro did not suffer any actual damages, you cannot award any compensatory damages, meaning punitive damages. I said it earlier in a

different way. You can't get punitive damages unless you first found that they are entitled to actual damages.

Now, members of the jury, you can award punitive damages to Allegro on its claim for breach of the duty of loyalty if you found that the company is entitled to actual damages and if Allegro proved by clear and convincing evidence that Defendant Scully and or Yarborough were reckless, willful, or wanton and were acting with a conscious failure to exercise reasonable care.

When determining the amount of punitive damages, if any, you can consider only the character, you can consider only the character of the wrong committed, the punishment that should be meted out for that wrong and the ability of the wrongdoers to pay. Clear and convincing evidence means the evidence is not ambiguous, doubtful, equivocal, or contradictory but that it should be pointed to the issue and is satisfactory in the sense that the source from which it comes is one in which you as jurors can place credence.

I apologize. I said 30 minutes. Obviously it is taking me close to an hour. But this is how it goes and give me a minute to have a drink of water, ladies and gentlemen. Now, damages for breach of contract. The measure of actual damage for the breach of a contract is the loss actually suffered as a result of the breach. A party cannot recover for losses that are conjectural or speculative. The measure of damages for breach of contract should be actual damages that the injured party may reasonably have incurred. The one injured by the breach of contract is entitled to be placed in the same position as far as can be done with

money as if it would have occupied if the contract had been performed. Damages recoverable for breach of contract as such as may fairly be reasonably, as may fairly and reasonably be considered as arising naturally from the breach of contract itself or such as may reasonably suppose to have been in the minds or contemplation of the parties at the time they made the contract. In considering any element of damages, you need not require the party claiming damages to prove the amount of its damages to a mathematical certainty. Although damage may not be established to a mathematical certainty, they must be reasonable. You are not to award speculative damages or damage for any loss that was not within the contemplation of the parties as foreseeable at the time the agreement was entered into nor for damage that does not flow directly from the alleged wrongdoing. In a breach of contract action, damages served to place to non breaching party in the same position it would have enjoyed had the contractor performed, that is damages give the non breaching party the benefit of his bargain in a normal case, the damage will consist of two distinct elements. One, out of pocket costs actually incurred as a result of the contract; and, two, the gain above cost that would have been realized had the contract been performed.

Damages recoverable for breach of contract either must flow as a natural consequence to the breach and they must have been reasonable within the parties' contemplation at the time of the contract. Actual damages are intended to compensate the injured parties put it as nearly as it possibly can before the breach occurred. In other words, actual damages would be the actual losses and expenses that the

Plaintiff has suffered because of Defendant's breach of contract. Like I said, some of these things I have now said three times I know. I'm sure we are all on the same page of what it means. Members of the jury, our law has long recognized a Plaintiff's right to recover punitive damage for breach of contract accompanied by a fraudulent act. In an action for breach of contract, the motives of the wrongdoer are not to be considered in arriving at the amount of damages. The fact that such contract is breached with willful or fraudulent intent will not rule that the wrongdoer's only liable for such damages as are the natural and proximate result of the wrongful act. The mere fact that a contract was breached does not carry with it the stigma of fraud, bad faith, malice, or wantonness. Punitive damages may not be recovered for breach of contract unless the breach is accompanied by fraudulent act as distinguished from fraudulent intent. A person may recover punitive damage to a breach of contract accompanied by a fraudulent act, however, mere breach of a contract even if willful or with fraudulent purpose is not sufficient to entitle a Plaintiff to a punitive damages award. It is a cabinet fraudulent act that allows recovery for punitive damages absent a fraudulent act accompanied by the breach there can be no recovery for punitive damages. To recover punitive damages for breach of contract accompanied by a fraudulent act, the Plaintiff must prove three elements by clear and convincing evidence. A breach of contract, fraudulent intent relating to the breaching of the contract, and not merely to its making such proof may or may not involve false representation. Fraudulent intent is normally proved by circumstances

