

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2010-CP-23-1646

Kyle Pertuis, ... Respondent ~~Appellant~~

v.

Front Roe Restaurants, Inc., Beachfront
Foods, Inc., Lake Point Restaurants, Inc.,
Mark Hammond and Larkin Hammond, ... Appellants ~~Respondents~~

RECORD ON APPEAL VOL. I

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2010-CP-23-1646

Front Roe Restaurants, Inc.,)

Plaintiff,)

vs.)

Kyle Pertuis,)

Defendant and
Third-Party Plaintiff,)

vs.)

Beachfront Foods, Inc., Lake Point
Restaurants, Inc.,)

Third-Party Defendants.)

CONSENT ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2012 SEP 10 P 1:01

This case came before this Court on various Motions. Prior to hearing the Motions, however, the parties agreed to the following to expedite and to streamline this case for trial:

1. The parties will be realigned, as will be henceforth reflected in the caption of this Consent Order, so that Kyle Pertuis will be the Plaintiff and the corporate Defendants and Mark Hammond and Larkin Hammond will become Defendants. The caption hereafter will be as follows:

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Kyle Pertuis,)

Plaintiff,)

vs.)

Front Roe Restaurants, Inc.,)

Beachfront Foods, Inc., Lake Point)

Restaurants, Inc., Mark Hammond,)

Larkin Hammond,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-1646

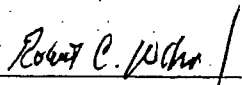
2. Kyle Pertuis, as Plaintiff, will prepare and file an Amended Complaint in which he asserts, as a Plaintiff, common-law and statutory claims for oppression of minority shareholder.

3. Defendants will file Answers asserting such defenses and counterclaims as they may deem appropriate, including a Declaratory Judgment Action to determine Pertuis' shareholder ownership in the corporate Defendants and a counterclaim for the value of a boat, the ownership of which is in dispute between the parties.

4. The Parties will fully and fairly cooperate in discovery in this action.

5. This case will be tried during the week of November 26, 2012, or earlier, if possible.

I so move:



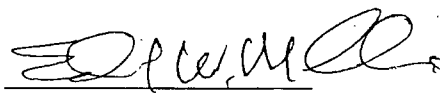
Robert C. Wilson, Jr.
Attorney for Kyle Pertuis

I consent:



Rodney F. Pillsbury
Attorney for Front Roe Restaurants, Inc.,
Beachfront Foods, Inc., Lake Point
Restaurants, Inc., Mark Hammond,
Larkin Hammond

Dated: 7/7/12



Hon. Edward W. Miller
Business Ct. Judge,
13th Judicial Circuit

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Kyle Pertuis,)

Plaintiff,)

vs.)

Front Roe Restaurants, Inc.,)

Beachfront Foods, Inc., Lake Point)

Restaurants, Inc., Mark Hammond,)

Larkin Hammond,)

Defendants.)

IN THE COURT OF COMMON PLEAS

2010-CP-23-1646

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

2013 JUL -3 A 9:27

ORDER

This case came before this Court for a bench trial on May 28, 29, 2013. Plaintiff's claim, essentially, was that Defendants Mark and Larkin Hammond, ("MLH"), had oppressed Plaintiff as a minority shareholder in the corporate Defendants. As relief, Plaintiff sought that this Court order a buyout of Plaintiff's shareholding in the three corporate Defendants. Plaintiff has also sought payment for shareholder distributions which were declared by the three corporate Defendants, but which Plaintiff never received. Plaintiff additionally sought compensation for the termination of his employment by MLH.

Plaintiff testified that he had been employed by MLH to work for the three corporate Defendants as Managing General Partner for the restaurants owned by the corporate Defendants. Plaintiff's worked for Defendants for 9.5 years; Plaintiff was responsible for the operations of 3 restaurants and approximately 100 employees. Plaintiff had acquired a 10% ownership in Beachfront Foods, Inc., ("BFF"), and in Lake Point Restaurants, Inc., ("LPR"), by operation of graduated employee stock vesting plans.

Defendant Mark Hammond testified that Plaintiff had become, at the least, a 1% shareholder in Front Roe Restaurants, Inc., ("FRR"). Defendant Mark Hammond disputed, however, that Plaintiff was a 10% shareholder. Hammond testified that there had been a document which set forth a vesting schedule so that, when FRR reached gross profit of \$500,000 for a fiscal year, Plaintiff would become a full 10% shareholder. Hammond testified that FRR had gross profit of \$361,498 in 2008, which did not qualify Plaintiff for a 10% ownership position in FRR. Hammond testified that the FRR vesting schedule could not be found. Defendant Larkin Hammond did not attend the trial of this case to corroborate Defendant Mark Hammond's testimony.

Plaintiff presented an exchange of emails which occurred during the early summer of 2009. The emails presented an offer from Plaintiff, apparently accepted by MLH, that Plaintiff was to become a 10% shareholder in FRR. Plaintiff testified that he endeavored to secure formal documentation of his 10 % share ownership, to no avail.

For Plaintiff, Dr. Charles Alford, Ph.D., testified as an expert witness as to the valuation of the corporate Defendants. Defendants presented Louis Manios, a local Public Accountant, to testify as to the valuation of the corporate Defendants. The Court finds, by virtue of his excellent credentials, Dr. Alford's testimony to be more persuasive.

Based on the testimony presented and the documents introduced into the record of this case, the Court makes the following findings of fact and conclusions of law:

1. Plaintiff and Defendants owned and operated a *de facto* partnership from Greenville.

This Court finds that Plaintiff was the Managing General Partner, in charge of the operations at the three corporate Defendants. From the clear, uncontroverted testimony of

Defendant Mark Hammond, Dr. Charles Alford, and Louis Manios, this Court finds that there had been considerable movement of corporate funds between the three corporate Defendants, for which Defendants did not produce any documentation in the record of this case. Defendant Mark Hammond testified that there had been no shareholder meetings, nor had there been any meetings of the board of directors, of any of the three corporate Defendants.

The record of this case presents other examples of disregard for corporate formalities. Defendant Mark Hammond testified that, without any corporate formality, MLH conveyed a boat to Plaintiff to avoid liability and high insurance premiums. It is worth noting that the three corporate Defendants and the majority shareholders were all represented by same counsel. Throughout, there has been a dearth of respect for proper corporate governance amongst the three corporate Defendants, blurring the distinction between the corporate Defendants. Accordingly, this Court finds and concludes, applying the standards articulated in *Magnolia North Prop. Owners' Ass'n v. Heritage Communities, Inc.*, 725 SE2d 112, 397 SC 348 (Ct. App. 2012), that MLH and Plaintiff operated the three corporate Defendants as a *de facto* partnership of the corporate entities. From Plaintiff's title, "Managing General Partner," from the joint and unified internet web site for the three corporate Defendants, and from the parties' email, the Court further finds that the *locus* of the partnership is Greenville, S.C..

2. Plaintiff is a 10% shareholder in Defendants Beachfront Foods, Inc., and in Lake Point Restaurants, Inc.

MLH and the corporate Defendants conceded that Plaintiff was a 10% shareholder in Beachfront Foods, Inc., ("BFI"), and Lake Point Restaurants, ("LPR"). Accordingly, it is the law of this case that Plaintiff was, and is, a 10% shareholder in BFI and LPR.

3. Plaintiff's shareholder ownership in Front Roe Restaurants, Inc.

Plaintiff and Defendants contested the level of shareholding of Plaintiff in Front Roe Restaurants, Inc., ("FRR").

In support of his case for 10% ownership of FRR, Plaintiff introduced an exchange of emails. In the exchange of emails, Defendant Mark Hammond offered to Plaintiff, on June 27, 2009, \$50,000 in salary, conveyance of a boat, and 10% of net shareholder distributions. In reply to Mark Hammond's offer, Plaintiff counterproposed that Plaintiff receive a salary of \$67,000, the conveyance of the boat, and 10% of net shareholder distributions, certainly in 2010, if Plaintiff had not already achieved 10% ownership in all three corporate Defendants. In response to Plaintiff's counterproposal, Mark Hammond advised on June 30, 2009, that the corporations would incorporate Plaintiff's changes into a forthcoming "employment agreement," which was to be delivered soon.

Defendant Mark Hammond then adjusted Plaintiff's salary to \$67,000; Mark Hammond conveyed the boat to Plaintiff. Plaintiff argues that there had been a "meeting of the minds" and that the parties engaged, at least, in part performance of their understanding, as documented by the foregoing emails. Plaintiff asserted that, thereafter, Plaintiff was a 10% shareholder in all three corporate Defendants.

Defendant Mark Hammond, however, testified that Plaintiff would not become a 10% shareholder in FRR until FRR reached \$500,000 in gross profit, under the terms of the missing FRR vesting schedule. Defendant Mark Hammond testified that the 2008 gross profit for FRR was \$361,498. Calculation shows that \$361,498 is 72% of \$500,000. This Court finds and concludes that, despite the strength of Plaintiff's argument for 10% ownership from the exchange

of emails, FRR had reached 72% of Defendants' alleged qualifying threshold for Plaintiff to become a 10% owner of FRR under the missing FRR vesting schedule. In light of the "missing" FRR vestment schedule which was under the control of MLH, this Court has determined to equitably treat this disputed ownership issue as if there was a *graduated* vesting schedule in place¹, so that Plaintiff had achieved 72% of the goal of 10% shareholding in FRR, or 7.2% ownership of FRR. Based on the foregoing, this Court has determined to declare that Plaintiff's ownership in FRR is 7.2%. ("Equity regards and treats as done that which in good conscience ought to be done." *Wilkie v. Phila. Life Ins. Co.*, 197 SE 375, 187 SC 382 (1938); *Atwell v. Orr*, 589 F. Supp. 511 (D.Ct. SC, 1984).

4. Oppression of Plaintiff by MLH.

Plaintiff has alleged that MLH has oppressed him as a majority shareholder, in violation of their common-law corporate fiduciary duties to Plaintiff. The landmark SC case for the oppression of minority shareholders is *Kiriakides v. Atlas Food Systems and Services, Inc.*, 541 SE2nd 257, 343 SC 587, (S.Ct. 2001). In *Kiriakides*, the SC Supreme Court found, the following criteria sufficient to order a buyout of the minority shareholders:

1. Unilateral action to deprive the shareholder of correct shareholding percentage;
2. Refusal to offer opportunity to minority shareholder to participate in related enterprises;
3. Minority shareholder cannot participate in future salary, distributions, and profits;
4. Majority continues to reap the benefits from the corporations;

¹The Court notes that the parties had employed a *graduated* employee stock vesting schedule for Plaintiff's stock acquisition in BFI and LPR, *supra*.

5. Adequate financial strength in the corporations to afford a buyout;
6. Total estrangement between majority and the minority;
7. Low-ball buyout offer to minority;
8. No public trading in stock of corporation.

Kiriakides, pp. 267-268, pp. 342-343, *supra*.

This case presents all of the facts which the *Kiriakides* court used as a basis for a court-ordered buyout. This Court has also considered legal authority from North Carolina, submitted by Defendants, which provides additional support for the foregoing analysis: *Meiselman v. Meiselman*, 307 SE2d 551, 309 NC 279 (S.Ct. 1983).

Plaintiff presented evidence that he was excluded from a real estate opportunity in connection with LPR. Likewise, cross-examination established that Defendants MLH had opened a new restaurant, "Grill Marks," using funds from FRR, without offering to allow Plaintiff to participate in the new venture, while using funds from a corporation of which Plaintiff was a shareholder. These are classic examples of misappropriation of corporate opportunities by the majority shareholders and are oppressive to the minority shareholder.

This Court finds that Defendants continued to frustrate Plaintiff by changing the threshold for Plaintiff to become a 10% shareholder in FRR and by failing to formally document the agreement memorialized in the email exchange of 2009. Post-termination examples of oppressive conduct by MLH included resisting Plaintiff's request for financial records, demanding return of the boat conveyed to Plaintiff as compensation, and using corporate funds to contest Plaintiff's shareholder rights. Based on the foregoing, this Court finds that MLH committed substantial and material breaches of their corporate fiduciary duties to Plaintiff.

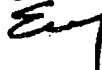
5. Plaintiff established a fair market value for a court-ordered buyout.

Plaintiff presented Dr. Charles Alford, Ph.D., to testify, as an expert, as to the "fair market value" of the three corporate Defendants. Dr. Alford described his methodology and the data to which he applied his methodology. Essentially, Dr. Alford established that LPR had a fair market value of \$507,000; Dr. Alford established that BFI had no value; Dr. Alford established that FRR had a fair market value of \$1,376,000. Dr. Alford established that "Larkins" was a brand which would have value in this area, regardless of the particular location in which it was located. This Court finds that Dr. Alford presented an entirely believable and competent analysis for the Court's use, based on his credentials and based on his demonstrated application of methodology.

In response to Dr. Alford, Defendants presented Louis Manios, a local public accountant. On cross-examination, Mr. Manios conceded that no minority shareholder discount should apply to any buyout of Plaintiff's stock by the majority. Mr. Manios' testimony as to the dismal future presented for FRR was not credible and did not take into account the growth and vibrancy of the downtown area of Greenville and the value of the name "Larkins" as a brand. Interestingly, Mr. Manios conceded that his schedules did not conform to GAAP, which govern the format of Mr. Manios' schedules.

6. Distributions and bonuses.

Plaintiff testified that he never received shareholder distributions from FRR or from LPR, despite tax returns, and K-1 schedules which purported to show such distributions. Defendant Mark Hammond, himself, testified as to the murkiness of the "distributions" which were "given" to Plaintiff. Defendant Mark Hammond testified that Plaintiff's bonuses were disguised as



distributions, but that they weren't distributions. To further confuse the issue about bonuses and distributions, there were emails between the parties which showed that the distributions and bonuses were to be separate and cumulative. In response to questions from the Court, Dr. Alford expressed concern that the bookkeeping for Defendants was unclear on this issue. The Court shares Dr. Alford's reservations about the reliability of Defendants' accounting. The record of this case is replete with references to shareholder/corporate loans for which no documentation was presented. For this reason, the Court has determined to rely on the corporate Defendants' tax returns as a more credible source for the amounts of distributions which were not distributed to Plaintiff by the corporate Defendants.

This Court finds and concludes that the shaky accounting applied by Defendants MLH to the distribution/bonus compensation was an additional form of oppression and wrongdoing by Defendants MLH.

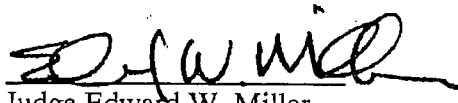
7. **Plaintiff shall not receive compensation for the termination of his employment.**
8. **Based on the testimony and exhibits which are the basis for the foregoing findings of fact and conclusions of law, this Court orders the following:**

Given the estrangement between the minority and the majority shareholders, there must be a parting of the ways among the shareholders. This Court adheres to sound judicial policy, as articulated under *Kiriakides* and *Meiselman, supra*, to provide for a fair buyout for an oppressed minority shareholder whose investment in a corporation is otherwise without a market. This Court concludes, then, that the most equitable way to achieve a just workout of the differences between the parties is the following:

- a. Plaintiff shall receive \$198,189 for a 7.2% shareholder interest in FRR;
- b. Plaintiff shall receive \$98,047 for his interest in BFI and in LPR;

- c. Plaintiff shall receive the sum of \$99,117 for distributions which he did not receive;
- d. Plaintiff shall surrender all documents, records, stock certificates, and other corporate property to Defendants and shall execute all documents reasonably necessary to bring the corporate records to full compliance with good corporate governance.

It is ordered that the parties shall comply with the terms of this Order within 45 days of the date of this Order.


Judge Edward W. Miller

June 7/2 2013

BUD

CLERK OF COURT
GREENVILLE CO. S.C.
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
SEP 10 P 1:34 2010-CP-23-1646

Kyle Pertuis,)

Plaintiff,)

vs.)

ORDER

Front Roe Restaurants, Inc.,)

Beachfront Foods, Inc., Lake Point)

Restaurants, Inc., Mark Hammond,)

Larkin Hammond,)

Defendants.)

Pursuant to Rules 59 and 60, SCRPC, Defendants served and filed consolidated post-trial Motions to Alter or Amend and to Reconsider the Order of this Court, (the "Order"), dated July 3, 2013. Defendants then served and filed an "Amended Motion to Alter or Amend and Motion to Reconsider." After careful review of Defendants' Motions and supporting materials, this Court has determined to amend the Order in this case, as follows:

1. This Court still finds, on the basis set forth in the Order, that Plaintiff is a 7.2% shareholder in Defendant Front Roe Restaurants, Inc. This Court still finds, for the reasons set forth in the Order, that Defendant Front Roe Restaurants, Inc., has a value of \$1,376,000. Due to clerical errors, however, this Court hereby adjusts the award to Plaintiff for his 7.2% interest to more accurately reflect that Plaintiff shall receive \$99,072.00 for his 7.2% interest in Defendant Front Roe Restaurants, Inc.

2. This Court finds that, for the reasons set forth in the Order, Lake Point Restaurants,

Page -1-

ENTERED COMPUTER

Inc., has a value of \$507,000. For the reasons set forth in the Order, Plaintiff is a 10% shareholder in Lake Point Restaurants, Inc. Accordingly, this Court finds that Plaintiff shall receive \$50,700.00 for his 10% shareholder's interest in Lake Point Restaurants, Inc.

3. This Court finds that, for the reasons set forth in the Order, Plaintiff did not receive \$99,117.00 in corporate distributions. Accordingly, this Court finds that Plaintiff shall receive the sum of \$99,117.00 for corporate distributions which were not received by Plaintiff.

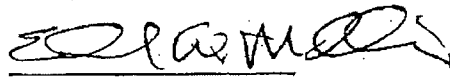
4. In their post-trial Motions, Defendants asserted claims of *ex parte* communications between this Court and counsel for Plaintiff, largely based on tardy service on counsel for Defendants of Plaintiff's post-trial "Memorandum in Support of Plaintiff's Claims." This Court has reviewed the record of this case, particularly the chronology of service of the parties' communications, and specifically with respect to Plaintiff's post-trial Memorandum. This Court made no decision until counsel for Defendants had been served with said Memorandum. Based on a careful review of the chronology of filings in this action, this Court hereby affirms that no ruling was issued by this Court until after all filings had been served on all counsel for all parties. There has been no occurrence of *ex parte* communication in this action; Defendants, therefore, cannot assert that there has been any prejudice to Defendants, or to any party, from any alleged *ex parte* communication.

5. Otherwise than as set forth above, Defendants' Motions to Alter or Amend and to Reconsider are hereby denied. Accordingly, save as hereinabove amended, modified, or otherwise amplified, the Order of this Court, dated July 3, 2013, is hereby affirmed in all respects.

This Court also notes that Defendants renewed their Motion for a Directed Verdict in writing on May 31, 2013, which Motion has not yet been resolved. This Court, viewing the evidence in the light most favorable to the Plaintiff, and for the reasons set forth in the Order, and for the further, and additional reasons set forth in this Order, denies Defendants' Motion for Directed Verdict.

AND IT IS SO ORDERED.

Dated: 9/1/13


E. W. Miller, Judge

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2010-CP-23-1646

Kyle Pertuis,)
Plaintiff,)

vs.)

AMENDED COMPLAINT

Front Roe Restaurants, Inc.,)
Beachfront Foods, Inc., Lake Point)
Restaurants, Inc., Mark Hammond,)
Larkin Hammond,)
Defendants.)

Plaintiff, complaining of Defendants, would respectfully show to the this Court as follows:

(GENERAL ALLEGATIONS)

I

Plaintiff, (herein, "Pertuis"), was the general manager of the Defendant Corporations, whose businesses were restaurants in Columbus, N.C., in Lake Lure, N.C., and in Greenville, S.C. As a result of Pertuis' effective and profitable management of the restaurants owned by the Corporations, Defendants Mark Hammond and Larkin Hammond, (herein, "the Majority"), promised Pertuis that he would own 10% of the Corporations, "across the board," though he already had a 10% ownership of the two North Carolina Corporations and a 1% ownership in the South Carolina Corporation. Pertuis relied upon the promises of the Majority and continued to profitably and successfully manage the restaurants. After repeated promises to document the

Majority's representations to Pertuis about stock ownership and other promised compensation, Pertuis realized that the Majority did not intend to honor its promises, relied upon by Pertuis to his detriment, to fully vest Pertuis with 10% ownership of the Corporations, "across the board." As a consequence of the breach of promises relied upon by Pertuis, and as a result of managerial interference, Pertuis was forced to resign his employment with the Corporations. The Majority made a bad-faith, **de minimis** offer to purchase Pertuis' ownership interest in the Corporations. When, however, Pertuis attempted to secure corporate financial records to determine if the Majority's buyout offer was fair and equitable, he was denied the records and he was preemptively sued to keep the corporate records unavailable to Pertuis to determine if the Majority's buyout offer was fair.

II

Pertuis is informed and believes that the majority shareholders, ("Majority"), in the three corporations which are parties to this action, ("Corporations"), have breached their statutory and common-law corporate fiduciary duties to Pertuis as a minority shareholder in the Corporations, by various acts of oppression, fraud, and managerial mistreatment which resulted in the termination of Pertuis' employment with the Corporations and which effectively operated to squeeze Pertuis out of the benefits of his 10% ownership interest in the Corporations. Since the termination of Pertuis' employment with the Corporations, Pertuis has suffered further difficulties in trying to respond to a **de minimis** offer of purchase from the Majority for his ownership in the Corporations:

1. By failing and refusing to provide Pertuis with financial information about the performance of the Corporations, despite Pertuis' reasonable and repeated demands therefor;

2. By granting dividends and distributions to the Majority without granting the same benefits to Pertuis, despite Pertuis' reasonable and repeated demands therefor;

3. By causing Pertuis to suffer tax liability for phantom income, without providing financial distributions to Pertuis sufficient to pay Pertuis' tax liability, for the purpose of squeezing Pertuis out of the benefit of his shareholder ownership in the Corporations;

4. In failing to fairly deal with Pertuis' good faith efforts to market his shares of stock, pursuant to the parties' buy/sell agreement.

5. In failing to include Pertuis in corporate opportunities to which he was entitled as a *de facto* partner/shareholder in the consolidated business unit owned by the Majority and by Pertuis.

As a result of the foregoing, Pertuis has suffered monetary and other damages, actual and punitive.

**(FOR A FIRST CAUSE OF ACTION:
BREACH OF CORPORATE FIDUCIARY DUTIES
OWED BY MAJORITY TO MINORITY SHAREHOLDER)**

III

Plaintiff hereby realleges all allegations set forth above as are not inconsistent herewith.

IV

Plaintiff is informed and believes that the Majority and the Corporations which they control, jointly and severally, have breached their common-law corporate fiduciary duties owed to Plaintiff, as a minority shareholder, to the damage, actual and punitive, of Plaintiff.

**(FOR A SECOND CAUSE OF ACTION:
OPPRESSION OF MINORITY SHAREHOLDER
ARISING UNDER §§33-14-300, *et. seqq.*)**

V

Plaintiff hereby realleges all allegations set forth above as are not inconsistent herewith.

VI

Plaintiff alleges that the Majority, and the Corporations which they control, have, jointly and severally, acted in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial to Plaintiff as a minority shareholder in the Corporations, in violation of §§33-14-300, *et seqq.* As a consequence of the Majority's (and, consequently, the Corporations') acts of oppression and constructive fraud practiced upon Pertuis by and through the Corporations, Plaintiff has suffered damages, actual and punitive, and seeks that this Court fashion relief for Pertuis, so that he may enjoy the benefit of his stock ownership in the Corporations.

WHEREFORE, Pertuis prays for judgment against the Majority and the Corporations, jointly and severally, for damages, actual and punitive; Plaintiff further prays that the Court in this matter order a buyout of Pertuis' 10% ownership of the Corporations at an equitable price which will adequately relieve Pertuis from his ongoing oppression as a minority shareholder at the hands of the Majority and of the Corporations, including reimbursement for his costs and expenses incurred in attempting to gain a remedy for his oppression and Pertuis prays for such other and further relief as this Court may deem just and proper.

Dated: _____

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Attorney for Kyle Pertuis

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS

Kyle Pertuis,

Plaintiff,

vs.

Front Roe Restaurants, Inc.,
Beachfront Foods, Inc.,
Lake Point Restaurants, Inc.,
Mark Hammond and Larkin Hammond,

Defendants.

C.A. No.: 2010-CP-23-1646

DEFENDANTS' ANSWER AND
COUNTERCLAIMS TO PLAINTIFFS
AMENDED COMPLAINT

FILED
CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENS
2012 OCT -5 PM 3:20

Defendants Front Roe Restaurants, Inc.,¹ Beachfront Foods, Inc., Lake Point Restaurants, Inc., Mark Hammond and Larkin Hammond, collectively referred to hereafter as "Defendants" unless specifically identified herein, by and through their undersigned counsel, answer Plaintiff's Amended Complaint and file the counterclaims thereto, will show unto the Court the following:

FOR A FIRST DEFENSE
(General Denial)

1. Any allegations contained in Plaintiff's Amended Complaint not hereinafter admitted, explained or modified, are denied and strict proof is demanded thereof.

2. In responding to Paragraphs 1 through 6 of Plaintiff's Amended Complaint, Defendants admit that plaintiff was a general manager who owned a ten percent (10%) interest of Beachfront Foods, Inc. and Lake Point Restaurants, Inc. and a one percent (1%) interest of Front Roe Restaurants, Inc. Defendants deny all remaining allegations as stated and demand strict proof thereof.

¹ Front Roe Restaurant, Inc. originally was filed this action as the plaintiff against Kyle Pertuis on March 1, 2010. Pertuis then named Beachfront Foods, Inc. and Lake Point Restaurants, Inc. as third party defendants. The parties agreed to reform the caption by order of this Court on September 10, 2012.

FOR A SECOND DEFENSE

(Failure to State a Claim Upon Which Relief May Be Granted)

3. Plaintiff's Amended Complaint fails to set forth the necessary facts and/or proper legal elements upon which any claim for relief may be granted as a matter of law.

FOR A THIRD DEFENSE

**By Way of the First Counterclaim by Defendants Lake Point Restaurant
and Mark Hammond
(Conversion)**

4. All previous allegations are incorporated herein by reference as if set forth *in toto* hereunder.

5. When Plaintiff Petruis was employed by and a shareholder in of Defendant Lake Point Restaurants, Defendant Mark Hammond had an 18' Hurricane Sundeck with a 250 HP outboard motor. The original cost of this boat was \$22,000.00. Its estimated value at the time of Plaintiff's departure from the business in 2009 was \$12,000.00.

6. This boat was used for the sole benefit of Lake Point Restaurants to transport customers to and from the restaurant on Lake Lure.

7. For insurance purposes, Defendant Mark Hammond and Plaintiff Petruis agreed to title the boat in the name of Plaintiff Petruis. It was agreed and understood that the boat was to remain an asset of Defendant Lake Point Restaurants. Upon information and belief, at all times relevant hereunder, Defendant Lake Point Restaurants paid or reimbursed all expenses regarding the taxes, licenses, insurance, maintenance and operation of the boat.

8. When Plaintiff Petruis left the business, the boat was docked at restaurant, where it had always remained for the business's use. Defendant Mark Hammond demanded the title to the boat so that it could be re-issued in the name of the business and/or Defendant Mark

Hammond. Plaintiff Petruis on numerous occasions promised to deliver the title, but repeatedly failed to fulfill his promises.

9. Without notice to Hammond and/or Lake Point Restaurants, Plaintiff Petruis retrieved the boat and converted it to his sole use and benefit.

10. Upon information and belief, Plaintiff Petruis later sold the boat and retained the proceeds.

11. The actions by Plaintiff contravened the express terms of the agreements with Mark Hammond and Lake Point Restaurants.

12. Defendants Mark Hammond and Lake Point Restaurants had a right to possess their property for which Plaintiff unilaterally took possession of, sold and received payment.

13. Plaintiff took possession of Hammond's/Lake Point Restaurants' property and/or exercised a right of ownership over the same, all to the exclusion of the rights of Mark Hammond and Lake Point Restaurants.

14. Such actions constitute conversion of Mark Hammond's and Lake Point Restaurants' property.

15. As a direct and proximate result, Mark Hammond and Lake Point Restaurants were damaged, thereby entitling Hammond and Lake Point Restaurants to actual and punitive damages hereunder in an amount to be determined by the Court.

FOR A FORTH DEFENSE

**By Way of the Second Counterclaim by Defendants Lake Point Restaurant
and Mark Hammond
(Unjust Enrichment)**

16. All previous allegations are incorporated herein by reference as if set forth *in toto* hereunder.

17. Defendants Mark Hammond and Lake Point Restaurants conferred a non-gratuitous benefit upon the plaintiff.

18. Plaintiff took possession of the boat and converted the same for his own use, enjoyment and benefit.

19. It would be unjust, unfair and inequitable for Plaintiff to retain this benefit without having to pay for the same.

20. As a direct and proximate result, Defendants Mark Hammond and Lake Point Restaurants have been damaged and are entitled to the amount owed, plus pre-judgment interest accrued on the same, in an amount to be determined by the Court.

FOR A FIFTH DEFENSE
By Way of Third-party Defendant Lake Point Restaurant's Third Counterclaim
(Promissory Estoppel)

21. All previous allegations are incorporated herein by reference as if set forth *in toto* hereunder.

22. Plaintiff made unambiguous promises that when title for the boat was transferred into his name for insurance purposes, the boat would remain the asset of Mark Hammond and/or Lake Point Restaurants.

23. Upon his resignation, Plaintiff repeatedly promised to return the title to the boat to Lake Point Restaurants and/or Mark Hammond.

24. Mark Hammond and/or Lake Point Restaurants reasonably relied on the promises in the manner contemplated by Plaintiff.

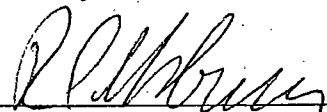
25. Plaintiff expected Defendants Mark Hammond and/or Lake Point Restaurants to rely on his promises and it was foreseeable that they would so rely.

26. As a direct and proximate result, Defendants Mark Hammond and Lake Point Restaurants have been damaged as set forth fully hereunder in an amount to be determined by the Court

WHEREFORE, Defendants pray that Plaintiff's Amended Complaint to be dismissed with prejudice and costs (including attorney's fees); that Defendants Mark Hammond and Lake Point Restaurants be awarded judgment for actual and punitive damages on their counterclaims in an amount to be determined by the Court and for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

Pillsbury & Read, P.A.



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Email: rpillsbury@prlawpa.com

ATTORNEY FOR DEFENDANTS

October 5, 2012

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s)::2010CP2301646
	)	
Kyle Pertuis,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Front Roe Restaurants, Inc.,	)	
Beachfront Foods, Inc.,	)	
Lake Point Restaurants, Inc.,	)	
Mark Hammond, Larkin Hammond.	)	
	)	
Defendant.	)	
	)	

May 28 - 29, 2013
Greenville, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

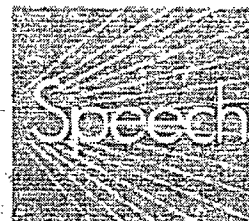
A P P E A R A N C E S:

ROBERT C. WILSON, JR., Esquire
Attorney for the Plaintiff

RODNEY F. PILLSBURY, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
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Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7

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P-2	Email - January 6, 2009	31	
P-3	Email - March 6, 2009	31	
P-4	Agreement	31	
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D-40	Profit Impact	8	
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D-42	Subtitle F	189	

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C-1	Subtitle F	190	

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 28th day of May, 2013 at approximately 10:10 a.m.)

(WHEREUPON, Defendant's Exhibits 1 through 40 are premarked for identification purposes.)

THE COURT: All right. What can I help y'all with?

MR. WILSON: Your Honor, my name is Bob Wilson. I am representing the plaintiff, Kyle Pertuis seated at this table. At the other table is my dear and personal friend, Rodney Pillsbury and his client, Mark Hammond. Before you, Your Honor, is a case involving allegations of breach of --

THE COURT: I read the briefs.

MR. WILSON: Sir?

THE COURT: I read the pretrial briefs. I'm familiar with the case.

MR. WILSON: Yes, sir.

THE COURT: All right. How y'all want to proceed?

MR. WILSON: Uh, Mr. Pertuis.

MR. PILLSBURY: Does Your Honor want to have any opening statement?

THE COURT: Okay.

1 **MR. PILLSBURY:** It's whether -- the Court or
2 not.

3 **THE COURT:** Well, is there something that
4 you didn't say in your briefs?

5 **MR. PILLSBURY:** Uh, no, Your Honor.

6 **MR. WILSON:** I think I --

7 **THE COURT:** Okay. Let's just go ahead with
8 the testimony. I think we can dispense with some
9 of the niceties. We're here to fish or cut bait.

10 **MR. PILLSBURY:** Right. Thank you, Your
11 Honor.

12 **THE COURT:** Okay.

13 **MR. WILSON:** Your Honor, the plaintiff would
14 like to take the stand.

15 **THE COURT:** All right. Put your left hand
16 on the Bible and raise your right hand.

17 **THE BAILIFF:** Face the judge.

18 **KYLE PERTUIS**
19 having first been sworn, testifies as follows:

20 **THE CLERK:** All right. Come on around and
21 have a seat. Please state your full name for the
22 record.

23 **THE WITNESS:** Kyle Pertuis.

24 **DIRECT EXAMINATION**

25 **BY MR. WILSON:**

1 Q Mr. Pertuis, where do you live, sir?

2 A I live here in Greenville, South Carolina.

3 Q How long have you lived here?

4 A Going on eight years.

5 Q Yes, sir. And is this your wife here?

6 A Yes, sir.

7 Q On the front row?

8 A Yes, sir.

9 Q And at some point, Mr. Pertuis, did you become
10 employed by Mr. and Mrs. Hammond?

11 A I did.

12 Q Could you give me a little background about how
13 that happened?

14 A Sure. It was spring of 2000. My wife and I
15 were living in Arkansas at the time. We were exploring
16 opportunities in our careers. I was looking for
17 opportunities in the Carolinas. They had approached me
18 about an opportunity they had with their original
19 location.

20 Q Had you been in the Carolinas before that, sir?

21 A I went to school in Greensboro. I was a soccer
22 player in North Carolina.

23 Q Yes, sir. In response to the advertisement,
24 did you communicate with the Hammonds?

25 A Yeah. We exchanged emails and phone calls.

1 Q And what transpired as a result of this
2 communication?

3 A Well, initially, I flew out to meet with them
4 to discuss the opportunity that they had and was on to
5 actually another interview with another company.

6 Q Yes, sir. At that point, did they own a
7 restaurant?

8 A They did.

9 Q Which one?

10 A Larkins on the Lake.

11 Q Yes, sir. Had they owned that restaurant for
12 very long?

13 A Uh, about a year and a half, I think, by the
14 time I started talking to them.

15 Q And how were they fairing in their ownership
16 and management of that restaurant, sir?

17 A I think it was -- my understanding at the time
18 was that it was growing and that they needed assistance
19 in helping kind of wrangle that and bring it into
20 control.

21 Q What was the job description of the position
22 that was open, sir?

23 A General Manager.

24 Q What did that entail?

25 A It was the day-to-day operations. I had a

1 significant amount of experience in a number of different
2 areas, from culinary to pretty much everywhere. So it
3 was just really coming down and helping, you know, better
4 organize that location.

5 Q Yes, sir. And did you, in fact, move from
6 Arkansas to --

7 A We did.

8 Q All right. When did that happen?

9 A I think it was in June of 2000.

10 Q Yes, sir. Is that when you took over your
11 position as General Manager?

12 A Yes.

13 Q Now, you generally described the job
14 description. Did you undertake to upgrade the service,
15 the menu and the various aspects of that location,
16 restaurant location?

17 A Yes, anything that had to do with it.

18 Q What were the changes that you made, sir?

19 A I mean, it was -- it was organization of the
20 front of the house. So anything from helping coordinate
21 sections to better control traffic, people coming in and
22 out. I did a lot in the kitchen from recipe development
23 to staffing. Just everything.

24 Q Did the financial performance of the restaurant
25 improve under your tutelage, sir?

1 **A** Yes. Yes.

2 **Q** Can you give me some or can you give the Court
3 some idea of how it improved -- how much it improved?

4 **A** Well, I don't remember statistically or
5 percentage-wise, but I know that we continued to grow
6 each year profitably.

7 **Q** Were the Hammonds pleased with your
8 performance?

9 **A** Yes.

10 **Q** Did they offer you additional compensation?

11 **A** Uh, yes. A number of things happened during
12 that period. I mean --

13 **Q** Can you tell the Court what those were?

14 **A** Yeah. One of the deciding factors for me to
15 take that position was that there be a vesting schedule.
16 I wasn't interested in taking a general management
17 position and that was just going to be it. I wanted to
18 move into a position for growth, potentially multiple
19 locations and ownership eventually.

20 **Q** I apologize. What were the terms of your
21 employment, sir?

22 **A** Well, when I came on board, it was a base plus
23 bonus comp package. They helped relocate us out there.
24 The initial conversations were a vesting schedule that
25 would accrue over five years to a maximum of 10 percent

1 ownership and that kind of thing.

2 Q So do I understand you correctly then it did
3 not matter about the performance of that restaurant, that
4 it was two percent per year that you would vest in
5 ownership?

6 A I believe that's how.

7 Q That was -- Lake Point was the name of the
8 corporation?

9 A Yes.

10 Q Did you at some time receive written
11 documentary evidence of your ownership interest in Lake
12 Point?

13 A Yes. And we actually had another location, uh,
14 that opened which I had 10 percent in as well. That was,
15 I believe, in '05 when all those documents and
16 certificates --

17 Q All right, sir. Would you tell the Court about
18 this other location?

19 A The summer of '01, there was another -- there
20 was a restaurant on the other side of town. It was
21 probably about maybe two miles from the original. It was
22 underperforming from the best we could tell. So we
23 acquired that.

24 Q Yes, sir. And did the ownership and
25 acquisition take place in the corporation of which you

1 just described your --

2 A No, a new one was formed, Beachfront Foods.

3 Q What was the name of the new one?

4 A Beachfront Foods.

5 Q What was the name of the restaurant?

6 A Uh, MaLarKie's.

7 Q And were you hired to perform services on
8 behalf of MaLarKie's?

9 A Well, yeah. At that point, my roll had
10 expanded to more of a Director of Operations over both
11 entities.

12 Q And did you make changes at MaLarKie's?

13 A Yes.

14 Q And what were those changes, sir?

15 A Uh, a lot of upgrades. A lot of physical
16 aesthetic things that we had to do. It was in bad shape.
17 We cleaned it up. Again, staffing, menu, developing. It
18 was pretty much -- even though it was an ongoing concern,
19 we pretty much took it over and put our own spin on it.

20 Q Yes, sir. And how did -- when did MaLarKie's
21 start -- when did you start managing MaLarKie's?

22 A Well, we bought it, I think, in the summer. It
23 seems like we closed it down after Labor Day for a week
24 or two to do some things. Then, uh, I guess, assumed the
25 name MaLarKie's some time in the fall of '01.

1 Q Just out of curiosity, where does the name
2 MaLarKie's come from?

3 A The M, the L and the K are the initials of each
4 of our first names. Mark, Larkin and Kyle.

5 Q Yes, sir. That would be Mr. Hammond and his
6 wife?

7 A Yes, sir.

8 Q And when it reopened, how did it perform, sir?

9 A It did fairly well. It had a number of unique,
10 uh, challenges due to location, where it was. On that
11 side, there's some competition. It was a restaurant and
12 a bar. The police frequented over there because of other
13 locations that were not on the up and up so to speak.

14 Q Yes, sir. Now, did I understand you to say
15 that there was a vesting schedule for your -- to provide
16 an ownership interest in Beachfront?