surrounding the breach and a fraudulent act accompanied by the breach. A fraudulent act is one characterized by dishonesty, in unfair dealing, or an unlawful appropriation of another's property by design the fraudulent act may be prior to contemporaneous with or subject to the breach of contract but it must be connected with the breach itself. It cannot be to revoke either in time or character. While fraudulent intent is a necessary element, a fraudulent intent of purpose in breaching a contract does not itself give rise to punitive damages such damages are recoverable only where in addition to or independent of the fraudulent intent that brought about the breach there was some fraudulent act on the part of the Defendant's accompanying breach. Even if there is a willful and fraudulent breach of contract, only actual damages can be recovered unless there is clear and convincing evidence of a fraudulent act accompanied by the breach of contract. In an action of breach of contract accompanied by the fraudulent act there must be proof of actual damages or at least nominal damages to support a verdict awarding punitive damages.

One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation. In a breach of fiduciary duties case, the Plaintiff is entitled to damages for harm caused by the breach of a fiduciary duty owed it. Damages in an action for breach of fiduciary duty are those proximately resulting from the wrongful conduct of the Defendants. Our law has long recognized a Plaintiff's right to recover punitive damages for fraud. The recovery of damages may be predicated upon a negligently made false

statement where a party suffers loss as a consequence of relying upon the misrepresentation. Members of the jury, in regards to damages under a claim of civil conspiracy, the injured party may recover the damages that flow from the conspiracy. The Plaintiff is entitled to recover only such damages as natural and proximately result from the wrongful act or acts done in pursuance of the conspiracy at which directly result from it. The element of actual damage that may be awarded are any damages or injury done to Allegro's business, any loss of business, and any loss of profits resulting from the conspiracy.

Members of the jury, I charge you that an action for civil conspiracy will not lie if a Plaintiff has obtained relief through other avenues. In fact, where the particular act charges conspiracy, are the same as those relied on as the tortuous act or actionable wrong, the Plaintiff cannot recover damages for such act or wrong in recovering, likewise, on the conspiracy to do the act or wrong. However, a Plaintiff can only recover damages one time. I charge you that the law requires the injured party to do those things a prudent person or party would do to avoid damages that are reasonably avoidable but it does not require the party to exercise or exert itself unreasonably or to incur substantial expense to avoid damages.

Now, I'm near the end members of the jury, believe it or not okay? Now this is a charge, this is in regards to Mr. McHenry's testimony, the expert witness in this case. In considering any opinion of an expert that has been admitted in this case, you should first consider the factual evidence. An expert may base his opinion upon factual evidence

presented at trial. Alternatively, experts may base their opinions on facts that are not in evidence. An expert testimony is based upon facts which are reasonably relied upon by experts in that particular field.

Consider expert testimony in the same manner as you do any other testimony. Give expert testimony such weight as you believe it is entitled when considering all of the other evidence in the case. Expert testimony is given for the purpose of helping you understand the evidence. Expert testimony is not given for the purpose of controlling your judgment. The value of expert testimony does not depend upon the skill and knowledge professed by the expert but rather upon the skill and knowledge which an expert actually possesses. You as jurors must determine whether a particular expert possesses such knowledge and skill. You may consider the training, experience, ability to communicate, ideas to you, the lodging of the opinions, the facts in support for the opinions, and all other factors used to weigh and judge the testimony of other witnesses. The value and effect of expert testimony are matters solely to be estimated by you the jury. No mere opinion of an expert can be accepted as in of itself truthful or reliable. Expert testimony must be weighed by you and convince you by the greater weight of the evidence of the same force and effect as any other fact proved in this case before you can rely on it as the basis of for a finding of fact.

Now, members of the jury, whatever your verdict in this case, it must be unanimous. That is, all 12 of you must agree. And until this end, as I suggested to you earlier, I have what we referred to as a verdict form. And it list each causes of action I have mentioned to you.

And you got to bear in the definitions and the elements of those causes of action and I will run through this with you right now.

And it says, State of South Carolina, County of Richland. Allegro Incorporated, Plaintiff versus Emmett J. Scully, Synergetic Incorporated, George Corbin, and Yvonne Yarborough, Defendants. Court of the Common Pleas, Case Number Plaintiff's I -- it is a verdict form. And it says, Plaintiff Allegro Incorporated hereinafter Allegro moves and request that the Court issue or use special verdict form as follows, and this is a verdict form that both Ms. Gaffney and Mr. Morgan agreed upon.

MR. MORGAN: That is correct, Your Honor.

MS. GAFFNEY: That's correct, Your Honor.

THE COURT: All right. I just want to make sure. And the language suggested came from one side but actually it is agreed upon by both sides. Just want you all to understand that. Now, and it starts Plaintiff Allegro Incorporated hereinafter Allegro moves in or request that the Court issue or use a special verdict form as follows. This is by agreement of the parties what you are getting here and it starts out with this. We the jury finds as follows: The jury finds for Allegro in all claims. Now, when you get the verdict form you are going to go through one claim. The other claim goes into all of the claims and as to each claim you must use the standards of proof I mentioned to you by the greater weight of the preponderance of evidence and most of these claims and the ones I have told you differently by clear and convincing evidence like with punitive damages but they all listed it for you and it should be easy

enough to sort out. You do your best. You have any trouble, you call me. We will bring you back in here and explain it some more. That's just the way it works in these things so with that in mind it says, we the jury, find as follows, the jury finds for Allegro in all claims. Under that if you find for Allegro in all claims please answer questions two, four, six, eight, ten, 12, 14, 16, 18, 20, and 22 and have the jury foreperson sign and date this form. Starts with that.

Next paragraph is on Plaintiff's claim for breach of the duty of loyalty against Defendant, Scully, breach of loyalty, Mr. Scully. One, has the Plaintiff proven by a preponderance of the evidence, preponderance, that the Defendant Scully breached the duty of loyalty owed to Allegro? And it says yes or no. And each and every one of these causes of action, if you are convinced by the greater weight or preponderance of evidence that the Plaintiff have proved their case, you should award them a verdict. If not, then you should say no. That makes sense, right?

Two, under this, on Plaintiff's claim for breach of duty of loyalty against Defendant Scully. One, has the Plaintiff proven by greater weight or preponderance the evidence that Scully breached the contract? Yes or no. Two says if you answered yes to question one, what amount of damages, if any, do you wish to award the Plaintiff? Please state both figures in words, both figures in words and it goes on to say we find the Plaintiff is entitled to actual damages in the amount of blank. Now you have got to be, it's got to be proven to your satisfaction what amount of money, if any, that they are entitled to okay by the

greater weight or preponderance of the evidence. We're talking about actual damages.

Compensatory damages in the amount of blank and punitive damages in the amount of blank. Punitive damages can only be awarded if you first award it actual damages. All right. So keep that in mind too. Second page, on Plaintiff's claim for a violation of Code Section 33-8-420, and this is as to Defendant, Scully. Has the Plaintiff proven by a preponderance of evidence that Scully violated Code Section 33-8-420? Yes or no. If yes, proceed to question four. If no, proceed to question five.

And once again, to remind you 38, 33-8-420 is the standard of conduct for corporate officers. Is that correct? Okay. All right. So, that's what this cause of action means. Has Defendant Scully, as a corporate officer under this cause of action 33-8-420 -- now if it's been proven to your satisfaction by the greater weight of the evidence that he did, in fact, do something wrong, if so, if you answer yes to question three, what amount of damages, if any, do you award the Plaintiff? Please state both figures in words. We find the Plaintiff is entitled to actual damage in the amount of so and so, compensatory damages and punitive damages. It goes on to the next cause of action, on Plaintiff's claim for breach of common law fiduciary duty against Scully and Scully only, has the Plaintiff proven by greater weight or preponderance of evidence Scully? Yes or no. And we find there is a verdict that follows that. Then you move to the next cause of action on the Plaintiff's claim for breach of contract with fraudulent intent against Defendant Scully.