17 A When we took that one over, our understanding
18 was that it was going to be concurrent with the same
19 schedule of the other ones that we accrue in that same
20 five-year period.

21 Q So during that period, you wound up -- under
22 the vesting schedule, do I understand it correctly, you
23 wound up owning 10 percent of each of those?

24 A Correct.

25 Q Those are North Carolina corporations?

1 **A** Yes.

2 **Q** All right, sir. Now, in 2005, did -- did you
3 continue to own MaLarKie's?

4 **A** Yes, MaLarKie's was still in operation in '05.

5 **Q** Was it sold?

6 **A** It was sold. I think it was sold in December
7 of 2007.

8 **Q** 2007?

9 **A** I believe so.

10 **Q** All right, sir. Did Beachfront acquire another
11 restaurant in lieu to operating with you, uh, MaLarKie's?

12 **A** We did. We opened. We built a ground-up
13 concept in Columbus, North Carolina that opened, I
14 believe, in spring of '08.

15 **Q** What's the name of that restaurant, sir?

16 **A** Larkins Carolina Grill.

17 **Q** What kind of restaurant is it?

18 **A** Uh, it's a casual. Like a Chili's or an
19 Applebee's kind of thing. A bar and grill.

20 **Q** Yes, sir. Now, if we could step back, what
21 kind of restaurant was the one at Lake Point?

22 **A** It was unique. It was a dual concept. The
23 upstairs was really what we call the creative American
24 fine dining, even though it wasn't really fine dining.
25 And then downstairs was very much a very informal kind of

1 burger place. People could pull up on their boats, come
2 in and enjoy sitting outside and be right there on the
3 water.

4 Q So it's right there on the lake, sir?

5 A Right on the water.

6 Q Yes, sir. And during the period of the
7 ownership and operation of the Lake Lure Restaurant under
8 Lake Point Corporation, did an opportunity arise to
9 purchase the real estate on which that restaurant was
10 located?

11 A Yeah. I don't remember. I think it was in '07
12 also. I know that we were renting or the lease was
13 through that owner. I guess at some point, she made it
14 known to Mark and Larkin that she was interested in
15 selling it.

16 Q Did they sell it?

17 A Yes.

18 Q Who brought it?

19 A Mark and Larkin.

20 Q Did it get bought through the corporation of
21 which you were a shareholder?

22 A Uh, no. I think they started another company
23 to do that.

24 Q Do you know anything about the terms of the
25 transaction?

1 **A** No. I didn't know anything about it other than
2 that they were buying it.

3 **Q** Did they tell you about it?

4 **A** They told me that they were going to buy it,
5 yes.

6 **Q** Did you say what about --

7 **A** No. I mean, at that point, I was just kind of
8 okay, you're going to buy it. That's what happened.

9 **Q** All right, sir. Now after the opening of the
10 restaurant in Columbus, how did that restaurant perform,
11 sir?

12 **A** The restaurant in Columbus? Well, the first
13 year, we're talking about '08. I think it was very much
14 a start up. We were getting used to a new location, a
15 new community marketing efforts. So, I mean, it was
16 slowly building traction.

17 **Q** Yes, sir. And financially, what were its
18 results?

19 **A** If I remember correctly, probably had a loss in
20 that first year from startup costs.

21 **Q** And thereafter, has it performed better?

22 **A** I assume so. It's still in operation. So
23 that's going on six years now..

24 **Q** Yes, sir. And during this period, you were
25 charged with managing both of those restaurants?

1 **A** Well, that was -- we also had the one down here
2 in Greenville as well.

3 **Q** Yes, sir. I'm going to ask you about that now.
4 Did, at some point, the Larkins become interested in
5 purchasing the location from Rene, the location at --

6 **A** Yes, sir.

7 **Q** Could you describe what you know about that
8 transaction.

9 **A** I know, uh, Mark had been down in Greenville
10 for something in -- seems like '04. Again, I don't
11 remember how it came up that that location was on the
12 market. Rene had been sick. But I think a friend of
13 ours collectively that lived down here mentioned it to
14 them. Mark checked out the location. It seemed like a
15 great spot. In '05, I guess he and Larkin had been down
16 to check it out a couple of times and then I came down
17 with them, it seems like a time or two, before it was a
18 done deal.

19 **Q** Yes, sir. You have any insight or information
20 about what was in the terms of the transaction?

21 **A** As far as how much --

22 **Q** Yes, sir.

23 **A** I don't remember. It seems like it was maybe a
24 million and a half. It seems like Rene raised the price
25 at the last minute. I don't remember exactly.

1 Q Yes, sir. And did, in fact, they take over
2 that location?

3 A Yes, sir.

4 Q And did they open a new corporation to operate
5 at that location?

6 A Yes.

7 Q What corporation was it?

8 A Front Roe Restaurants.

9 Q Yes, sir. And what kind of restaurant was it?
10 What did they ask you to do at that restaurant?

11 A Well, at the time -- again, this was kind of a
12 take over. It was an ongoing acquisition. So it was to
13 come in and really upfit it to our standards. It was a
14 huge facility. Much bigger than anything we ever
15 managed. There were a lot of different dynamics,
16 staffing, understanding departmentally who was going to
17 be in charge of what. Those kind of things. Just a lot
18 of different operations.

19 Q Did you work on the menu, for example?

20 A Yes. At that location, we actually -- I don't
21 remember the time. It seemed a couple, a few months into
22 it. We had put on pretty extensive search for a
23 qualified chef. At which point, we brought on the chef
24 that I believe is still there today.

25 Q Yes, sir. And was the menu upgraded?

1 **A** Absolutely.

2 **Q** And did they, uh, reach an understanding with
3 you about your compensation for managing yet another
4 restaurant?

5 **A** Yeah. It was in that conversation about, you
6 know, if we're going to do this, what do you expect. My
7 comment, the best I can remember to them was I want
8 ownership in this one up to the 10 percent. Similar to
9 the last two.

10 **Q** And what were the -- what were the -- would you
11 describe for the court the substance of the discussions
12 about your potential ownership in -- should we refer to
13 it as the River?

14 **A** Yeah.

15 **Q** Is that right?

16 **A** Well, the best I remember when we talked about
17 that, Mark asked me what I wanted. I probably put
18 together a detailed list of some things. We felt it was
19 probably wise for me to move down here.

20 **Q** Yes, sir.

21 **A** Just because of the size of the operation. So
22 that was -- they were going to relocate me down here.

23 **Q** Yes, sir.

24 **A** And the conversation around the ownership was,
25 you know, I'd like to acquire 10 percent in this as well

1 **Q** And was some kind of piece of paper or
2 something memorializing your understanding?

3 **A** There was a letter written at some point
4 talking about how that was going to be structured and set
5 up.

6 **Q** When did you move down here?

7 **A** Well, I actually got an apartment starting in
8 probably about June of '05. And we actually moved in
9 October.

10 **Q** Yes, sir. You alluded to the magnitude of this
11 operation as compared with the other two restaurants.
12 Would you give the court an idea of how you would
13 quantify that magnitude?

14 **A** Financially, it was probably at least double if
15 not one and a half or two and a half, three times
16 revenue-wise. Facility-wise, it was enormous compared to
17 the other two.

18 **Q** Now, at some point, did you undertake the
19 operation and management, supervision of all three of
20 these restaurants?

21 **A** Yes.

22 **Q** What period of time did that -- during what
23 period of time did that transpire?

24 **A** Well, I mean, technically, it was over four.
25 We still had MaLarKie's. We were building the other one.

1 We sold MaLarKie's in '07. That was -- '05, we had the
2 three locations. Once we acquired Rene's, we had Rene's,
3 MaLarKie's and Larkins on the Lake.

4 Q Yes, sir. And you were living here to do that?

5 A Yes.

6 Q Would you describe for the court a typical day
7 in the -- or week, if you can, of a general manager for
8 these three restaurants?

9 A I honestly don't know that there is a typical
10 day or typical week.

11 Q Did you travel much?

12 A Yes. It often started out that I would stop in
13 this location and make my way up to Columbus and then
14 onto the lake.

15 Q How many times a week were you doing that, sir?

16 A Probably -- probably four days out of the week.
17 Four to six.

18 Q Were you in contact with Mr. Hammond and Mrs.
19 Hammond during this period?

20 A Yes.

21 Q How often was the contact?

22 A Every day.

23 Q What was the -- what was the subject of the
24 contact?

25 A Just what's going on, where and what -- here

1 are some things that we are working on. Those kind of
2 conversations:

3 Q During this period from 2005 to, let's say,
4 2009 -- excuse me -- did the restaurants perform,
5 financially perform well?

6 A Yes.

7 Q Can you give the court some idea, if you can,
8 of a measure of that performance?

9 A Uh, I have -- I'd have to say that it was
10 probably somewhere between 1.7 to 2 million. Uh, for
11 real, I don't think it ever hit a million. It may have
12 been 6 or 800,000 annually. Then it seems like down here
13 -- honestly, I don't remember. But it seems like it was
14 between 2.5 and 3 maybe.

15 Q It improved from a takeover level to 3.5
16 million at the time of your departure?

17 A Yeah.

18 Q Would that be fair to say?

19 A (Nods head.)

20 Q All right, sir. During this period, were you
21 working towards some sort of ownership interest?

22 A That was my understanding.

23 Q When did you first realize that you had
24 achieved some ownership interest in the River?

25 A Well, I mean, I guess the first time it showed

1 up was in '07 as a one percent in a K-1.

2 Q And did they ever give you any kind of written
3 agreement?

4 A No.

5 Q Did they ever give you any kind of other
6 confirmation other than a K-1 tax return?

7 A No.

8 Q All right, sir. And in '08, did you get a
9 similar sort of K-1?

10 A Yes.

11 Q During this period, did I understand you to say
12 -- if you would, confirm for me. The River improved
13 from, let's say, 1 million up to 3.5 million?

14 A Yes. I don't remember exactly what it was
15 doing in '05 when we took it over. I'm assuming it was
16 probably doing a million and a half to two.

17 Q Yes, sir. But under your tutelage, it improved
18 it's performance?

19 A Yes.

20 Q And at any time, did you have any clear
21 understanding about what it was going to take for you to
22 be vested in an increased amount of ownership in the
23 River?

24 A No, I didn't have clarity on that other than
25 that original document that was put together just kind of

1 saying, hey, this is how we will structure --

2 Q Did that bother you, Kyle?

3 A Yes.

4 Q Did you communicate your concern about it to
5 Mrs. Hammond?

6 A Initially, I didn't. I often suppress things.
7 Just kind of stuck my head down and kept going. It got
8 to a point, I think, in, it seems like in early '08, to
9 where I just, uh, didn't see where it was going.

10 Q All right, sir. You often have strategy or
11 meetings with the Hammonds about the setting of the next
12 year's business plan and talking about issues in the
13 corporations?

14 A We got together, it seems like each year,
15 somewhere. Usually, down in Florida in the latter years.

16 Q Yes, sir. And during this period, they were
17 treating it in effect as a partnership?

18 A Yes.

19 Q Those three businesses that happened to do
20 business, uh, be in poor performance?

21 A Yes.

22 Q And were there exchanges -- to your knowledge,
23 were there exchanges of funds between the businesses?

24 A Yes.

25 Q And exchange of personnel?

1 **A** Yeah. We used to share personnel.

2 **Q** Sure. And would -- during this period, they
3 treated -- the Hammonds --

4 **MR. PILLSBURY:** Your Honor, I've been fairly
5 calm about leading. I would just ask that he ask
6 open questions instead of leading ones on direct.

7 **THE COURT:** Try not to lead so much.

8 **MR. WILSON:** Yes, sir.

9 **BY MR. WILSON:**

10 **Q** During this period, Mr. Pertuis, what was the
11 management ownership -- how did they manage the
12 corporations amongst each other with respect to each
13 other? If you would, please tell the Court.

14 **A** How did they manage the corporations?

15 **Q** Yes, sir.

16 **A** Help me to understand.

17 **Q** I'm being chastised by my friend, Mr.

18 Pillsbury. Were they operating as a partnership?

19 **A** Yes. I felt like I was, you know, included in
20 those meetings for a reason.

21 **Q** And at some point, you got, uh, frustrated and
22 started insisting, as I understand, insisting on some
23 written --

24 **MR. PILLSBURY:** Your Honor, I'm just -- if
25 you please would make it open-ended.

1 **THE COURT:** Okay. Try to make it open-ended.

2 **MR. PILLSBURY:** I know it's --

3 **THE COURT:** I know what's going on. Let's
4 go.

5 **MR. PILLSBURY:** Okay.

6 **BY MR. WILSON:**

7 **Q** Can you identify this document that's been
8 marked as Exhibit 1 please, sir?

9 **A** Looks like an email Mark sent to me in the
10 summer of 2008.

11 **Q** Yes, sir. And if you would, without reading
12 it, would you take a moment to tell the judge what
13 prompted that response? What prompted that email?

14 **A** I mean the heading here says here are some
15 thoughts to think about for our Tuesday meeting. Based
16 on the timing, my assumption is this is a response to
17 questions I had had about formalizing our agreement with
18 the vesting schedule at the River.

19 **Q** Yes, sir.

20 **MR. WILSON:** Your Honor, I have enlarged the
21 first page of that.

22 **THE COURT:** Okay.

23 **MR. WILSON:** I'd ask the Court's permission
24 to mark it as 1A or something like that.

25 **MR. PILLSBURY:** No objection.

1 **THE COURT:** Okay. You're going to mark that
2 as an Exhibit?

3 **MR. WILSON:** Yes, sir.

4 **THE COURT:** Is the other one in? The small
5 one?

6 **MR. WILSON:** It is.

7 **THE COURT:** Let's don't put the big things in
8 there. They are demonstrative. You have any
9 objection to that?

10 **MR. PILLSBURY:** No, Your Honor.

11 **THE COURT:** All right.

12 **(WHEREUPON, Plaintiff's Exhibit 1 is marked for**
13 **identification purposes.)**

14 **BY MR. WILSON:**

15 **Q** Would you read for the Court that paragraph
16 number 1 in Mr. Hammond's communication?

17 **A** It says some of the options with, like, keep
18 current arrangement with 10 percent Lake Point and
19 Beachfront plus what I hope will be 10 percent of Front
20 Roe this year. You will own approximately 250,000 in net
21 street equity on the businesses. You will also receive
22 shareholder distributions of approximately 30,000 in 2008
23 from this ownership.

24 **Q** Yes, sir. Now, did he tell you at that point
25 how much ownership you have in the River?

1 **A** Uh, no. I think that was the whole point of
2 trying to get this thing solidified.

3 **Q** All right, sir. But this document was in
4 response to your questioning him about what?

5 **A** About getting the documents drafted and making
6 sure there was clarity on where we were going and how
7 this thing was going to be structured.

8 **Q** All right, sir. Now, after that, did you all
9 have an understanding about a meeting in early 2009 to
10 discuss issues involved in the corporation?

11 **(WHEREUPON, Plaintiff's Exhibits 2, 3 and 4 are**
12 **marked for identification purposes.)**

13 **BY MR. WILSON:**

14 **Q** This would be Plaintiff's Exhibit 2. Would you
15 take a moment, sir, and identify that document?

16 **A** (Reviewing.) This looks like an email that I
17 sent to Mark requesting -- it looks like requesting
18 things as it relates to shareholder documents, just
19 asking them some questions about the things that weren't
20 included in the original ones of Lake Point and
21 Beachfront and just other things to consider as we
22 started going forward.

23 **Q** There in the text, what do you ask about the
24 current formula for evaluating the share? It's the
25 fourth line down, sir, in the main body of the text.

1 A Uh, if I'm looking at the same thing, it's
2 where it says if I wanted to buy.

3 Q Immediately above that, sir.

4 A What is the current formula for evaluating the
5 share stock in our company? And what is that value?

6 Q What was Mr. Hammond's response to that
7 inquiry?

8 A Uh, I honestly don't know that there one.

9 Q Immediately below that, would you read that out
10 loud please, sir.

11 A If I wanted to buy an additional 23 percent of
12 the company to equalize my shares, meaning, make it 33
13 percent, what would that cost be in today's present
14 value?

15 Q What response, if any, did you receive to that
16 inquiry?

17 A Uh, I don't remember.

18 Q All right, sir. Now, after that Exhibit number
19 2 -- is it 2? Did you all have a meeting at Santa Bell
20 Island?

21 A We did.

22 Q And immediately prior to that meeting, did you
23 receive a response from Mr., uh, -- Mr. Hammond?
24 (Pause.)

25 Mr. Pertuis, would you take a look at Exhibit

1 3?

2 A (Reviewing.)

3 Q Now, the thread is usually -- some run from the
4 bottom to the top. He first wrote you on February 20th,
5 2009?

6 A Yeah. I think that was right about the time
7 that I was down there. Or up there.

8 Q Would you look at number 1 in his letter?

9 A Number 1?

10 Q Yes, sir. Number 1.

11 A It says we will look into forming an umbrella
12 corporation or choose another means to equalize your
13 ownership interest across the three companies.

14 Q Right. And his opening remark is thanks for
15 what?

16 A Taking the time to work on our partnership
17 agreement and share your ideas.

18 Q What was the partnership agreement? What was
19 that, sir?

20 A It was the document that hadn't existed that I
21 had been trying to get finished and formalized.

22 Q Did it embrace -- what did it -- what was it --
23 what was you --

24 THE COURT: What did it embrace?

25 BY MR. WILSON:

1 Q What did it embrace? Thank you.

2 A Each of the three companies.

3 Q All right, sir. Now, if you would, look down
4 at number 2. Would you read that one for me?

5 A Develop a lease between Lake Point and Largo
6 Properties to ensure Lake Point's ability to operate at
7 its current location long term.

8 Q Yes, sir. What's that? What's that about?

9 A Largo Properties is the company that they
10 formed to purchase the land under the Lake Point
11 restaurant. There had been a lease drafted or that I had
12 seen.

13 Q A lease from themselves to themselves in
14 effect?

15 A Yes.

16 Q All right. Could you look down at number 6
17 please, sir.

18 A Disperse shareholder distributions on an annual
19 basis according to completed K-1 forms.

20 Q Why was that an issue that Mr. Hammond would
21 communicate that?

22 A Cause they weren't being done that way.

23 Q Why not?

24 A They don't know why not.

25 Q Were you asking them to address that issue?

1 **A** Yes. I think that was one of my concerns.

2 **Q** Number 7. Would you read that one?

3 **A** Clean up all, quotation, due to/from
4 shareholder, unquote, accounts and define treatment of
5 Beachfront sale of MaLarKie's and opening of Carolina
6 Grill as it relates to Kyle's payouts and investment
7 requirements.

8 **Q** What is that about, Kyle?

9 **A** There were accounts on the books that showed
10 loans to and from. I started asking questions about them
11 because I didn't know where they were coming from.

12 **Q** Who were the loans to and who were the loans
13 from?

14 **A** That's what I was trying to figure out. Some
15 of them were to me. I didn't understand why.

16 **Q** Now, if you look up here, it says the next
17 steps are.

18 **A** Yeah. This says Mark to discuss certain items
19 with business advisers and report back with clarification
20 by March 4th.

21 **Q** Let's go down, if you will, to the fourth
22 bullet. What does that say?

23 **A** Kyle to provide initial draft of employment
24 agreement buy-sale/shareholder agreement to Mark and
25 Larkin including language addressing item 5 consistent

1 with our agreement and discussion from yesterday's
2 meeting. Anticipate document -- draft documents to be
3 available by April 30th.

4 Q All right, sir. In response to that, did you,
5 in fact -- you've got friends in Texas, sir?

6 A Yes.

7 Q Is one of them an attorney?

8 A Yes.

9 Q Did you ask an attorney to prepare something in
10 response to your -- that provides that bullet point?

11 A Yes. I asked him to prepare documents earlier
12 in '08.

13 Q I'm going to hand you a document -- without
14 objection?

15 MR. PILLSBURY: No objection.

16 BY MR. WILSON:

17 Q Without objection from Mr. Pillsbury, would you
18 take a look at that, please, sir. It's marked number 5.

19 A 4.

20 Q 4, excuse me. What is that, sir?

21 A This is the Master Relationship Agreement that,
22 uh, my friend had drafted.

23 Q Who is your friend?

24 A Doug Bell.

25 Q What's his business?

1 **A** He's a corporate attorney.

2 **Q** Why did he prepare that document?

3 **A** Because I had been telling him for a long time
4 I don't have it. Then, uh, asked him if he would draft
5 one. I think it came from a conversation Mark and I had.
6 He said why don't you just have one drafted. So I did.

7 **Q** Yes, sir. Did you submit that document to Mr.
8 and Mrs. Hammond?

9 **A** Yes.

10 **Q** Can you tell the court approximately when that
11 happened?

12 **A** Uh, I think I gave a copy of an original
13 document to Mark ---

14 **Q** I'm sorry.

15 **A** --- some time in '08. This, I have email
16 record that showed up at the end of '08, some time in
17 December. Then to Mark's point in this other letter, I
18 think there was one redrafted maybe with some of the
19 language around whatever .5 was. So at least twice per
20 month my memory --

21 **Q** Why are you engaging a friend of yours who is
22 an attorney to prepare this document?

23 **A** Because I wanted this stuff done. And it
24 wouldn't get done on the other hand.

25 **Q** And why did that matter?

1 **A** Because I wanted to have this formalized and I
2 wanted to have it over with so I'd stop worrying about
3 it.

4 **Q** Yes, sir. Now, --

5 **(WHEREUPON, Plaintiff's Exhibit 5 is marked for**
6 **identification purposes.)**

7 **BY MR. WILSON:**

8 **Q** I'm going to show you a document without
9 objection to its admissibility for Mr. Pillsbury's
10 document marked number 5. When did you receive that
11 document, Exhibit 5, sir?

12 **A** Looks like the end of June. June 27th.

13 **Q** Yes, sir. Why did you receive that document?

14 **A** Because I approached them in June about doing
15 some things to restructure my comp package kind of as a
16 -- at least in my mind as a last additional effort to
17 say, hey, I want some things to change.

18 **Q** And who is the author of this communication?

19 **A** Mark Hammond.

20 **Q** Yes, sir. And it's composed of three pages?

21 **A** Yes.

22 **Q** Yes, sir.

23 **A** Yes, sir.

24 **Q** You've got to say yes.

25 **A** Yes.

1 Q Now, it shows that your current salary is what?

2 A 55,000.

3 Q And your bonus is what?

4 A 50,000.

5 Q And it shows your shareholder distribution as
6 what?

7 A 8 percent of net SD.

8 Q Then it shows various -- various other elements
9 of compensation. Now, he has three options on here,
10 doesn't he?

11 A Yes.

12 Q And would you take a look at Option A?

13 A Okay.

14 Q Would you describe the salary?

15 A 67,000.

16 Q All right, sir. Would you take a look at the
17 shareholder distribution?

18 A 10 percent.

19 Q Would you take a look at the car, and then it
20 shows below the car, it shows what?

21 A It says boat 12,000 one time.

22 Q What does that one time mean, sir?

23 A They were giving me the boat as part of the
24 comp package for that option.

25 Q Okay. Option B shows salary of what?

1 **A** 75,000.

2 **Q** It shows what percentage of shareholder
3 distribution?

4 **A** 8 percent.

5 **Q** And likewise shows boat?

6 **A** Yes.

7 **Q** And various other items. And item C shows a
8 salary of what?

9 **A** 80,000

10 **Q** It shows what percentage of distribution?

11 **A** 8 percent.

12 **Q** And it shows something about the boat?

13 **A** Yes.

14 **Q** If you would, go down a little lower. If you
15 would, look at the first paragraph or sentence
16 immediately before the table, would you read that, sir?

17 **A** It says if we go with Option A, we'll extend
18 the original timeline on the River into 2009 if the final
19 numbers from 2008 fall short of what you need under the
20 original agreement to get you the 10 percent ownership
21 across the board.

22 **Q** Did you have any idea at that time, sir -- or
23 what idea, if any, did you have as to what performance
24 level you had to reach to increase your ownership in the
25 Front Roe or the River?

1 **A** I don't know. At that point, I think it was
2 somewhat arbitrary.

3 **Q** Yes, sir. Who is making the decision?

4 **A** Mark and Larkin.

5 **Q** Yes. If you would, look at the next page.

6 Would you go to the second sentence or paragraph? Would
7 you read the first line please, sir?

8 **A** I'm sure you realize that every dollar we spend
9 is 90 cents we don't make and 10 cents you don't make.

10 **Q** Yes, sir. And if you would please, read the
11 next to the last and last sentences in the paragraph, the
12 third paragraph on that page.

13 **A** Our desire and goal is to make it easy for you
14 to assume 100 percent ownership of the company in the
15 event of our death while making sure your family is safe
16 and secure in the event of your death. Your new life
17 insurance policy will immediately address the latter as
18 we get --

19 **Q** And the second sentence of that paragraph, sir.

20 **A** We are working with Curt on the buy-sell
21 agreement and revisions to articles of incorporations
22 more necessary to adequately and legally address buy-
23 backs, death, divorce, exit strategy, third party
24 investors and all other current and future ramifications
25 to our respective ownership in the three companies.

1 Q And what is the date of this document, sir?

2 A June 27th, 2009.

3 Q Would you tell the court how much time had
4 elapsed since you had presented them with a proposed
5 first draft?

6 A It had been several months, a couple of months.

7 Q Yes, sir.

8 (WHEREUPON, Plaintiff's Exhibit 6 is marked for
9 identification purposes.)

10 MR. WILSON: Do you have any objection to
11 this document, Mr. Pillsbury?

12 MR. PILLSBURY: No.

13 MR. WILSON: Marked number 6.

14 BY MR. WILSON:

15 Q Mr. Pertuis, would you take a look at this
16 document marked number 6 please, sir?

17 A (Reviewing.) Okay.

18 Q Is this your response to the document marked
19 Exhibit 5?

20 A Yes.

21 Q Finish looking at it.

22 A This says number 6.

23 Q Yes, sir.

24 A Okay.

25 Q But the number 5 -- this document 6 is your

1 response to Exhibit 5?

2 A Oh, yes. I'm sorry.

3 Q Yes, sir.

4 A Yes, it is. (Reviewing.)

5 Q Now, would you look at your counterproposal,
6 sir. What was your proposed response for salary?

7 A 67,000.

8 Q And your bonus?

9 A 80,000.

10 Q And your shareholder distribution?

11 A 10 percent.

12 Q And the boat?

13 A 12,000 one time.

14 Q And various -- insurance and various other
15 listed insig -- more insignificant items. All right.
16 You say in the text the base salary is adjusted to what?

17 A 67,000.

18 Q And you say as to -- what as to shareholder
19 distributions?

20 A Uh, in the last line?

21 Q If you would just read where it says "if I did
22 not".

23 A Oh, in the second line. Oh, yeah. If I did
24 not achieve 10 percent ownership in 2008, we will extend
25 current program through 2009 in order to equalize current

1 ownership at 10 percent across the board. Distributions
2 going forward after the close of '09 will be based on 10
3 percent ownership.

4 Q All right, sir. And last, but not least, would
5 you look at the first sentence under benefits?

6 A Thank you for arranging transfer of ownership
7 for the boat. We look forward to using it.

8 Q All right. So what was the salary?

9 A 67,000.

10 Q What was the shareholder distribution?

11 A 10 percent.

12 Q What about the boat?

13 A That it was mine.

14 Q All right. Okay. If you would, look at the
15 second page of that Exhibit 6 please, sir. Would you
16 read, uh, read the last bit of text on there?

17 A I will finalize life insurance details and
18 anticipate hearing from you once Curt has been able to
19 complete our partnership and employment agreements in a
20 timely manner. Please give me a reasonable timeline and
21 expectation for this to be completed as it is extremely
22 important to me to have this finalized. I know it's been
23 a long process and I look forward to having things in
24 place.

25 O Thank you, sir. What was the date on that?

1 **A.** I don't see the header on this one. I'm
2 assuming it was probably around the first of July.

3 **Q** All right, sir.

4 **(WHEREUPON, Plaintiff's Exhibit 7 is marked for**
5 **identification purposes.)**

6 **MR. WILSON:** Mr. Pillsbury, do you have any
7 objection to the admission of Exhibit number 7 into
8 the record in this case?

9 **MR. PILLSBURY:** None.

10 **MR. WILSON:** Thank you.

11 **BY MR. WILSON:**

12 **Q** Would you take a look at Exhibit number 7
13 please, sir.

14 **A** (Reviewing.) Okay.

15 **Q** You recognize that document?

16 **A** Yeah. That looks like the headers from the
17 one --

18 **Q** Okay. Who was the author of that document?

19 **A** Mark, on this one.

20 **Q** Yes, sir. Would you read the first sentence to
21 the court please, sir?

22 **A** Thanks, Kyle. We're looking forward to the
23 next 10 years. I'll get these details to Curt to
24 incorporate into the employment agreement and ask him
25 about the timeline as well.

1 Q What was the import or impact of that first
2 sentence, sir?

3 A That it was going to be done.

4 Q Okay. And in the second paragraph, how does he
5 -- what does he -- how does he describe your new salary
6 level?

7 A Well, in accordance with what we had agreed on
8 in that proposed new plan of 60,000 -- 7,000.

9 Q So he's performing to your new salary demand?

10 A Yes.

11 Q And at this time, or shortly thereafter, did he
12 convey the boat to you?

13 A Yes.

14 Q Okay. Did he give you a stock certificate for
15 10 percent in the Front Roe Restaurant?

16 A NO.

17 Q Why not?

18 A There was nothing done.

19 Q Did you ask for stock certificate, sir?

20 A Yes. That was what was outlined in the plan.
21 This was all -- the point of all these meetings that we
22 were having for the last year.

23 Q Now, sir, through the summer and into the fall,
24 did you continue to press for your -- documentation of
25 your ownership interest?

1 **A** Yes.

2 **Q** What was their response?

3 **A** Usually something along the lines of its
4 working. It's coming.

5 **Q** And at some point, did you have a meeting with
6 Mr. Hammond to discuss exactly what it was that needed to
7 happen?

8 **A** Yeah, I think we probably had several meetings
9 about it whether it was in person or by email or phone.
10 Then, I think it just kind of came to a head there a week
11 or two before I left.

12 **Q** Yes, sir.. And would you describe for me the
13 events leading up to your departure?

14 **A** Uh, I mean, there were a series of things. My
15 frustration continued to build. It just seemed like
16 there was one thing after the other. These documents
17 weren't being done. It had been months now since the
18 agreement. It just, to me, continued to say nothing's
19 going to happen. We're just going to keep playing this
20 game.

21 **Q** Were the restaurants continuing -- what were
22 the performance of the restaurants during this period
23 from, let's just say July '09 until October of '09. How
24 were they performed?

25 **A** The best I could remember, they were performing

1 well. I mean --

2 Q Were there any incidents of mismanagement,
3 negligence or any other problems that came to your
4 attention?

5 A Uh, there are always issues with this business.
6 As far as their bringing things to my attention, there
7 was always something. There probably were a couple of
8 issues that I think maybe just were blown out of
9 proportion or whatever.

10 Q How long have you been with the Hammonds during
11 the late summer or early fall of '09, sir?

12 A Nine and a half years.

13 Q What restaurants -- did they have any
14 restaurant, hands-on restaurant experience prior to your
15 arrival?

16 A Mark had extensive background in operations and
17 Larkin, I think, had some experience from a marketing
18 standpoint.

19 Q Were you the contact between upper management
20 and the folks that were on the floor taking orders and
21 delivering food to the table?

22 A Yeah. We had managers at each of the
23 locations. I was that point for them.

24 Q Yes, sir. What was your -- what was the term
25 that they gave you, the title they gave you during this

1 period?

2 A Managing partner.

3 Q Yes, sir. Did they put that in the context of
4 managing partner of what?

5 A Of all the locations.

6 Q All the locations? All right, sir. Now, uh,
7 at some time in early, uh, October, did you confront Mark
8 with your frustration about no documentation?

9 A Yes, I did.

10 Q Would you describe for us what happened at that
11 first event?

12 A The best I remember, there were a number of
13 things that I was frustrated about, this being the main
14 one. I remember having a conversation with them in the
15 parking lot outside of the Lake Point with Larkins on the
16 lake just basically telling them that I felt that I was
17 being pressed between them and management. Things
18 weren't being done. I felt like there were a lot of
19 empty promises. I needed some time to clear my head.

20 Q What did he say to that?

21 A He said, oh, yeah, I understand that. He said
22 you just call Kevin. The documents should be done.

23 Q Who is Kevin?

24 A I believe it was Mr. Stodghill's partner.

25 Q Did you call Kevin?

1 A I think I called him late that -- later that
2 afternoon.

3 Q What happened?

4 A Uh, best I remember, he wasn't in. He was out
5 sick or something. Seems like there was an email about
6 the documents being worked on or he wasn't there or
7 something. I don't remember exactly.

8 Q How long did you take to consider your
9 situation with the Hammonds and the partnership?

10 A A good 10 days.

11 Q Yes, sir. And during that period, did you hear
12 any -- have any -- what communications, if any, did you
13 have from the Hammonds?

14 A Well, I had an email, I think, come in from
15 Mark that Saturday, the first weekend that I was off. It
16 was just talking about, uh, things to think about. I
17 don't remember exactly what all was in that one. Then I
18 had spent a significant amount of time the first four or
19 five days really thinking about things and sent them an
20 email just to kind of put them on notice again about some
21 of the things that I was concerned about, what I -- what
22 I was seeing and feeling. Mark responded to that saying,
23 yeah, we should meet on this sooner than later and then
24 gave me two times that he was available to meet. If I
25 remember correctly, we ended up meeting in his car in a

1 parking lot in Columbus somewhere just so he could
2 address this.

3 Q What transpired at that meeting, sir?

4 A Nothing. He answered the questions that I had
5 sent out. I honestly don't even remember the details of
6 that conversation. It seemed to me like I was just
7 getting a lot of yes or "here's what we're doing, here is
8 the way this is" kind of answers.

9 Q Yes, sir. And did you continue to take some
10 time off to consider the situation?

11 A I did.

12 Q And at some point, did you have a final
13 confrontation with Mr. Hammond?

14 A Uh, well, it seems like that Saturday or Sunday
15 we seen him downtown. There was a directive as to, based
16 on my decision, where to meet them. They were
17 anticipating an email so they could adjust the plans
18 accordingly.

19 Q What do you mean by your decision indicated by
20 where they were going to -- what does that mean?

21 A They told me if I was going to continue with
22 the companies, I needed to come to their house so that we
23 can talk about it. If I wasn't, just to stay down in
24 Greenville. They were going to meet me at the River.

25 Q All right, sir. On the date of the meeting,

1 which direction did you initially take in your car, sir?

2 A Well, I took off. As I remember, it was
3 raining really hard that morning. I took off driving to
4 the lake. I believe Mark called me. It was past the
5 time that I was supposed to have met there. He was angry
6 on the phone. He said no, we're coming down there; meet
7 me at the River at a certain amount of time -- certain
8 time.

9 Q And the River being the location that you were
10 going to meet at if there was termination?

11 A Right.

12 Q What happened when you met at the River?

13 A Mark and I met in one of the banquet rooms,
14 just the two of us.

15 Q Yes, sir.

16 A And it was at that point, Mark said we're going
17 to have the understanding that this is a mutual
18 agreement.

19 Q What was the mutual agreement?

20 A That I was going to be moving on.

21 Q Is that what he said to you?

22 A Yes.

23 Q What was your response?

24 A My response was okay.

25 Q When you left the banquet room from Mr.

1 Hammond, what did you tell the staff?

2 **A** Well, I asked Mark, I said, you know it's been
3 a long time. There was a lot of people that I brought on
4 this team. I said, I'd like the opportunity to talk to
5 them and just let them know I'm leaving. I had no
6 intention of ruffling feathers or anything. There was no
7 reason.

8 So I went into the office. If I remember,
9 there were two employees there. I let both of them know
10 I was moving on. It was as simple as that. I went
11 downstairs to let the general manager at the time know
12 that I was going to be moving on. When he approached me,
13 he shook his head. He said, "I already know. Larkin told
14 me." Which I don't know -- she wasn't in the meeting.

15 **Q** What did that mean to you, sir?

16 **A** That meant she was telling people I was going
17 before Mark and I met.

18 **Q** Yes, sir. Now, after that -- that meeting of
19 your termination, uh, did you have -- what discussions,
20 if any, did you have with Mr. Hammond about the purchase
21 of your stock?

22 **A** Well, he cordially told me in that conversation
23 that he and Larkin had decided to buy my shares.

24 **Q** Yes, sir. Did they put a price on it?

25 **A** Not at that meeting, but he said he was going

1 to get with the accountant and put together some things
2 and then we would circle back up.

3 Q When did you next hear from them about the
4 purchase of your stock?

5 A I believe it was within a week or two. I think
6 they were traveling some. I know I was.

7 Q What was the offer made?

8 A Uh, the offer was made based on a -- I guess it
9 was an evaluation spreadsheet that Mark had put together
10 and emailed to the accountant.

11 Q What was the net net of the agreement?

12 A The net net. they wanted to give me \$12,000 if
13 I returned the boat back to them. The net net would have
14 been zero.

15 Q But the boat had already been conveyed to you
16 as part of your compensation.

17 A That was my understanding.

18 Q So net net again, if you go back and revisit
19 it, what was the net of their offer?

20 A Zero.

21 Q For your stock ownership in these three
22 corporations?

23 A Yes.

24 Q Now, Mr. Pertuis, --

25 (WHEREUPON, Plaintiff's Exhibit 8 is marked for

1 identification purposes.)

2 BY MR. WILSON:

3 Q Now, I'm going to show you a document marked
4 Exhibit 8.

5 MR. WILSON: Mr. Pillsbury, do you have any
6 objection to the admissibility and inclusive of the
7 record of Exhibit 8?

8 MR. PILLSBURY: No, no.

9 THE COURT: Exhibit 8?

10 MR. WILSON: 8.

11 BY MR. WILSON:

12 Q Would you take a look at that? Again, I'll
13 remind you that it's an email string and it runs from the
14 bottom to the top.

15 A (Reviewing.) Okay.

16 Q It's dated December the 2nd. It's from Mark
17 Hammond. And what's his -- what's his communication to
18 you on December the 2nd by email?

19 A This says we are rescinding our offer to
20 purchase your stock interest. Should you choose to
21 deliver the hurricane boat back to us this weekend before
22 the lake goes down for proper storage, we will consider
23 further discussions.

24 Q What did that mean to you, sir?

25 A It's off the table.

1 Q Yes, sir. And did you respond to that?

2 A I did.

3 Q And is that the upper part of that Exhibit 8?

4 A Yes.

5 Q Would you tell the court what you were trying
6 to communicate to them?

7 A Basically, I was, uh, saying they were saying
8 they were rescinding the offer. It's the same offer I
9 told them I didn't believe was a fair evaluation and I
10 needed information to have one done at his suggestion to
11 hire a third party evaluation specialist. Several
12 questions. And then --

13 Q What is the third, fourth paragraph? It begins
14 "I have every intention". Would you read that to the
15 court please, sir?

16 A Yeah. It says I have every intention to
17 resolve things with you both on fair and amenable terms.
18 That's all I have ever requested. My decision to move on
19 from Larkins was based on changes I needed to make to
20 positively impact my life. I represented this brand with
21 the utmost integrity and professionalism. The nine and a
22 half years have given me a tremendous number of
23 experiences, opportunities and growth, and I'm truly
24 appreciative. I'm looking forward to every new
25 opportunity and what is best for me and my family and

1 wish for you and everyone representing Larkin's brand the
2 same. I continue to promote and support your business
3 and the people that represent you on a daily basis and do
4 not appreciate you taking this direction.