Has the Plaintiff proven by the preponderance of evidence that Scully breached the contract with Allegro and that this breach was covered with fraudulent intent accompanied by a separate fraudulent act that was closely related to the breach of contract? Yes or no. If yes, it gives direction to proceed to question eight. If no, go to question nine. Question eight is, if you answered yes to question seven, what amount of damages, if any, do you award the Plaintiff. Please state both figures and numbers. We go on to the next cause of action. On Plaintiff's claim for breach of contract against Scully. Has the Plaintiff proven by the greater weight of the evidence or preponderance that Scully breached the contract? Yes or no. We find if you do, what amount of money, if any. The next claim is on Plaintiff's claim for fraud against Defendant Scully. Has the Plaintiff proven by the preponderance of evidence that Scully's action in, herein upon which Allegro relied constitute a fraud? Yes or no. If yes, go to the next question. If you answered yes to question eleven, what amount of damages, if any, you think is entitled to and it mentions actual compensatory damages? Next claim on Plaintiff's claim for gross negligence is against Scully and it follows the same line. Now, I could go through all of these but I think you get the idea and I think you will be able to follow it sufficiently by reading the questions as they come up. If you have any difficulty, you let me know. But once you have reached your verdict on all of these claims and you sign your name, foreperson, and date it and that should conclude your services on this particular case.

Now, what again I ask you to do and hopefully for the final time is

go back to the --

MR. MORGAN: May we approach for a second, Your Honor.

THE COURT: Sure.

(Thereupon, a bench conference was held.)

THE COURT: Now, so we're now at a point where I can send you out. You can't begin your deliberations until you receive the signal to do so. That's probably what we're talking about up here and the point being after you go out, I got to ask a short legal questions, we got to resolve those and then we have to sort through all of the Exhibits and make sure what's in the record should be in the record. So it takes a little bit of time. If we miss something then we want to give it to you until we find it out. So go to the jury room. Please do not start deliberating but you can start eating if you want to. And this is the deal it has been along time. These sandwiches may be a little cold now but we have microwaves throughout this place and if you need to heat them up some we'll make sure we do that. So go in, don't discuss this case. I think we got everything okay but we need to sort through these exhibits and make sure what's in and what's not. So until, the bailiff knocks on the door and say here are all of the exhibits, here is the verdict form, don't begin your deliberations. Okay thank you all so very much.

(Jury exits the courtroom.)

THE COURT: As long as you all are happy, I'm happy. I hadn't read this stuff. I didn't know it was going take me that long. Big deal. Make sure all of the exhibits are there. There's one or two I.D.s that we have got to take care of.

MR. MORGAN: I think there were some objections and there were some that we did not enter. We have separated those out that we didn't.

THE COURT: Just take your time. They are going start eating so look through those to make sure we are on the same page and if we are we'll give it to the jury. And while we do that, let me say this to everybody involved by the end of this week, you all are tired and worn out. That is the way it is.

(Whereupon a recess was taken commencing at 2:30 pm. and concluding at 4:37 pm.)

THE COURT: But I want to make sure you understand what you are asking. And it says, dear Judge, would we have to break down the total of each damage, total of damages per each question two, four, six, etcetera or the amount within the general amount.

THE JUROR: Yes.

THE COURT: Explain what you are trying to --

THE JUROR: Okay. According to this form, the question, the first one is the point of law or the question to damages or whatever. Question two is about damages.

THE COURT: Uh-huh.

THE JUROR: And we wanted to know if -- are the damages, for instance, on question number two, do I write -- do we write.

THE COURT: We find the Plaintiff is entitled to actual damage in the amount of --

THE JUROR: Is that actual amount that we write here, the total

that we decided to award or do we just --

THE COURT: A break down on each cause of action. In other words, it says on Plaintiff's claim of breach of duty of the loyalty against Defendant Scully. Has the Plaintiff proven by upon the evidence that Scully breached the duty of loyalty? If it is yes, you go to question two. If you answer the question, if yes, proceed to question two. If no, go to question three. Question two is, we find the Plaintiff is entitled to damages in the amount of blank. That would be on that cause of action. Whatever you think they proven by the preponderance or the greater weight of evidence to value, if any, on that.

THE JUROR: Okay.

THE COURT: And then for the next cause of action will be the same thing. And for the next it will be the same thing.

THE JUROR: Just to make it clear in my head. For instance, if we said we were going to award them ten apples, so then on this one, we think, oh, this one is worth two apples, the next question would be until we --

THE COURT: Three apples. I think that's a good way to put it. And that's what we all understand. That's what we anticipate.

THE JUROR: So after you have totaled every one of the damages you would have the same amount?

THE COURT: You give a certain number of apples for each cause of action. And that's all you are worried about. And there are some law related matters that I will take care of as a Judge but you say, and it's whether you believe it or not, whatever your answer is like for on

the Plaintiff's breach of duty of loyalty, you assign a certain number of apples for that, if you find that they deserve any apples. And on the next one on Plaintiff's claim for a violation of Code Section 38,33-8-420, you give a certain number of apples for that or if any apples at all. And you go down the list.

THE JUROR: Okay.

THE COURT: So, for each cause of action depends on the breach of duty or contractor whatever you may find give a number, assign a value that you have been -- if the Plaintiff's have proved to you by the greater weight of preponderance of evidence they are entitled to two apples on this one or three on that one or four on that one, that's the way you do it and don't worry about the total. Hold on a minute.

MR. MORGAN: But they would ultimately get to a total at the end of the day if there are damages found. The jury would say we believe that they're entitled to ten apples but the ten apples consist of one, three, one--

THE JUROR: Yes, that's what I meant.

MR. MORGAN: But at the end of the day they will say, that the Plaintiff should get ten apples. But they're only getting one apple on this cause of action.

THE COURT: And one apple on that. You agree with that?

MS. GAFFNEY: I agree with that.

THE COURT: Okay we're all on the same page?

THE JUROR: That's all I needed. Thank you.

(Whereupon a recess was taken commencing at 4:41 pm. and

concluding at 5:25 pm.)

CLERK: Madam Foreperson, have you reached a verdict?

THE JUROR: Yes, we have.

CLERK: Will you hand it to me?

THE COURT: (Views verdict).

THE COURT: You may publish it.

CLERK: Case number 2004-CP-40-1915. Allegro Incorporated versus Emmett J. Scully, Synergetic Incorporated, George Corbin, and Yvonne Yarborough. Plaintiff Allegro Incorporated moves and request that the Court issue or use special verdict form as follows. We, the jury find as follows, the jury finds for Allegro on all claims. Question number one, has the Plaintiff proven by a preponderance of the evidence that the Defendant Scully breached the duty of loyalty owed to Allegro? Yes. Question number two, if you answered yes to question number one, what amount of damages, if any, do you wish to award the Plaintiff? That's $160,000 and we find that the Plaintiff is entitled to actual damages in the amount of $160,000 and punitive damages in the amount of $0. Question number three, has the Plaintiff proven by a preponderance of the evidence that Defendant Scully violated South Carolina Code Section 33-8-420A? The answer is yes. Question number four, if you answered yes to question number three what amount of damages, if any, do you wish to award to the Plaintiff? We find that the Plaintiff is entitled to actual damages in the amount of $160,000, compensatory damages in the amount of $0.

And punitive damages in the amount of $0. Question number

five, has the Plaintiff proven by preponderance of the evidence that the Defendant Scully breached the common law fiduciary duty owed to Allegro? The answer is yes. Question number six, if you answered yes to question number five, what amount of damages, if any, do you wish to toward to the Plaintiff? We find that the Plaintiff Is entitled actual damages in the amount of $160,000, compensatory damages in the amount of $0, and punitive damages in the amount of $0.

Question number seven, has the Plaintiff proven by a preponderance of the evidence that Defendant Scully breached a contract with Allegro and that this breach was accompanied with fraudulent intent and accompanied by a separate fraudulent act that was closely related to the breach of contract? The answer is yes.

If yes, that fraudulent act was the intent to establish his own company Synergetic while still under employment with Allegro. Question number eight, if you answered yes to question number seven, what amount of damages, if any, do you wish to award to the Plaintiff? We find that the Plaintiff is entitled to actual damages in the amount of $160,000, compensatory damages in the amount of $0, and punitive damages in the amount of $0. Question number nine, has the Plaintiff proven by the preponderance of the evidence that Defendant Scully breached the contract with Allegro? The answer is yes.