5 Q Mr. Pertuis, what documents had you received
6 from corporate counsel during the period from your taking
7 the week off to consider things until the date of this
8 exchange of emails?

9 A What did I receive?

10 Q Yes, sir.

11 A I don't remember receiving anything.

12 Q No master agreement, no shareholder buy/sales?

13 A No. None of that.

14 Q All right, sir. Did you receive any further
15 offers from them for your stock after this ---

16 A No.

17 Q --- exchange of events?

18 A No.

19 Q What happened to the boat?

20 A What happened with it?

21 Q Yeah. You still have the boat?

22 A No, I sold it a year and a half or so ago after
23 that.

24 Q Did they try to get the boat back? Did they
25 continue to -- what did they do about the boat?

1 **A** Well, they -- there was a letter sent accusing
2 me of stealing company property. Then they wanted some
3 type of protective order signed off before they would
4 release documents so I could have an evaluation done.

5 **Q** Okay. Maybe that's moving ahead. When you
6 finally realized that the offer was not an offer that you
7 wanted to consider, did you ask Mr. Hammond for an
8 opportunity to evaluate the company?

9 **A** Yes. The last phone call I remember having
10 with him, he said, if you don't like my offer, you can go
11 pay for a third party evaluation to be done.

12 **Q** Did you hire somebody to do that?

13 **A** I did.

14 **Q** Who was that?

15 **A** Charlie Alford.

16 **Q** All right. And did he tell you you were going
17 to have to have some records and documents?

18 **A** Yes.

19 **Q** And why?

20 **A** So he could perform the evaluation accurately.

21 **Q** What documents did you ask for?

22 **A** I believe he asked for all of the financials
23 from --

24 **MR. PILLSBURY:** Your Honor, I'm -- obviously
25 hearsay. But whatever you want to do with it.

1 **THE COURT:** Yeah. I'll tell you what, what I
2 want to do is take a short break.

3 **MR. PILLSBURY:** Okav.

4 **THE COURT:** All right. Okay. You can step
5 down. Don't talk about your testimony.

6 **THE WITNESS:** Okay.

7 **MR. PILLSBURY:** Thank you, Your Honor.

8 **THE COURT:** Okay.

9 (WHEREUPON, a short recess is taken.)

10 **THE COURT:** As you were saying?

11 **BY MR. WILSON:**

12 **Q** As I was saying, Mr. Pertuis, what did you ask
13 -- what kind of documents or records did you ask for from
14 Mr. Hammond?

15 **A** Uh, I had asked for the financials. I don't
16 remember tax returns. I think it was just, you know,
17 balance sheets.

18 **Q** And what response did you get from Mr. Hammond?

19 **A** Uh, he didn't send anything directly to me.
20 Actually, I think, uh, -- I think that was earlier in
21 this from the in-house accountant that sent me something
22 current. But as far as everything that was legitimate
23 that he needed to view his analysis, nothing was sent.

24 **Q** You never received anything?

25 **A** Never received anything.

1 Q What was your reaction to that, sir?

2 A I didn't understand why not. He told me to go
3 get the third party evaluation.

4 Q Yes, sir. And Mr. Pertuis, after you left,
5 after your termination on October 12th, 2009, what did
6 you do for a living after that?

7 A I didn't really do anything for about six
8 months.

9 Q Why?

10 A I wasn't sure what I was going to do.

11 Q Did you find something to do?

12 A I did. Yes.

13 Q What is it?

14 A I believe in March of 2010, I took a position
15 as a management consultant working for a company out of
16 Chicago.

17 Q What kind of work were you doing?

18 A Primarily turnarounds with small businesses.

19 Q Any particular focus for small businesses?

20 A No, it was everything from airplane dealers to
21 lumber yards to plumbers.

22 Q All right, sir. How long did that job last?

23 A A little over a year.

24 Q What did it pay?

25 A It was a commission structure, so --

1 **MR. PILLSBURY:** Your Honor, I don't
2 understand the relevance.

3 **THE COURT:** What's the relevance?

4 **MR. WILSON:** Wrongful termination and the
5 difference between what he was making and what he
6 should have been making, Your Honor.

7 **MR. PILLSBURY:** They've never alleged
8 wrongful termination in the pleadings.

9 **MR. WILSON:** As a part of the breach of
10 fiduciary duty, I would suggest that it --

11 **THE COURT:** Well, go ahead. Go ahead.

12 **THE WITNESS:** It was commission but
13 significantly less.

14 **BY MR. WILSON:**

15 **Q** Yes, sir. That job lasted six months?

16 **A** No, that one lasted a little over a year.

17 **Q** What did you do after that?

18 **A** I started my own business.

19 **Q** What is it?

20 **A** I work with small business owners, executives
21 and athletes as an executive coach.

22 **Q** Had you had anything to do with the restaurant
23 business since your departure from your employment with
24 the Hammonds?

25 **A** Other than eating in restaurants, no.

1 Q Now, uh, at some point, Mr. Pertuis, did you
2 receive a copy of a document called a Protection or
3 Confidentiality Agreement?

4 A I remember something like that.

5 Q And do you remember why you didn't agree to
6 that confidentiality agreement?

7 A If I remember correctly, there were three
8 points on it, the first one accusing me of theft and the
9 third one was, uh, that my ownership percent in Front Roe
10 was only one percent. I wasn't willing at that point to
11 sign off on that.

12 Q Is that why you didn't sign --

13 A That's why I didn't sign off on it.

14 Q All right. Now, this law suit, sir, how did it
15 start?

16 A That's how it started.

17 Q Was what?

18 A They sent that document to me saying they
19 weren't going to send me the documents unless I signed
20 it.

21 Q Yes, sir. Now, uh, Mr. Pertuis, can you tell
22 the Court exactly how it is that you have been injured by
23 the Hammonds' treatment of you as a minority shareholder?

24 A Well, I mean, it's, uh, now going on three and
25 a half years trying to get this thing resolved when it

1 should have been resolved, and I thought man-to-man
2 honestly, with integrity. So having to come up with the
3 financial burden to pay for, not only the evaluation, but
4 to maintain counsel. I was out of work for six months.
5 There are a number of things.

6 Q Yes, sir. Do you think you are entitled to
7 what -- what kind of shareholder position do you think
8 you are entitled to?

9 A Based on what we had discussed in the summer
10 before I left, it was a ten -- it was going to be ten
11 percent. At a minimum, the current evaluation that he
12 put on it was eight percent.

13 Q Yes, sir. And did you, at any time, receive
14 any documentation from any source whatsoever, that
15 documented the understanding that we presented to the
16 court this morning?

17 A No.

18 MR. WILSON: Your Honor, may I have a moment
19 to confer with myself?

20 THE COURT: It might take longer than that.

21 (WHEREUPON, there is a pause.)

22 MR. WILSON: Mr. Pertuis, would you answer
23 any questions Mr. Pillsbury has?

24 THE WITNESS: Yes.

25 MR. PILLSBURY: Your Honor, these are

1 Defendant's Exhibits. That's just a judicial copy.

2 THE COURT: Well, come on around.

3 MR. PILLSBURY: Oh, I'm sorry. Your Honor.

4 THE COURT: I do have a long reach.

5 MR. PILLSBURY: Long arm of the law.

6 THE COURT: Are these admitted or are these
7 just proposed exhibits?

8 MR. WILSON: Never seen them before.

9 MR. PILLSBURY: Well, he's seen them all and
10 I've shown them this morning. He didn't have a
11 problem this morning.

12 THE COURT: You want to look at them? Come
13 here, Mr. Wilson. Take a look at this so we can
14 save some time down the road.

15 (WHEREUPON, there is a pause.)

16 MR. WILSON: A few new items, Your Honor, but
17 nothing that I think is material.

18 THE COURT: Does that mean you don't object?

19 MR. WILSON: Well, yesterday evening at
20 approximately six o'clock, Rodney sent me copies of
21 documents purportedly generated by Mr. Stodghill. I
22 had not seen those documents until yesterday
23 evening. None of them were signed by my client.
24 Their point, of course, was going to be that they
25 were prepared and that they were going to --

1 **THE COURT:** Well, let's see. Nothing is
2 admitted. We'll just take it as we go. All right.

3 **CROSS-EXAMINATION**

4 **BY MR. PILLSBURY:**

5 **Q** All right. Mr. Pertuis, a few things. When
6 you started, uh, Mark and Larkin, it was -- when you
7 initially started, it was strictly salary plus base,
8 correct?

9 **A** What was? My comp?

10 **Q** Yes.

11 **A** With the understanding that there was going to
12 be a vesting schedule put in place.

13 **Q** Right. And ultimately, you reached a vesting
14 schedule for Larkins on the Lake, Lake Point, correct?

15 **A** Right.

16 **Q** Was that a document that was generated and
17 signed by the two of you?

18 **A** Help me understand. What document?

19 **Q** The vesting schedule for how you would acquire
20 ownership interest in Larkins on the Lake.

21 **A** Yeah. I think early on and again I don't have
22 that initial offer letter, but my employment with them
23 was contingent on that vesting schedule otherwise I
24 wouldn't have taken the opportunity.

25 **Q** It -- was there a vesting schedule that was

1 signed by the two of you?

2 A Again, I --

3 Q I understand that there was an agreement.

4 A Right.

5 Q But what I'm trying to get to is was there a
6 written document between the two of you that -- what the
7 vesting schedule would be or was it something that they
8 simply told you here is how it's going to happen and they
9 followed through it?

10 A I don't remember.

11 Q You don't remember signing any vesting
12 schedule?

13 A I don't remember that.

14 Q Okay. And -- but true to their word, they told
15 you that you would acquire a two percent interest in Lake
16 Point or Larkins on the Lake, two percent a year over a
17 five-year period, correct?

18 A Something like that. I don't remember exactly.

19 Q You have a different recollection?

20 A Yeah, I don't know that it was equal two
21 percent each year. It may have been one, two, three and
22 four over those periods. I don't remember.

23 Q But over a five-year period, you acquired a 10
24 percent interest?

25 A Uh-huh.

1 Q That's yes?

2 A Yes.

3 Q And the purpose of that was they wanted to
4 increase your interest over time because they wanted to
5 incentivize you to stay there longer?

6 A Sure.

7 Q And when Beachfront opened up, was there a
8 written agreement about the vesting schedule that you
9 signed and that Mark signed for Beachfront?

10 A I think there was probably a letter recapping
11 those terms.

12 Q Was there a document that you signed?

13 A I don't remember.

14 Q And, uh, there was a document?

15 A Possibly.

16 Q No. There was or was not?

17 A I believe there was.

18 Q Okay. And similar to the vesting schedule with
19 Larkins on the Lake or Lake Point, that one was amortized
20 -- you acquired in piecemeal a 100 percent interest over
21 a five-year period, correct?

22 A Yes.

23 Q And so whether there was a document that you
24 signed or whether there was just an agreement that you
25 had, when it came to Lake Point and when it came to

1 Beachfront, you acquired exactly the interest in those
2 businesses that you agreed to, correct?

3 A Correct.

4 Q Uh, some of these matters, I'm just, uh, -- let
5 me hand you what is marked as Exhibit number 1,
6 Defendant's Exhibit number 1.

7 MR. WILSON: We have no objection, Your
8 Honor.

9 BY MR. PILLSBURY:

10 Q And I don't want to spend too much time on
11 this. But the point of this and the documents I'm going
12 to show you is that there was fairly regular
13 communication between you and particularly Mark Hammond
14 regarding either an annual assessment or where you stood
15 as far as how the business was doing and your
16 compensation. Would you agree with that?

17 A Yeah. During this time period, sure.

18 Q Okay. And so for -- and I -- I'll move for
19 admission of all of them in the end to keep it --

20 MR. WILSON: I have no --

21 MR. PILLSBURY: Once I --

22 MR. WILSON: I have no objection to anything.
23 He can admit it or not.

24 THE COURT: All right.

25 MR. PILLSBURY: Okay.

1 BY MR. PILLSBURY:

2 Q Exhibit 2, that is for December 1st, 2003,
3 correct?

4 A Yes.

5 Q And again, it's just sort of an annual review
6 of kind of how -- sort of a stated union address. Is
7 that a fair assessment?

8 A I guess. I mean that was December. That one
9 was August.

10 Q Exhibit 3, is in April of 2004. So that's
11 approximately a few months later. In this one, by this
12 time, uh, you are acquiring the interest that you had
13 been promised in Lake Point and Beachfront. And, uh, --
14 well, first of all, do you recognize the document?

15 A I mean, they are all on the same letterhead. I
16 don't know that I seen that one. I couldn't tell you.
17 It says '04. So if it came out in '04, possibly so.

18 Q Okay. Uh, well, I guess do you have -- is
19 there anything in there that looks new to you or
20 different than what you remember about your --

21 A I wouldn't be able to tell you.

22 Q Then, under incentive plan, do you see -- it's
23 really the last full sentence of that paragraph. It says
24 one change going forward is reducing the taxable amount
25 of your incentives through the use of shareholder

1 distributions which will be applied to the incentive
2 payouts to benefit you an extra seven and a half percent
3 in real cash. You see that?

4 A I see it.

5 Q Do you understand what that means?

6 A Yeah. He mentioned it the other day.

7 Q And so as you are acquiring interest, where you
8 started as salary plus a bonus and that bonus was always
9 based on performance, correct?

10 A Yes.

11 Q And that bonus was always based on what the
12 projected profit should be for a given location for the
13 following fiscal year.

14 A Correct.

15 Q And that's something that you and Mark would
16 sit down and discuss, correct?

17 A We did.

18 Q Uh, and so your bonuses, that was historically
19 something that would be run through payroll that you
20 would pay taxes on, correct?

21 A I don't know about historically. I would say
22 sporadically at best.

23 Q Was there ever a bonus that you recall that you
24 were entitled to that you didn't get?

25 A I don't -- I don't remember.

1 Q Did you ever complain I'm owed a bonus here and
2 I didn't get it?

3 A No.

4 Q And so what Mark is trying to do here in
5 Exhibit 3 is actually to save you money, correct?

6 A As far as that reads, yeah.

7 Q And -- and -- and all that's doing is taking
8 whatever the bonus component of your compensation package
9 is and running it through as a shareholder distribution
10 so you could save some taxes, correct?

11 A Okay.

12 Q And when you got those, uh, -- when you got
13 those shareholder distributions, those were always in,
14 like, even amounts, correct? Like 500 or 1000. There
15 wouldn't be any deduction for taxes so all the
16 shareholder payments that you received were even amounts,
17 correct?

18 A So let me back up just a little bit just make
19 sure I'm answering your question. When I received a
20 check like that, it was based on bonus target. Then if
21 it was an even amount, it would have been congruent with
22 what my bonus target was for achieving over or above.
23 And Mark may make a calculation of, oh, well, we're
24 probably going to take some money so let's just write the
25 full amount. That's how that was determined.

1 Q But it was always designed to make sure it
2 would maximize whatever bonus you would be entitled to by
3 running as much of it as possible as a shareholder
4 distribution?

5 A Maybe. But I didn't know what part of that was
6 shareholder distribution ever.

7 Q Well, like for example, the accountant out in
8 California, did you interact with him at all?

9 A Not very often.

10 Q Was there anything that prohibited you from
11 asking him any questions about this?

12 A No.

13 Q Was there ever any time that you asked him a
14 question and he refused to answer it about the difference
15 between shareholder distribution and bonus payments?

16 A No. in fact. the only time I ever remember
17 talking to him was actually when my attorney friend in
18 Dallas and I were on a conference call with him and I
19 made the comment about shareholder distributions and he
20 said, yeah, we need to clear those up so that we're
21 paying them out at the end of the year. That's the only
22 time I talked to him about it.

23 Q But regarding any questions that you had about
24 how the -- what was categorized as a distribution or
25 bonus, there was nothing that prevented you from asking

1 him any of those questions, correct?

2 A No.

3 Q And isn't it true that Mark had actually
4 encouraged you to ask him if you were still confused
5 about this?

6 A I'm sure he encouraged me to do that.

7 Q Okay. Now, I hand you what's been marked as --
8 or admitted as Exhibit number 4. This document is
9 basically the beginning of Larkins on the River, correct?

10 A Correct. That was about the time frame.

11 Q Right. And down at the bottom paragraph, as we
12 indicated earlier, uh, we want you to have an ownership
13 in FRR, which is Front Roe Restaurants, and are looking
14 at some creative ways to make this happen, correct?

15 A Yes.

16 Q Now, I had glossed over a point that Mr. Wilson
17 had asked you about. When the real estate at Larkins on
18 the Lake was purchased, that was kind of important for
19 that business to own the land, correct?

20 A I don't know.

21 Q And they didn't own the land and the original
22 lease with the landowner was coming up, correct?

23 A Okay.

24 Q It --

25 A The lease was coming up, I guess. I mean, you

1 might know better than I do. I don't remember.

2 Q You were the Director of Operations. You don't
3 recall any discussion about the necessity of --

4 A I bet I did at that time but sitting here
5 today, I don't remember that.

6 Q So that lease is coming due or it's expiring.

7 A Okay.

8 Q And it's kind of imperative in order for that
9 restaurant to stay in existence that they have a
10 relationship with the landlord, correct?

11 A Okay. That makes sense.

12 Q And so at the time that they purchased, uh, the
13 land, did you ask to participate in that transaction?

14 A I don't remember asking to participate. But it
15 was just kind of one of those things that Mark had moved
16 forward with.

17 Q Well, did you ever say, Mark, I want a piece of
18 that pie?

19 A I don't remember, not until it was pretty much
20 done. I doubt I . . . I doubt I did.

21 Q Uh, and are you aware that they had to pay 1.7
22 million for the land?

23 A I remember you brought that up the other day.

24 Q Do you remember that being -- I mean, aside
25 from --

1 A I don't know what the number was. If that's
2 what you say, I don't have any reason to dispute it.

3 Q Okay. And do you understand that Mark and
4 Larkin had to personally guarantee all the loans?

5 A If you say so.

6 Q Do you know one way or the other whether, uh,
7 the rent payment at Larkins on the Lake is exactly what
8 the loan payment is on the land?

9 A I never saw the loan. So I wouldn't have any
10 idea. I know the rent went up considerably after that
11 happened.

12 Q Right. So would it surprise you that that was
13 exactly what the loan payment was?

14 A So my question is, is that a distribution to
15 them?

16 Q It -- if -- it was important for the business
17 to stay in its location because they needed a landlord
18 and they had to buy the land. If they lost the land,
19 then the business would close, correct?

20 A Or you negotiate a lease with a new owner.

21 Q Right.

22 A I don't deal with real estate.

23 Q Okay.

24 A I know the Peace Center lease is going to come
25 up. The one in Columbus is going to come up, but I doubt

1 they'd buy those properties.

2 Q Well, we'll get to those in a couple of
3 minutes. Handing you what's been marked as or admitted
4 as Exhibit number 5. Now, again this is sort of along
5 the lines of there were kind of routine adjustments to
6 your compensation. It wasn't like you started working
7 there and then you quit and nothing happened in between
8 as far as taking care of you financially, correct?

9 A They were routine meetings. Whether he
10 prompted them or I did, I guess, is to be determined.

11 Q Well, did -- was there a meeting where he ever
12 told you I don't want to meet with you because I don't
13 think you deserve any more money?

14 A I don't remember that specific conversation.

15 Q Now, when it came to Front Roe, your vesting
16 schedule for Lake Point, vesting schedule for ownership
17 with Lake Point was incremental over a five-year period
18 and you got a 10 percent interest.

19 A Correct.

20 Q And the same with Beachfront.

21 A Correct.

22 Q With Front Roe, it was different, correct?

23 A Yeah. It was different.

24 Q And the agreement with Front Roe was as long as
25 the business achieved a certain, uh, profit margin,

1 that's how your ownership interest was calculated,
2 correct?

3 A There was an initial letter similar to form of
4 this around a creative way to structure something.

5 Q Okay.

6 A It was based not on time as you said. It was
7 on profitability, I think.

8 Q All right. And this is where I have to be very
9 clear because we went round and round in your deposition
10 on Friday about this. There was an agreement that had a
11 vesting schedule for your ownership interest with Front
12 Roe, correct?

13 A I remember a document. If you have the
14 document, I'd love to look at it again. But I don't have
15 that document.

16 Q There was a document that you remember,
17 correct?

18 A I remember a document, yes.

19 Q And that document had a vesting schedule for
20 Front Roe?

21 A It had a proposed way to do things going
22 forward that we were going to solidify at a later date.
23 That's what it had.

24 Q Well, did it have a vesting schedule or not?

25 A It outlined a way we were going to move forward

1 based on profitability. So if you call that a vesting
2 schedule. I don't know.

3 Q Okay.

4 A It's the magic document.

5 Q Okay. And that agreement -- it's similar to
6 Lake Point or Beachfront. We don't have any written
7 agreement as to a vesting schedule as to those entities,
8 do we?

9 A Well, by '05, we had it all done with stocks
10 certificates issued, shareholder agreements documented
11 legally. Everything else was in place.

12 Q Well, let's talk about that because my question
13 was was there ever a specific agreement that you signed
14 that said here is the incremental increase on how you are
15 going to get ownership interest over time.

16 A Don't remember that document.

17 Q All right. And so despite that document not
18 existing --

19 A Which one are you talking about?

20 Q Lake Point and Beachfront.

21 A Okay.

22 Q They follow through with exactly what they said
23 they would do.

24 A They did, yeah.

25 Q And when it comes to Front Roe, Front Roe was

1 different because there wasn't an incentive that was
2 based on trying to keep you around for years. Front Roe
3 was based strictly on the production of the business,
4 correct?

5 A That seems, right, yes.

6 Q And, uh, -- that -- we'll get to some of the
7 particulars here in a few minutes, but that agreement is
8 what you agreed to with Mark Hammond regarding how you
9 would acquire an interest in Front Roe?

10 A I'm having a hard time with your word
11 "agreement". I'll say it was an agreement, but what that
12 was is a letter introducing a way, which you will see in
13 these later documents after my constant probing to some
14 options to create and solidify that. So let's call it an
15 agreement so I can answer your question and move on.

16 Q Well, again, because it is important, there was
17 a document that existed that had a vesting schedule that
18 was based on performance of Front Roe?

19 A It had some big outline about year after year
20 what percentage I could earn based on profitability. I'm
21 not going to call that a vesting schedule.

22 Q And your ownership interest would increase as
23 the business met certain profit margins?

24 A Yes, I believe that, yes.

25 Q Okay. And that's what you went with.

1 **A** Initially, yes.

2 **Q** And, uh, I think you had mentioned that if
3 Front Roe had achieved whatever that margin was that got
4 you 10 percent in Year One, you would get your 10
5 percent.

6 **A** That sounds right.

7 **Q** Handing you what's been marked as Exhibit 6 or
8 admitted as Exhibit 6. This is an email from Mark to you
9 in kind of going through some of the different options.
10 And I think it's already been admitted as a Plaintiff's
11 Exhibit. The thing that I wanted to point to is down
12 there when Mark is discussing various options, he states
13 keep the current arrangement with 10 percent of Lake
14 Point and Beachfront plus what I hope will be 10 percent
15 of Front Roe this year. You will own approximately
16 250,000 in net street equity on the businesses. You see
17 that?

18 **A** I do.

19 **Q** Okay. Now, do you agree with me that when this
20 was written that however Front Roe was performing, it
21 hadn't performed at a level that gave you or earned you
22 that 10 percent interest, correct?

23 **A** Uh, well, again, I don't know. That's why we
24 are discussing these options so I do know and I have
25 clarity. The way that reads to me is, well, I hope you

1 earn 10 percent.

2 Q Right. If Front Roe met the profit level that
3 would have earned you the 10 percent that you agreed to,
4 you would then own that 10 percent, correct?

5 A Yes.

6 Q But it hadn't reached it yet, correct?

7 A Right. We didn't know what we were working
8 for.

9 Q That's not entirely true. If you had earned 10
10 percent based on your agreement with Mr. Hammond,
11 wouldn't you have sent him an email saying, hey, Mark,
12 I've already earned my 10 percent?

13 A Might have. But based on this and based on the
14 formula you're using, we would have had to have over a
15 million dollars in controllable profit for me to hit 10
16 percent in that year alone. I would not have signed off
17 on that budget.

18 Q Well, I'm talking about the way in which you
19 acquired an interest.

20 A So am I.

21 Q And so what that interest -- what that
22 agreement was is what you guys went by, correct?

23 A Yes. It's what I thought it was. I don't even
24 know what it was.

25 Q Right. My point is that if you thought Front

1 Roe had achieved whatever it needed to in order to earn
2 you that 10 percent interest, you would have said
3 something to Mark in 2008, correct?

4 A Most likely.

5 Q So it's fair for us to assume that the fact
6 that you didn't say anything that you knew that whatever
7 that goal was, you hadn't met?

8 A No. And you know what they say about
9 assumptions. But that's why we had this letter written
10 with these three options for us to discuss so I had 100
11 percent clarity on what I was working from and what I was
12 working towards. That was the whole point of this
13 document.

14 Q Well, the whole point of the document is to
15 discuss options that weren't in. Two and three talk
16 about options that are yet to be in play. Number 1 is
17 what the current arrangement is, correct?

18 A Yes. That was keep current arrangement with 10
19 percent Lake Point, Beachfront and what we hope would be
20 10 percent of Front Roe.

21 Q Right.

22 A And so how we got to that 10 percent, I wasn't
23 clear.

24 Q Well, again, you -- there's no point in which
25 you said I don't understand when I get my 10 percent,

1 correct?

2 **A** No, but we were working towards it. Every time
3 I asked about it, there was going to be documents that
4 clarified that. I don't know how long this magic
5 document has been missing. As far as I know, I saw it
6 when he sent it to me in '05 and haven't seen it again.

7 **Q** Well, now this is -- at any point along the
8 way, did you ever send him an email saying I do not
9 understand what I have to earn in order to get 10
10 percent?

11 **A** Hence my reason for requesting these kind of
12 conversations to have things legally drafted. I didn't
13 think it would be that big a deal. We just done it in
14 '05 to solidify the other vesting schedule. How long
15 does it take? So going back to your Exhibit 4 where it
16 says, as we indicated earlier, we want you to have
17 ownership and are looking at creative ways to make this
18 happen. This document, three years later, is creative
19 ways. That's what I'm saying.

20 **Q** Was there ever an email or letter that you sent
21 to Mr. Hammond that said I do not understand what my goal
22 is at Front Roe in order to earn me my 10 percent?

23 **A** I don't know a letter or email. But if it was
24 something like that, these conversations were probably a
25 conversation that happened. I want to be clear.

1 **Q** Do you remember asking him, I don't know where
2 -- I don't know what the goal is? At what point do I get
3 my 10 percent?

4 **A** How clear do I have to be? I want documents.
5 I want clarity from the very beginning.

6 **Q** Again, is there -- at any point along the way,
7 did you say I do not understand what I have to earn in
8 order to get my 10 percent?

9 **A** Yes. This is why we had these documents and
10 these conversations so we could come up with what it was
11 and I would know.

12 **Q** Show me in that document where you are
13 questioning that you do not understand --

14 **A** I just told you I don't know that it was in a
15 document.

16 **Q** Pardon?

17 **A** I don't know that I put it in a document. We
18 saw each other every day.

19 **Q** Let me hand you what's been admitted as Exhibit
20 8. So -- and this is just sort of groundwork. There
21 were portions of some of the exchanges and meetings that
22 took place in 2009. This document is just sort of
23 groundwork. Would you agree with me that beginning in
24 January of '09, uh, you guys began to sit down in earnest
25 and talk about what needed to be done as far as an

1 employment agreement or a shareholder agreement. Things
2 of that nature in a general sense.

3 A Yeah. It started long before 2009. I think my
4 line of questioning with the specifics was --

5 Q I think you said on direct that you sent an
6 employment agreement to Mark in 2008 and that you had
7 emailed it to him. Do you have that email?

8 A The one that I sent to him?

9 Q Yes.

10 A No. I don't -- I think actually what I said
11 was I gave him a hard copy. I don't remember if I
12 emailed it or forwarded it. I have a copy of the email
13 that was sent to me from my friend that's an attorney.

14 Q This, I think, is already in, but Exhibit
15 number 9. Defendant's Exhibit. Now, you have to kind of
16 start at the bottom. This is a little bit what you went
17 through on direct. My point is that you guys had a
18 meeting in February of 2009 to talk about kind of who was
19 going to be responsible for what. It wasn't just that
20 you were talking about shareholder agreements. You were
21 talking about a multitude of other issues, correct?

22 A Right.

23 Q Like disability insurance, things of that
24 nature?

25 A Uh-huh.

1 Q So it's not like there was only one issue on
2 the table and it was being ignored. There were kind of
3 multiple parts that were moving, correct?

4 A Okay.

5 Q Is that fair?

6 A Sure.

7 Q And the reason that I -- about Exhibit number 9
8 is it's kind of typical for Mark, isn't it, that he'll
9 generate bullet points about issues that are covered.
10 Then he'll summarize, okay, here's how we're going to do
11 the followup, correct?

12 A Typical, I don't know. But it's certainly
13 indicated here that was what was done.

14 Q And in your course of dealing with him,
15 wouldn't you traditionally receive emails of similar
16 structure and say here are the issues and here's who's
17 going to be doing what from this point forward?

18 A I guess so. I don't remember looking back
19 through emails.

20 Q Okay. Well, uh, so it's not like he's ignoring
21 you?

22 A No.

23 Q Right. And at the bottom of that, of his email
24 in February, it says if I missed any item from our
25 discussion, please let me know so I can be sure it's

1 addressed. Do you recall that there was anything missing
2 or that you sent a followup to this saying there's
3 something else in play that we talked about that's not
4 here?

5 **A** I don't remember.

6 **Q** You had -- after he had said why don't you take
7 the first crack at the shareholder agreement, I think
8 that's one of the exhibits that you've had admitted,
9 which is what I have as Exhibit number 10, correct?

10 **A** That's it here.

11 **Q** And so, uh, Exhibit 11 --

12 **MR. WILSON:** What is it, Rodney?

13 **MR. PILLSBURY:** Uh, which one is 11?

14 **MR. WILSON:** Yes.

15 **MR. PILLSBURY:** Uh, I'm sorry.

16 **THE COURT:** Email dated April 14, '09,
17 Hammond to Pertuis. Is that how you say your name?
18 How do you pronounce your last name?

19 **THE WITNESS:** Pertuis.

20 **THE COURT:** Pertuis. Pertuis.

21 **BY MR. PILLSBURY:**

22 **Q** Okay. Now, this is in April. So approximately
23 two months after that original meeting, correct?

24 **A** Yeah.

25 **Q** And, uh, there was discussion about whether or

1 not, uh, you should wrap all three entities under one,
2 uh, under one corporation, correct?

3 A Yes.

4 Q Yes? And, uh, I think it was pretty much
5 agreed to that there were lots of reasons, uh, both from,
6 uh, concerns that were raised about trying to issue stock
7 and individual restaurants to managers. Let me back up
8 with that. As the direction of operations, hiring all
9 the managers and hiring the staffing side was kind of
10 your baby, correct?

11 A Correct.

12 Q And so, -- and the thought -- I'm gleaming from
13 this the thought was that if you had managers that were
14 doing well, you would want to do with them what Mark and
15 Larkin had done with you at Lake Point, which is offer
16 you an opportunity to have an ownership interest in the
17 company, correct?

18 A That's correct.

19 Q And so if the three entities were combined,
20 that would sort of hamper the ability of trying to issue
21 stock to a manager at Lake Point or another manager at,
22 uh, Front Roe because they would all have -- the stock
23 would have to be issued uniformly, correct?

24 A Okay.

25 Q Is that your recollection?

1 A I follow what you're saying.

2 Q Right. So it's pretty much decided that you
3 really don't want to form an umbrella corporation at that
4 -- at least at that particular juncture, correct?

5 A Not according to this.

6 Q Well, did you disagree with that?

7 A No. That was just something that came up for
8 him to talk with him about.

9 Q I understand. So there was a definitive reason
10 to keep all three corporations separate?

11 A Would seem so.

12 Q And there's also notation that the -- let's
13 see. If you go -- these aren't numbered. It's the
14 sentence that begins the paragraph all due to-from
15 accounts, uh, need to be cleaned up. Do you see that?

16 A I see that.

17 Q I'm sorry. Skip down one. As soon as we have
18 the 2008 returns, and this is now April 14th of 2009,
19 those returns haven't been prepared yet, correct?

20 A They would have been due the next day.

21 Q Was there an extension filed?

22 A Always. Always.

23 Q Okay. Now, was that any fault of Mr. Hammond?

24 A I don't think so.

25 Q So what he's saying here is all the things that

1 we would want in order to do the current evaluations and
2 determine what options there may be to get you at a 33
3 percent level. We need to at least wait on those returns
4 to get done, correct?

5 A Yeah. I guess so.

6 Q My point is he's not ignoring the fact that
7 you're raising the issue. He's telling you that we need
8 the most current financial returns to see where we stand,
9 correct?

10 A Right. It says he sent a revised journal entry
11 list to Ashley for each of the companies late last week.
12 He was going to follow up with her. It probably should
13 have been done enough for us to move forward at that
14 point instead of waiting until October when they were
15 turned in.

16 Q Well, in -- now, did you disagree that the
17 return -- this was actually, uh, -- did you disagree that
18 the returns needed to be done in order for these
19 calculations to be made?

20 A Didn't think about it, no.

21 Q That's kind of my point. You didn't send him a
22 reply saying there's no reason for us to wait for the '08
23 returns. We already have the financial information.
24 Let's go, go, go. You didn't say anything like that,
25 correct?

1 **A** If he didn't understand my sense of urgency by
2 April 14th of 2009, he never would have.

3 **Q** I guess my question was, was there anything
4 that you said that said we don't need to wait for that?

5 **A** I'm sure I said let's move forward as quickly
6 as we can. Probably not in an email.

7 **Q** We'll get a lot further a lot quicker if you'd
8 answer my question.

9 **A** I did answer it.

10 **Q** Okay. My question is did you ever say we don't
11 need to wait for the '08 returns?

12 **A** I may not have said that specifically to this
13 document, but I know that they knew my sense of urgency.
14 So yes.

15 **Q** Uh, and you see where, down in the last full
16 paragraph, it's talking about the returns are taking a
17 little longer and they were hoping not to have to file an
18 extension. But I think you would acknowledge that they
19 typically would file for an extension and that he says
20 that he had failed to get the life insurance options from
21 Raymond on time and that's totally my fault. And that he
22 will make that call and follow up on that. Do you see
23 that?

24 **A** I do see that.

25 **Q** Is that kind of consistent with Mark that if he

1. said he was going to do something, uh, and he didn't do
2. it that he owned up to it?

3. **A** In some instances. But I also know that I had
4. reached out life insurance through another party on my
5. own which I ended up going with.

6. **Q** Handing you what's been admitted as Exhibit
7. number 12.

8. **MR. WILSON:** It's already in evidence as a
9. Plaintiff's Exhibit.

10. **MR. PILLSBURY:** Yeah, it's yours.

11. **BY MR. PILLSBURY:**

12. **Q** Okay. Now, this is the, uh, compensation
13. package that has been discussed in your direct exam. A
14. couple of things. One is, uh, below when it has those
15. calculations, uh, it says, uh, if we go with Option A, we
16. will extend the original timeline on the River into 2009
17. if the numbers for 2008 fall short of what you need under
18. the original agreement to get you 10 percent across the
19. board. The starting point is you already own 10 percent
20. lake front, correct?

21. **A** Correct.

22. **Q** And you own 10 percent -- Lake Point. You own
23. 10 percent in Beachfront?

24. **A** That's correct.

25. **Q** So the only issue where you didn't own 10

1 percent at that time would be Front Roe, correct?

2 A Correct.

3 Q And, uh, when it references -- when Mark says,
4 uh, if the numbers in 2008 fall short of what you need
5 under the original agreement to get you the 10 percent
6 ownership across the board, what he is saying is whatever
7 -- because we still don't know what the 2008 numbers are
8 yet because the returns haven't come back, correct?

9 A Okay.

10 Q And that the original agreement is the one that
11 we talked about, correct?

12 A The document.

13 Q And what he's saying here is whatever that time
14 frame was to achieve that profit level that entitled you
15 to 10 percent, if you went with Option A, it was like
16 extending the option another year in 2009 to let you meet
17 the financial goal to earn the 10 percent, correct?

18 A That seems right.

19 Q Okay. And then on page 2, the third paragraph,
20 uh, once we agree on a comp structure that I will
21 incorporate into an Employment agreement, we are working
22 with Curt on the buy-sell agreement and the revisions to
23 the articles of incorporation, et cetera, et cetera. And
24 do you recall sitting in on meetings with either Mr.
25 Stodghill or Mr. Reese about the buy-sell agreement and

1 drafting those documents?

2 A I remember one meeting, yeah.

3 Q And so Mark had done what at least he said he
4 was going to do, which was have his lawyers sort of
5 generate something based on what you presented to him --

6 A The corporate attorneys, not his lawyers.

7 Q Right. Right. The corporate attorneys. So he
8 had engaged the corporate attorneys to generate the
9 documents, correct?

10 A I guess so.

11 Q Well, there wasn't anything in that meeting --
12 was it Mr. Stodghill or Mr. Reese or both? Do you
13 recall?

14 A Both were there.

15 Q There wasn't anything that you remember at that
16 meeting where they hadn't started the process or they
17 didn't know anything about this project, but in fact this
18 was something that they were going to be working on?

19 A I honestly don't remember all the details of
20 that meeting.

21 Q And, uh, now, it's not your testimony, is it,
22 that Mark in any way hampered the law firm from producing
23 those documents?

24 A No, I mean I don't think he hampered them.

25 Q Under where it says, uh, current original.

1 **A** Uh-huh.

2 **Q** You go down to shareholder distributions. Do
3 you see where it says eight percent of net distributions?

4 **A** I do.

5 **Q** Okay. Now, we know you own 10 percent in --
6 actually, let me... (Pause.)

7 Let me hand you what's been marked as Exhibit
8 31.

9 **MR. PILLSBURY:** Your Honor, I don't think I
10 made an extra copy of these.

11 **THE COURT:** All right. Just describe what it
12 is.

13 **MR. PILLSBURY:** I'm sorry, Your Honor. These
14 are the corporate tax documents for Front Roe
15 Restaurants, Inc. They are marked as Exhibits 31A
16 through 31H, as in Harry. A corresponds to 2005, B
17 corresponds to 2006, et cetera, et cetera. So each
18 tax year is a separate sub-exhibit.

19 **THE COURT:** Through what year?

20 **MR. PILLSBURY:** 2012, Your Honor.

21 **THE COURT:** Okay.

22 **BY MR. PILLSBURY:**

23 **Q** Do you see the tax returns for Front Roe?

24 **A** I see them.

25 **Q** And you are free to look through this if you

1 want to confirm. But in 2005 and 2006 for Front Roe, uh,
2 you didn't have -- you weren't listed with any percent
3 ownership, correct?

4 A According to this.

5 Q And then the first time that you acquired any
6 interest in Front Roe was in 2007, correct?

7 A According to this.

8 Q And, uh, that interest was one percent,
9 correct?

10 A Correct.

11 Q And it was a one percent interest in 2007, a
12 one percent interest in 2008, a one percent interest in
13 2009, and et cetera, et cetera. It's been one percent
14 since 2007, correct?

15 A According to these documents.

16 Q And we discussed this in your deposition. But
17 in 2007, although we didn't -- you didn't recall the
18 details of what the performance goals were, that Front
19 Roe had performed well enough in 2007 to earn you that
20 one percent interest, correct?

21 A I believe so.

22 MR. PILLSBURY: I would move for admission of
23 31A through H.

24 MR. WILSON: I don't see any reason to
25 object.

1 **THE COURT:** Without objection.