Question number ten, if you answered yes to question number nine what amount of damages, if any, do you wish to award to the Plaintiff? We find that the Plaintiff's entitled to actual damages in the amount of $160,000. On the Plaintiff's claim for fraud against

Defendant, Scully, question number 11, has the Plaintiff proven by a preponderance of the evidence that Defendant Scully's actions herein upon which Allegro relied constitute a fraud? The answer is yes.

Question number 12, if you answered yes to question number 11 what amount of damages, if any, do you wish to award to the Plaintiff? We find that the Plaintiff is entitled to actual damages in the amount of $160,000, compensatory damages in the amount of $0, and punitive damages in the amount of $0. On Plaintiff's claim for gross negligence Defendant Scully, question number 13, has the Defendant proven by a preponderance of the evidence that the Defendant Scully's actions herein constituted gross negligence? The answer is yes. Question number 14, if you answered yes to question number 13 what amount of damages, if any, do you wish to award to the Plaintiff? We find that the Plaintiff is entitled to actual damages in amount of $160,000.

On the Plaintiff's claim of negligent misrepresentations against the Defendant Scully, question number 15, has the Plaintiff proven by a preponderance of the evidence that Defendant Scully's actions herein constituted negligent misrepresentation? The answer is yes. Question number 16, if you answered yes to question number 15, what amount of damages, if any, do you wish to award to the Plaintiff? We find that the Plaintiff is entitled to actual damages in the amount of $160,000, compensatory damages in the amount of $0, and punitive damages in the amount of $0.

On the Plaintiff's claim for violation of South Carolina Code Section 33-8-310 against Defendant Scully question number 17, has the

Plaintiff proven by preponderance of the evidence that the Defendant Scully violated South Carolina Code Section 33-8-310? The answer is yes. Question number 18, if you answered yes to question number 17, what amount of damages, if any, do you wish to award to the Plaintiff? We find that the Plaintiff is entitled to actual damages in the amount of $160,000, compensatory damages in the amount of $0, and punitive damages in the amount of $0.

On Plaintiff's claim for breach of the duty of loyalty against Defendant, Yarborough. Question number 19, has the Plaintiff proven by preponderance of the evidence that Defendant Yarborough breached the duty of loyalty owed to Allegro? The answer is yes. Question number 20. If you answered yes to question number one, what amount of damages, if any, do you wish to award the Plaintiff? We find that the Plaintiff is entitled to actual damages in the amount of $160,000, compensatory damages in the amount of $0, and punitive damages in the amount of $75,000. On Plaintiff's claim for civil conspiracy against Defendant Scully, Corbin, and Yarborough. Question number 21, has the Plaintiff proven by preponderance of the evidence that Defendants Scully Corbin, and Yarborough's actions herein constituted civil conspiracy? The answer is yes.

Question number 22, if you answered yes to question number 21, what amount of damages, if any, do you wish to award the Plaintiff? We find that the Plaintiff is entitled to actual damages in the amount of $160,000, compensatory damages in the amount of $0, and punitive damages in the amount of $175,000. This is signed foreperson, Carol

Gaurdiola, May 5th, 2006. Madam foreperson, is this your verdict and verdict of the entire jury?

THE JUROR: Yes, it is.

THE COURT: All right. Now, can I have the verdict form back? Madam forelady, the time you came in and you used an excellent example about apples. And you were instructed or asked to find a certain number of apples for each cause of action. Now, my question to you is what is the total number of apples, so to speak, that you intended to award the Plaintiff in this case?

THE JUROR: 1.76 -- $1,716,000.

THE COURT: All right. Slow down.

THE JUROR: Actual damages.

THE COURT: All right. Say that again, please.

THE JUROR: $1,760,000 in actual damages.

THE COURT: $1,760,000 in actual damages.

THE JUROR: Yes, sir.

THE COURT: That is the total number of apples you wanted to give to the Plaintiff in their case.

THE JUROR: Yes.

THE COURT: What about punitive damages in terms of the total number of apples you wanted to give to the Plaintiff?

THE JUROR: $250,000.