2 **(WHEREUPON, Defendant's Exhibits 31A through 31H are**
 3 admitted into the record.)

4 **BY MR. PILLSBURY:**

5 **Q** Now, uh, back to Exhibit 12. When we were
 6 looking -- I won't do what Bob Wilson did to me in 2002
 7 at my very first trial, which is, mark on my exhibits.
 8 But this number here says eight percent of net
 9 shareholder distributions, correct?

10 **A** That is correct.

11 **Q** And, uh, this document was generated in mid-
 12 2008, correct?

13 **A** 9.

14 **Q** Oh, I'm sorry. Yeah, 2009. And I think we
 15 covered that the '08 return still hadn't been filed yet,
 16 correct? So that the most current information available
 17 or based on the tax returns and comparing it to
 18 QuickBooks would have been for 2007, correct?

19 **A** I guess so.

20 **Q** Now, we've established that you own -- in 2007,
 21 Lake Point, you owned 10 percent, correct?

22 **A** Correct.

23 **Q** And Beachfront, you own 10 percent, right?

24 **A** Correct.

25 **Q** Okay. And so this is the one that we know it's

1 at least one percent. Now, if -- when you were given the
2 Quickbook files, you had all the Quickbook information on
3 the company, correct?

4 A I very seldom got all the Quickbook files.

5 Q You seen the Quickbook files since this
6 litigation started?

7 A Yeah.

8 Q And you have them all for the company, correct?

9 A Yeah.

10 Q And in, uh, -- let me just see if I can... uh,
11 in 2008 -- I'm sorry. In 2007, from Lake Point, does it
12 sound about right to you that as the shareholder
13 distribution you received \$15,250?

14 A No.

15 Q Well, does it sound right to you that Mark and
16 Larkin total received 152,500?

17 A I have no idea.

18 Q Uh, does it sound right to you in 2007 for
19 Beachfront that you received 3000 for, uh, shareholder
20 distributions?

21 A No.

22 Q Does it sound right to you that Mark and Larkin
23 total had received 30,000 in shareholder distributions?

24 A (Shakes head.)

25 Q Does it also sound right to you that in Front

1 Roe you received \$500 distributions?

2 A No.

3 Q And likewise, does it sound right to you that
4 in 2007 they received a total of 50,000 in shareholder
5 distributions?

6 A No.

7 THE COURT: Just so I'm clear. Your answer
8 to each of those questions was no?

9 THE WITNESS: No.

10 THE COURT: Was that your answer?

11 THE WITNESS: That's my answer.

12 THE COURT: Okay.

13 BY MR. PILLSBURY:

14 Q Would it surprise you that in 2007, you
15 received a total of \$18,750 for shareholder
16 distributions?

17 A Yes, it would surprise me.

18 Q Would it surprise you that in 2007, Mark and
19 Larkin had received a total of 232,500 in shareholder
20 distributions?

21 A Don't know.

22 Q Do you know what percentage \$18,050 is of
23 232,500?

24 A You can do the math real quick I'm sure.

25 Q Just so you can make sure I add it up

1 correctly.

2 **A** Eight percent.

3 **Q** These are divisible by 10. That's the reason I
4 think we can do them without a calculator. 15,250 is
5 what percent of 152,500?

6 **A** 10.

7 **Q** 3000 is what percent of 30,000?

8 **A** 10.

9 **Q** 500 is what percent of 50,000?

10 **A** 1.

11 **MR. PILLSBURY:** Uh, Your Honor, if we -- when
12 do you want to break for lunch? I will -- what I
13 can do is take that opportunity to see if I can see
14 how much is left.

15 **THE COURT:** Left of what?

16 **MR. PILLSBURY:** What did Your Honor want to
17 do for lunch? Pardon?

18 **THE COURT:** Left of what?

19 **MR. PILLSBURY:** Uh, cross-exam. I probably
20 have about --

21 **THE COURT:** Y'all ready to break? Want to
22 break, Mr. Wilson?

23 **MR. WILSON:** I'm always hungry, Your Honor.

24 **THE COURT:** Obviously. All right. We'll,
25 uh, -- how much time do you want?

1 **MR. PILLSBURY:** Uh, --

2 **THE COURT:** It's 12:45. An hour and 15
3 minutes and be back here at 2 o'clock?

4 **MR. PILLSBURY:** Okay.

5 **THE COURT:** Is that good?

6 **MR. PILLSBURY:** Yeah.

7 **THE COURT:** Okay.

8 **MR. PILLSBURY:** Thank you.

9 (WHEREUPON, a lunch recess is taken.)

10 **THE COURT:** Have at it.

11 **BY MR. PILLSBURY:**

12 **Q** All right. Uh, Mr. Pertuis, during our lunch
13 break, did you discuss your testimony in any way with Mr.
14 Wilson?

15 **A** No.

16 **Q** I apologize. Although you weren't familiar
17 with the numbers, per say, uh, your answers would be the
18 same if those were the total distributions for all
19 shareholders, uh -- if I went through and asked you the
20 same questions, you just don't know one way or the other,
21 correct?

22 **A** Yeah.

23 **Q** Okay. All right. So, like, just because it's
24 easy math on this one, if the QuickBooks records bear out
25 that Mark and Larkin collectively got a shareholder

1 distribution on Beachfront for 27,000 and you got 3, that
2 would have made the total 30 as opposed to that's what
3 their number was. I was incorrect on that. But you
4 don't know one way or the other, correct, on what the
5 distributions were?

6 A I know that that wasn't mine for sure. I don't
7 know what they got. I never did.

8 Q Well, you had the QuickBooks records, right?

9 A Right. So I don't remember having reviewed
10 them recently and exactly what they said.

11 Q But that has all of the shareholder
12 distribution information contained within it, correct?

13 A As far as I know.

14 Q Okay. All right. That's all I have on that.
15 I'm handing you what's been marked -- I apologize -- 29A
16 through K and then 30A through K. I'm handing you what
17 I've marked as Exhibits 29A through K and 30A through K.
18 Those are just the corporate tax returns for Beachfront.
19 Beachfront property is which number? 30?

20 A 30.

21 Q And Lake Front is 29.

22 A Okay.

23 MR. PILLSBURY: Any objection?

24 MR. WILSON: None. I beg your pardon. No
25 objection.

1 BY MR. PILLSBURY:

2 Q And consistent with everything we talked about,
3 the K-1's in there reflect, I think, from 2005 on that
4 you're a 10 percent owner in each of those businesses,
5 correct?

6 A Correct.

7 Q All right.

8 MR. WILSON: No objection, Your Honor.

9 BY MR. PILLSBURY:

10 Q And these are all admitted. This is Exhibit
11 13. And you covered this. This was, uh, -- actually,
12 it's here as well. We had talked a little bit about
13 extending the ownership agreement for -- I'm sorry.
14 Extending the original agreement for you to acquire 10
15 percent or the opportunity to acquire 10 percent
16 ownership in Front Roe. What I wanted to focus on is the
17 next paragraph, which is that, uh, while -- there, uh,
18 the revenues in, like, for example, Front Roe did go up.
19 But also the cost went up as well, correct? I mean, we
20 talked about these large increases in revenue. But like,
21 for example, I think if you look at the tax returns for
22 Front Roe for \$3 million in sales, there was a net profit
23 of approximately \$300,000 give or take, correct?

24 A I didn't turn to that, but that -- sure, that's
25 what we paid taxes on.

1 Q Well, I mean, would that be kind of consistent
2 with your memory?

3 A I don't remember really.

4 Q Okay. Okay. Uh, actually, it was 13. I was
5 mistaken. This is your response back to Mark and Larkin.
6 In the base and bonus -- I mean, in the shareholder
7 distribution section, uh, you acknowledge that if you
8 don't achieve the 10 percent ownership in 2008, you're
9 going to extend that option or that opportunity through
10 2009 in order to, uh, equalize current ownership at 10
11 percent across the board, correct?

12 A That's what it says.

13 Q Okay. And so you are acknowledging there that
14 you don't own 10 percent in Front Roe, correct?

15 A Right.

16 Q Oh, it shows -- where does it say you own eight
17 percent?

18 A Well, that's where it got a little muddy.
19 Shareholder distributions eight percent and then 10
20 percent in the proposed plan.

21 Q Okay. And we been through the math. Okay.
22 Wanted to talk to you a little bit about the boat. Now.
23 the primary purpose -- the boat that we're talking about
24 was a boat that was maintained up there on Lake Lure,
25 correct?

1 **A** It was.

2 **Q** And that was something that primarily the
3 restaurant would use for -- either for its employees or
4 to take customers to and from that kind of thing,
5 correct?

6 **A** Originally.

7 **Q** And, uh, that was true through mid-2009. That
8 was kind of the purpose of the boat, right?

9 **A** Until June or so.

10 **Q** And then, uh, once -- and when ownership was
11 transferred to you in 2009, wasn't that primarily for
12 insurance purposes?

13 **A** It was because I requested it. It came up in
14 February when someone called Mark and asked if it was for
15 sale. We had some discussions around that. He came back
16 to me at some point there that spring and said, you know,
17 the insurance company is suggesting we get that out of
18 our name. Well, if I was going to have it in my name, I
19 was going to own it.

20 **Q** And did you pay for the insurance on the boat?

21 **A** Yes. Once it was titled to my name, I had it
22 insured in my name.

23 **O** Exhibit 15.

24 **MR. PILLSBURY:** And Your Honor, it's page 2
25 of Exhibit 15.

1 BY MR. PILLSBURY:

2 Q It lists there that you are the insured?

3 A Yes.

4 Q And that's the address for Larkins on the Lake,
5 correct?

6 A Yes.

7 Q Would it surprise you that, uh, Lake Point paid
8 this insurance bill?

9 A Uh, no, but I have records where we had it
10 insured in our name. That's what I was assuming, because
11 this was effective as of July the 17th, that it was mine.

12

13 Q Uh, yes, but would it surprise you that, uh,
14 the ownership was actually transferred before then,
15 correct?

16 A Yeah, whatever into June.

17 Q Right. And so would it surprise you that Lake
18 Point paid that insurance bill?

19 A I don't know that it would surprise me. I know
20 that it was -- I put it in my name. I don't remember
21 them paying for that.

22 Q Uh, I was looking at your 2008 returns. I
23 didn't see where you had shown, uh, \$12,000 worth of
24 income for the boat.

25 A Yes, sir. It was something that Mark may have

1 overlooked. Mark then communicated that that was given
2 to me.

3 O Okay. Uh, so uh, now, did you know it at the
4 time that it should have been reported on your tax
5 returns?

6 A I don't know that I thought either way. It was
7 in '09. There were things being reported on my tax
8 returns that I didn't get elsewhere.

9 Q Okay. I'm going to hand you what's been marked
10 as Exhibit 16. These are -- it's kind of a string of
11 emails that come October is when I think you testified
12 that you were having kind of second thoughts about which
13 direction you wanted to be going, correct?

14 A We had this conversation in October, yeah.

15 Q Right. And so, uh, there was -- you told Mark
16 and Larkin that you just needed to take some time off to
17 think about stuff, right?

18 A We did have that conversation.

19 O And they actually covered for you at the
20 restaurants while you were on vacation, I think, right?

21 A Whatever that means.

22 Q Uh, and, uh, then your response to this email -
23 - this is kind of on that Tuesday, uh, that you said on
24 October the 6th, 2009 and you start enumerating all of
25 the issues that you are experiencing at that particular

1 time. Is that fair to say?

2 A It is.

3 Q And, uh, I don't see anything in here where you
4 are saying that you felt that you're being treated
5 unfairly. Am I missing something?

6 A Because that word wasn't used?

7 Q You have a college degree, correct?

8 A I do.

9 Q All right. Is there anything in here in your
10 email where you believe that you are being treated
11 unfairly?

12 A Well, there's one bullet that says feeling
13 boxed in, where can I go with this partnership?
14 Frequently feel that the partnership is only on the
15 surface or based on how I perform on any given day. Let
16 me read for a minute. Delay in getting documentation
17 complete. No sense of urgency on your part.

18 Q Let's talk about that point if we can.

19 A Okay.

20 Q Uh, we've already discussed that June or some
21 point in that summer, you had a meeting with Mr.
22 Stodghill and his associate Mr. Reese and Mark Hammond to
23 go over and start the drafting of these documents,
24 correct?

25 A Okay. That's true.

1 Q And so it was -- basically, the ball was in
2 their court at that point. Mark didn't have any control
3 over that, correct?

4 A Okay.

5 Q True?

6 A I'd assume so.

7 Q And now, uh, it also says that, you know, that
8 the documents, that you would call Curt and he said that
9 Kevin had generated them but he was out sick.

10 A Like I said, I don't remember that
11 conversation.

12 Q Right. And so at least at the time that you
13 were generating this, there was a draft that was floating
14 out there. I realize you didn't have it but there was a
15 draft, correct?

16 A I wasn't aware of one. Like I said, I never
17 saw it.

18 Q Another point, uh, that -- two bullet points
19 down from that. You said since you were granted your
20 first one percent in your vesting schedule, you had not
21 received any form of distribution payout. Uh, that's
22 that one percent that we referenced that you own.

23 A In '07, right.

24 O And that's current as of 2009, correct?

25 A Yeah. Henceforth the reasoning for all my

1 questioning since that time.

2 Q Well, you don't say that you have any, you
3 know, any percentage greater than one percent, correct?

4 A That's been illustrated in all the other
5 documentation that occurred in the last six months.

6 Q Uh, I think Mark's response to this was that he
7 was willing to sit down and chat with you about whatever
8 you wanted to talk about, correct?

9 A Yes.

10 Q And was there anything about that conversation
11 between that Wednesday and the Sunday that you maybe feel
12 that Mark was in any way being unfair or misleading you
13 in any way?

14 A I felt like when we met, as I mentioned
15 earlier, we met in his car in a, I think it was a grocery
16 store parking lot that I drove up to meet him in
17 Columbus. I felt like his answers were evasive and short
18 to me and I felt like he was moving me on.

19 Q Uh, in what way?

20 A Just to appease things so we get back to normal
21 and keep on moving.

22 Q Okay. Did you talk about the documents were
23 being drafted?

24 A I don't remember talking about that at that
25 point.

1 Q And was there anything that you sensed from
2 them that he was trying to keep that from happening?

3 A I don't know but I felt like it was being
4 pushed forward to happen.

5 Q Exhibit 17. Oh, I need to chat with you about
6 one thing. The day that you ceased employment, you say
7 that you were on your way to, uh, Lake Lure?

8 A Yes.

9 Q In the car?

10 A Yes.

11 Q And that you called?

12 A I believe he called me.

13 O Uh, any reason why you didn't say any of that
14 in your deposition that we took three days ago?

15 A I think I did.

16 Q That you were in the car driving on the way to
17 Lake Lure?

18 A I think I did. I think I said that I called
19 him. I think when he was deposed, he said he called me.
20 As I remember, I think he's right.

21 THE COURT: You can open it.

22 BY MR. PILLSBURY.

23 Q I'm handing you a copy of your deposition.
24 That's one that we actually just took Friday, correct?

25 A Correct.

1 Q Of course, you know at the time that you gave
2 that deposition, you were sworn to tell the truth just
3 like you took the oath here on the stand, correct?

4 A Yes.

5 O If you would, turn to page 101. You have to
6 excuse me for just a second because there was no hard
7 copy of that deposition. I have to go off a computer-
8 generated...(Pause.)

9 Well, there was just zero discussion about
10 being in the car on the way there, Your Honor. To the
11 extent that it matters on whether or not he was actually
12 headed to, uh, Lake Lure, uh, and then changed
13 his...(Pause.)

14 Uh, at page...(Pause.)

15 Yeah, on page 100, uh...(Pause.)

16 Uh, you were asked a question at line 15, so
17 you called them to tell them that you weren't staying.
18 uh, with the company. And your answer was that you
19 called Monday morning to tell them that you were coming
20 to meet with them at Lake Lure and you said, uh, at page
21 101 so you already made up your mind that you were going
22 to resign. And you said you think at that point that,
23 uh, based on some of what you had experienced in the last
24 couple of days, yeah. So at the point that that phone
25 call took place, you already made up your mind that you

1 were going to resign, correct?

2 **A** What it says is that I had a lot of things on
3 my mind. I had agreed to go up there to continue to have
4 open conversations. If you'll go to page 99, I tell you
5 I had instructions. I had, if I was going to, on page
6 100, to stay, to come to the lake if I wasn't to stay at
7 the River and they would come down here. Where I was
8 incorrect was saying that I phoned him. Mark countered
9 that in his deposition saying he called me. I do believe
10 that's correct. I did not say I was in the car. I said
11 I was coming to meet them. Sorry I left out not being in
12 the car.

13 **Q** Let me just see if I read this portion of it
14 correctly. Page 101, line 1, it says okay. So you
15 already made up your mind that you were going to resign.
16 At line 3, your answer was, you know, I think at that
17 point based on some of the things that I experienced
18 those last couple of days, yeah. That was your answer?

19 **A** The best I could remember.

20 **Q** Okay.

21 **A** Then on line 7, it says I knew I was going up
22 there to talk more openly about a lot of things I'd been
23 thinking about.

24 **Q** Yes, but at the point in which you had already
25 made up your mind. I'm sitting here looking at the

1 transcript. You said under oath that I was asked -- I
2 asked you specifically at the point so you had already
3 made up your mind that you were going to resign. Your
4 answer was yes.

5 **A** Right. So if we segment it line by line, you
6 qualified your first question by saying in other words,
7 before you made the phone call, you knew you were going
8 to resigned. I answered I was going to talk more openly.
9 If I knew I was going to resign, my specific instructions
10 were to stay in Greenville. That's what happened.

11 **Q** So were you fired?

12 **A** As I told Mr. Wilson earlier, when Mark came in
13 and we started to discuss things, he said to me, so this
14 is going to be a mutual understanding.

15 **Q** So were you fired?

16 **A** Around about that --

17 **Q** So were you fired or did you quit?

18 **A** When he told me it was a mutual understanding,
19 that was my indication to move on.

20 **Q** So you were terminated?

21 **A** That's as short as the conversation was. I
22 told you when you asked me that the other day.

23 **Q** Were you fired?

24 **A** I'm saying it was a mutual agreement.

25 **(WHEREUPON, Defendant's Exhibit 35 is marked for**

1 identification purposes.)

2 **BY MR. PILLSBURY:**

3 Q I'm handing you what's been marked as Exhibit
4 number 35 which is the amended answer and third party
5 complaint filed in this case in April of 2010. Do you
6 recognize the document?

7 A I do.

8 Q Uh, there's nothing in that document, and feel
9 free to review it if you want to, that says that you
10 believe that you were wrongfully terminated. Would you
11 agree with that?

12 A Without reading through it line by line right
13 now, uh, --

14 Q It's not very long.

15 A (Reading.) Okay.

16 Q Correct?

17 A Okay.

18 Q There's nothing that you said to the court in
19 April of 2010 that you believe that you had been
20 terminated unfairly or improperly, correct?

21 A No, because I said it was a mutual agreement
22 according to that.

23 Q And in fact, there is no allegation at all that
24 Mark or Larkin misrepresented anything to you about the
25 percentage ownership of the business, correct?

1 **A** That they misrepresented the ownership?

2 **Q** Yes.

3 **A** Uh, I mean, this states that I allege I'm a 10
4 percent shareholder. That's all I see.

5 **Q** Uh, other than access the records, is there any
6 allegation that you made in April of 2010 that had
7 anything to do with that you were, you thought you had
8 been defrauded or you thought that you had been, uh,
9 treated unfairly?

10 **A** In here?

11 **Q** Yes.

12 **A** I don't see things specifically listed in this
13 particular document.

14 **Q** And isn't it true that the first time any
15 allegation was made about anything to do with, uh,
16 minority shareholder abuse didn't arise until November of
17 2011?

18 **A** I don't remember the dates.

19 **Q** Do you remember -- well, uh, do you have any
20 information to believe that it's not the case.

21 **A** What I know is that I wasn't given an
22 opportunity, I went out to get an evaluation done that
23 was fair and equitable. Since then, the documentation I
24 was entitled to was withheld from me, I was accused of
25 something that I didn't do. Those are the kind of things

1 that continued to occur that lead this now for three and
2 a half years to where we sit in a conversation that
3 should have been handled on October 12th the way it
4 should have been. That's the information I have.

5 Q Again, my question was was there any pleading
6 that you alleged any of that misconduct prior to November
7 of 2011?

8 A No, I don't remember anything.

9 Q This is, uh, Exhibit 18. My point in this one
10 is, uh, you send an email on November the 10th. This is
11 approximately a month after you were no longer working.
12 You state that the, uh, boat is no longer on the lake.
13 It won't be an issue until we can finalize things. Now,
14 why is it that it's only -- it won't be an issue until
15 you can finalize things. What did you mean by that?

16 A That was when I declined their offer because I
17 owned the boat outright and Mark asked me about that. He
18 said, I'm sure we could work out a way to purchase it
19 back from you. Then he started to question me about the
20 boat. As you can see when you pointed out on the
21 insurance, it was insured in my name at the lake. He
22 told me, you know, if you're not employed by this
23 company, that boat's parked illegally. I didn't want to
24 do anything illegal, so I went and got a trailer and I
25 went and got my boat. I'll be happy to tell you the rest

1 of that story if you'd like to hear how it went down.

2 Q Exhibit 19. Uh, these are a set of emails
3 going back and forth between the two of you again. This
4 is following the, uh, your resignation at the point that
5 you and Mark were trying to figure out what to do with
6 the situation. And, uh, Mark's -- the very -- on his
7 email of November 16th, 2009, he's still maintaining
8 regular contact with you, right? I'll call you later to
9 be in touch.

10 A Yeah.

11 Q Now, at the time after you left, it's true,
12 isn't it, that you were posting your resume on, uh, I
13 think Monster.com and perhaps some other places
14 soliciting yourself as a restaurant consultant, correct?

15 A I think I said that in the deposition. I don't
16 remember exactly where I posted it. I know I looked at a
17 lot of websites. I talked to a couple of companies.
18 Monster may have been something that I posted.

19 Q I guess the focus of my question was that when
20 you were, when you were holding yourself out there, you
21 -- one of the things that you were wanting to pursue was
22 to be a restaurant consultant, correct?

23 A As I said the other day, with 20-some-odd plus
24 experience, years of experience in that industry, I mean,
25 I just left a position for nine and a half years and

1 having a one and three-year-old, I thought that was the
2 only fallback I had in the worse economy that this
3 country has experienced in many, many years.

4 Q So the answer to my question would be yes?

5 A Yes.

6 Q Thank you. Uh, and that -- obviously anybody
7 wanting to retrain your services could have included any
8 competitor of Larkins, correct?

9 A Could have.

10 Q Exhibit 20. The point here is that when, uh,
11 -- this is again an email from Mark to you talking about
12 the disappearance of the boat. And in that big paragraph
13 right there, Mark is just kind of complaining that you
14 just need to let somebody know out of courtesy. And, uh,
15 he's also complaining that you didn't get back with them
16 all last week and that you need to communicate. Do you
17 see that?

18 A I see that.

19 Q Is that true?

20 A Yeah. This email was sent about 30 minutes
21 after the first one when I forwarded the email that I did
22 make an effort to communicate. As you notice it was
23 somehow -- it was entered into the wrong email address
24 and he didn't get it, which triggered him, I guess, when
25 Louis called to say that the boat was missing. That's

1 what triggered this email. This is within the same 24-
2 hour period, it looks like to me.

3 Q Right. But he's complaining that you didn't
4 call him or get back with him for a week.

5 A Well, if you'd let me, I did make an effort to
6 send an email. It was an error. You can see that. It
7 was misspelled. Then I was out of town that week. I
8 didn't have any obligation to call him. This is him
9 reaching back out to me saying why didn't I communicate.
10 Well, when I went to pick it up, no one was there.

11 Q Exhibit 21. Let me borrow that for a second.
12 (Pause.)

13 This is just generally information about
14 working with you on insurance stuff through October and
15 November, correct?

16 A Uh, yeah.

17 Q Exhibit 22. In there, you state -- this is
18 your email that you went through on direct. In the third
19 paragraph, you state that your decision to move on was
20 based on changes you needed to make to positively impact
21 your life. I don't see anything in there where you are
22 saying that you treated me wrongfully, unfairly or
23 anything like that.

24 A You are making the assumption that the things
25 that I said would positively impact my life to include

1 those.

2 Q Do you say anything in there about that you
3 mistreated me?

4 A I don't. Not in this letter.

5 Q Exhibit 23. That, uh, that document is, uh, --
6 there's not a date on that email, which I found a little
7 unusual. But I'm assuming that it was in response to the
8 email, your email on the bottom in January --

9 THE COURT: Mr. Pillsbury, ask him questions.
10 You're not here to testify.

11 MR. PILLSBURY: I'm sorry, Your Honor.

12 THE COURT: Ask him questions.

13 BY MR. PILLSBURY:

14 Q Can you discern from your email at the bottom
15 that -- the approximate date that this would have been
16 generated?

17 A I have no idea. The one I sent was January the
18 8th. As you said, there was no date on it. Let me read
19 for a second. Maybe I can tell you.

20 MR. PILLSBURY: I apologize, Your Honor.

21 THE WITNESS: Yeah, I can't tell you.

22 BY MR. PILLSBURY:

23 Q Uh, I believe this was a document that you
24 produced.

25 A May have been. I tried to give everything.

1 Q And so -- this is -- you requested a copy of
2 the Quickbook files, correct?

3 A I did.

4 Q And this is at the same time that we discussed
5 that you were also holding yourself out as someone who
6 would be hired as a restaurant consultant, correct?

7 A If it was January or February, I was pretty
8 much exhausted.

9 Q So you only -- you only tried that for a month?

10 A Yeah. It may have been on the Monster boards
11 longer than that. I never actively pursued it as I told
12 you the other day.

13 Q And uh, I think, uh, the other thing that's
14 being raised here is that there were documents that had
15 been drafted but they weren't finalized because you had
16 resigned before they were completed. Do you see that?

17 A Let me read that. What --

18 Q Third paragraph.

19 A Third. Resigned before these documents were
20 completed. I see that.

21 Q Did you respond to this email in any way saying
22 that, uh, I didn't resign, you fired me or I'd like to
23 see the documents even in draft form? Anything along
24 those lines?

25 A I don't remember responding like that. But at

1 that point, to me, it was moot.

2 Q At the point that, uh, -- these are just --
3 Exhibit 24, I will go through them very quickly. I've
4 just got to go -- this is once Mr. Wilson and Mr.
5 Stodghill were engaged in trying to figure out how to get
6 the information communicated back and forth. Exhibit 24,
7 it -- what is that document?

8 A Uh, it just looks like him sending some kind of
9 communication to Mr. Stodghill.

10 Q Right. And that's, uh, Exhibit 25. Have you
11 seen that document before?

12 A Yes, it looks like the one that was sent.

13 Q And uh, you had mentioned -- and it may be that
14 I just misunderstood -- that somebody accused you of
15 breaking the law?

16 A Yeah, Larkin accused me of stealing their boat.

17 Q And, uh, in this letter, uh, Mr. Stodghill
18 references that they would be willing to provide the
19 information if there was some type of confidentiality
20 agreement entered, correct?

21 A I believe that's what this was.

22 Q Do you know one way or the other whether -- I
23 know you said you wouldn't sign it because it had
24 stipulations in there about percentages. Do you know one
25 way or the other whether that was even a material issue?

1 Was there ever a counter saying just take out the
2 percentages and we agree to the order?

3 **A** I don't -- I don't honestly remember. I mean,
4 at this point, I had to get counsel to help me with this.
5 I trusted whatever correspondence he had.

6 **Q** Okay. And 26 and 27. And I understand that
7 you maybe are just relying on attorneys and that's okay.
8 But there's certain aspects of this case that sort of
9 bleed over into what may be reasonable in this case.
10 And --

11 **A** Reasonable? I'm confused.

12 **THE COURT:** Wait a minute.

13 **MR. PILLSBURY:** I'm sorry.

14 **THE COURT:** Ask some questions which relate
15 to the issues involved in the case.

16 **MR. PILLSBURY:** I'm sorry.

17 **THE COURT:** Let's not make arguments or
18 editorial comments.

19 **MR. PILLSBURY:** I apologize.

20 **BY MR. PILLSBURY:**

21 **Q** Uh, the response to that letter for Mr.
22 Stodghill was basically no protective order, we need the
23 documents unrestricted in any way, correct?

24 **A** Basically, it looks like, yeah.

25 **Q** And Mr. Stodghill's response to that letter in

1 Exhibit 27 is saying, well, there has to be some type of
2 protection so, I guess we'll do it if there's a court
3 order to do it, correct?

4 A Yeah. That's what it looks like.

5 Q And this suit was originated by Front Roe in
6 order to seek protection for the information. That's how
7 this law suit started?

8 A That sounds right.

9 Q And then once the protective order was entered,
10 all the information has been produced, correct?

11 A Yeah. I think it took some time to get here
12 but it was.

13 MR. PILLSBURY: That's it, Your Honor. Thank
14 you. I apologize for the length of it.

15 THE COURT: All right. Any redirect?

16 MR. WILSON: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. WILSON:

19 Q Mr. Pertuis, uh, this chart prepared before us
20 by Mr. Pillsbury -- excuse me -- that chart comes from
21 this document here?

22 A Yes.

23 Q Which was superceded by your counterproposal
24 here?

25 A Yes.

1 **THE COURT:** What Exhibit number are you
2 referring to? Famous Exhibit 13. Thank you.

3 **MR. WILSON:** Thank you.

4 **BY MR. WILSON:**

5 **Q** Which, in turn, is accepted by Mr. Hammond
6 here?

7 **A** Yes.

8 **Q** Thank you. I have no further questions.

9 **MR. PILLSBURY:** Nothing further, Your Honor.

10 **THE COURT:** Plaintiff's 6, Defendant's 13.
11 Same exhibit.

12 **MR. WILSON:** Because of the repetition by
13 defendants, I lost count.

14 **THE COURT:** All right. Mr. Pertuis?

15 **THE WITNESS:** Pertuis.

16 **THE COURT:** Pertuis. Do you know what
17 distribution you got for your ownership in 2008?

18 **THE WITNESS:** I don't.

19 **THE COURT:** You don't have any documentation
20 that shows that?

21 **THE WITNESS:** There's a K-1 that shows
22 distribution, but there was never a distribution
23 check cut specific as a distribution. They were
24 included in bonuses, if they were included. And I
25 was never clear on what was what or how much was

1 taken.

2 **THE COURT:** Okay. And what would be
3 commingled with that check?

4 **THE WITNESS:** Bonus payouts.

5 **THE COURT:** Bonus payouts?

6 **THE WITNESS:** Yeah.

7 **THE COURT:** So there is no way to determine
8 from what was paid to you whether you had --

9 **THE WITNESS:** Whether it was bonus or
10 shareholder distributions.

11 **THE COURT:** One percent, eight percent, or
12 ten percent. There's no way to know.

13 **THE WITNESS:** There's no way to know.

14 **THE COURT:** All right. I don't have anything
15 else. Thanks.

16 **MR. WILSON:** We would call Dr. Alford to the
17 stand.

18 **THE COURT:** Okay.

19 **CHARLES ALFORD**

20 having first been sworn, testifies as follows:

21 **THE COURT:** All right. Come on around.
22 State your name for the record. Go ahead and give
23 us your educational background.

24 **MR. PILLSBURY:** Your Honor, I will stipulate
25 to whatever you want to shorten it.

1 **THE COURT:** Okay. Well, --

2 **MR. PILLSBURY:** Whatever Your Honor needs,
3 but --

4 **THE COURT:** Okay. Well, I know -- I've
5 qualified him as an expert before. I want to make
6 sure in case some court review this.

7 **MR. PILLSBURY:** I will stipulate -- I'm
8 sorry, Your Honor.

9 **THE COURT:** Are you offering him as an
10 expert?

11 **MR. WILSON:** Yes, sir.

12 **THE COURT:** In what field?

13 **MR. WILSON:** In the field of economic
14 evaluation of businesses.

15 **THE COURT:** Okay. Let's just put just
16 something so -- what's your educational background?

17 **THE WITNESS:** I have a Bachelor of Arts in
18 Economics, Wofford College; Ph.D. Economics Business
19 Administration, University of Alabama.

20 **THE COURT:** Okay. Have you ever been
21 qualified as an expert before?

22 **THE WITNESS:** Yes, sir.

23 **THE COURT:** In state and federal court?

24 **THE WITNESS:** Yes, sir.

25 **THE COURT:** How many times?

1 **THE WITNESS:** Dozens.

2 **THE COURT:** Okay. All right.

3 **MR. WILSON:** We offer doctor -- proffer Dr.
4 Alford as an expert witness for the purpose of
5 evaluating these businesses.

6 **THE COURT:** Okay. And there's no objection?

7 **MR. PILLSBURY:** No objection.

8 **THE COURT:** All right. Go ahead.

9 **DIRECT EXAMINATION**

10 **BY MR. WILSON:**

11 **Q** Dr. Alford, what were you asked to do in this
12 case?

13 **A** Uh, to evaluate the three restaurants that
14 you've been discussing today.

15 **Q** You have any dispute, any opinion as to the
16 dispute between this table and this table about the
17 portion of ownership that Mr. Pertuis should or could or
18 would enjoy?

19 **A** No.

20 **Q** How come?

21 **A** Well, I assume that's what y'all are arguing
22 about. You know, it requires legal opinion and legal
23 interpretation of some of these documents. That's not
24 what I do.

25 **Q** Yes, sir. Dr. Alford in preparing your

1 presentation, I've got to ask you as a civilian what is
2 your -- the meaning of the term "standard of value" in
3 the report that you are about to offer to the court?

4 **A** You know, every time an evaluation is done, you
5 are supposed to identify the standard of value. It is
6 just a term for a type of value. You know, there could
7 be investment value. There could be liquidation value.
8 There's fair value. There's fair market value. There's
9 intrinsic value. There are a lot of different standards
10 of value that you can turn to.

11 **Q** And might different standards of value yield
12 different value estimates?

13 **A** Sure.

14 **Q** Why is that?

15 **A** For example, wholesale value and retail value
16 in valuing a vehicle.

17 **Q** Yes, sir.

18 **A** You ever watch, uh, antiques road show. They
19 will talk about insurance value and, uh, auction value.

20 **Q** Yes, sir.

21 **A** So you have to specify the type of value or the
22 standard of value that you're using in a particular case
23 to me for it to make any sense. I mean, that's just one
24 of the guidelines of evaluation.

25 **Q** Yes, sir. What standard of value did you use

1 in your analysis in this case?

2 **A** I used fair value of 100 percent equity
3 interest.

4 **Q** In your experience, sir, what is the difference
5 between fair value and fair market value?

6 **A** For appraisers, the difference is fair value
7 generally does not consider discounts for lack of
8 marketability or lack of control because of implications
9 for squeeze outs and certain issues like that.

10 **Q** And by the way, during the course of your
11 review in preparation for your testimony today, did you
12 have an opportunity to review the report prepared by
13 Louie Manios who is the expert that's been employed by --

14 **MR. PILLSBURY:** Oh, now, hold it.

15 **THE COURT:** What's your objection?

16 **MR. PILLSBURY:** Your Honor, I was -- my
17 objection is that I requested if he was going to
18 offer any testimony other than this document that I
19 be afforded an opportunity to interview or depose
20 him. I was assured that I was not. This is exactly
21 what I was trying to avoid. Your Honor, here's --

22 **THE COURT:** Wait a minute. What expert is
23 not required to tell the court or jury or whoever
24 the factfinder is what they relied on in coming to
25 their conclusion?

1 **MR. PILLSBURY:** What he relied on in the
2 report has nothing to do with anything Louie Manios
3 did because that was done two years later. It has
4 no -- what he's wanting to do is to give an opinion,
5 I assume, about Mr. Manios' evaluation. My problem
6 is --

7 **THE COURT:** Okay. Your objection is noted
8 for the record. You are speculating about where
9 he's going. I don't know where he's going. So, you
10 know, let him answer it and then register an
11 objection if it becomes necessary.

12 **BY MR. WILSON:**

13 **Q** In your review of Mr. Manios' report, did Mr.
14 Manios use a different standard of value than you did,
15 sir?

16 **MR. PILLSBURY:** Your Honor, this is exact --
17 I'm sorry. I object on the grounds that I
18 specifically asked if he was going to give any
19 opinion other than this report because Mr. Manios'
20 report was produced two weeks back, three weeks
21 back.

22 **THE COURT:** Okay. I'll tell you what, if
23 that was the agreement, fine. Wait a minute. After
24 they put up their expert, then you can call him in
25 rebuttal. I don't know.

1 **MR. WILSON:** I'm very fond and have high
2 regard for Mr. Pillsbury.

3 **THE COURT:** Okay.

4 **MR. WILSON:** May I say it please?

5 **THE COURT:** Yeah. Go ahead.

6 **MR. WILSON:** I asked him to stipulate to Dr.
7 Alford's report so we wouldn't have to go through
8 this lengthy presentation. He wouldn't do it. I
9 sent that to him last week. I offered to stipulate
10 to Mr. Manios' report so the court could have them
11 side by side without the necessity of a bunch of
12 static, background information not necessary to
13 appreciate what the experts have done. Mr.
14 Pillsbury ignored my request until just now. I said
15 we'd like to stipulate. Then I said no, we're not
16 going to stipulate. We're going to go ahead and put
17 it up.

18 Now, Rodney, I love you to death, but that's
19 just not right.

20 **MR. PILLSBURY:** That's -- I don't want to get
21 bogged down in this because that's apples and
22 oranges. I told him I would stipulate and that it
23 was fine. He asked me at lunch. I said sure. Not
24 a problem. I don't know why -- I thought that's why
25 I consented to him being the expert and he could --

1 the discussion I had with him before we went on the
2 record was he is going to ask some basic questions,
3 put it in the report. I'll do my cross and let him
4 go home. My problem with talking about anything
5 related to Louis Manios is that is exactly what I
6 asked him if he was going to give an opinion about
7 anything other than his own report, I would like the
8 opportunity to depose him and it was silent. And
9 so, you know, there was --

10 **THE COURT:** Okay. Your objection is noted
11 for the record. I'm going to overrule it. Go
12 ahead.

13 **MR. WILSON:** Thank you, Your Honor.

14 **BY MR. WILSON:**

15 **Q** What standard of value did Mr. Manios use?

16 **A** I don't think he used the standard of value.
17 He refers to the net value of the companies.

18 **Q** Thank you. Let's move on from Mr. Manios, sir.
19 What is the effective date of your evaluation?

20 **A** December 31, 2010.

21 **Q** And what did you learn from the records that
22 came to you for your review, what did you learn about
23 transactions between and among these three corporations
24 and between the companies and the Hammonds?

25 **A** Uh, well, they were numerous. At 12/31/2010,

1 two of the companies, Lake Front and Beachfront owed
2 Front Roe, the Greenville company, \$430,000. At the same
3 time, Lake Front owed Beachfront \$28,000. The tax
4 returns showed that the shareholders owed the companies,
5 owed the three companies in total \$529,000. At the same
6 time, two of the entities owed the shareholder \$731,000.

7 **THE COURT:** Wait a minute. Two of the
8 entities owed --

9 **THE WITNESS:** Two of the entities owed the
10 shareholder \$731,000.

11 **THE COURT:** Which two?

12 **THE WITNESS:** Lakefront -- I'm sorry. Front
13 Roe owed the shareholders \$275,388. Beachfront owed
14 the shareholders \$456,052.

15 **BY MR. WILSON:**

16 **Q** Dr. Alford, in the course of your preparing
17 this analysis, did you receive any documentation for
18 those two -- those items of indebtedness that you just
19 described?

20 **A** Did I receive what documentation?

21 **Q** Copies of promissory notes or anything that was
22 documented?

23 **A** No, I didn't see anything about, uh, promissory
24 notes or interest.

25 **Q** Just off the books. I'm sorry.

1 **A** On the QuickBooks register or the tax returns.

2 **Q** In light of that, why didn't you evaluate these
3 three corporations as a single unified business entity?

4 **A** Well, for three reasons. One is y'all are
5 arguing about ownership, Mr. Pertuis' portion of
6 ownership share in these three entities.

7 **Q** Yes, sir.

8 **A** And I don't have an opinion about that. It
9 pretty much necessitated that I look at all three of them
10 separately. Secondly, they are really different. They
11 are different in geographic location. Two are in North
12 Carolina. One is in South Carolina. They are different
13 in terms of revenue so when you look at comparables, you
14 can't -- you have to look at sales of entities of about
15 the same size.

16 **Q** Yes, sir.

17 **A** And three, one of the entities, and there was
18 some testimony about this before. It didn't affect my
19 evaluation, but one of the entities is located in a
20 facility owned by majority shareholders.

21 **Q** Yes, sir.

22 **A** So rent is paid to them. One of the things I
23 had to try to do is see whether rent was normal fair
24 market value, which I concluded that it was. But those
25 are the things that kept me from looking at the -- you

1 know, in initially, I thought, well, I'll just look at it
2 like just a big umbrella because of all the intercompany
3 transactions. But it just didn't pan out to do it that
4 way.

5 Q Yes, sir. Now, relating back to your
6 description of the standard of value, what is the
7 significance -- in your employment of the term "standard
8 of value", what is the significance of the term 100
9 percent equity interest?

10 A Well, uh, the difference between enterprise
11 value of a company and equity value is the difference
12 between what somebody would be willing to pay for it and
13 what you walked away with if you were the seller.

14 Q Yes, sir.

15 A The equity value is what we're really
16 interested in. Any company you sell, it's like selling
17 your house. You know, if you sell your house and your
18 house is valued at \$250,000, if you owe \$100,000, you are
19 still stuck with that. What you will walk away with is
20 the equity. So in valuing a company in this kind of
21 situation, what you want to look at is equity value. In
22 other words, upon the sale, when all the dust clears,
23 what did the -- what did the shareholders have. That is,
24 what did the buyer pay them plus any assets that they may
25 retain.

1 **Q** Yes, sir.

2 **A** Minus any liabilities that they are still on
3 the hook for.

4 **Q** Yes, sir. Now, will you describe for the court
5 the resources you had and the methodology you employed in
6 arriving at your conclusion?

7 **A** Yeah. If, uh, the Court will sort of bear with
8 me, I've got a bunch of charts.

9 **Q** Sure.

10 **A** You won't see all of them, but the big numbers,
11 you will be able to see.

12 **THE COURT:** All right.

13 **THE WITNESS:** Can I slide this that way?

14 **THE COURT:** Yeah, you can come this way.

15 **THE WITNESS:** This is -- this is just sort of
16 starting -- I know that these business appraisals,
17 Your Honor, keep you on the edge of your seat
18 anyway. But I just had to drag through this. I
19 felt like I needed to show it. This is -- I valued
20 the company at 12/31/2010. This is three years
21 operating results. This is off the tax returns.
22 This is straight off the tax returns. There's no
23 changes in it or anything else. Essentially, when I
24 valued the three companies, two of them were
25 profitable. So I valued them based on present value

1 of cash flow. Then I made those balance sheet
2 adjustments for any liabilities that the owners
3 would still have and any assets they might keep.

4 When I did that, I did a weighted average of
5 the adjusted performance of the three companies.
6 This is Front Roe. This is the Greenville company.
7 This is just it's actual performance. In 2008 tax
8 return, it made \$361,000. In 2009, it fell off as
9 you would have expected it to that year to 193.
10 Then it rose back in 2010 to \$383,000. This is S-
11 Corporation. That was the income that would have
12 flowed through to the owners. Then, of course, they
13 could make adjustments for contributions they made
14 that aren't deductible or some other things like
15 that. So this is what that company did.

16 Now, what I did for all three companies -- and
17 if you don't kick me out, I'm going to drag you
18 through some of these things. But what I did was to
19 take the operating results and then I normalized it.
20 In other words, you try to see what the operating
21 results would be for another owner. What the
22 economic income to the owner would be.

23 Normally, you'd look for -- for example, if
24 owners of a closely held company have extraordinary
25 benefits they are paying themselves or if a company

1 owns a beach house. You add things like that. Mr.
2 Pertuis believed that there were some perks flowing
3 to the majority owners and maybe some to him, but I
4 didn't find any evidence of them enough that I was
5 comfortable with it. So all I adjusted was
6 compensation to the officers. The way you do that is
7 to add back all the compensation to the owners and
8 then you pull out market compensation.

9 The market compensation, I used, uh,
10 Greenville, Mauldin, Easley Bureau of Labor
11 Statistics Data. I assumed a general operations
12 manager at a normalized salary of \$97,969.30 and a
13 marketing manager at a normalized salary of \$91,000.
14 So I assumed if somebody else bought these three
15 restaurants and they weren't going to run it, they
16 would have to hire those two people and they would
17 have to pay them a total of \$187,000. So what I did
18 was to add back the compensation -- and I'll get
19 back to that in just a second -- that they actually
20 paid. I pulled out that fair market, I called it
21 compensation.

22 Then, I discounted everything at present value.
23 Then I'll get to the individual things, but, you
24 know, you have to use discount rate. I used the
25 standard buildup approach. I used risk-free rate.

1 I added a premium for size. I added a premium for
2 equity because those -- you are buying equity. You
3 are not buying interest producing assets. I
4 adjusted for an industry risk. I came up with a
5 discount rate for minority interest of, like, 22
6 percent. I applied a 25 percent, uh, majority
7 premium, which is sort of -- that's sort of the
8 average premium that people pay for control. That
9 resulted at about a 16 percent discount rate that I
10 ultimately used in valuing these companies, all
11 three of them except for one of them where it didn't
12 have any value.

13 So here's Front Roe. This is what actually
14 happened for the years 2008 through 2010. That
15 comes off the tax returns. This is not going to tax
16 your eyes quite as much. This is the normalized
17 result. In other words, this total property right
18 here, these numbers I read to you a few minutes ago,
19 they came off the bottom line of the tax return.

20 What I did was to add back the wages that were
21 paid to the individuals. For example, Larkin
22 Hammond received no wages those years. Mark Hammond
23 was not paid by -- was not paid in 2008. Was paid
24 in 2009 and 2010. So I added whatever they had
25 actually been paid. Mr. Pertuis was paid in 2008 and

1 2009. There was no compensation in 2010, of course.
2 I added back what they had been paid. Then I pulled
3 out that -- some of these three things. Is that
4 roughly 180-something-thousand-dollars? 65 percent
5 to Greenville, 25 percent to Lake Point and 10
6 percent to the other one. That was sort of
7 proportionate to their revenues. Obviously,
8 Greenville is the -- that's the one that's
9 generating the greatest revenues. That's where I
10 allocated most of this normalized compensation.

11 When I did that, that actually reduced the
12 profit. They weren't paying themselves much in
13 terms of wages. You figure if somebody's going to
14 buy it but they are not going to operate it, they're
15 going to have to pay somebody to do it. While they
16 were paying themselves, for example, in 2010, total
17 compensation to the owners is only \$60,000. I
18 assume that normalized compensation to owners to
19 operate that restaurant would have been 120-
20 something-thousand-dollars so I reduced it. I took
21 out interest expense because I'm looking at, at, at,
22 uh, a debt-free model for, you know, cash flow. I
23 added back in depreciation amortization because they
24 are not cash expenditures.

25 Here is the normalized EBITDA for those three

1 companies, earnings before interest, taxes,
2 depreciation, amortization. It was about 455 in
3 2000 -- not for those three companies, but Front
4 Roe. I apologize. 455 in 2008. It fell to 288 in
5 2009 and back to 426 in 2010. If you looking at
6 cash flow, although you put depreciation back in,
7 you've got to pull out capital expenditures. All
8 that money wouldn't be available to the people
9 because they've got to continue to make capital
10 investments.

11 These were the actual capital outlays each of
12 the years. Yeah, for each of the years, 2008
13 through 2010. So I computed two things, normalized
14 cash flow for each of the three years. I did it for
15 the others. I won't drag you through it quite as
16 slowly, but the normalized cash flow ultimately was
17 441 in 2008. It fell to 223 in 2009 and then back
18 to 398 in 2010.

19 There is another measure that's used in
20 valuation and it's called normalized owner's
21 discretionary income. That's just a standard
22 valuation term. It's defined here. It's the
23 normalized cash flow, this number plus your capital
24 outlays, plus the normalized wages for only one
25 owner. So you wouldn't add the full, uh,

1 compensation for both owners but just for one owner.
2 These numbers ultimately become part of the
3 valuation later. The discretionary income to the
4 owners was 515 in 2008, 349 in 2009 and 489 in 2010.
5 Uh, so that's sort of a picture of the operating
6 results of Front Roe, the Greenville operation.
7 This is the balance sheet at 12/31/2010.

8 Earlier, when you were asking me about how much
9 the, uh, companies owed to the shareholders and how
10 much the shareholders owed to the companies, that
11 information comes from businesses. It's straight
12 off the balance sheet. This didn't require any
13 interpretation on my part. Here is where a lot of
14 those intercompany transactions are, the Greenville
15 operation at the end of 2010, Beachfront owed it
16 \$114,000 and Lake Point owed it \$319,000 and some
17 unknown employee that they advanced \$11,000 to. And
18 that's not really intercompany funding. They have
19 loaned -- this company had loaned to the
20 shareholders, uh, an amount -- amounts that resulted
21 in an ending balance that year of \$454,000.

22 At the same time, the shareholders owed Front
23 Roe \$275,000. They had loaned the company money.
24 They had taken loans from the company. It also had
25 \$640,000 of, uh, you know, mortgages and notes

1 payable. These are just current liabilities that
2 any company would have. So, I looked at the
3 operating results, then I looked at the financial
4 condition of the two companies.

5 Then I looked at a computation of enterprise
6 value. An enterprise value is what somebody would
7 pay for it. They wouldn't necessarily take all the
8 debt and keep unessential assets. So essentially,
9 if you buying a restaurant, you'd buy the equipment.
10 You'd buy whatever inventory they have on hand.
11 You're probably not going to take their cash.
12 You're probably not going to take their accounts
13 receivable. You're certainly not going to take
14 their old debt because you will have your own to
15 deal with.

16 So here is what I did. I found that the
17 normalized pretax cash flow was \$348,000. That -- a
18 few minutes ago, I showed you cash flow for three
19 years. Did a weighted average. It's sort of a
20 standard procedure. It's not real scientific, but
21 you weigh the third year by weight of three. The
22 first year weighted one, the second year weighted
23 two and the third year, 2010 weighted three. So
24 you're not really trending. You're giving more and
25 more weight to more recent performance.

1 In this case, I went back and checked it. It
2 didn't really matter a lot. The bottom year was a
3 low year. So you are evaluating a high year. You
4 are weighing it with a weight of three but the
5 highest year was actually 2008 for some of them and
6 that was the only weight with a value of one.

7 So I went through the arithmetic. I got
8 normalized cash flow of \$349,000 for this company.
9 Then I pulled out income tax. These are S
10 companies, uh, S-Corporations, so they don't
11 actually pay income taxes. I'm going to tell you,
12 there's a lot of -- there's a lot of, uh, -- a lot
13 of controversy among valuation people with the IRS
14 as to whether you ought to tax affect an S-
15 Corporation. I did. And I did because if somebody
16 came and bought them, it might be a C-Corporation
17 but they are going to pay that corporate tax. So I
18 pulled out tax and this is the value I ultimately
19 capitalized, this \$213,000 as normalized tax cash
20 flow. That assumed that going forward the
21 depreciation expense, which is noncash, and the
22 capital outlays, which is non-expense item, but it's
23 really a flow of cash, would be the sign.

24 I assumed a growth rate of 2.8 percent. The
25 2.8 percent is what the Social Security

1 Administration currently projects the long-run rate
2 of inflation to be. They projected that -- for the
3 last three years, that's what their long run
4 projection's been. I didn't assume any -- I didn't
5 assume any real growth, just inflationary growth.
6 That's the only thing that I assumed. So this gave
7 me an enterprise value of \$1.6 million. I concluded
8 that based on cash flow, someone would come in and
9 pay \$1.6 million for the Greenville operation,
10 \$1,606,500.

11 This is sort of a sanity check. I'm going to
12 tell you, it doesn't always pan out either. But
13 there is a -- there is a database called Pratt's
14 Stats and a lot of people doing appraisals look at
15 -- it includes sales of other companies. There's
16 another database -- and I subscribe to that --
17 there's another database called BizBuySell. It's a
18 database available online published by Wall Street
19 Journal that deals with just offerings of companies.

20 I looked at both of them. BizBuySell didn't
21 have much information. Pratt's Stats did. But what
22 you have to do -- I've got it in my report. It's
23 more than you'd want to hear. But when you first
24 look at Pratt's Stats' database, it will include --
25 it will include restaurants with sales of \$100,000

1 in a year or restaurants with sales of \$40 million a
2 year. So you've got to narrow it down by size. The
3 normal rule that I use is a half to twice the
4 revenues of the present company that I'm looking at.
5 So I narrow it by that.

6 I'll look at, uh, -- really, I only look at
7 generally transactions in the last, in this case,
8 since 2000, since the year 2000. I considered that.
9 I looked at, uh, -- I eliminated specialty
10 restaurants, franchises, ethnic restaurants.
11 There's a whole slew of types of restaurants that
12 you would -- that just aren't what you would call a
13 full search restaurant. So I did all that. Once I
14 did it, I looked at four multiples, multiple of
15 discretionary earnings. And I looked at the average
16 multiples for the remaining transactions that I
17 considered. For those actual sales of restaurants,
18 the actual multiple of discretionary earnings on
19 average was 3.04 -- 3.06. Well, if I applied that
20 to the Greenville restaurant, it would suggest a
21 value of 1.49 million.

22 Multiple sales, .31 was the average. If I
23 applied that to the Greenville restaurant, it would
24 be 1.1. Greenville Beachfront would have been 1.7
25 multiple EBIT, which is Earnings Before Interest and

1 Tax. The value indicator would have been 1.588. I
2 said those -- that's sort of a -- that's sort of a
3 sanity check because remember, I came up with a
4 value of one million six, which is sort of in line
5 with these. So I decided that that company would be
6 appraised at one million six from the buyer's
7 prospective.

8 But that doesn't mean that's what they put in
9 their pockets, the sellers. For example, they have
10 excess working capital. They had, uh, current
11 assets of 147,000, current liability of 118. I'm
12 sorry. The required working capital would have been
13 118 based on Robert Morris Associates which
14 publishes information on working capital and other
15 things for restaurants. I used the top, in other
16 words, the good restaurants based on the performance
17 of Front Roe would have needed working capital of
18 118. They had working capital of 147. So I figured
19 they would put \$27,000 in their pocket in
20 essentially cash.

21 In addition, there were some, some receivables
22 that they would keep. One of those receivables,
23 however, was from Beachfront. Beachfront is
24 essentially worthless. I figured it wouldn't pull
25 anything out of that. But they did get -- would

1 keep receivables from Lake Point, from the
2 shareholders, they would still owe the company, and
3 from the employee advance. So there was a total,
4 including these good receivables and this excess
5 working capital, it was about 108-114,000 additional
6 dollars that the sellers would put in their pocket
7 in addition to what the buyer would pay. But they're
8 still settled with \$1,044,000 of debt. And the
9 buyer's not taking that. So essentially, the
10 sellers, if they sold it at one million six, 230,000
11 of that net gets eaten up in satisfying their debt
12 after they keep these, keep these assets up here.
13 So this is a subtraction from that one million six.
14 I promise you it's going to get --

15 **THE COURT:** It's going to get what?

16 **THE WITNESS:** If you are like my students,
17 they start yelling at me after a while. So there's
18 that 1.6. There's that \$230,000 balance sheet
19 adjustment which figures the net outflow that the
20 sellers are going to have to come off the hip with
21 after cashing in those other receivables. So the
22 equity value is \$1.376 million. That's what I
23 computed as fair value of the Greenville operation.

24 Now, I did the same thing --- I've got
25 exhibits. Unless the court really wants to see all

1 these. But here's the bottom line on Lake Point. I
2 did exactly the same thing all the way through.
3 Those what all those exhibits show. Did the same
4 kind of analysis. The only difference was Pratt's
5 Stats I used. I used benchmarks of companies that
6 had revenues in the range of Lake Point. Lake Point
7 had a positive balance sheet adjustment. I can go
8 back and show the court that. But all these things
9 are in my report. If the court wants to, it can
10 look at that. I came up with a discounted cash flow
11 value of \$485,000. In this case, it was a positive
12 balance sheet adjustment of roughly 23.

13 My conclusion was in selling this operation,
14 the owners walk away with \$507,000. That's for 100
15 percent equity. At the end of 2010, Beachfront was,
16 I guess, sucking wind. If you look at three years,
17 they were not making money. If you normalize the
18 earnings just like I did for the others, they were
19 still not making money. If you look at the balance
20 sheet, which this is, they had no equity. They had
21 negative equity.

22 Although if you look, this \$410,000, this
23 adjusted value means that there's some assets, for
24 example, what they owed to Lake Point. I figured
25 they really wouldn't -- they really wouldn't pay

1 that because it wasn't worth anything. Didn't have
2 money to pay it. So the adjusted value is a little
3 bit different from the book value, but it's still
4 negative.

5 So, uh, you know, I concluded that Beachfront
6 had no value of this negative \$410,000. That is due
7 primarily to it owing at that time -- now it's
8 changed since then I just learned in the last few
9 weeks. But at that time, they owed the owners 400
10 and -- this company owed the owners \$456,000.
11 That's pretty much what I went through to get those
12 three values. I concluded that.

13 **BY MR. WILSON:**

14 **Q** Dr. Alford, I just have a few more questions,
15 sir. Uh, are these corporations S-Corporations or C-
16 Corporations?

17 **A** They are S-Corporations.

18 **Q** I'm sure the court knows what the difference
19 is, but could you give the court --

20 **A** I'm sorry.

21 **Q** What's the difference between an S-Corporation
22 and a C-Corporation?

23 **A** S-Corporation doesn't incur directly any income
24 taxes, any tax consequences flow through to the owners in
25 terms of their proportionate share of profits minus

1 certain other adjustments they can make.

2 Q Therefore, these entities don't -- the entities
3 that you reviewed don't pay any taxes?

4 A They do not.

5 Q In your valuations though, I noticed that you
6 did compute cash flow after taxes, why did you do that?

7 A Well, I was saying, you know, if an investor
8 buys and that investor is a C-Corporation, they would
9 consider some portion of that income as taxable.

10 Q Yes, sir.

11 A I considered all of it as taxable.

12 Q Yes, sir.

13 A The Greenville operation at 30 percent for the
14 profitable North Carolina operation because it would be
15 in a lower corporate tax bracket.

16 Q If you had not imputed the income taxes to the
17 cash flow, would that have affected your appraisal of
18 these three corporations?

19 A Two of them. Front Roe, the appraisal of Front
20 Roe if you eliminated the tax adjustment, the appraisal
21 of Front Roe goes up a \$1,027,000. Lake Point, the
22 appraisal goes up \$208,000. Beachfront appraisal, uh,
23 wouldn't change.

24 Q Are those figures included in your report, sir?

25 A No. They are easily derived.

1 Q Yes, sir. If you will, let me repeat it. Is
2 -- the Front Roe evaluation would have been increased by
3 \$1,027,000?

4 A Yes.

5 Q And the evaluation of Lake Point would have
6 been increased by \$208,000?

7 A Yes.

8 Q Could you find any records showing payments or
9 accruals of interest on the amounts shown on the
10 financials as due to shareholders?

11 A No. All I could find was the balance of those
12 loans.

13 Q Yes, sir. How might this affect the company
14 value, sir?

15 A Well, there's two ways of looking at it. The
16 way I did it, I assumed all those loans from shareholders
17 were really loans.

18 Q Yes, sir.

19 A But, uh, I'm going to tell you, if they are not
20 regular payments of interest or accruals of interest or
21 recording interest, there's a -- there's a, I want to
22 say, a better than 50/50 chance that those loans from the
23 shareholders can be classified as capital investments.
24 If they are, then that, you know, dollar for dollar
25 changes valuations.

1 **Q** Could -- could -- could you give the court the
2 increase in each of the companies if those loans are not
3 bonafide loans but are to be construed as capital
4 investments?

5 **A** If they were capital investments, if what they
6 were really doing is putting money in and they were
7 recording it as loans but they were not paying themselves
8 any interest.. It would have increased the Greenville
9 operation by \$276,000. It would not have affected the
10 Lake Point valuation because they don't appear on that
11 balance sheet.

12 **Q** Yes, sir.

13 **A** It would have increased the Beachfront
14 valuation from 0 to \$46,000.

15 **Q** And that's, again, if it will help, that's if
16 those loans were not -- interest was not being paid on
17 those loans, they were not properly documented as loans
18 and they were therefore to be construed as investments by
19 the shareholders?

20 **A** Yes, sir.

21 **Q** All right, sir. Are these -- are the results
22 of your analysis, some of which you summarized and some
23 of which you presented in detail, are they contained in
24 this report, sir?

25 **A** They are.

1 **Q** And to the best of your professional ability in
2 using the methodology and the data you described, are
3 your conclusions -- do they purport with your
4 professional opinion of the value of these companies?

5 **A** Yes.

6 **MR. PILLSBURY:** No objection.

7 **THE COURT:** Okay.

8 (WHEREUPON, Plaintiff's Exhibit 9 is marked for
9 identification purposes.)

10 **BY MR. WILSON:**

11 **Q** Is this your report, sir?

12 **A** Yes, sir.

13 **Q** And it's marked number, Plaintiff's Exhibit 9?

14 **A** 9.

15 **MR. WILSON:** We'd move the admission of this
16 into the record.

17 **THE COURT:** Without objection?

18 **MR. PILLSBURY:** It was, Your Honor.

19 (WHEREUPON, Plaintiff's Exhibit 9 is admitted into
20 the record.)

21 **MR. WILSON:** Dr. Alford, thank you. If you
22 would, answer Mr. Pillsbury's questions.

23 **THE COURT:** Well, let's take about a five-
24 minute break.

25 (WHEREUPON, a short recess is taken.)

1 **THE COURT:** All right. Cross.

2 **MR. PILLSBURY:** Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 **BY MR. PILLSBURY:**

5 **Q** Dr. Alford, a few preliminary questions. Uh,
6 did you look at the QuickBooks information and base any
7 of your opinions on the QuickBooks information?

8 **A** Yes. Well, that and the tax returns.

9 **Q** I know that you did the tax returns. But the
10 QuickBooks information, did that not lay out what the
11 distributions were to the shareholders?

12 **A** It does. QuickBooks includes distributions.
13 That wasn't part of my analysis, but it certainly
14 includes distributions.

15 **Q** Right. And so by your reviewing the QuickBooks
16 information, you were able to determine what the
17 distributions were to the shareholders for any given
18 year.

19 **A** I could have. Yeah. I didn't, but I could
20 have. But those also show up --

21 **Q** Well, I'm not questioning the impact of that on
22 your opinions. I was just making a comment. My question
23 was more geared towards you -- within the QuickBooks
24 information, all the information about shareholder
25 distribution payments was contained. I know that wasn't

1 the focus of your analysis. But that information was
2 there?

3 A I expect so.

4 Q Yes.

5 A It is generally included in QuickBooks file.

6 Q So for example, if Mr. Pertuis had any
7 questions about what did I get paid for shareholder
8 distribution in 2007, that was discernable from the
9 QuickBooks file information?

10 A It should have been, yeah.

11 Q And I know it's been a while since you issued
12 your report. Your report -- the data in your report is
13 limited to the financial information as of December 31st
14 of 2010, correct?

15 A Correct.

16 THE COURT: Let me interrupt just so I --
17 before I forget. If you can tell what the
18 shareholder distributions are from the Quickbook
19 figures, can you tell by looking at that, those
20 distributions what the percentage ownership is of
21 each of the shareholders?

22 THE WITNESS: The recorded ownership, yes.

23 THE COURT: Recorded ownership?

24 THE WITNESS: Well, yeah. I know that's what
25 they are arguing about.

1 **THE COURT:** I mean just from a numbers point
2 of view, can you look at what was distributed to the
3 shareholders and determine what percentage each one
4 got?

5 **THE WITNESS:** Yes.

6 **THE COURT:** Would there be anything else
7 included in there?

8 **THE WITNESS:** No, there is a -- what you do
9 is you look at the general ledger. The category is
10 equity category. Within equity, there are a number
11 of entries, one of which is labeled shareholder
12 distribution. That number generally will come right
13 out of QuickBooks onto the K-1 statement.

14 **THE COURT:** I don't know that much about
15 QuickBooks but if they combined payments, the
16 corporation combined payments to the shareholders of
17 their distribution along with bonus, would that
18 be --

19 **THE WITNESS:** I don't know how the bonus was
20 categorized. If it was categorized as wage, you
21 know, a bonus -- a payment to an owner may be wage.
22 Owner wages, shareholder wages would be an expense.
23 They'd be included on the tax return as wages paid
24 to owners. For example, that \$60,000 that I would
25 point out earlier, that was a wage to Mr. Pertuis.

1 Distributions are entirely different. Honestly, I
2 don't know whether -- I heard the testimony earlier
3 about bonus. I don't know if that was bonus out of
4 a -- it came through in the form of a wage payment
5 or a distribution. I just don't know.

6 **THE COURT:** In other words, just sort of --
7 would you categorize this bookkeeping as creative?

8 **THE WITNESS:** I would categorize it as a
9 little bit loose, yeah. There were so many
10 intercompany transactions. The thing is about
11 bonusing, Judge, to bonus someone an amount of
12 money, if you are going to categorize it as
13 shareholder distribution, they already have to be a
14 shareholder. If you say I'm going to award you a
15 bonus of \$2 and with that, you can buy some stock,
16 the bonus can't be a distribution because at that
17 point, --

18 **THE COURT:** Doesn't own stock.

19 **THE WITNESS:** Doesn't own stock.

20 **THE COURT:** Okay. Okay. Thank you. I'm
21 sorry to interrupt.

22 **BY MR. PILLSBURY:**

23 **Q** That's fine. This is what I want to -- I know
24 you didn't look at shareholder distributions within the
25 Quickbook files but, uh, assume these facts for me, if

1 you would please, that there was a, uh, -- there was a,
2 uh, salary and bonus compensation package for an employee
3 who was also a shareholder. Okay. And that as part of
4 the bonus portion component of the compensation package,
5 that money was distributed as a shareholder distribution
6 in order to avoid taxes. Is that uncommon?

7 **A** No, but it's wrong. Uh, shareholder
8 distributions don't avoid taxes.

9 **Q** Well, it was poorly phrased on my part. Do you
10 understand what I mean? If you got --

11 **A** Well, --

12 **Q** If you get --

13 **THE COURT:** Let him answer the question.

14 **MR. PILLSBURY:** Okay.

15 **THE WITNESS:** I heard y'all talking about
16 that earlier. A distribution is never taxed. What
17 is taxed is your share of the profit. Now, the
18 company may distribute proportionately more or
19 proportionately less than the profit that was made.
20 But the distribution, categorizing it as
21 distribution doesn't save anybody anything if they
22 were already an owner. If they weren't an owner, I
23 don't think it can be categorized as a distribution.

24 **BY MR. PILLSBURY:**

25 **Q** My point is assume that it is a shareholder for

1 sure.

2 A Okay.

3 Q And assume that there is an agreement that X
4 amount is paid in salary and Y amount is paid in bonus
5 and that in order to fulfill the bonus compensation, uh,
6 that a distribution is made as a shareholder distribution
7 in order to save FICA and other taxes that would be
8 incurred, are you with me?

9 A Yes, I am with you.

10 Q And so there's nothing wrong with that
11 approach.

12 A I don't think there's anything wrong with it
13 but suppose you have three owners and they own whatever
14 proportion that you finally decide they have a claim to,
15 a distribution to one is going to be proportionate to the
16 ownership at the time of the distribution. And so, you
17 need to call in a CPA. I'm not a CPA. I think a CPA can
18 tell you you can't make owner distributions unless they
19 are already owners.

20 Q I'm saying assume that --

21 A If you call it an owner --

22 Q --- it is an owner, that is a shareholder,
23 right?

24 A If he is a shareholder, then however much is
25 distributed to other shareholders will be distributed to

1 that particular shareholder proportionate to ownership.

2 Q Correct. So my -- number 1, let me finish up
3 with this line of questioning. If somebody in that
4 hypothetical is an owner or a percentage owner and they
5 have a compensation package that is part salary, part
6 bonus, there is nothing wrong with doing a payment of the
7 bonus component as a shareholder distribution so long as
8 that distribution is proportional to the other
9 shareholders.

10 A Nothing wrong with it but, essentially, this is
11 what you are doing. What you are really doing, Mr.
12 Pillsbury is saying let's agree we're only going to pay
13 ourselves a certain amount of wages and we'll share the
14 profits and those will be paid out in terms of
15 distribution. Sure, that is fine to do that. What I
16 don't think would be fine, I mean, since you got me into
17 this, I don't think it would be fine to say to a
18 prospective buyer, I'm going to give you a distribution,
19 I'm going to pay you a bonus, I'm going agree to pay you
20 a bonus, but I'm going to couch it in terms of
21 distribution. Because if you do that, then you are
22 making that distribution based on a percentage ownership
23 that would have been due anyway to that person. It
24 doesn't have anything to do with being a bonus.

25 Q I'm not sure. When you -- well, within the

1 QuickBooks information, the information about the
2 distribution to each of the shareholders was contained
3 within those files?

4 **A** Yeah. I'm pretty sure it was. I don't recall.
5 But they were complete QuickBooks files. I can drill
6 into it this afternoon and tell you. But I think it's
7 there.

8 **Q** Okay. And, uh, traditionally, were the
9 payments that were made as shareholder distributions even
10 number dispersements like increments of 100 or 1000.

11 **A** I'm sorry. I'm sorry. I don't remember.

12 **Q** Now, let me talk to you a little bit about the
13 -- on the information, your information is as of December
14 31st, 2010?

15 **A** Yes, sir.

16 **Q** You haven't reviewed any of the tax returns of
17 2011 or 2012?

18 **A** I have not seen any tax returns after 2010.

19 **Q** And, uh, it, uh, -- any of the market analysis
20 that you did is part of your report and none of that
21 information has been updated since, correct?

22 **A** Well, I want to answer that correctly. I
23 didn't do a market analysis in terms of what a marketing
24 person would do. I certainly looked at the environment
25 as you have to do. I looked at -- I assumed that

1 performance of the restaurants reflected the market at
2 that time.

3 Q My point is that whatever research you did in
4 that area had not been updated in the last two and a half
5 years?

6 A Absolutely.

7 Q Now, are you aware of the lease situation at
8 Front Roe?

9 A Well, I saw -- I saw the attachment to Mr.
10 Manios' report. I don't know if I can get into that or
11 not.

12 Q Are you --

13 A That's the only one I'm aware of.

14 Q Actually, I need the -- the, uh, are you aware
15 that the Front Roe lease has a definitive term?

16 A When I did the analysis, yes. I was aware
17 then. I specifically asked for information about lease
18 terms for each of the locations.

19 Q And the lease term, assuming the option is
20 exercised, the lease for Front Roe expires in nine years?

21 A You know, I can go look it up.

22 Q Does that sound about right?

23 A I don't remember.

24 Q I don't want you to have -- do you feel
25 comfortable that that's the case?

1 **A** I'm happy with that.

2 **Q** Are you aware one way or the other about
3 whether or not what the relationship is between landlord
4 and tenant with Front Roe as the tenant and the Peace
5 Center as the landlord?

6 **A** Not until I saw the attachment in Mr. Manios'
7 report.

8 **Q** Okay.

9 **A** Well, I mean, yeah. I take that back. Yeah, I
10 knew who the landlord was. I had the lease. With regard
11 to the more recent developments, I obviously didn't know
12 about that.

13 **Q** Would it be fair to say that the information
14 about the lease situation of Front Roe does not indicate
15 that that lease is going to be extended whatsoever?

16 **A** I don't know. You may offer some testimony on
17 that. I do not know.

18 **Q** At the time that you generated your report in
19 early 2011, was there any competing businesses that the
20 Peace Center had opened to take away from that would have
21 impacted Front Roe's operations?

22 **A** No. No. To give you a really thorough answer,
23 I think the question is is the evaluation at 12/31/2010
24 appropriate or not to really sort of cut to the chase
25 because if subsequent developments which includes some

1 new, uh, competition, new developments by the owners of
2 this company, a new facility out there behind Larkins on
3 the River. If all those things have to be considered,
4 the court's going to have to look somewhere besides me.
5 I looked through 2010. That's all I had.

6 Q That -- outside of seeing that information from
7 Mr. Manios' report. None of that information has been
8 provided to you before that time?

9 A No. I had not seen the first tax return. I
10 went back and checked thinking you'd probably ask me
11 that. I didn't have any tax returns after 2010. Didn't
12 have any subsequent information.

13 Q It's sort of the big ticket item on Front Roe.
14 I think if I understand what you're saying, and I
15 apologize, economics was my second worse course in
16 school. Maybe if I had had you, I would be much better
17 than I am now. But you project sort of a running profit
18 or recurring normalized cash flow of profit of about
19 \$213,000 from Front Roe.

20 A After tax, yes.

21 Q And your opinion is that the business, if there
22 was a for sale sign for the business, you would expect
23 that it would generate \$1,600,000 ball park?

24 A Yes.

25 Q Now, we know that, uh, the lease expires in

1 nine years. Again, I apologize if I'm missing something.
2 If I'm buying a business for 1.6 million, I'm hoping that
3 this 212,000 or 213,000 every year, that's what's going
4 to fund my investment, right?

5 A Yes.

6 Q Okay. And so --

7 A I mean, I can tell you exactly what you would
8 do. If you thought that that lease had a zero chance of
9 being renewed, you take the present value of the after
10 tax cash flow for a nine-year period. That is what you
11 would do.

12 Q Okay. And what would that be different than
13 this calculation of 1.6?

14 A It would be lower. I can't tell you as I sit
15 here how much lower. But remember every year in the
16 future, present value, the projection gets smaller and
17 smaller and smaller.

18 Q Right.

19 A So it would be material. It would be foolish
20 for me to tell you it wouldn't be material. Remember
21 that --

22 Q Honestly, you don't --

23 A --- that presumes two things. One, it would
24 not be possible to renew that lease and, two, the name
25 and reputation of Larkins restaurant is tied exclusively

1 to that location and it could not be relocated.

2 Q And --

3 A You got -- to deal with the whole picture, you
4 have to look at those things. Maybe you're going to have
5 somebody to do that, but that's what you need to do.

6 Q So the first thing would be that we'd have to
7 be fairly confident that the lease is not going to be
8 renewed, correct?

9 A Not fairly confident. You'd have to know it
10 was not going to be renewed if you were going to limit
11 your projection to the duration of the lease. Two, you'd
12 have to know that the reputation and profitability of the
13 restaurant was uniquely tied to that location and could
14 not be replicated to any extent anywhere else.

15 Q Would it be fair for me to say that as to how
16 much a location is important to a particular restaurant
17 and it's performance, would that be somewhat outside your
18 expertise?

19 A No. I think location is critical. I didn't
20 mean to suggest to you that it's not very important.
21 Obviously, uh, the restaurant in North Carolina, they
22 bought that location as testimony was earlier today,
23 location is very important. What I'm telling you is for
24 your scenario to hold water, location has to be the only
25 factor in valuing the business. It can -- it can not

1 have value outside that location.

2 Q And, uh, again, my -- I guess, where I was
3 headed as to what the likelihood of that being
4 transferable and retaining full value, is that something
5 that's a little bit outside your area of expertise?

6 A It's not outside the area of appraisal. I can
7 tell you this having taught marketing for 32 years at
8 Furman. If I had the opportunity of acquiring the name
9 Larkins, just the name, nothing else, and could open up a
10 restaurant in Greenville with the name Larkins, there
11 would be value in that. If it were not on the river, if
12 Mr. and Mrs. Larkins were not involved and Mr. Pertuis
13 were not involved, if I could open up a restaurant with
14 the name Larkins, there is some value in there. They've
15 worked hard and rightfully so to develop that.

16 Q Are you aware of any restaurant, major
17 restaurant in Greenville that completely relocated and
18 did not lose revenue?

19 A No. But we weren't talking about losing
20 revenue. The model you proposed was nothing would be
21 available in the lease period. Those are two entirely
22 different things.

23 Q And I guess -- let me make sure we're on the
24 same page. Are you aware of any major restaurant that's
25 relocated and not lost business here in Greenville?

1 **A** No. And I'm not aware that it has happened or
2 that it has not happened.

3 **Q** Okay. Now, the discount rate that you would
4 apply, ballpark, what would that move the number down to?

5 **A** It wouldn't -- oh, boy. What would it be if
6 the lease -- it was incontrovertible that there would be
7 no lease available, there's no value, no terminal value
8 in the name or reputation for performance of Larkins.

9 **Q** Assume those two things.

10 **A** I can tell you how I'd do it. I'd take the
11 present value of \$213,000 at a discount rate of about 19,
12 uh, 18.8 percent. But that part, I can't do in my head.

13 **Q** Yeah, I'm surprised. Usually, you have your
14 calculator with you. But with your experience, can you
15 approximate what that would be? I know it's going to be
16 arranged, but what are we looking at? Is it half that
17 figure?

18 **A** I would be happy to call you with that or call
19 the court with it. I'm not being evasive with you. The
20 court can do it. I mean, if you take that \$213,000 and
21 you divide it by 1.16, the next year, you take \$213,000
22 and you increase it by 2.8 percent and then divide it by
23 1.16 squared. Just do it by nine years and you've got
24 it.

25 **THE COURT:** Piece of cake.

1 **THE WITNESS:** I didn't mean to trivialize it.

2 **BY MR. PILLSBURY:**

3 **Q** I'm not. Pardon me.

4 **A** I'm just telling you there's a way of doing it,
5 you have to make the assumptions.

6 **Q** I understand. Yes. That's the reason why
7 calculators with those formulas can crank this thing out
8 without blinking. I just didn't know with you sitting
9 here today what the range you would expect to be.

10 **A** I think I'm fairly good, but I'm not that good.

11 **Q** Okay.

12 **A** Plus if you knew that your lease was going to
13 expire in nine years, if you knew that you couldn't renew
14 it, you couldn't take that restaurant anywhere, would you
15 continue to spend \$36,000 and capitalize every year as I
16 assume you would do. You wouldn't do that. You'd cut
17 your capital outlays. You'd milk the company for nine
18 years. It's just not realistic.

19 **Q** I guess my point is would any buyer out there
20 buy a restaurant that had a nine year limitation on it?

21 **A** Well, sure. The Larkins -- if what you say is
22 true, if they don't have but nine years of remaining
23 life, Larkins on the River, they are continuing to
24 operate it, uh, because it has value to them. The proof
25 of the value is that they are continuing to operate.

1 Q Well, that's not exactly true because they are
2 continuing to operate on it -- operate it because they've
3 got \$900,000 in debt that they personally guaranteed. I
4 mean, they've got to pay off that debt. In your
5 calculation, even at 212,000, they've got four and a half
6 years before they break even.

7 A I don't know what to say. We're arguing. I'm
8 not answering the question.

9 Q All right. Hang on. Obviously, you didn't
10 take into account what a buyer would pay for any
11 proportion of this business?