THE COURT: So, you wanted to award $1.7 million for actual damages to the Plaintiff.

THE JUROR: Yes, sir.

THE COURT: And $250,000 for punitive damages to the Plaintiff. And that represents the total amount of apples, so to speak. So the total amount of the verdict you wanted to award the Plaintiff is $1,935,000.

THE JUROR: Yes, sir.

THE COURT: I'm sorry. Add that up again. 1.7 plus 250. He's my law clerk and he played basketball at Carolina. We can all figure it up. So the total amount would be 2 million? $2 million actual and punitive. The total amount of actual and punitive is $2 million awarded to the Plaintiff, is that correct?

THE JUROR: Yes, sir.

THE COURT: All right. Now--

MR. MORGAN: I think it is 2,010,000.

CLERK: 2,010,000.

THE COURT: I'm sorry.

THE JUROR: We have a mathematician over here.

THE COURT: Okay. We can add it up but your mathematician says it was the intent of this jury to award the Plaintiff $2,010,000.

THE JUROR: Yes, sir.

THE COURT: $2,010,000. Let me ask you this. So say you all? Is that your verdict and is that still your verdict?

THE JUROR: Yes.

THE COURT: So once again, let me review it. Actual damage 1.7 million and the remainder of that sum is punitive damages totaling in the amount of $2,010,000. Now having gone through that, as I suggested to you all that I would, anything further of this jury from the

Plaintiff?

MR. MORGAN: Nothing from the Plaintiff, Your Honor.

THE COURT: Ms. Gaffney, anything from the defense?

MS. GAFFNEY: Nothing at this time, Your Honor.

THE COURT: All right. Now members of the jury, we all watch trials on TV. We read about them in the paper but until you actually sit on a jury and have to sit in judgment of your fellow citizens, I'm sure so many of you have never been on the jury before didn't realize how difficult it was. A long case we, not so complicated except by the fact you had so many causes of action. I watched you all each and everyday and got to know you fairly well over the course of the week. And I'd like to congratulate the sincerity, the honesty of which you approached your job, how vigilant and conscious you were in resolving these issues in this case. And I thank you on behalf of all of the participants, all of the lawyers, both the Plaintiff's, and the Defendants.

As a result of your service here this week you won't be required to be on jury duty again for at least three years. But if in three years or ten years from now if you ever receive another invitation to come and sit as a jury, I hope you will be happy to accept it. We appreciate your service so much. In our government, of the people, by the people, and for the people cannot exist or operate without the people and that means each and every one of you citizens from this community. They say, a lot of people say the juries are like the conscious of the community and like the conscious of the community, so like a mirror you need to reflect its values. I think that's what you all tried to do here in this case and I think

you have been successful. So I appreciate your hard work this week. And you are free to go but you need to go back to the jury room where Jackie has --

CLERK: Excuses.

THE COURT: Excuses to let your wives and your employees know that you were, in fact, here the whole week. And I'm sure that if I ever see any of you again at the Target or Publix or somewhere and if I do I hope we meet as friends. So thank you all so very much. Good luck ladies and gentlemen.

(Jury exits the courtroom.)

THE COURT: Now what I'm going do is, Ms. Gaffney, I'm going to make sure I make a copy right now of this for each of you and what I would suggest is this, I will ask Ms. Jackson, here -- Ms. Jackson, I want you to type up the jury coming back with the verdict and all of this, the questions that I asked them, you know, the last part the jury come back with the verdict. I want you to type that up. And I'm going to have her type that up. I'm going to give you ten days, give me a copy of this, have her to type that up with all of the questions I asked the jurors and give that to you also. And I say ten days but I can extend it with the agreement of you all. So the idea is to give you a copy of this, give both of you a chance to go through it thoroughly, get a copy of it between members and foreperson about all of the questions and the different cause of action with that together that should be sufficient I hope for you to do whatever motions you need and for you all to sort through it all.

Good luck to everybody. You are free to go but I'm going to give you this before you all leave. By the time you pack up and everything, I have data

for everybody.

(Whereupon the case ended at 5:40 pm.)

End of requested transcript of record.