12 A No, I valued 100 percent equity.

13 Q Right. And you would agree with me that if --
14 if somebody was purchasing a 10 percent interest in the
15 business or a one percent interest in the business, there
16 would be a significant discount associated with that?

17 A Yeah. I think that question is not one for me
18 to answer. I mean, if the court decides to apply a
19 minority interest discount, who am I to argue? Fair
20 value doesn't -- fair market value does. Y'all are going
21 to have to depend on the law and not me to answer that
22 question.

23 Q Your discount for that would be what?

24 A My discount for minority interest?

25 Q Yes.

1 **A** Uh, it -- I'm going to say with even looking at
2 it, 20 percent. If I applied a minority interest
3 discount, I would -- I know I'm not supposed to take Mr.
4 Manios' word. I'd take a little bit higher discount rate
5 than he took. He took 16 percent. I'd take a little bit
6 higher.

7 **Q** And so if we were -- let me see if I can do it.
8 (Pause.)

9 **A** I mean, I can tell you. I can give you the
10 numbers.

11 **Q** Yeah. No. I -- I'm sorry. Dr. Alford, I was
12 trying to get that summary that you had. I thought the
13 one where you have it's the final conclusion on the last
14 page. Just turn to your report if you don't mind. Let's
15 take Lake Point as an example.

16 **A** Lake Point's 507. If you took a 20 percent
17 discount, that is, uh, just a tad over \$100,000. That is
18 about \$406,000. Front Roe, I valued at 1.376. If you
19 applied a 20 percent discount to all of that, it's about
20 \$275,000. That comes to about \$1,110,000. But I'm going
21 to tell you, I'm just doing arithmetic now. I'm not --

22 **Q** I'm not asking you to make that assumption.
23 I'm just trying to figure out using your numbers and
24 applying your discount what they would come out to be.
25 Is there a difference between owning what somebody would

1 pay for 1 percent versus 10 percent?

2 **A** You know, you get 10 people up here, you're
3 going to get 10 different answers. I don't think there's
4 a whole lot of difference. What matters is if you got a
5 swing vote. If I had 10 percent, for example, and two
6 people that were at each other's throat had 45 percent,
7 my 10 percent would be worth a good bit. If I had 10
8 percent and the other two people were compatible, my 10
9 percent might not be worth as much.

10 **Q** Okay.

11 **A** That becomes problem with discounting anyway if
12 you're looking for fair value.

13 **Q** Again, I understand you took a fair value
14 approach. I'm just looking at it from a market value
15 approach as to what somebody might be willing to pay for
16 that kind of interest. I know that's not the approach
17 that you adopted in this circumstance, but if you were to
18 adopt a market approach, do you have an opinion one way
19 or the other whether there was any different -- whether
20 there would be a difference between purchasing 1 percent
21 of a business or 10 percent?

22 **A** In this case, I don't think so because of the
23 structure of ownership to be honest with you.

24 **Q** Okay.

25 **A** You've got two owners that are business

1 partners and spouses. I'm not sure that -- if Mr.
2 Pertuis got 45 percent, his influence would not be
3 changed that much. Distributions would have changed.

4 Q Hang on just one second. (Pause.)

5 That's it, Your Honor.

6 THE COURT: Any redirect?

7 MR. WILSON: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WILSON:

10 Q Dr. Alford, Mr. Pillsbury brought up an
11 interesting point. The discount, is it appropriate where
12 as the majority is buying the minority?

13 A No. In that case, I think it's very clear.
14 There's no reason for a discount.

15 Q Thank you, sir. I have no further questions.

16 THE COURT: Wait a minute. Say that -- ask
17 your question again.

18 MR. WILSON: I'll try, Your Honor.

19 BY MR. WILSON:

20 Q In the context, postulate a majority
21 acquisition from the minority in your valuation, is a
22 discount, minority discount appropriate for that
23 valuation?

24 A I don't think so because they are going to be
25 exercising the same amount of control. They are just

1 acquiring more distributions for profitability. There's
2 no reason in that case to discount it. That extra one
3 percent or 10 percent or whatever it happens to be is
4 worth proportionately that to them.

5 MR. WILSON: Yes, sir. Thank you. I have no
6 further questions.

7 RECROSS-EXAMINATION

8 BY MR. PILLSBURY:

9 Q Why would the majority pay any more than an
10 outsider?

11 A Why would they pay more?

12 Q Yes.

13 A Because they are going to have control. The
14 outsider would not have control. That's what I said. If
15 I buy 10 percent of Mr. Hammond's stock, I may not have a
16 lot of control. But if he buys it, if he increased his
17 ownership, he has the same control but over more dollars.
18 So it's worth dollar for dollar without any discount.

19 Q Well, he already has the control, correct?
20 He's not buying control. He already has it.

21 A He has control but he doesn't have the full
22 distributions. If he's acquiring, let's say, 10 percent
23 more profitability, okay, then it's worth whatever this
24 valuation is because he will get all of that. He doesn't
25 have to depend on somebody else and make a decision about

1 whether he's going to get it or not.

2 Q Why would he pay more than market value for
3 them if he already has control? I mean, he doesn't care
4 whether that money goes necessarily to him or somebody
5 else as long as, uh, he's got that control?

6 A I would differ with you about that. I think
7 he would care if the money went to himself or someone
8 else. If he is obligated in distributions to pay some
9 percentage to another owner, he can internalize that by
10 acquiring that ownership share. Now, if he were to
11 decide, and I'm certainly not suggesting that he would,
12 but if he were to decide we're not going to make any
13 distribution, we'll just pay the majority owners large
14 salaries, then he's got another, you know, issue to deal
15 with.

16 MR. PILLSBURY: Thank you.

17 MR. WILSON: If it please the Court, I have
18 no further questions.

19 Dr. Alford, thank you.

20 With Mr. Pillsbury's permission, may we excuse
21 Dr. Alford?

22 MR. PILLSBURY: Absolutely.

23 THE COURT: All right. Thank you, Doctor.

24 MR. WILSON: That concludes the plaintiff's
25 case, Your Honor.

1 **THE COURT:** All right. What do you got?

2 **MR. PILLSBURY:** Uh, directed verdict, Your
3 Honor. I don't know if you want to go through --

4 **THE COURT:** Directed verdict on what?

5 **MR. PILLSBURY:** Minority oppression under
6 North Carolina law and under South Carolina law.
7 North Carolina for the two companies there, he got
8 what he asked for. He bargained for 10 percent and
9 got 10 percent. He was paid everything that was due
10 to him from the North Carolina corporations.

11 **THE COURT:** Okay.

12 **MR. WILSON:** As to the North Carolina
13 corporation, there's a use of corporate opportunity
14 incident, i.e., the acquisition of the location at
15 which Lake Point does business. The acquisition was
16 not shared with their shareholder nor with the
17 corporation. It's our position that the rent is a
18 distribution to the extent that it develops equity
19 in land. It is a distribution to them without
20 making the same proportionate distribution to Mr.
21 Pertuis.

22 Additionally, we see them treating the entire
23 North Carolina -- both North Carolina operations
24 during the period of Mr. Pertuis' tutelage or during
25 his management. That's taking place with

1 micromanagement at the hands of these folks, daily
2 meetings, hourly emails and the rest of it.

3 Finally, both with the South Carolina and North
4 Carolina corporation, they didn't offer -- there
5 will be testimony tomorrow and I think Your Honor
6 can take notice of it -- they opened a burger place
7 over here.

8 **MR. PILLSBURY:** Whoa. It's directed verdict.

9 **THE COURT:** Wait a minute. Don't interrupt.

10 **MR. WILSON:** I mean --

11 **MR. PILLSBURY:** I'm sorry.

12 **THE COURT:** Go ahead, Mr. Wilson.

13 **MR. WILSON:** Yes, sir.

14 **MR. PILLSBURY:** Sorry, Your Honor.

15 **MR. WILSON:** There will be evidence yet from
16 Mr. Hammond that they've taken money out of the
17 North Carolina corporation and out of the South
18 Carolina corporation. They got the Hot Dog King and
19 they opened up the Hot Dog King. That's
20 distribution and another use of corporate
21 opportunity under North Carolina corporation.
22 Additionally --

23 **THE COURT:** Well, I'm not going to consider
24 that since it's not in evidence at this time.

25 **MR. WILSON:** I'm sorry. It's not in the

1 record at this time. Additionally, uh, they
2 promised him -- I think we've shown you by the
3 documentation that they promised him 10 percent.
4 There was an offer of acceptance there. They didn't
5 follow through with documentation that's before you,
6 Your Honor. This is not just some fellow off the
7 street. This is a one percent shareholder who is
8 owed a fiduciary duty by these people. They are
9 making promises to him. They are leading him along.

10 I think you heard Dr. Alford saying that the --
11 these corporations should be paying \$90,000 each.
12 They are paying him a total of 110 including his
13 bonus. So they are keeping the carry it out in
14 front of him by promising him shares of stock,
15 continued distributions. They don't happen. That's
16 partially the breach of the fiduciary duty. That's
17 partially the impression of a shareholder.

18 They run him off from his employment which is a
19 part of his -- and this is what's testified to by
20 Mr. Pertuis. They run him off from his employment.
21 Just about the time he starts insisting on a final
22 package documenting his status, all of a sudden, he
23 no longer is employed.

24 I respectfully disagree with Rodney. I think
25 this is a clear case using the guidelines -- he's in

1 by North Carolina law -- of common law breach of
2 fiduciary duty. I've got the case that charges
3 courts of equity with vigilant, vigilant supervision
4 of transactions between majority, minority, where
5 the majority takes advantage of the minority. Thank
6 you.

7 **THE COURT:** Okay. Yeah.

8 **MR. PILLSBURY:** Your Honor, first of all, uh,
9 there's zero evidence that with respect to the North
10 Carolina corporations that there was anything that
11 he either asked for or was promised that wasn't
12 delivered on. There's nothing in the record
13 regarding the two North Carolina corporations. The,
14 uh, -- the case of Meiselman versus Meiselman. And
15 I can hand it up to Your Honor. (Pause.)

16 On, uh, -- I don't --if you are reading, I
17 don't want to talk.

18 **THE COURT:** Go ahead.

19 **MR. PILLSBURY:** Okay. That case, Your Honor,
20 it discusses that in order to find, uh, a reasonable
21 necessity for court action that there are four
22 things that the plaintiff must prove. One is to
23 define rights or interest the complaining
24 shareholder has in the corporation. Two to
25 determine whether some form of relief is reasonably

1 necessary for the protection of those rights. In
2 order to do that, they must prove that he had four
3 things, he had one or more substantial reasonable
4 expectations known or assumed by other participants,
5 the expectation has been frustrated, the frustration
6 has been without the fault of the plaintiff and was
7 in large part beyond his control and under all
8 circumstances of the case, plaintiff is entitled to
9 some relief -- some form of equitable relief.

10 Again, there's nothing -- there's no allegation
11 that the two North Carolina corporations didn't do,
12 uh, -- there wasn't anything that was promised that
13 he didn't receive. The issue about the real estate,
14 he said he didn't even ask. So how can -- how can he
15 come in and again in a court of equity and say, I've
16 been opposed when he didn't even ask for the
17 opportunity.

18 Dr. Alford has testified that he examined the
19 lease to see whether or not it was something spooky
20 about it and he said it was within normal lease
21 payments for that location. So there was nothing
22 about the transaction that was remotely improper
23 aside from the fact that the plaintiff never
24 requested it. So, there's just --

25 **THE COURT:** Here's my problem. You've got

1 three corporations. They are intermingled,
2 amalgamated. How does the general -- what is it?
3 The operational manager. Uh, if there is a
4 reasonable inference to be drawn from the evidence
5 with respect to one of them, why doesn't it apply to
6 all of them?

7 **MR. PILLSBURY:** Well, you -- I mean, my point
8 is that the North Carolina corporations have to
9 follow North Carolina law. Under North Carolina
10 law, there's absolutely no evidence that supports
11 the criteria that North Carolina courts require for
12 this type of equitable relief.

13 **THE COURT:** Well, I have to think about it.
14 But he lost his job.

15 **MR. PILLSBURY:** I -- uh, there's --

16 **THE COURT:** How do you -- how do you -- there
17 is no bright line distinction there between what
18 goes on. He was -- am I right, he was the
19 operational manager in all three of the restaurants?

20 **MR. PILLSBURY:** Yes.

21 **THE COURT:** And that terminated in October of
22 2009, right?

23 **MR. PILLSBURY:** Correct.

24 **THE COURT:** I'm sure I'm going to hear more
25 about why it happened. But from the evidence that's

1 been presented, he couldn't get the corporate -- a
2 fulfillment of the agreement that he alleges he had.
3 In the light most favorable to the -- all of that is
4 intertwined. He loses his job in North Carolina as
5 a result of that. I mean, I'll think about it
6 overnight, but I'm inclined not to grant your motion
7 for directed verdict.

8 **MR. PILLSBURY:** Okay. And as to the South
9 Carolina corporation, uh, opposition has to be
10 something that is more than just business dealings.
11 And there's the -- the evidence here is that there
12 was a -- he agrees that there was a vesting schedule
13 that was based on percentages. He agrees that
14 whatever that schedule was, no one knew the
15 particulars that he -- as of 2007, he had done --
16 there -- Front Roe had performed adequately to earn
17 a one percent interest. But he also acknowledges
18 repeatedly that the program -- the original
19 agreement that we have for my acquiring a 10
20 percent, I still haven't met. That didn't change up
21 until the date that he left. So there's no -- I
22 mean, there's just no -- there's no fraud.

23 By his own admission, there was an agreement
24 that he would get a percentage of Front Roe
25 ownership based on controlled profit and, in 2005

1 and 2006, Front Roe didn't meet those goals. In
2 2007, it did. He got his one percent. In 2008 and
3 2009, he's acknowledging that I want to get that 10
4 percent, I want to earn that 10 percent which I know
5 I haven't gotten yet. But I want that to still be
6 in play. So there's nothing about the, uh, that
7 there is a 10 percent interest that, uh, that he
8 ever qualified for. There's no evidence of it.

9 **THE COURT:** All you got is him saying that.
10 There's no evidence he didn't qualify for it. We
11 don't know what the criteria is. It's not in
12 evidence that I've heard.

13 **MR. PILLSBURY:** He acknowledged -- and I can
14 retrieve the exhibits. He acknowledged that that
15 program where he would earn that 10 percent --

16 **THE COURT:** What he said was there is a
17 mystery document that has disappeared that outlined
18 what the criteria was. Am I mistaken about that?

19 **MR. PILLSBURY:** I'm not -- no, Your Honor,
20 you're not. But he also said that, uh, I -- as of
21 2008 and 2009, when his terms were being in the
22 process of being negotiated that he still had yet to
23 qualify. I mean, that's the point. Whatever the
24 goal was, he's admitting he had met it. It
25 literally was his own testimony that the terms of

1 the original agreement, uh, --

2 THE COURT: He doesn't know what they are.
3 So I'm going to deny your directed verdict on that.
4 I'll hear the rest of it. Okay. All right.
5 Anything -- what you're going to have?

6 MR. PILLSBURY: Uh, I'll have Mr. Hammond and
7 two, uh, employees. I don't know how late Your
8 Honor wants to go.

9 THE COURT: We're not going to start it
10 tonight.

11 MR. PILLSBURY: Okay.

12 THE COURT: We'll just come back tomorrow.

13 MR. PILLSBURY: Okay. And I've got Louis
14 Manios. THE COURT: Okay. 9:30?

15 MR. PILLSBURY: Sure.

16 THE COURT: 9:30 good?

17 MR. WILSON: 9:30's good, Your Honor.

18 THE COURT: Okay. All right. See y'all
19 then.

20 (WHEREUPON, the Court recessed for the day at
21 approximately 4:47 p.m.)

P R O C E E D I N G S

(WHEREUPON, the Court resumed on the 29th day of May, 2013 at approximately 9:48 a.m.)

(WHEREUPON, Defendant's Exhibit 35 is remarked as Defendant's Exhibit 41 for identification purposes.)

THE COURT: Okay. You ready?

MR. PILLSBURY: Yes, Your Honor.

THE COURT: Okay.

MR. PILLSBURY: There is a clerical matter, I need to correct from yesterday. There was an Exhibit I marked on the fly yesterday as Exhibit number 35. I had already premarked another Exhibit as 35. We've made the correction. It is Exhibit 41.

MR. WILSON: I have no objection to the correction.

THE COURT: All right.

MR. PILLSBURY: The other thing is, uh, there was a stipulation that the parties had agreed to that I need to enter in on the record. Regarding Mr. Pertuis' individual tax returns from 2007 until through 2012, the K-1 for Front Roe reflects a one percent interest in Front Roe. Those documents -- the K-1 schedules are already in evidence. The stipulation -- and if I may approach, Your Honor,

1 with IRS reg.

2 **THE COURT:** Okay.

3 **MR. PILLSBURY:** Uh, 26 USC Section 6037
4 requires that when a shareholder believes that his
5 interest is something other than what has been
6 reported by the corporation that that individual has
7 a responsibility to notify that they believe they
8 are due a different percentage and to file returns
9 accordingly. And the parties have stipulated that
10 Mr. Pertuis has made no notification pursuant to
11 that section at any time since 2007. Actually, Your
12 Honor, let me -- if I may, I'll just marked that
13 Exhibit 42 even though -- this IRS section itself
14 just so the record is clear.

15 Bob, does that accurately reflect the
16 stipulation?

17 **MR. WILSON:** We stipulated that he received --

18 **THE COURT:** I'll just take judicial notice of
19 the IRS regulation.

20 (WHEREUPON, Defendant's Exhibit 42 is marked for
21 identification purposes.)

22 **MR. WILSON:** Thank you.

23 **MR. PILLSBURY:** Well, and -- but the other
24 component of the stipulation was that he has made no
25 notification pursuant to that section.

1 **THE COURT:** All right. Is that your
2 understanding, Mr. Wilson?

3 **MR. WILSON:** He filed his tax return based
4 upon when he got from them and filed nothing else.
5 That's correct.

6 **THE COURT:** Okay. All right. Okay.

7 **MR. PILLSBURY:** Okay. I would call Mr. Mark
8 Hammond.

9 **MR. WILSON:** Excuse me. May I respond more
10 fully to Mr. --

11 **THE COURT:** Yeah. I thought you'd agreed to
12 it.

13 **MR. WILSON:** I did agree to it but I want to
14 make sure in the record is the full -- here's a copy
15 of pertinent portions of the tax regs. Here's a
16 copy of -- excuse me -- of the instructions that go
17 with that and the form. I think it would be useful
18 to the Court if it's taking judicial notice of Mr.
19 Rodney's -- Mr. Pillsbury's argument of estoppel by
20 tax return so the Court has the full story in front
21 of them.

22 **THE COURT:** All right. Let's, I guess, mark
23 this as a Court's exhibit too, I guess.

24 **(WHEREUPON, Court's Exhibit 1 is marked for**
25 **identification purposes.)**

1 **MR. PILLSBURY:** And I guess we agree that
2 there's been nothing submitted on any of those
3 forms?

4 **MR. WILSON:** That was the stipulation.

5 **MR. PILLSBURY:** Okay. All right, Your Honor.

6 **THE COURT:** Okay.

7 **MR. PILLSBURY:** I'd call Mr. Mark Hammond to
8 the stand please.

9 **THE COURT:** All right.

10 **MARK HAMMOND**

11 having first been sworn, testifies as follows:

12 **THE CLERK:** All right. Come on around. Have
13 a seat. State your name for the record.

14 **THE WITNESS:** My name is, uh, -- excuse me.
15 My name is Mark Darrell Hammond.

16 **DIRECT EXAMINATION**

17 **BY MR. PILLSBURY:**

18 **Q** Uh, Mr. Hammond, did you fire Kyle?

19 **A** No, sir.

20 **Q** Uh, tell the Court what things you did to work
21 with Kyle to develop him professionally along the way.

22 **A** Well, it would take a significant amount of the
23 Court's time to recount that. But it would include
24 personal coaching between Mr. Pertuis and myself on a
25 day-to-day or weekly basis about the businesses. It

1 would include things like paying for him to have
2 executive coaching, attend workshops, leadership
3 seminars. We used an executive coach in North Carolina
4 that, uh, spent a series of days with him. I would take
5 him to things like a national restaurant show in Chicago
6 where there's a variety of workshops and seminars about
7 everything from hiring to leadership to, uh, various
8 accounting or other elements of the business. It was our
9 intent to continue to help Kyle become the best manager
10 for our business as possible.

11 Q And in October, tell the Court a little bit
12 about what happened in late September, early Octo -- I
13 guess it was early October when he -- tell the Court what
14 happened then in 2009.

15 A Well, early October or late September, I know
16 Kyle had been concerned about a variety of things with
17 both his business and professional life as well as his
18 personal life. He had come to me and requested an
19 opportunity to take some time off just to kind of clear
20 his head and think about what was important to him and
21 make some decisions about his future, both, again,
22 professionally and personally. I think I recall having
23 that conversation with him in the parking lot of a
24 restaurant in North Carolina. We granted him a week off.
25 We took over the operation of the business for that week

1 and gave him time to think.

2 Q What was going on with him at the time
3 personally?

4 A I can't really speak to what may have been
5 happening personally. I know all he stipulated was he
6 had been thinking a lot about where he wanted to go with
7 his future and not sure if the restaurant business or
8 this particular business was going to be part of his
9 future. And he wanted some time off to really get his
10 head around that.

11 Q And what were the things that he was concerned
12 about professionally?

13 A Well, he had had some discussions starting
14 really in the summer, a couple of months prior to that
15 about his, uh, compensation package, about his interest
16 in wanting more ownership in the businesses up to even
17 being an equal partner where each of us owned a third of
18 each of the businesses. Paramount to that would be
19 getting some type of shareholder agreement in place.
20 Toward the end of the summer, I made an arrangement for
21 Kyle. I had to meet with our corporate counsel and get
22 documents drafted to that effect so that we would have
23 the appropriate documents in place prior to issuing any
24 additional shares. It would spell out all the terms
25 relating to being a shareholder.

1 Q And is that what you were working on at the
2 time?

3 A Actually, our corporate counsel was drafting
4 those documents toward the end of that summer, beginning
5 of that fall.

6 Q And, uh, now if you were going to fire Kyle,
7 would you have given him a week off?

8 A No, sir.

9 Q Uh, what --

10 A It was a difficult time for us because it was
11 the time that typically we start closing down things over
12 at the lake and go to our home in Florida for a little
13 while. This would certainly mean putting that off a
14 little bit.

15 Q What did you do during that week that he took
16 off? Did you stay in contact with him?

17 A I did. I let him know that I was there to
18 answer any questions as they might come up. I even
19 offered to meet with him, which he felt helpful. The two
20 of us met about midweek so that I had an opportunity to
21 answer any questions that he may have as he's formulating
22 things in his own mind about what he wanted to do with
23 his future.

24 Q Do you remember the questions, either
25 specifically or generally, that he was asking?

1 **A** I spec -- not specifically. But in general, he
2 wanted to know about what he would be able to do to own
3 more ownership, what he would be able to do to help grow
4 the company and expand the value of the businesses to all
5 shareholders.

6 **Q** And how did you -- what did you tell him?

7 **A** Uh, the same thing that we had been talking
8 about all along. We needed to get through the first
9 hurdle, which is getting the shareholder agreements in
10 place. He needs to obtain his next hurdle of
11 profitability in the newest enterprise, which was Front
12 Roe Restaurants by obtaining a half million dollars in
13 operating profit. Once he was able to obtain that, we
14 would look at, not only ways for him to increase his
15 ownership, but also ways to grow the company whether it
16 be through opening another restaurant, which had been our
17 growth path in the past or simply improving the revenue
18 and profits of the existing enterprise.

19 **Q** At the time that you guys ended that meeting,
20 did he indicate to you one way or the other which
21 direction he was leaning?

22 **A** Not really. I think he appreciated a little
23 bit of having some questions answered. But no, I don't
24 think he had really made up his mind at that time.

25 **Q** Uh, if you were going to fire him, would you

1 have met with him?

2 A No, sir.

3 Q And what did you want him to do?

4 A Well, to be honest, I want all of our employees
5 to want to work and be excited about showing up every
6 day. If there were things that were preventing Kyle from
7 doing that that I could, uh, mitigate or resolve, then I
8 would run that to ground as much as possible. But at the
9 end of the day, I wanted Kyle to make a decision that was
10 going to work for him. That could be staying with the
11 company and being an interval part of management or
12 choosing to leave and do something different.

13 Q Uh, the morning -- you met with him some point
14 during the week.

15 A Correct.

16 Q And then your next contact with him was what?

17 A Actually, it was unplanned. We were down in
18 Greenville for the Fall for Greenville Festival. It was
19 a Sunday afternoon. We actually ran into each other. We
20 had already agreed that if he chose to stay with the
21 business, then he would meet with Larkin and myself in
22 Lake Lure because we were going to really solidify the
23 plans for the future. We had a lot of things to share
24 with him with about marketing ideas and growth ideas. We
25 wanted to make a real productive session. If you choose

1 not to stay with the company, then we were going to meet
2 him at Larkins on the River here in Greenville. We would
3 part ways.

4 Q When you were down here at Fall for Greenville,
5 did Larkins have a booth that they were operating?

6 A They did.

7 Q And so were you kind of down here on business?

8 A Yes.

9 Q And he was just happened to run into him with
10 his family?

11 A Correct.

12 Q And was there any indication from him at that
13 point which way he was leaning?

14 A Uh, yes, actually. He indicated that he made a
15 decision to stay with the company and that he would be
16 seeing us the next morning at our home at 9 a.m.

17 Q And so the next morning was Monday?

18 A That's correct.

19 Q And what happened on Monday?

20 A Well, 9 a.m. came and went. About 9:15, 9:20,
21 I called him to see if something might have happened, you
22 know, sometimes traffic or something, and why he was
23 late. And his response was that he had changed his mind.
24 He decided to meet us in Greenville instead.

25 Q Uh, were you upset or angry?

1 **A** Uh, no. Disappointed.

2 **Q** And so what did you do from there?

3 **A** Uh, Larkin and I got in the car. We drove to
4 Greenville where we met Kyle at our restaurant, Larkins
5 on the River.

6 **Q** Now, uh, did you want him to resign?

7 **A** No, sir.

8 **Q** And why is that?

9 **A** We had invested a lot of time and a lot of
10 money in coaching him and making him a good manager and
11 integral part of our ability to manage the business. You
12 know there's probably some level of -- it was helpful for
13 my personal life. My wife and I had started to take more
14 and more of a backseat in the business. It allowed us a
15 little bit more freedom. A lot of that freedom was
16 because we had Kyle in place. And without him, it meant
17 that both of us were really back running the restaurants
18 full time.

19 **Q** And is that what ended up happening?

20 **A** It is. Immediately after his departure, yes.

21 **Q** And did you hire anybody to replace him?

22 **A** No, sir.

23 **Q** And so how has his duties been handled since
24 his -- since he left?

25 **A** Since his departure, I done the same thing with

1 our existing management team that I did with him. I
2 coached them to be better decision-makers, better
3 managers of their businesses. We have sent some of our
4 existing management to various workshops and coaching
5 sessions training them. That's my approach is to make
6 sure that my management team are the best they can be. A
7 lot of that is through education, whether it be through
8 myself or through someone else to make them better
9 decision-makers and better managers.

10 Q After Kyle left, revenue at Front Roe, did it
11 go up or down?

12 A It -- the revenue has been a fairly steady
13 increase. A couple of bumps, whether it be due to the
14 economy in 2010 or our landlord virtually made our
15 restaurant a construction zone for about 18 months. And
16 we weathered those storms. But in general, revenue has
17 steadily improved as probably almost any restaurant in
18 downtown Greenville could indicate.

19 Q Okay. Now, once he resigned, what happened
20 from there?

21 A Uh, I asked for his, you know, keys to the
22 restaurants and go ahead and return the title to the boat
23 that we had titled to him in North Carolina. Uh, I knew
24 it was a difficult decision from him. I knew that he had
25 labored over it. He really didn't have a replacement

1 career path. We offered to work with him a little bit
2 and told him that we would put together a price to buy
3 his shares of his stock so that he had some money that he
4 could live on and move forward with.

5 Q Uh, did you pay him any after he left?

6 A Uh, I think we did. It's not our company
7 policy to pay severance or not pay severance. We don't
8 have a real policy that addresses that. Typically, when
9 someone quits, we may pay them out throughout the rest of
10 that pay period. I think I paid Kyle for maybe a month.

11 Q And I just need to focus on a couple of things.
12 When you two had -- and we'll go into some of the details
13 in a little bit, but some of this stuff, I just wanted to
14 hit on the front end. When you had discussions about the
15 value of the company, what is it that you did initially
16 just in a general sense?

17 A After he resigned?

18 Q Yes.

19 A I took a look at the most recent records that
20 were completed, which were the 2007 tax returns. I also
21 looked at what the QuickBooks showed for 2008 in terms of
22 cash flow, book value, intrinsic value. Came up with a
23 rough number. Talked to my accountant. He kind of
24 concurred. We applied the normal minority shareholder
25 interest discounts and I believe came up with a value of

1 about \$12-15,000. Somewhere in that ballpark.

2 Q And we'll look at the documents in a little
3 bit. But once Kyle, uh, -- when he wanted to confirm his
4 own analysis, what information did you give him
5 originally?

6 A Uh, really just copies of what he would already
7 have, which would be the profit/loss statements, budget
8 versus actual financial information. That sort of thing.

9 Q Okay. Now, -- and again, we'll get to the
10 details in a little bit. But in a general sense, at the
11 time after he had resigned, did it come to your attention
12 that -- what, if anything, came to your attention about
13 what Kyle might do as his next career option?

14 A Well, he had mentioned to me and I had heard
15 from other people in Greenville that he had been
16 interested in pursuing a career as a hospitality
17 consultant or a consultant to the restaurant industry.
18 And we certainly wished him success in whatever he
19 pursued.

20 Q What, if anything, -- did that raise concerns
21 to you about additional financial information he was
22 requesting?

23 A Well, when he requested copies of our
24 QuickBooks files and, you know, other things that I felt
25 were proprietary, I did have a concern based on the

1 career path that he was currently pursuing, which was a
2 consultant to the restaurant industry. And I told Kyle
3 that I didn't feel comfortable releasing more data than I
4 felt was necessary. Certainly, our QuickBooks files have
5 proprietary information that was and is critical to the
6 future success of the business.

7 Q Were you willing to provide that information if
8 he would enter confidentiality agreement?

9 A Yes, I was.

10 Q And was a draft of that agreement presented?

11 A Yes, it was.

12 Q Now, was it germane to you what the recitations
13 have as far as percentage of interest in any given
14 entity?

15 A No, sir.

16 Q What were you concerned about?

17 A I was concerned about making sure that I had
18 some legal document that if Kyle was using information
19 proprietary to our business in his new business pursuits
20 that we had a way to stop that.

21 Q And, uh, if you had been asked about moving --
22 removing or adjusting any of the recitations, is that
23 something that you would have done?

24 A Absolutely.

25 Q And at the point at which no confidentiality

1 agreement was willing to be entered into, what did you
2 do?

3 **A** Well, I talked to our attorney. It was a
4 difficult position. We understand that he has a right as
5 a shareholder to have information, but we also have a
6 right as a business to protect what we feel is
7 proprietary. So we filed some kind of motion or
8 something to have the court really fairly weigh our
9 interest versus Kyle's interest in a way that would make
10 all parties okay with the decision.

11 **Q** Now, uh, so the suit started with your seeking
12 protection of the court on disclosure of the records?

13 **A** That's correct.

14 **Q** At any point up to that point had Kyle
15 complained to you that he felt like he had been treated
16 unfairly?

17 **A** The only indication that Kyle had about
18 unfairness would have been simply the value that I offer
19 for the companies. He didn't think that the amount that
20 I offered to buy his shares was high enough.

21 **Q** Was there any point -- again, we'll get to some
22 of the documents in a little bit. But was there any
23 point along the way that Kyle ever raised a question that
24 he didn't understand what he needed to do at Front Roe in
25 order to earn a 10 percent interest?

1 **A** No.

2 **Q** Was there ever anything that Kyle said to you
3 up to that point that he believed that you, as
4 shareholders, or that the company had done anything
5 illegal?

6 **A** No, sir.

7 **Q** All right. Uh, now, why don't we sort of back
8 up a little bit. If you would, just tell the Court a
9 little bit about your background and what you did before
10 you went into the restaurant business.

11 **A** Well, I would have been in high school. I was
12 interested in becoming an airline pilot. When I was 16,
13 I got my private pilot's license. I started working in
14 the restaurants to put myself through flight school.
15 Obtained commercial and instrument rating for flying. As
16 I was looking for a career in the airline industry, the
17 FAA decided to deregulate the airlines. There were no
18 jobs at all in flying aircraft. That's the same time the
19 restaurant business was looking to move me into
20 management. It was what I already knew and what I had
21 been doing for four or five years already. So I stayed
22 on in the restaurant business and I been in that business
23 ever since.

24 **Q** Now, what is it, uh, what was the track of your
25 career before owning your own restaurant?

1 **A** I was working in the restaurant divisions of,
2 at the time, the PepsiCo Corporation. They owned several
3 national quick service restaurant chains. I was working
4 in the top division in California at the time. I spent
5 about 10 or 11 years in operations, actually running
6 individual and areas of restaurants up and down the west
7 coast from Seattle to Medford to San Francisco to
8 Southern California. The company then moved me into
9 their corporate office in Southern California as the
10 manager of their training facility where they would bring
11 other managers in from around the country for weeklong
12 training sessions. That was then really part of the
13 Human Resource Department.

14 **Q** And how long did you serve in that capacity?

15 **A** I was in that capacity for about four years.
16 Then, Taco Bell wanted to enter into a new area, which
17 was downsizing their operations and putting them into
18 places like college campuses or airports or baseball
19 stadiums. With my operations background, they brought me
20 into that new business venture, which is actually part of
21 their marketing department. I helped them design
22 equipment. I helped them design training materials and
23 operational elements paramount to the downsizing of a
24 4000 square foot restaurant into a 200-square foot space.

25 **Q** And how long did you do that?

1 **A** I stayed with them, uh, for the balance of my
2 career actually in that capacity, which moved from an
3 operation focus to a marketing focus. Once the
4 miniaturized versions of the brands, if you will, were
5 developed, I started representing all the PepsiCo
6 restaurant brands, Pizza Hut, KFC, Taco Bell, into these
7 nontraditional spaces. I had the responsibility of
8 managing that growth with a Wal-mart Corporation out of
9 Arkansas. I was relocated to Arkansas. I lived there
10 for a couple of years working very closely with the Wal-
11 mart Corporation to put our restaurants in their
12 facilities. That's when I made the decision to leave the
13 corporate world and do our own thing.

14 **Q** Okay. And how much of that time in your career
15 approximately was spent training and developing
16 management?

17 **A** All the first 10 years in the operations side
18 of things, probably the next four years as the manager of
19 the training facility, and then periodically in the next
20 concept business. So maybe 15 out of the 20 years.

21 **Q** And when you went into business for yourself,
22 what is it that you did?

23 **A** We -- my wife and I loved the restaurant
24 business and we looked for an opportunity to purchase a
25 going concern business. We didn't have a lot of capital.

1 We were looking for someone that could seller finance,
2 that type of acquisition. And we also wanted to move
3 closer to this part of the country. Her father's health
4 was diminishing. We wanted to be somewhere within a half
5 a day's drive of his residence in Kentucky. And we found
6 the opportunity in North Carolina. We met with a seller.
7 We reviewed his books. Our accountant reviewed his
8 books. We agreed on a price. We purchased that
9 business.

10 Q And what was the name of the business?

11 A At the time, it was called Jimmy's Original.

12 Q And once you took it over, what was it?

13 A It was Jimmy's Original. We ran it as Jimmy's
14 for maybe a couple of months. Over the time, we started
15 thinking about a new name for the business. We
16 eventually chose the name Larkins on the Lake.

17 Q And you set up the corporation at that point
18 for that business?

19 A It was set up prior to the acquisition, yes.

20 Q And that's Lake Front that we heard about?

21 A Uh, Lake Point Restaurant.

22 Q Lake Point. I'm sorry. Yes. And, uh, who
23 were the shareholders originally?

24 A Larkin and I were each the only shareholders.

25 Q Equal shareholders?

1 **A** Equal shareholders.

2 **Q** Okay. And now when that business was financed,
3 did you have to personally guarantee any of the money?

4 **A** Absolutely. Personal guaranteed everything.
5 Sold two boats we had in Arkansas. Sold two cars we had
6 in Arkansas. Sold everything we could for a down
7 payment. Then, the seller carried most of it. There was
8 a small bank loan that we were able to secure as a line
9 of credit.

10 **Q** At what point, did Mr. Pertuis come on board?

11 **A** About a year later. The following, I think it
12 was summer of 2000. Maybe a little more than a year.

13 **Q** How is it that that happened?

14 **A** After going through our first year, my wife and
15 I realized that fortunately we brought a business that
16 had a lot of upside. That was the good news. The bad
17 news is neither one of us had much experience in running
18 a full service business with, uh, a bar, liquor, wine.
19 We knew that we would be able to focus more of our time
20 and energy on the business enterprise and making it more
21 successful if we had someone help us in the day-to-day
22 management of the operation.

23 **Q** Okay. And how is it that you found Mr.
24 Pertuis?

25 **A** We found his resume on the internet. We were

1 interested to at least meet with him. He actually had
2 worked at a restaurant that we frequented when we lived
3 in Arkansas. We were looking forward to see if maybe
4 there was an Arkansas connection that might work out..

5 Q And so originally when he came on board, what
6 was the arrangement?

7 A We hired him on as our general manager for that
8 restaurant. We agreed to relocate, him and his wife out
9 and make the move to Arkansas and be part of our
10 management team.

11 Q Now, was, uh, having stock or his having stock
12 in the corporation something that was discussed
13 originally?

14 A I actually don't recall. It's certainly
15 possible, but there were no promises or no arrangements
16 made at that time.

17 Q And -- but at some point, you made that option
18 available?

19 A That is correct.

20 Q And why is that?

21 A Well, I believe it was subsequent to his
22 hiring. We were very impressed with how he took to the
23 business, his dedication to the business. We wanted to
24 do something that would be mutually beneficial. We
25 wanted to keep him on board, an incentive to stay on for

1 the next several years. We wanted him to share in the
2 business he was helping to grow and develop and be a
3 shareholder.

4 Q And so how is it that you structured his
5 acquisition of an interest?

6 A We gave him an opportunity to earn through a
7 vesting schedule up to 10 percent ownership purely based
8 on sticking around, staying dedicated and staying on
9 board as an employee in that capacity.

10 Q And why was that?

11 A We felt it was important to the business to
12 have some continuity in management and some consistency
13 in management. That's one of the things that I learned
14 at PepsiCo. I felt if I could incent Kyle to stay
15 longer, then we would have a greater level of consistency
16 in management and the operations.

17 Q Do you recall one way or the other whether that
18 schedule was reduced to writing that both of you signed?

19 A I really don't recall. I really don't know. I
20 know that we had an agreement. I know that we were both
21 comfortable with it. As time progressed, we continued to
22 grant him his ownership shares as we stipulated and
23 agreed to culminating in his ownership of 10 percent of
24 the corporation.

25 Q So whether there was a signed agreement or not,

1 you followed through on the commitment that you would
2 make?

3 A Absolutely.

4 Q And, uh, tell the Court a little bit about
5 Beachfront.

6 A Well, a couple of years after that or after
7 Kyle came on board, uh, we had an opportunity to acquire
8 another restaurant in town. We felt that it was in a
9 different trade area that would not compete with our
10 existing restaurant and would give us an opportunity to
11 grow the business within the same community. So
12 similarly to what we had done with Jimmy's Original, we
13 met with the current owners. We looked at the facility,
14 looked at the trade area and the formation of a new
15 corporation to run that business was completed. We
16 purchased that business and started to operate.

17 Q And what was the arrangement with Kyle for
18 Beachfront regarding acquiring any ownership interest?

19 A We made Kyle the same offer that we made him
20 for Lake Point. We would grant him shares of corporate
21 stock based on a vesting schedule over time. Again, we
22 want him to have some consistency in management. We
23 wanted to have him focused on growing the business
24 profitably for the long haul. And the longer he stayed,
25 the more ownership he gained in that enterprise similarly

1 to Lake Point.

2 Q Uh, I'm not going to go into tremendous detail
3 on these. This is Exhibit number 1 that's been admitted
4 which is -- if you would, identify that document.

5 A It's dated August 2002. It's a memo from
6 myself to Kyle. It's talking a little bit about the
7 operation that we had acquired. It's -- it's really
8 outlying the fact that what Larkin and I had been seeing
9 from him was a significant amount of time that he had
10 invested in trying to run the operation and acknowledging
11 that time but also acknowledging that there was a gap
12 between what effort was being placed or put out and the
13 results that were being obtained. This memo was really
14 geared toward helping Kyle understand that it's very much
15 a result-oriented business. Just to read from the memo,
16 results, action, execution, this is what we need to focus
17 on uh, so that we can be all the things that we worked so
18 hard over the last couple of years to accomplish.

19 Q Now, memos like this, is this sort of -- tell
20 the Court a little bit about as far as why you would
21 spend the time generating a document as detailed as
22 Exhibit number 1.

23 A I wanted to be clear in helping Kyle understand
24 really where to prioritize, where to focus. Kyle was a
25 dedicated employee. He put the time in. In this kind of

1 business, if you don't, you're not going to be
2 successful. We're a seven-day-a-week business. It does
3 take a lot of time. And my goal is to redirect his
4 efforts and focus where I feel it does the most -- does
5 the most good for the business.

6 Q And I think actually this -- confirm that
7 those -- all three pages are part of that letter.

8 A Well, the copy of the staple holes are all
9 identical, so I assume they all go together. And it
10 seems to be consistent. It looks as though this is
11 actually may be a salary performance review where we talk
12 about, uh, his base pay, his bonus structure, that sort
13 of thing, as well as a bullet point list of some issues
14 that we've had in the operation and my goal in this
15 document would have been to help articulate where again
16 he needs to focus.

17 MR. PILLSBURY: Your Honor, does your Exhibit
18 1 have three pages?

19 THE COURT: Yes.

20 MR. PILLSBURY: Okay. It was just this
21 original that I may have stapled.

22 THE COURT: The original didn't have three
23 pages?

24 MR. PILLSBURY: The original did, except two
25 of the pages were --

1 **THE COURT:** I'm just asking.

2 **MR. PILLSBURY:** Yeah.

3 **MR. WILSON:** May I look at it?

4 **MR. PILLSBURY:** Yes.

5 **BY MR. PILLSBURY:**

6 **Q** And is this something -- I think you'd gone
7 into it. But is this something that you tried to do at
8 least annually?

9 **A** To this level of detail, yes, annual. I would
10 not generate something like this on a regular basis. But
11 at least once a year, maybe, uh, midyear, I would
12 generate something like this if I felt clarification
13 needed and more importantly follow up for me so that I
14 could go back a month later and say, gee, Kyle, you are
15 doing great on these ten things and I really appreciate
16 you focusing on that. But hey, these others were
17 missing. So we need to go, circle back and redirect.

18 **Q** The -- and tell the Court a little bit about
19 the compensation in the early days salary versus bonus.

20 **A** Bonus was based on obtaining profitable
21 targets. Every year, Kyle and I would sit down and
22 prepare a bonus structure that was tied directly to a
23 budget for the operation that he and I also would put
24 together. And I would set up a bonus target. I would
25 say, look, we're going to pay you this amount as a

1 salary. We're going to pay you this amount as a bonus.
2 And here is what has to happen for these bonuses to be
3 paid out.

4 Q When you would review the budgets, is that
5 something you did every year?

6 A Yes.

7 Q And it -- was that collaborative?

8 A Yes.

9 Q And tell the Court a little bit about that.

10 A Well, we would look at prior year performance
11 on a month-by-month basis. Then we would look at any
12 upcoming anomalies, whether it be the lake being lowered,
13 which the city does every three years or other factors,
14 the economy, other growth in the area. We'd look at the
15 cost side of the business and were we anticipating
16 increases in certain costs or were we anticipating, uh,
17 taking on additional expenses through changes in the
18 operation. Then, we would finalize a budget for the
19 upcoming year that would be broken down into month by
20 month segments.

21 Q And were there times when you would generate
22 these targets that you would go back and forth with what
23 you thought they should be and what he thought they
24 should be?

25 A The bonus targets -- let me clarify, the bonus

1 dollar amounts were pretty well set by me. I chose this
2 is how much I want to allocate of your compensation to
3 bonuses. Kyle and I would certainly go back and forth on
4 what the target would be in terms of restaurant
5 profitability in order for those bonuses to be paid out.
6 That would have been the collaborative piece.

7 Q And that's kind of what -- let me make sure
8 we're on the same page. As far as what amounts were
9 awarded at what plateaus, that was what you decided? Or
10 help me understand the difference in how the goals agreed
11 to.

12 A I'll just give some examples. Let's just say
13 that in a given year, we would say, gee, Kyle, we're
14 going to pay you \$40,000 as a salary and we're going to
15 pay you \$15,000 as a bonus. That bonus is going to be
16 paid quarterly. So \$3500 or 3750 per quarter, that's a
17 set number. Now, the payout of that number is going to
18 be based on the restaurant obtaining a predetermined pre-
19 agreed upon profitability. If the restaurant falls short
20 of the profitability number, then the bonus does not get
21 paid out. If the restaurant exceeds that target
22 profitability number, then the bonus would be paid out
23 and even then some. So there was a schedule for all of
24 that that we would set for the upcoming year. Here's the
25 dollar amount that we're going to pay. Here's the dollar

1 amount that the restaurant has to achieve.

2 Q And the achievement part by the restaurant, is
3 that the portion that was collaboratively agreed to?

4 A The budget, yes. And actual is whatever the
5 restaurant actually performed. The budget was
6 collaborative usually around the end of the forth quarter
7 prior to the next year.

8 Q And so whatever the targets were that the
9 restaurant had to earn in order for a 100 percent bonus
10 or 90 percent bonus or 110 percent bonus to be paid,
11 whatever the target number that the restaurant had to
12 generate, that's what was agreed to ahead of time?

13 A Correct.

14 Q Okay. Were there times that you would go back
15 and forth on what that number, that target number should
16 be?

17 A Uh, during the budget process, sure.

18 Q Was that fairly common?

19 A It was in my history of PepsiCo and it's been
20 the history since Day 1 up through today of how, uh, I do
21 things in our restaurants now.

22 Q Okay. Uh, Exhibit 2. This is December 1st,
23 2003.

24 MR. WILSON: Your Honor, I'm going to ask Mr.
25 Pillsbury to tell me what the relevance of this line

1 of questioning is, more particularly, this document.

2 **THE COURT:** Well, it's in evidence. What --
3 he's objecting to the --

4 **MR. WILSON:** He's going to go further with a
5 description of events.

6 **THE COURT:** He's objecting to relevance.
7 What's the relevance?

8 **MR. PILLSBURY:** The relevance is it
9 establishes a pattern and course of dealing with
10 these parties about -- there's been complaints by
11 the plaintiff that there was no communication and
12 that all things were just made from Mount Sinai by
13 Mark with no discussion.

14 **THE COURT:** Okay. I'm going to let him. Go
15 ahead.

16 **BY MR. PILLSBURY:**

17 **Q** Again, I'm not going to go into great detail on
18 this particular document. But is this kind of more of
19 the same?

20 **A** Yeah, this document is about six months after
21 the other one you showed me. This breaks down the
22 business so it's easy for Kyle and I to get our arms
23 around it and discuss it. This particular one is broken
24 down into areas of operations, leadership summary.
25 Again, I'm saying that, uh, Larkin and I are very proud

1 of you and the results that you've achieved this year.
2 As we spend less time in the operation, we rely more and
3 more on you to carry out the decisions we make as a team.
4 Follow up and follow through and you'll do great. That's
5 kind of the essence of this note.

6 Q Uh, there was something. Well, anyway, in
7 Exhibit number 1 on page, uh, look at page 3 under
8 Compensation. Do you see what it says there about
9 stocked ownership or incentivizing Kyle to grow the
10 business?

11 A It says incentive to grow the value of the
12 company in two ways. First, in annual bonus objectives
13 which are focused on the net flow through or contribution
14 or net profit. Second is stock ownership in the two
15 operating companies, Beachfront Foods and Lake Point
16 restaurants, which incent you to grow the business that
17 you help to make profitable.

18 Q And, uh, all right. Now, let's look at, uh,
19 Exhibit 4. I'm sorry. Exhibit 3. That's April 7, 2004.
20 And, uh, in that document, what, uh, -- explain what's
21 going on as far as the incentive plan. More particular
22 about payment of the bonus.

23 A As I had mentioned earlier, we'd have a dollar
24 amount set aside for bonuses. Typically, we would
25 increase that target, that payout target every year.

1 This one says that, uh, we're going to give you a \$25,000
2 bonus per year which is 6250 per quarter and that your
3 last payout was the first time that you'd actually
4 exceeded the target. What I wanted to do, obviously, was
5 have that level of performance continued. I even said
6 that I hope that sets a new trend that continues.
7 Incentives will still be based on controllable profit.
8 Mark decided to look at ways of maybe even -- I'm looking
9 for more exciting and rewarding ways of structuring this.
10 One change going forward is reducing the taxable amount
11 of your incentives through the use of shareholder
12 distributions which will be applied to the incentive
13 payouts to benefit you an extra seven and a half percent.
14 Basically, now that he's a shareholder, I can write a
15 check -- instead of running a bonus through payroll, I
16 can write a check as a shareholder distribution. Those
17 are not subject to FICA and Medicare, which is the seven
18 and a half percent.

19 Q And so is that something to Kyle's advantage to
20 do?

21 A It's a seven and a half percent advantage. He
22 would get the shareholder distribution based on the
23 overall shareholder distributions of the corporation.
24 But by giving as much of it that way, he's going to
25 benefit seven and a half percent. That was really the

1 only net benefit.

2 Q Uh, and then Exhibit number 4, uh, the April
3 19th, 2005 letter, what is that?

4 A Uh, looks like this is addressing his move to
5 Greenville and him taking on more responsibility of now
6 running another operation. Now, there will be three
7 distinct individual restaurants that he will be
8 supervising that articulates our agreement to his base
9 salary which we increased, his bonus, which we increased,
10 a company car, which we're paying for. Other elements of
11 benefits, medical insurance, uh, life insurance, uh, at
12 the bottom, I say that we do want you to have ownership
13 in the new business, Front Roe restaurants and are
14 looking at some creative ways to make that happen.

15 Q All right. Let's take a step back for just a
16 moment. Talk generally, if you can, about the operations
17 of Lake Point and Beachfront up to 2005.

18 A Uh, well, we would have been in operation about
19 six to seven years at the Lake. Probably four to five
20 years at Beachfront. The Lake was doing fairly well with
21 increases in revenue and profits. Beachfront was
22 struggling. Not long after we opened that restaurant, we
23 had some issues with the city. We had issues with
24 signage. A competitor opened up in a much more visible
25 location about 100 yards from where we were. Those were

1 hard factors to overcome.

2 Q When you opened Beachfront, what was the
3 financial arrangement for Beachfront?

4 A We secured a loan from the local bank to
5 purchase the going concern business. Larkin and I put
6 some personal money into it. There may have been even
7 some seller financing.

8 Q And, uh, from time to time up until that point,
9 would either of those businesses need a cash infusion?

10 A Oh, yeah.

11 Q Talk a little bit about that please.

12 A Lake Lure is a very seasonal location. We make
13 100 percent of our profits in 100 days. That's not an
14 exaggeration. Our business runs really from Memorial Day
15 to Labor Day in terms of profitability. The rest of the
16 months kind of, hopefully balance out. I think even this
17 year, we're in the hole about 100 grand prior to this
18 last weekend. And that's normal. So sometimes during
19 those months when we're operating in the red, there isn't
20 enough carryover from the prior year. And so I can even
21 remember I made payroll on my credit card one time. So
22 yes, sometimes you have to add capital in to keep the
23 enterprise going.

24 Q Now, at those points when there was a need for
25 capital infusion, was Mr. -- did Mr. Pertuis have any

1 percentage of interest in the business as a shareholder?

2 A Probably so.

3 Q And, uh, explain why you would do a loan to the
4 business that way as opposed to any other method.

5 A We didn't want to make a capital call. Any
6 other closely held corporation, that's typically what the
7 board of directors would do. And all the shareholders
8 would have to come up with their pro rata share of that
9 capital cost. If you don't, then whoever doesn't come up
10 with the capital cost has the value of their share,
11 number of shares or value of shares diluted. We knew
12 Kyle didn't have the money, first of all. And secondly,
13 we didn't want to dilute his value of shares. So we
14 would loan the company money.

15 Q And at the point that you were loaning money in
16 order to get the infusion, was there ever any objection
17 by -- first of all, would Kyle know when money was being
18 loaned?

19 A Well, most of the time, I would think so, yes.

20 Q And was there ever any objection when you were
21 providing cash infusions into the business?

22 A No.

23 Q And, uh, now, talk a little bit about, like, in
24 the instances where there might be a loan from one entity
25 to another.

1 **A** Uh, that probably happened after we opened the
2 restaurant down here that was less seasonal. There were
3 certainly times that one restaurant may be low on cash to
4 meet obligations. So instead of again making a capital
5 call or, in some cases, instead of an additional infusion
6 of cash from Larkin and myself, as a loan to the company,
7 we would transfer funds from one corporation to another
8 in order to meet current cash flow obligations.

9 **Q** Were interest on those loans paid?

10 **A** Uh, interest on those loans were paid in some
11 regards, but not on all. I'll be honest. I didn't keep
12 as close a tab on that as I probably should have.

13 **Q** The, uh, -- let's talk up to the point. How is
14 it that you came to get involved in Greenville?

15 **A** Friends of ours that lived in Greenville also
16 had a home in Lake Lure. They often invited us to come
17 down to Greenville. And he was, uh, personally
18 acquainted with the gentleman that owned the restaurant
19 that we now call Larkins on the River. And he introduced
20 us to him.

21 **Q** And how -- just talk about the evolution of
22 that arrangement.

23 **A** I met with the gentleman. His name is Rene,
24 Rene Rock. Rene and I struck up a conversation. He, at
25 the time, was interested in selling but hadn't fully

1 decided when and how much. So I left the dialog open.
2 He and I communicated probably for the next six to nine
3 months periodically. That culminated into an agreement
4 for us to acquire the business.

5 Q At what point did you acquire the business?

6 A The end of April, beginning of May 2005.

7 Q I think that gets us to, uh, Exhibit number 4,
8 right? Yes. That's the document in front of you talking
9 about Larkins.

10 A Correct. This is April 19th, 2005.

11 Q Okay. And so, uh, talk about the dynamics of
12 how that growth was going to be incorporated with the
13 other two restaurants that you -- that you, Larkin and
14 Kyle with the other two restaurants.

15 A Rodney, I'm not sure if I understood your
16 question.

17 Q Very poorly worded. Explain to the court, if
18 you would, the dynamics of what was Kyle's position going
19 to be. How were you going to change the compensation
20 package? What did you do on that?

21 A Sure. Kyle's job title was Director of
22 Operations. His responsibilities for the new restaurant
23 would be the same that they had been for the other two
24 restaurants. We realize he had to split his time up now.
25 Some of it's going to be on the road, which it didn't

1 used to be. And he's got another enterprise to keep on.
2 So we treated it the same way we did the other ones. We
3 set out bonus targets. We did budgets and his
4 compensation included a base pay. In addition, he had a
5 bonus based on profitability. Of course, he still was a
6 shareholder in the two North Carolina corporations. And
7 we talked to him about, and I even mentioned it in this
8 memo, we want him to also be a shareholder in the new
9 restaurant. We want to come up with some creative ways
10 for him to earn that.

11 Q And what did you end up deciding on?

12 A Larkin and I had a long conversation about
13 that. As directors, we agreed that what was most
14 important at that time was making that restaurant
15 profitable. We were confident that Kyle was 100 percent
16 on board. We felt that, uh, what was best for all
17 parties involved was to grant or offer stock in the new
18 company based on financial performance and obtaining
19 certain financial goals.

20 Q The other two companies, the acquisition of an
21 interest was spread out over a five-year period?

22 A Correct.

23 Q Why wasn't that an issue with Front Roe?

24 A Again, we really felt that Kyle was an integral
25 part of the team. We had worked together now for almost

1 seven years. And incenting him just to stay on longer
2 was not as critical of a concern to us as getting the new
3 restaurant profitable was. So we tied his ownership
4 vesting, if you will, to profitability goals which he
5 could attain in one year, two years. Obviously, the
6 quicker that he attained it, the better we all, you know,
7 would benefit.

8 Q And the profitability goals, uh, what were the
9 terms that you had as far as what the interest would be?

10 A We, uh, -- we, first of all, wanted to become
11 profitable. So we agreed to grant him a one percent
12 ownership in Front Roe after the year that it first
13 turned a profit. Then we anticipated a revenue growth
14 based on what we knew the opportunity would be. The next
15 hurdle was once the restaurant obtained a half a million
16 dollars in operating profit, he would be granted an
17 additional nine percent to give him a 10 percent
18 ownership.

19 Q Now, when you acquired Rene's how did you
20 finance it? How is that transaction handled?

21 A Unfortunately, that was a seller that didn't
22 have any money to carry. So this was our first
23 acquisition that we had to come up with all the money to
24 buy it. Uh, but he had a loan that we just were able to
25 assume. I met with the bank president. Instead of

1 paying him that additional money, we were able to count
2 that loan as part of the purchase price. I also secured
3 financing from another North Carolina bank. The rest was
4 personal savings from Larkin and myself.

5 Q The financing -- well, on the financing that
6 you secured and the loan that you assumed, did you have
7 to personally guarantee the performance of those loans?

8 A Those loans weren't just personal guarantees.
9 Those loans were mortgages against our home.

10 Q And how is that?

11 A The bank took out a lien on our property to act
12 as collateral. This was not a real estate acquisition.
13 This was a lease operation. The bank wanted to have real
14 estate as collateral instead of some ovens and some
15 tables and chairs.

16 Q Was the financial risk at Front Roe
17 substantially different than the other two businesses?

18 A The dollar amount was significantly higher, yes.

19 Q And I meant to ask. At any point along the
20 way, did Mr. Pertuis ever make any capital contribution
21 or loan to the company?

22 A No, sir.

23 Q On any of the three companies?

24 A No.

25 Q Uh, so when you talked about this, uh,

1 incentive plan, I think -- was it reduced to a document
2 at some point?

3 A Yes.

4 Q And have you been able to find that particular
5 document?

6 A No, I have not.

7 Q Was there ever any point, uh, -- at any point
8 along the way, did Kyle ever ask you, I do not understand
9 what I need to do in order to earn a 10 percent interest?

10 A No. I equate that to something that we also
11 talked about, PepsiCo. If you don't know the goal line,
12 it's hard to ride the team to get there. Just like bonus
13 payouts, there was always an understood, agreed goal
14 line.

15 Q And we'll get to some of the documents here
16 very, very shortly. Exhibit 5. What is that document?

17 MR. WILSON: May I see it?

18 MR. PILLSBURY: Yeah.

19 THE WITNESS: Uh, this is, uh, annual salary
20 performance review consistent with some of the other
21 documents.

22 BY MR. PILLSBURY:

23 Q Is this sort of consistent with trying to have
24 regular or, you know, part of your management style?

25 A Yes.

1 Q This entire time, as the companies have been
2 added, has his compensation been increased to reflect
3 that?

4 A Yes. If I compare Exhibit 3 with Exhibit 4,
5 we've increased his base pay from \$45,000 to \$55,000
6 which is about a 20 percent increase. The bonus went
7 from \$25,000 to \$48,000 which is almost a 50 percent
8 increase. So yes.

9 Q And the bonus component are the same things
10 that we talked about early on that each year, you are
11 sitting down deciding what the numbers should be in order
12 for that bonus to be achieved.

13 A That's correct.

14 Q I'm handing you what's been admitted as Exhibit
15 6. All right. The cover is an email. The next -- the
16 following two pages, are they an attachment -- is that
17 the attached document?

18 A It appears to be, yes.

19 Q Now, on -- on -- the date of this, what is the
20 date?

21 A June 14th, 2008.

22 Q And up to this point, uh, in 2005, had Front
23 Roe performed at a level where Kyle was vested with any
24 interest in Front Roe?

25 A No.

1 **Q** In 2006?

2 **A** Uh, I believe it was post-2006 that we finally
3 turned the restaurant from a negative to a positive in
4 terms of operating income.

5 **Q** And so when it achieved profitability, what did
6 you do?

7 **A** He was granted a one percent ownership shares.

8 **Q** Okay. Now, uh, when there would be payments on
9 bonus versus distributions, how would that generally be
10 handled?

11 **MR. WILSON:** Your Honor, I want specific
12 information. I don't want general information.

13 **MR. PILLSBURY:** Specifically, it's --

14 **THE COURT:** Well, you can cover that in
15 cross-examination. I'm not sure what your objection
16 is.

17 **MR. WILSON:** The question was how was it
18 generally handed -- handled. I object to it because
19 it's not a question that can be answered.

20 **THE COURT:** Well, he can answer it the best
21 he can. You can nail him down on cross. All right.
22 Go ahead.

23 **MR. PILLSBURY:** Thank you, sir.

24 **THE WITNESS:** We would have a target for a
25 bonus and as much as his shareholder distributions

1 would allow, we would write a check for that bonus.
2 Then, if he had more bonus than his shareholder
3 distributions would allow, we'd run that through
4 payroll.

5 **BY MR. PILLSBURY:**

6 **Q** And there was something I skipped over. Did --
7 what did Front Roe do -- when Kyle relocated down to
8 Greenville, did Front Roe do anything to assist in that
9 move?

10 **A** Well, we got him a car. In fact, we were
11 trying to help him further improve his credit. We had
12 him actually acquire the car in his name. Then we made
13 the payments on that vehicle for him. Certainly, we
14 covered his expenses. He used that car extensively in
15 business. We paid his maintenance and gas, insurance and
16 that sort of thing.

17 I know that, uh, he was very interested in
18 purchasing a home when he relocated. But he didn't have
19 the money for a down payment. So we loaned him, I
20 believe the number was \$10,000 to help him acquire that
21 home for his family.

22 **THE COURT:** Who loaned the money?

23 **THE WITNESS:** I don't recall, Your Honor. It
24 may have been us personally. More than likely, it
25 would have been the company because I recall the

1 repayment of that loan was not from a check from
2 Kyle to us but through bonuses that he was due. We
3 would just not pay him. We would credit the bonuses
4 due against that \$10,000 loan. It was probably the
5 company, but I don't remember.

6 **BY MR. PILLSBURY:**

7 **Q** But that would be reflected within the
8 QuickBooks?

9 **A** Yeah.

10 **Q** And the, uh, -- now, whenever there was a
11 repayment of that loan made back, was that something you
12 did unilaterally or was that agreed to?

13 **A** Anything like that would have been a
14 conversation between us. It would have been agreed to.

15 **Q** Okay. And then, uh, on -- looking at Exhibit
16 number 6, uh, down there when it's talking about the, uh,
17 the options that are out there -- well, what's going on
18 in June of 2008? I should back up. What's going on that
19 leads to this kind of meeting?

20 **A** Uh, I believe this is subsequent to a
21 conversation that Kyle and I had at some point prior
22 regarding where he sees himself down the road with the
23 company in terms of his areas of responsibility and his
24 ownership with the company. This just kind of outlines
25 some of my thoughts in writing back to him about those

1 questions and concerns.

2 Q Okay. And uh, now, this meeting that took
3 place, where was it? Do you remember?

4 A Uh, he and I had a meeting at the City Range on
5 Haywood probably over lunch. This document then would
6 have been subsequent to that. It articulates some of my
7 thoughts about that conversation.

8 Q Right. And then on, uh, -- I think this is
9 actually -- Your Honor has a copy. Item number 1 there,
10 uh, if you would, read that please.

11 A So some of the options would be, number 1, keep
12 our current arrangement where you own 10 percent of Lake
13 Point and Beachfront plus what I hope will become 10
14 percent of Front Roe this year and you will own
15 approximately 250,000 in net street equity on the
16 businesses.

17 Q Now, uh, when it says what I hope will be 10
18 percent of Front Roe, what happened in 2007 that made it
19 look like the 10 percent figure might be reached?

20 A I'm not sure much as what happened in 2007, but
21 it was what we saw happening in the town in general, in
22 Greenville in general. Our catering business was
23 growing. We had made probably some strides in 2007 that
24 were good indicators. This is dated halfway through
25 2008. So it was probably both 2007 plus what we're

1 seeing in 2008 that made me feel like there was a strong
2 possibility we could hit a half million in net operating
3 profit this year.

4 Q And, uh, if -- if Front Roe had performed at
5 the level that would have earned him a 10 percent
6 interest, would the statement about the street equity
7 value be true?

8 A Uh, yes.

9 Q Okay.

10 A Yes.

11 Q And that's because of what?

12 A Well, I look at, when I acquire businesses, the
13 biggest factor for me is the cash flow multiple. I want
14 to know how quickly I can recoup my investment. So based
15 on a cash flow multiple, that's where the quarter million
16 dollars in value comes from.

17 Q In order for it -- a cash flow multiple for him
18 to get the 10 percent, what would the net profit had to
19 have been?

20 A Cash flow multiple and net profit are two
21 different things.

22 Q I'm with you.

23 A To answer your question about his 10 percent
24 ownership in Front Roe was based on getting a half
25 million dollars in net operating profit.

1 **Q** Okay. And so if the business, if Front Roe was
2 performing in a way where their bottom line was a half
3 million in your net profit, ---

4 **A** Uh-huh.

5 **Q** --- that's where the \$250,000 figure --

6 **A** It would have been a component.

7 **Q** Right.

8 **A** Of course, Lake Point and Beachfront would also
9 have factored into that.

10 **Q** Okay. Now what happ --

11 **THE COURT:** Let me -- pardon me.

12 **MR. PILLSBURY:** Yeah, please.

13 **THE COURT:** This was written halfway through
14 the year. So based on that assertion, are you --
15 and Larkins on the River being a non-seasonal
16 restaurant, how much money had he made in the first
17 six months?

18 **THE WITNESS:** Uh, we probably had made
19 \$200,000. 150,000. It's not as seasonal as the
20 lake, Your Honor. But a big component of our
21 business at Front Roe is catering. We do --

22 **THE COURT:** So holidays would have been
23 bigger.

24 **THE WITNESS:** December is, I think, our
25 biggest month of the year actually.

1 **THE COURT:** Okay. All right. Go ahead.

2 **MR. PILLSBURY:** No, no. Thank you.

3 **BY MR. PILLSBURY:**

4 **Q** And, uh, so what was the game plan from that
5 June meeting or once you did that memo? Where were
6 things going?

7 **A** Well, looks like we have a meeting set up for a
8 Tuesday that I referenced. This is written on a
9 Saturday. Probably this was something for him to kind of
10 digest. Then we would discuss the items that I had
11 listed and come up with a mutually agreeable plan to move
12 forward.

13 **Q** I hand you what's been marked as or admitted as
14 Defendant's 8. Now, this is in January of 2009. If you
15 can, tell the Court a little bit about what's going on in
16 January of 2009.

17 **A** Looks like this is an email from Kyle to me.
18 There are some things he's asking for such as reviewing
19 his insurance policy because it was a little old. He's
20 asking about disability insurance and do I have an
21 opposition to having that or providing that. The current
22 formula for valuing a share of stock in the company and
23 what is its value today. If you wanted to buy more of
24 the company, what would that cost him. So it's a list of
25 questions that he had about his future. It looks like

1 he's kind of thinking about how he's better positioned to
2 take care of himself and his family.

3 Q And so what was the game plan from that point
4 as far as responding to or doing anything with that?

5 A Uh, --

6 Q His memo?

7 A He says, I think that's it for now about
8 documents. I will give you the input we need on what it
9 will take to continue the growth of the company. I have
10 several things complied for us when you get here as it
11 relates to operation. We'll send you and Larkin out a
12 topical outline Thursday so you can formulate your
13 thoughts. Uh, this is January of '09. So I'm more than
14 likely in Florida at the time. So it's probably in
15 reference to -- I come up in the off season. I'm up here
16 at least one part of every month. This is probably
17 something prior to a trip that I had planned to come back
18 up here.

19 Q Okay. And, uh, alright. Exhibit 9. What is
20 that?

21 A Uh, let me see. This is a few months later.

22 Q The date on that is when?

23 A Oh, okay. Yeah, it's backwards.

24 Q The first email from you is what date?

25 A Uh, this was February 20.

1 Q So what does that reflect?

2 A Apparently, he had gotten together since the
3 memo in Exhibit 8. This says Kyle, thanks for taking the
4 time to work on our partnership agreement and share your
5 ideas and concerns. As we discussed, we want to get
6 something in writing to confirm where we are and where we
7 want to go. Here are some bullets. Looks like this is
8 kind of a followup list. We're going to do this. You're
9 going to do this kind of bullet list. Let's get these
10 things done.

11 Q Is that sort of typical for your management
12 style as far as documenting the bullet points of the
13 meeting and then what was going to be done by way of
14 followup?

15 A Yeah. Typically, I do that for that latter
16 reason. It's so I got something I can follow up with
17 either personally or with another individual.

18 Q Okay. And did you have any resistance at all
19 to getting these documents generated or having the
20 agreement formalized?

21 A No, sir.

22 Q All right. So what was -- the action plan as
23 of February of 2009 was what? Who was going to be doing
24 what to move things forward?

25 A According to this agreement or this email, uh,

1 we're going to look into forming an umbrella corporation.
2 We're going to develop a lease between Lake Point
3 restaurants and Largo Properties. We're going to
4 reevaluate his life insurance. We're going to look at
5 Key Man life policies. We're going to ensure adequate
6 language addressing concerns he has about what might
7 happen in the event of Larkin's and/or my death or
8 divorce. We'll disperse shareholder dispersements on an
9 annual basis. We'll clean up some balance sheet
10 accounts, due to/from accounts and create an opportunity
11 for Kyle to own a third of the company through a company
12 loan, a revised vesting schedule. The next steps are I'm
13 going to take care of items 1, 3, 4 and 7. I'm going to
14 take care of item 2. We're going to spell out some
15 options for item 8. Kyle is going to provide a draft of
16 an agreement, an employment agreement, buy/sell agreement
17 including language to address his concerns. We
18 anticipate documents being drafted by April 30th.

19 Q Okay. Kyle, I think, uh, presented a proposed
20 or draft agreement which has been marked as Exhibit 10?

21 A Yeah. I don't know the Exhibit number, but
22 yes, he did.

23 Q Okay. And, uh, let me hand you what's been
24 marked as Exhibit 11. What is that?

25 A It's an email from me to Kyle.

1 Q Okay. And what does it reflect?

2 A Just an update on the items I just articulated
3 from Exhibit 10.

4 Q And there is some general discussion about
5 bringing everything under one umbrella. What were the
6 pros and cons of doing that?

7 A Uh, I spoke with our CPA and our attorney about
8 the pros and cons of doing that and realized it was not
9 in the shareholder's best interest or any of the
10 corporations to consolidate or combine them all into one.
11 There's different leases. There's other elements from a
12 liability standpoint, from a tax standpoint. It just
13 didn't make sense. It was to no one's benefit to do
14 that.

15 Q Which reminds me. When it comes to Lake Point,
16 2007, what was going on as far as the real estate at Lake
17 Lure?

18 A Well, we were approaching towards the end of
19 the lease that we had with the landlord. And we had made
20 several attempts to acquire that real estate. She
21 finally agreed that she would sell it. So we took an
22 opportunity to look at the viability of that. That
23 location's success is so site specific. It's the only
24 commercial piece of property that exists on Lake Lure.
25 They basically said we're not going to do that anymore.

1 We felt it was of paramount importance to continue the
2 enterprise beyond the existing lease. Acquiring the
3 property was paramount to making that happen. So we put
4 an opportunity -- we took the opportunity to acquire it.

5 Q What did you have to do to acquire that real
6 estate?

7 A I met with the seller, which was our current
8 landlord. I paid for an appraisal of the property. We
9 met with her attorney and accountant. We agreed on a
10 purchase price. I was -- my sole goal really was to
11 ensure the long-term viability of the operation of that
12 restaurant. So I was able to convince her to give us a
13 30-year fixed mortgage so that we didn't have rent
14 escalations or other things that, you know, would make
15 the future maybe more difficult. We knew going in what
16 it was going to be.

17 Q And the rent that Lake Point pays, what does
18 that represent?

19 A The rent that Lake Point now pays to Largo, uh,
20 backtrack from Day 1. The rent went up from what we paid
21 the landlord and what they now pay Largo. There were
22 escalation clauses for the balance of our lease that was
23 going to create an increase in rent anyway. Lake Point
24 was charged a rent factor that was about the same as what
25 we were paying as a mortgage. In fact, the first few

1 years, we were paying interest only of about 9600 a
2 month. The rent that was being paid was 11,000 a month.
3 So there was about \$1400 a month surplus to cover parking
4 lot re-stripping and boat dock repair and other landlord
5 required repairs and maintenance. I think that was about
6 three years. And at that point, the loan became fully
7 amortized and it was principle and interest. The
8 payments, I think, were about \$11,500 a month. And the
9 rent at Lake Point went to \$14,000 a month, where it is
10 today.

11 Q And is, uh, has that investment gone up or down
12 since you acquired it?

13 A Well, unfortunately, like most real estate, it
14 is not what it was in 2007. I would say that right now,
15 that purchase might have been a smart purchase for the
16 business, but we probably owe more on that property than
17 it's worth today.

18 Q And was there any discussion with Kyle about
19 acquiring the land?

20 A Sure. For probably a couple of years.

21 Q Was -- at any point along the way did he ask to
22 participate in that venture?

23 A No.

24 Q Now, -- oh, on Exhibit --

25 THE COURT: Let me interrupt for a second.

1 Who is the property -- who's name is the property
2 titled in?

3 THE WITNESS: Largo Properties, LLC.

4 THE COURT: Okay. Which is a separate
5 entity?

6 THE WITNESS: Yes, sir.

7 MR. PILLSBURY: I'm sorry, Your Honor.

8 BY MR. PILLSBURY:

9 Q Largo Properties is a separate corporation?

10 A That is correct. Larkin and I formed that as
11 purely a commercial real estate holding company.

12 Q Have you had to personally guarantee the
13 performance of that loan?

14 A Yes, sir.

15 Q Uh, alright. In -- going back to Exhibit
16 number 11. When it takes about a down -- about just
17 below halfway through the page, uh, all due to and due
18 from accounts, getting those cleaned up with the '08
19 returns, what is that referring to?

20 A Uh, every year, our accountant makes various
21 adjustments to prepare the corporate tax returns. Where
22 we had borrowed money from one company to help another
23 one, help another company's cash flow situation, all
24 those intercompany transfers would be cleaned up and
25 reflected in the corporate books, QuickBooks, as well as

1 the corporate tax returns.

2 Q Had the -- this is done on -- this memo is
3 April 14th, 2009. It references about the completion of
4 the 2008 returns for the businesses. Had they been
5 completed by that point?

6 A This -- as you know, corporate returns are due
7 on March 15th. This is April 14th. We were on
8 extension. So it was up to my accountant's workload to
9 get them done at his earliest opportunity.

10 Q Was 2008 any different one way or the other as
11 far as extensions go?

12 A Not really.

13 Q In other words, you weren't -- you gave no
14 direction to the accountant to get an extension or to
15 delay in getting the returns done?

16 A If I gave any direction to my accountant, it
17 would have been could you do it a little faster.

18 Q Uh, and -- was -- did everyone seem okay with
19 the necessity of the '08 returns being completed as part
20 of this structuring of the shareholder agreement?

21 A I actually don't recall if the shareholder
22 agreement had anything to do with waiting for 2008. Any
23 financial payouts, any vesting of stock for hitting
24 certain targets, those would all wait until we had the
25 final tax returns and audited books for the prior year.

1 **THE COURT:** All right. Seems like we're at a
2 good break point.

3 **MR. PILLSBURY:** Yeah.

4 **THE COURT:** Just take about five or ten
5 minutes. Don't talk about your testimony.

6 **THE WITNESS:** Very good, sir.

7 **THE COURT:** All right.

8 (WHEREUPON, a short recess is taken.)

9 **MR. PILLSBURY:** I didn't know you were
10 waiting on me, Your Honor.

11 **THE COURT:** Yeah.

12 **MR. PILLSBURY:** I apologize. May it please
13 the Court.

14 **BY MR. PILLSBURY:**

15 **Q** I'm handing you what's been admitted as Exhibit
16 12. And, uh, what -- tell the Court what that document
17 is.

18 **A** This is an email from me to Kyle in June of
19 2009, which is the review of his compensation.

20 **Q** Okay.

21 **A** It articulates where he is today and some
22 options for, uh, him to choose regarding his future
23 compensation.

24 **Q** Okay. Now, uh, regarding the -- I want to ask
25 you about a few things on this particular document.

1 This, uh, -- as far as the process of where you guys
2 were, you had a meeting in February and you were doing
3 some followup items in April, what is going on as far as
4 the continuing to move on getting things nailed down?

5 A Well, to your point, we are continuing to work
6 on the list in getting things nailed down just based on
7 the time of year. We're probably dividing our time
8 between managing the going concern businesses and taking
9 care of other administrative tasks on our followup list.

10 Q Now, the attachment, is that the proposal that
11 you generated?

12 A Yes, I did.

13 Q I want to ask you about a couple of issues on
14 that schedule. Uh, the, uh, -- it has the current or
15 original arrangement, uh, under, uh, -- under base
16 salary, does that reflect what his base salary was at
17 that particular point?

18 A Yes. It increased it 45 to 55 when we moved
19 him down to Greenville a year and a half or so.

20 Q And the bonus structure, is that what it was in
21 play in 2009?

22 A Yes.

23 Q And then on shareholder distribution, you have
24 eight percent of net S.D. What does S.D. stand for?

25 A Shareholder distribution.

1 **Q** And what is it -- what was his percent of
2 interest in Lake Point?

3 **A** At this time, it was 10 percent.

4 **Q** And Beachfront?

5 **A** Also 10 percent.

6 **Q** And at Front Roe?

7 **A** I believe he had attained one percent. This
8 was in '09. Yes, he was one percent owner.

9 **Q** Okay. And so how is it when you got an eight
10 percent of net S.D., how did you derive the eight percent
11 figure?

12 **A** I looked at the distributions that had been
13 done in 2007 because I didn't have the 2008 tax returns
14 yet. When I calculated what those dispersements had
15 been, it came out to an aggregate of eight percent of all
16 shareholder distributions.

17 **THE COURT:** Say that again.

18 **THE WITNESS:** I looked at the 2007
19 information.

20 **THE COURT:** Okay.

21 **THE WITNESS:** And the dispersements that had
22 been made to Kyle from the three different companies
23 that he was a shareholder in, when you looked at the
24 total in aggregate, he received eight percent of
25 what had been distributed to shareholders.

1 **THE COURT:** That was from year '07?

2 **MR. PILLSBURY:** That's correct.

3 **BY MR. PILLSBURY:**

4 **Q** But that eight percent aggregate was based upon
5 what percentage of ownership in Front Roe?

6 **A** One percent.

7 **Q** And the, uh, you got this information from
8 where?

9 **A** Probably QuickBooks because the tax returns
10 would not have been done.

11 **Q** And would QuickBooks information reflect
12 shareholder distribution or what has been booked as one?

13 **A** Yes, it would.

14 **Q** And, so, uh, the -- I believe, for example, on
15 Lake Point, do you recall approximately what distribution
16 was for '07 for Kyle?

17 **A** I would imagine it would be in the neighborhood
18 of \$50,000. Larkin and I probably had somewhere --
19 \$145,000 or something like that.

20 **Q** Okay. And for Beachfront, what was it for Kyle
21 versus you guys?

22 **A** Some years, it was nothing. '07, it could have
23 been a couple of grand.

24 **Q** Okay. But did you actually go through and do
25 those calculations?

1 **A** I would have to produce this document, yeah.

2 **Q** And, uh, have you since confirmed with
3 QuickBooks that that calculation is accurate?

4 **A** Yes, I have.

5 **Q** And, uh, the distributions in '07 for Front
6 Roe, a shareholder distribution, what was done for Kyle
7 in '07 and what was done for the two of you?

8 **A** For '07, I think we booked \$500 as a
9 distribution to Kyle and about \$45,000 as a distribution
10 to Larkin and myself.

11 **Q** Now, he was earning bonus, but this is what was
12 being booked within QuickBooks as what?

13 **A** As a shareholder distribution.

14 **Q** Okay.

15 **A** As I already articulated in one of the earlier
16 exhibits, one of the things Kyle wanted was to have as
17 much of his earnings in cash or at least to avoid taxes.
18 So as I promised I would do, we would take as much of his
19 bonus eligibility and write it as a distribution if we
20 could.

21 **Q** And do the numbers, does \$232,500 sound about
22 right for total distributions in '07?

23 **A** Yeah. I mean, eight years ago. It sounds
24 about right.

25 **Q** Uh, and -- well, let's see.

1 **THE COURT:** Those are the '07.

2 **THE WITNESS:** Yes.

3 **THE COURT:** Okay. What was Front Roe's
4 profitability in '07?

5 **THE WITNESS:** Maybe 30 grand.

6 **MR. PILLSBURY:** Your Honor, that information
7 would be on Defendant's Exhibit 31C, as in Charlie.

8 **THE COURT:** Just tell me what it is.

9 **MR. PILLSBURY:** The number of income is
10 \$37,767.

11 **THE COURT:** Tell me what it was in '08.

12 **MR. PILLSBURY:** Exhibit 31D, '08 income is
13 \$361,498.

14 **THE COURT:** Okay. You had one percent,
15 37,000. And I guess we got to figure out what
16 percent of 361.

17 **BY MR. PILLSBURY:**

18 **Q** Well, Okay. I think I can clarify the -- what
19 was the arrangement as far as it going from one percent
20 or above one percent up to 10 percent?

21 **A** Kyle was granted one percent for when Front Roe
22 turned profitable, which I believe was 2007 or it may
23 have been 2006. And then an additional nine percent once
24 the company had a net operating profit of \$500,000.

25 **Q** Did it ever achieve net profit of \$500,000?

1 **A** No, sir.

2 **Q** In particular in '08 or '09?

3 **A** No, sir.

4 **THE COURT:** You are saying there is no
5 intermediary stopping point, is that right?

6 **THE WITNESS:** That was -- no, there wasn't.

7 That was part of what the original agreement was.

8 **BY MR. PILLSBURY:**

9 **Q** And when you were looking at the, uh,
10 shareholder distribution at eight percent, did -- did --
11 did that mean that Kyle had an eight percent interest in
12 Front Roe?

13 **A** No, sir.

14 **Q** Or a five percent interest?

15 **A** No, sir.

16 **Q** You got this aggregate figure based upon what
17 percent interest?

18 **A** One percent.

19 **Q** And that information came from QuickBooks?

20 **A** It came from our agreement.

21 **Q** Well, I mean, the information on how you
22 derived the distribution?

23 **A** Yeah.

24 **Q** And is that information that he had as well?

25 **A** Certainly. Yes. He had access to it.

1 **Q** Okay. Uh, I'll hand you what's been marked as
2 -- well, actually, let me talk about one thing. On that
3 exhibit, Exhibit 12, you talked about if we go with
4 option A in that second column, we will extend the
5 original timeline on the River into 2009 if the numbers
6 for 2008 fall short of what you need under the original
7 agreement to get you to 10 percent ownership across the
8 board. What did you mean there?

9 **A** We gave Kyle a certain number of years to get
10 the restaurant profitable. We didn't want it to be in
11 perpetuity. The goal was to turn it profitably quickly.
12 So we gave them through 2008 to hit that target that we
13 had set, one percent ownership for just making it
14 profitable at all and an additional nine percent for
15 hitting a half a million dollars in profitability. But
16 we wanted that to happen quickly. So the agreement was
17 you only had through 2008. What I'm articulating here is
18 that we are willing to extend that timeline four more
19 months and allow him to have that additional time to get
20 -- hit that profitability number.

21 **Q** Uh, and at the time that this document was
22 generated, the most current return for Front Roe showed a
23 net profit of what?

24 **A** 2007, which I think you just said was \$37,000.

25 **Q** And in looking at Exhibit number 13, what is

1 that document?

2 **A** Uh, this is an email in June of 2007 from me to
3 Kyle.

4 **Q** And -- however, the attachment is from Kyle to
5 me.

6 **A** Make sure that's correct. The top of it says
7 from Kyle to me. This says from me to him, so I'm
8 confused. It looks like it's referring to the top email
9 which says, sorry, here it is, referring to the
10 attachment.

11 **Q** Right. And the date on that is what?

12 **A** Uh, June 30th, 2009.

13 **Q** Now, in his, uh, in his counterproposal, uh,
14 what does he say regarding, uh, shareholder
15 distributions?

16 **A** He says if I did not achieve 10 percent
17 ownership in 2008, we will extend the current program for
18 2009 in order to equalize current ownership at 10 percent
19 across the board.

20 **Q** Now, uh, was there ever any question raised by
21 Mr. Pertuis as to what he needed to do in order to meet
22 the goal and obtain a 10 percent interest?

23 **A** No.

24 **Q** Was there ever any discussion that he didn't
25 understand what the current program was?

1 **A** No.

2 **Q** Was it clear to both of you what you were
3 agreeing to by extending that program through 2009?

4 **A** Yes.

5 **Q** If he didn't meet -- if that goal wasn't met in
6 2008?

7 **A** Correct.

8 **Q** Uh, was that goal ever met?

9 **A** Not up til 2010 or whatever.

10 **Q** Okay. Exhibit 14, what is this document?

11 **A** This is an email from myself to Kyle.

12 **Q** And what is that exactly?

13 **A** It looks like it's in response to his email
14 saying that we're looking forward to the next 10 years
15 together. I'll get details to Kurt to incorporate into
16 the employment agreement. Asking about timeline. I
17 asked him to get with our bookkeeper to update the pay
18 rates that we had agreed to for his increase for pay and
19 that, uh, I also am asking him to get with our insurance
20 broker on the disability plan that he had asked for that
21 we were going to pay for.

22 **Q** Uh, did you do all those things?

23 **A** Yes.

24 **Q** And now, within the restaurant business, in
25 particular at Lake Lure, what goes on here during the

1 warm season down in Greenville with Front Roe?

2 **A** There's a lot of weddings. May and June are
3 our big wedding months. We put on a concert series, or
4 we used to, 17 Thursdays throughout the summer. Uh,
5 various festivals, some of which we are involved in. We
6 make a lot of contributions. We donate our time and food
7 to various causes. Beachball's probably one of the
8 biggest ones. A lot of activity in the summer.

9 **Q** The concert series that went on back in '09,
10 what is that?

11 **A** It's called Larkins Rhythm on the River.

12 **Q** And what would that be?

13 **A** It's a concert series where we're the promoter.
14 We're the producer. We lease space through the Peace
15 Center for the outdoor stage and pavilion. We provide
16 food and beverage to people that come attend the concert.
17 We promote it as a city event. There's a charity portion
18 where we donate money to various charities throughout the
19 course of that, uh, concert event.

20 **Q** Is it fair to say that the summer months are
21 some of the more busier months for Front Roe?

22 **A** Not necessarily.

23 **Q** Okay. What about at Lake Lure?

24 **A** That's a completely different story. The
25 summer months are their busy months. Most of the

1 business really is June, July, August.

2 Q So, at that point, had you guys engaged the
3 corporate attorney to prepare or draft the shareholder
4 agreements?

5 A At what time?

6 Q Following this, your email of --

7 A In June?

8 Q June ---

9 A End of June?

10 Q --- 30th.

11 A End of June. I think we met with him in person
12 after this. Maybe August or maybe July. But this
13 certainly indicates that we're in the process. I'm
14 giving information to our counsel to prepare those
15 documents. Then I think there was a subsequent face-to-
16 face meeting that both Kyle and I had with counsel.

17 Q I'm just going to cover this very briefly. On
18 Exhibit 15, this is some of the information pertaining to
19 the boat.

20 A Uh-huh.

21 Q Tell the court a little bit about what the
22 issue was with the boat and what it's primary purpose
23 was.

24 A Larkin and I had purchased a boat for ourselves
25 personally. Maybe a year or two later, we were

1 interested in purchasing a different boat. So we gave
2 the first boat to the restaurant for them to use both for
3 business and for pleasure and kept the boat at the
4 restaurant. It would sit at the restaurant's dock. We
5 have about 12 boat lifts at that restaurant. It remained
6 there from that point for the next several years.

7 Q And what was -- what, if any, issue came up
8 about insuring the boat?

9 A Our insurance broker, uh, said that we really
10 needed to protect our liability if the staff is going to
11 use it and certainly if they are going to use it in
12 business. The cost was pretty high, about 10 times the
13 price for insurance if it was a corporate boat. And so
14 we talked to our general manager at the restaurant, which
15 was Louis Bentley. He didn't quite understand. He was a
16 little apprehensive about having it titled in his name.
17 So I talked to Kyle about having it titled in his name.
18 He agreed. I articulated that it was for him to use any
19 time they wanted. It always had been. It was also there
20 for the restaurant to use as they needed it. It would be
21 titled in his name. We would continue to pay all the
22 expenses, insurance, annual permits, maintenance, et
23 cetera.

24 Q Look at the second page of Exhibit 15. The
25 insurance information, who paid the insurance for the

1 boat after it was titled to Mr. Pertuis?

2 A Uh, well, we paid the insurance.

3 Q We as who?

4 A Lake Point Restaurants.

5 Q Okay. Hand you Exhibit 16. This, uh, -- what
6 is this document?

7 A This is from October. It's an email from me to
8 him in response to his email to me on October 6th. Looks
9 like we had given him some things to think about. He's
10 thanking us for covering him on such short notice for the
11 week that he had asked to have off. He's had some days
12 to think about things. I replied that, uh, I think it
13 would be valuable to get together and maybe talk about
14 some of the questions that he had articulated in here. I
15 gave him a couple of times that I might be available to
16 meet that week.

17 Q And we talked a fair amount about this on the
18 front end, so I'm not going to rehash it. Now, what's --
19 have the documents been generated back from the corporate
20 attorney's office by early October?

21 A I had not seen them, but I knew that they were
22 either completed or drafts were virtually ready to be
23 provided to Kyle and I to review.

24 Q And, uh, when -- was Kyle interested in that
25 being completed around this time frame?

1 **A** As soon as practical.

2 **Q** When he raised the issue with you, what, if
3 anything, did you suggest he do?

4 **A** I asked him since he was in Greenville to
5 either swing by their office, maybe they were ready or
6 call them and check the status of the documents.

7 **Q** And his email to you on the second, on October
8 the 6th, does it say anything about contacting Mr.
9 Stodghill's office?

10 **A** (No response.)

11 **Q** Look at page 2, the fourth bullet point.

12 **A** It says that -- this is Kyle speaking -- I did
13 speak with Curtis and he said Kevin had them but was out
14 sick yesterday.

15 **Q** Okay. Now, the -- did you have anything to do
16 with the timing of when those documents were generated?

17 **A** No, sir.

18 **Q** Okay. And so then we get to all the events
19 that we already talked about regarding the resignation.
20 I'm not going to go through them again obviously. Now,
21 on Exhibit 17, uh, tell the Court what this is.

22 **A** This is an email to our corporate CPA. I'm
23 just letting him know that Kyle had made the difficult
24 decision to pursue other interest and leave Larkins
25 restaurants, and Larkin and I are choosing to buy back

1 his shares of the company. I'd like your opinion in
2 helping to determine the current net market value of the
3 three operating companies to give Kyle a fair price for
4 his stock.

5 Q And, uh, then, -- and again, I'm not going to
6 -- let me pull out of a couple of the relevant exhibits
7 very quickly. Thank you. (Pause.)

8 Okay. Exhibit 23. Uh, that, uh, -- that email
9 had generated approximately what time?

10 A No time stamp on the top part. The bottom is
11 January 8th. So I would assume that it's post-January
12 8th.

13 Q And at this particular point in time, is this a
14 little bit about what we talked about as far as other
15 endeavors Mr. Pertuis was pursuing at that time?

16 A Yeah, it expresses several things. It
17 expresses the fact that our corporate CPA had some
18 conversations with Kyle about his ownership and the
19 values. It says that I am concerned about releasing
20 competitive information or confidential information in
21 the market places that we do business in that he was
22 considering working as a hospitality or restaurant
23 consultant.

24 Q And, uh, Exhibit 25 and then I'm not going to
25 be too much longer.

1 **A** This is one of the clarifications on Exhibit
2 23. I didn't see this when I first read it. It also
3 talks about unfortunately, he resigned before the
4 documents were completed. So we don't have a clear cut
5 set of documents.

6 **Q** And have you since, uh, -- I think it request
7 -- in your deposition ask for a copy of whatever the
8 draft documents were that were generated by Mr.
9 Stodghill?

10 **A** Yes, I recall the request.

11 **Q** And, uh, have you seen those?

12 **A** I have not. The request was from Mr. Wilson. I
13 believe you may have had Mr. Stodghill provide those
14 documents directly to Mr. Wilson. I haven't them.

15 **MR. WILSON:** Your Honor, may it please the
16 Court. The documents in question were, in fact,
17 forwarded to me by Mr. Stodghill along with a screen
18 print that show when the documents were created.
19 The documents were created September the 14th
20 and ---

21 **MR. PILLSBURY:** Yeah, October the 1st.

22 **MR. WILSON:** --- October the 1st.

23 **MR. PILLSBURY:** No, no. There's one in
24 September --

25 **MR. WILSON:** One in September. The rest on

1 October the 1st, 2009. They were -- those documents
2 were sent to me by email. I've agreed to -- that
3 the documents to which Mr. Hammond is referring were
4 initially prepared on September the 14th, 2009. One
5 was prepared on September the 14th, 2009. The rest
6 were prepared on October the 1st of 2009.

7 **MR. PILLSBURY:** These are just the
8 shareholder agreements. If I may, Your Honor, what
9 we're referring to are, uh, draft shareholder
10 agreements that are marked as Exhibits 32A and B.
11 32 is Lake Point. 33 is Beachfront, A and B. And I
12 will explain what the B portion is in a second. The
13 stockholder agreement, the draft stockholder
14 agreement for Front Roe restaurant is 34A and B.
15 These were the documents that were generated by Mr.
16 Stodghill. The A portion is the document. The B
17 portion is the properties printout that shows when
18 they were worked on. In other words, to confirm --
19 to avoid having to call Mr. Stodghill as a witness
20 to verify that these were the documents, that's why
21 we're doing the stipulation.

22 **THE COURT:** 32A and B refer to which
23 restaurant?

24 **MR. PILLSBURY:** Lake Point.

25 **THE COURT:** And 33A and B?

1 **MR. PILLSBURY:** Beachfront. And 34A and B is
2 Front Roe.

3 **THE COURT:** They are all on the same dates?

4 **MR. PILLSBURY:** Pardon?

5 **THE COURT:** Same dates?

6 **MR. PILLSBURY:** They have different dates.
7 The first one was worked on in September. The other
8 two were worked on in October, October the first.

9 **THE COURT:** Which two are October the first?

10 **MR. PILLSBURY:** Pardon?

11 **THE COURT:** Which one is September 14th and
12 which two are October the first?

13 **MR. PILLSBURY:** I'm sorry. Lake Point. It's
14 on the B portion of the exhibit. But Lake Point was
15 worked on, uh, September 14th.

16 **THE COURT:** Okay. And the other two on
17 October 1st?

18 **MR. PILLSBURY:** Correct.

19 **MR. WILSON:** We have no objection.

20 **THE COURT:** You stipulated to it, right?

21 **MR. WILSON:** Somewhat..

22 **THE COURT:** Okay.

23 **BY MR. PILLSBURY:**

24 **Q** And now although you didn't have possession of
25 those, those were the drafts to which you were referring

1 in your email?

2 A Yes.

3 Q Okay. Uh, and then, Exhibit 23, I think we
4 were talking about, is the information -- and I'm not
5 going to go in more detail than this, but the information
6 within there, is that what you were discussing when we
7 started your testimony about just wanting to make sure
8 that the records remain confidential?

9 A Our company records, yes.

10 MR. PILLSBURY: Uh, Your Honor, I will have
11 to make copies for you.

12 BY MR. PILLSBURY:

13 Q Exhibit 30 -- I'm going to hand you what's
14 been marked as Exhibit 38 and 39. I don't have copies
15 with me. I'll generate them for you. Mr. Hammond, I
16 want to talk to you a little bit about the situation of
17 Front Roe. Talk a little bit about the nature of the
18 lease at Front Roe. Who is it with?

19 A The Peace Center Foundation.

20 Q What is the time term for that lease?

21 A It was an 18-year term. Well, it was a three-
22 year term with three five-year options.

23 Q Okay. At the point that you acquired Front
24 Roe, how many years were left on the lease?

25 A We actually negotiated a new lease.

1 Q Okay. And the new lease, is that the -- is
2 that the lease that you just referred to, the 18 years?

3 A Correct.

4 Q And so, uh, how many years are left on the
5 lease?

6 A Nine and a half.

7 Q What's been going on with the Peace Center --
8 tell the Court a little bit about some of the issues that
9 you have had with the Peace Center regarding lease issues
10 and other things pertaining to that area.

11 A Sure. The Peace Center has been, in many ways,
12 a benefit to our business, but as a landlord, in many
13 ways, detrimental to our business. When we took over the
14 operation, they were giving us free space to store a lot
15 of our catering supplies. Then they took that space away
16 from us. Fortunately, Mr. Pertuis was able to find other
17 space available that we could rent for our catering
18 supplies. They tried to increase our, uh, the rent that
19 we pay on some of our catering venues. I paid for the
20 services of Mr. Stodghill and his firm to prevent that
21 from happening. We were able to stave it off for a
22 while. Unfortunately, the Peace Center ultimately
23 prevailed. They increased the rent that we pay on two of
24 our catering venues. One, even as much as 10 times what
25 we had been promised and had been paying up to that

1 point.

2 Q Okay.

3 A Additionally, they had remodeled their
4 facility. Most of that is great. But when you run a
5 business right next to it, we had no access for a lot of
6 our guests during the almost two years of construction
7 activity, which was detrimental to our business. It
8 actually procluded us from using the lion's share of our
9 catering business facility during that period. There was
10 no compensation. There was no, uh, willing to help us
11 through that process. At the end of that process, they
12 ended up opening a restaurant, which they told us in the
13 beginning that they were not going to do. As we all know
14 now, there was a competing restaurant that the Peace
15 Center operates called Genevieve's. You know, it's
16 directly competing with our business as it relates to any
17 time there's a show at the Peace Center.

18 Q So the Peace Center actually opened its own
19 restaurant on site?

20 A Yes.

21 Q And the other lease issues that you mentioned,
22 you said the lease went up or the charge went up 10
23 times?

24 A We used to pay \$500 to rent the amphitheater.
25 They charge us now \$5000.

1 **Q** And, uh, how has that or will that impact your
2 use?

3 **A** The most significant is the concert series that
4 we did in the summer time which kept people downtown on
5 Thursday nights. We used to run 17 of those. The
6 concerts pretty much broke even on what we charge tickets
7 versus the cost of the band and production. But the
8 restaurant benefitted. We had a full restaurant on those
9 nights. We are attempting to do four of those this year.
10 We weren't comfortable outlining any more cash than that.
11 If it goes well this year, we may continue that, but we
12 can no longer afford to do 17 of those at \$5000 a piece
13 just for rent.

14 **Q** Exhibits 38 and 39, you had mentioned that
15 there were some issues pertaining to the Peace Center
16 wanting to raise the rent.

17 **A** Yes. The Peace Center back in, uh, -- there's
18 no date on that letter. This is 2012, but prior to this,
19 they wanted to raise our rent on the Pavilion, which is
20 not part of our lease space. It's rented on a per use
21 basis. We argued successfully that our lease procluded
22 them from doing that. They had some management changes..
23 They changed law firms. They had a new CFO. A few years
24 later, they made another run at us to do the same thing.
25 Their argument was a little stronger this time. We

1 didn't feel that we had a strong enough argument to take
2 to court. We made the decision to agree to their
3 demands. We now pay them more rent for that facility.

4 Q Exhibits 38 and 39, do they reflect some of the
5 sort of lease disputes that you had more recently with
6 the Peace Center?

7 A Yeah, particularly, Exhibit 38. We were
8 withholding paying that additional rent because we felt
9 it was unfair. We were arguing that they were just
10 trying to do the same thing they had done a few years
11 prior. So then they sent us a letter that we were in
12 breach of our lease and basically they are going to kick
13 us out if we don't pay their new demands.

14 Q What did you end up doing?

15 A Under the advice of counsel, we wrote them a
16 check.

17 Q Now, I'm handing you what's been marked as
18 Exhibit 40. What is that document?

19 A This is a --

20 MR. PILLSBURY: I'm sorry. Your Honor, I'll
21 make a copy of the last three for you. Okay.
22 Sorry.

23 BY MR. PILLSBURY:

24 Q Exhibit 40.

25 A You going to keep those separate?

1 Q Yeah.

2 A Exhibit 40 is a document that articulates what
3 we've just been talking about regarding the Peace Center.
4 I'm estimating what those individual impacts are to our
5 profitability at the restaurant.

6 Q Okay. Now, is that a calculation that you
7 generated?

8 A Yes.

9 Q How is it that you -- talk about the three
10 different categories that are enumerated there.

11 A The two that are contractual, one is a clear
12 cut we're going to move your rent from \$250 per use to
13 \$750 per use. And we know how often we use the facility,
14 so we know how that impacts us. Similarly, the other
15 facility is -- has gone up in value, in cost. We know
16 how often we use that facility. So we are able to see
17 how that impacts our bottom line. The third element was
18 the competing restaurant business that I alluded to or
19 articulated earlier. This is only the first year in
20 operation. It's somewhat of an estimate. We're
21 estimating how many of our guests are choosing to dine at
22 their facility instead of our facility. Show nights.
23 How many show nights there are per year? What the
24 average guest spends. So therefore, there's a revenue
25 stream that we're no longer able to enjoy as a result of

1 our landlord being a competitor.

2 Q Okay. Take the first category, the Pavilion
3 rent, what is your -- you generated these calculations
4 when?

5 A A couple of months ago, I'm thinking.

6 Q And on the Pavilion rent, what was your
7 estimation of the impact on the bottom line?

8 A \$7000.

9 Q And that was for increasing the rent from 250
10 per use to 750 per use?

11 A Correct.

12 Q On the amphitheater TD stage where the charge
13 for leasing the amphitheater went from what to what?

14 A 500 to -- it's \$4000 if it's a charity event.
15 It's \$5000 if it's not.

16 Q And what was your estimation as to the loss of
17 revenue for the amphitheater? I think you alluded to
18 this. At one point, you're doing 17 events, now you are
19 down to what?

20 A Four.

21 Q And so, uh, in looking at the revenues
22 generated on those nights, what did you calculate the
23 loss to be for Front Roe based on that increase?

24 A About a \$39,000 hit to the bottom line,
25 negative hit to the bottom line.

1 Q And that would be -- what's the exact figure
2 you have?

3 A \$39,350.

4 Q Okay. Then on the Peace Center's restaurant
5 Genevieve, how is it that you derived any general number
6 there or how did you get that calculation?

7 A Looking history and also the current year
8 calendar for the Peace Center, you could see that there's
9 about 35 major show days per year and about 25 minor show
10 days. The Peace Center has said that they are only going
11 to open Genevieve's on those nights although there is
12 some conversation that they may start to open it on a
13 more frequent basis. But on those nights, we know how
14 much business we're losing. Their proximity is actually
15 better than ours and their convenience is better than
16 ours especially in inclement weather. Most of their
17 shows are during the winter. So we estimated a loss of
18 roughly 30 diners on major show days and we're losing a
19 conservative estimate of 10 diners on a minor show day at
20 \$40.50 per person as an average check, it translates into
21 \$68,000 in lost revenue. That's not lost profit. That's
22 lost revenue. So you have to back out the cost of food
23 and beverages and things you're no longer paying. The
24 actual impact of the bottom line is \$34,000.

25 Q Okay. And I should have been clear about that

1 on the front end. All the figures that you just gave
2 were net profit figures?

3 A Yes.

4 Q That's EBITDA. And that stands for?

5 A Earnings Before Interest, Taxes, Depreciation,
6 Amortization.

7 MR. PILLSBURY: All right. Thank you. Your
8 Honor, that's all I have.

9 THE COURT: How long do you anticipate your
10 cross-examination to be, Mr. Wilson?

11 MR. WILSON: Uh, I think it's going to be an
12 hour.

13 THE COURT: All right. We'll just come back
14 at two o'clock.

15 MR. WILSON: Yes, sir.

16 THE COURT: All right.

17 (WHEREUPON, a lunch recess is taken.)

18 THE COURT: I can't decide if I'm going to
19 take it out on you. All right.

20 MR. WILSON: May it please the Court?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. WILSON:

24 Q Uh, Mr. Hammond?

25 A Yes, sir.

1 Q Uh, we have some housekeeping we need to do,
2 first of all. Do you remember when I took your
3 deposition last Friday?

4 A I do.

5 Q Yes, sir. And I asked you about several
6 things. Among them was about these promissory notes that
7 are flying around, promissory notes from shareholders to
8 corporations and promissory notes from the corporation to
9 the shareholders. And I asked if you could find those
10 for me please, sir. Did you find them?

11 A Uh, I believe so.

12 Q Where are they?

13 A Any document that I had that you requested, I
14 gave to my counsel.

15 Q Is your accountant here today, sir?

16 A My counsel, Mr. Pillsbury.

17 Q All right, sir. Can I show you why I think
18 it's a little bit important that we have those documents?

19 A Sure.

20 Q I also asked you for your business plans.

21 A Yes.

22 Q Where are those?

23 A I gave those to Mr. Pillsbury.

24 MR. PILLSBURY: Those were emailed to you.

25 MR. WILSON: The business plans?

1 **MR. PILLSBURY:** Yes.

2 **BY MR. WILSON:**

3 **Q** Let me show you why I think it's important we
4 get the promissory notes. Would you agree that in 2008,
5 there was a loan to stockholder -- loans to stockholders.
6 This is off the tax return for the amount of 267,585?

7 **A** There may have been. I don't have them in
8 front of --

9 **Q** You don't disagree with that, do you?

10 **A** I don't -- I can't --

11 **Q** Let me get you the tax returns.

12 **MR. WILSON:** Rodney, you have the Front Roe
13 tax returns?

14 **MR. PILLSBURY:** I don't have the originals.
15 I have my copy. I gave you the original.

16 **BY MR. WILSON:**

17 **Q** I beg your pardon, sir. Here's the original.
18 I apologize to the clerk for trying to steal it. Do you
19 have all those tax returns with you now, sir?

20 **A** I mean this was 2005. You're asking about
21 2008? I have that, yes. Go ahead.

22 **Q** All right. In 2008, there were loans to
23 shareholders in the amount of 262,585.

24 **A** I'm sorry, Mr. Wilson. I'm looking for that.

25 **Q** Yes, 2008, Front Roe.

1 **A** Okay.

2 **Q** Number is 262,585, sir. You agree with that
3 number?

4 **A** Uh, that was the balance at the end of the
5 year, yes. Correct.

6 **Q** And there were distributions in that year shown
7 on that return of \$290,000. Isn't that correct?

8 **A** Sounds about right. I'm looking at one
9 that's --

10 **Q** Let's be sure.

11 **A** Okay. Yes, that's correct.

12 **Q** Yes, sir. Now, out of Lake Point, in 2008,
13 there were loans to shareholders of 53,960. Would you
14 please take a look at the Lake Point return and confirm
15 that I'm correct?

16 **A** In 2008?

17 **Q** Yes, sir.

18 **A** Any loan balance, I'm showing 57,970.

19 **Q** 50 -- that's my handwriting, sir. I beg your
20 pardon. 57,960. Now, would you also look on that and
21 see if the distributions in that year from Lake Point
22 were \$195,000?

23 **A** Yes, that's correct.

24 **Q** 195. So you would agree with me, wouldn't you,
25 and I'll get your computer if you want, that, in 2008,

1 you and Mrs. Hammond received \$805,545 out of the three
2 restaurants?

3 A Absolutely incorrect, and help me see where you
4 drew that conclusion.

5 Q I drew it from your tax return, sir.

6 A Did you not notice that on this document that
7 on the beginning year tax return shows the loan balance
8 of Front Roe was \$270,934?

9 Q Yes, sir. At the end of 2008, it shows these
10 numbers that I've just drawn across the board.

11 A That is correct.

12 Q Yes, sir. And those numbers totaled \$805,545,
13 don't they?

14 A I'll trust your arithmetic.

15 Q Thank you, sir. Now, let's take a look at
16 2009. Look at Front Roe from 2009, loans to
17 stockholders.

18 A Yes.

19 Q \$106,000 loaned to stockholders in that year?

20 A That would be correct.

21 Q Thank you, sir. And the distributions in that
22 year were \$150,000?

23 A Yes. That's correct.

24 Q So in 2009, \$256,000 from these entities to the
25 Hammonds?

1 **A** We looked at Front Roe. We haven't looked at
2 Lake Point yet. But from Front Roe, yes.

3 **Q** Thank you.

4 **A** Sure.

5 **Q** Let's take a look at 2010, sir.

6 **A** Can I ask a question?

7 **Q** I have a question, sir.

8 **A** I'm sorry.

9 **Q** Thank you. At 2010, you've got a loan to
10 stockholders for \$96,000 from Front Roe.

11 **A** Looks correct.

12 **Q** Thank you. And you've got a loan to
13 stockholders in 2010 in the amount of \$16,600. Isn't
14 that correct?

15 **A** That was out at Lake Point, sir?

16 **Q** Yes, sir.

17 **A** 2010?

18 **Q** Yes, sir.

19 **A** I'm sorry. How much again?

20 **Q** I suggested that it was \$16,600. Loan to
21 stockholders out at Lake Point in 2010.

22 **A** Looks to me like \$11,000. I'm sorry, Mr.
23 Wilson. According to this document in 2010, it's the
24 difference between \$74,560 and \$53,835. Can I write on
25 these?

1 Q No.

2 A Okay. If somebody has a calculator... and I
3 can borrow that.

4 Q Yes, sir.

5 A 10,725.

6 Q 10,725?

7 A That's what I calculate, yes.

8 Q Yes, sir. 10,725, which means that in that
9 year, you've got approximately 90,000 -- \$92,000 in loans
10 and distributions.

11 A That's correct.

12 Q Yes, sir. Now, the reason -- to return to my
13 first question -- for the wanting to have a chance to
14 look at these promissory notes. These are notes that
15 should have been issued by Mark and Larkin Hammond back
16 to the corporation because the corporation lent money to
17 Mark and Larkin Hammond.

18 A Okay.

19 Q You understand the premise for the question?

20 A Sure.

21 Q And where are the promissory notes and when
22 were those loans made?

23 A I would have -- I don't know where the
24 promissory notes are for those particular loans. The
25 loans were made between the shareholders in the

1 corporation for various purposes. In some cases, it was
2 purely a tax computation. But I'm not a CPA so I'm not
3 absolutely certain.

4 Q My question, sir, is where are those notes so
5 that we can determine whether or not those notes were
6 distributions or whether or not if forgiven by the
7 shareholders, they should be capitalized as additional
8 value in the corporation. Where are they?

9 A I don't believe I have those particular
10 promissory notes.

11 Q Did you ever pay interest on those promissory
12 notes?

13 A I don't believe so.

14 Q Did the corporations ever pay interest on those
15 promissory notes?

16 A Not that I'm aware of. There are notations in
17 the QuickBooks files. There are some figures. I'm not
18 sure if that would have been in there or not.

19 Q Let me make sure that you understand my point.

20 A Sure.

21 Q Those notes have not been serviced either by
22 the makers, Mr. and Mrs. Hammond, or by the other makers,
23 the corporation. They've never had interest paid on
24 them, have they?

25 A I don't believe so.

1 Q Would you take a look at -- if you don't mind,
2 take a look at your tax returns and see if I'm shooting
3 straight.

4 A (Reviewing.)

5 It's -- unfortunately, it's hard to say.
6 There's interest expense of, in this particular year,
7 \$73,000. I don't know if that's interest from where.

8 Q Did you and Mrs. Hammond pay interest on the
9 notes that you made to the corporations?

10 A Not that I'm aware of.

11 Q Thank you, sir. Now, if we can, let's talk a
12 little bit about these business plans. You told me, I
13 think you did, on Friday last, that you prepared a
14 business plan every year, every calendar year for the
15 upcoming year.

16 A Yes. As I stipulated in the deposition, it's
17 really a financial plan for the next year.

18 Q Yes, sir. But it reflects your anticipated
19 business activity for the upcoming year.

20 A It anticipates the anticipated, uh, financial
21 results from that business.

22 Q Yes, sir. As a matter of fact, it was used for
23 more than just the purpose of anticipating revenues,
24 wasn't it?

25 A It's the budget that we used to make business

1 decisions throughout the year, bonus calculations for
2 management, anticipated cash needs, anything related to
3 the financial element of that coming year.

4 Q And those business plans from years 2005
5 through 2010 during the period of Kyle's association with
6 the companies, those business plans would reflect what
7 your anticipated income stream was going to be, what your
8 anticipated bonuses were going to be, what your
9 anticipated distributions were going to be, all of that,
10 wouldn't they?

11 A Uh, distributions would not have been part of
12 that document, no.

13 Q All right, sir. But we don't have those?

14 A I furnished them to counsel.

15 MR. PILLSBURY: I emailed them to you on
16 Sunday or Monday. He sent them to me Saturday. I
17 didn't work on Saturday. But when I got in the
18 office, I emailed them to you.

19 MR. WILSON: And those --

20 MR. PILLSBURY: I --

21 MR. WILSON: Excuse me.

22 MR. PILLSBURY: They came to me
23 electronically and I had emailed those documents to
24 you. If you want me to -- I don't know if you want
25 me to put it on a floppy drive or what, but I've

1 sent them.

2 MR. WILSON: All right, sir.

3 BY MR. WILSON:

4 Q The point is that those business plans showing
5 the anticipated revenues and the disposition and
6 dispersement of those revenues for the upcoming year
7 would have reflected in some way what the deal was
8 between you and Mr. Pertuis about his vesting at Front
9 Roe restaurants?

10 A No, sir. It was nothing in there about
11 shareholder vesting. These were business plans for the
12 individual operations, one for each corporation's
13 operating activities which would have been all the
14 revenues and all the expenses.

15 Q And the disposition thereof?

16 A Yes.

17 Q And it would reflect what was going to be
18 available at the end of the day for distribution and for
19 vesting shareholders.

20 A Or retained earnings.

21 Q Yes, sir.

22 A Or investing in other investments.

23 Q Yes, sir. And they would have reflected the
24 operation of this magic document that's missing?

25 A I'm not sure if I understand the question.

1 Q They would have shown what the company was
2 going to have to do to conform to the magic document that
3 supposedly memorialized your understanding with Mr.
4 Pertuis about vesting in Front Roe?

5 A As it relates to profitability, it would have
6 been a forecast or a budget for that profitability which
7 bonuses and his vesting in Front Roe would be based on.

8 Q And we don't have that magic document?

9 A No, unfortunately, neither Mr. Pertuis nor
10 myself can reproduce it.

11 Q No, sir. You can remember apparently from your
12 examination at the hands of the able Mr. Pillsbury, you
13 can remember to great detail what's in that document,
14 can't you?

15 A I remember the threshold, as I mentioned in my
16 deposition on Front Roe.

17 Q Yes, sir. And that threshold never moved?

18 A No, sir.

19 Q Do you remember when I took your deposition and
20 asked you how the threshold was set?

21 A I remember answering a question that was set
22 purely based on profit performance and that I have a good
23 memory of what those thresholds were.

24 Q Did you tell me that it was set and that once
25 it was met, he was going to be vested with 10 percent?

1 **A** Yes.

2 **THE COURT:** Go ahead and open it.

3 **MR. WILSON:** Thank you, sir.

4 **BY MR. WILSON:**

5 **Q** There's your deposition, sir.

6 **A** All right.

7 **MR. WILSON:** May I hand you up a copy, Your
8 Honor?

9 **THE COURT:** Yeah.

10 **BY MR. WILSON:**

11 **Q** Turn to page 35 for me, sir.

12 **MR. WILSON:** Your Honor, that's the number of
13 the pages in the lefthand margin, not at the bottom
14 of the page. It's something about computers. I'm
15 sorry.

16 **BY MR. WILSON:**

17 **Q** Are you at page 35, sir?

18 **A** I am, sir.

19 **Q** You remember when I asked you at line 11, would
20 you describe for me what your understanding of the
21 incentive program was? And your response?

22 **A** Sure. We were very clear with Kyle that his
23 prior vesting schedules were all based on time. It was
24 the company's goal to incent him to stay on and not leave
25 in short order. Now that that was no longer an issue, we

1 knew that he enjoyed working for the company. We knew
2 that he enjoyed the business that he was running. What
3 we want to do is incent him to improve the operation's
4 financial performance. So his vesting schedule for
5 ownership in that entity, which we are referring to Front
6 Roe was based on achieving levels of profitability as
7 opposed to a certain amount of time.

8 Q I asked you, yes, sir, who was to determine
9 where the goal line was.

10 A I believe I determined what the goal line was
11 in a conversation with Kyle. Then we worked together on
12 annual budgets.

13 Q Now, would you go to page 37, sir?

14 A Sure.

15 Q Look at line 12.

16 A Uh-huh.

17 Q I asked you the following question, sir, as a
18 consequence of there not being a written document, who
19 determined what the terms were for vesting during the
20 period that this vesting schedule was in force and
21 effect?

22 A As I've indicated, whether there's a written
23 document or not, I determine what the goal line was.

24 Q No, sir. I want you to read your question on
25 line 16.

1 **A** Line 16?

2 **Q** Yes, sir.

3 **A** Uh, the board did. Larkin and I met. We
4 agreed that if Kyle met certain profit goals, he would
5 obtain ownership in the company.

6 **Q** So you met every year as a board and set
7 different goals for vesting of stock?

8 **A** If that was a subject of that year's
9 discussion, yes.

10 **Q** So the goal line got moved around, didn't it,
11 Mr. Hammond?

12 **A** Not at all.

13 **Q** Isn't that what it says in your deposition?

14 **A** No.

15 **Q** Let me read your answer to you again. Help me
16 understand why you say no.

17 **A** Okay.

18 **Q** Your answer was the board did. Larkin and I --
19 and that is Mrs. Hammond?

20 **A** That is correct.

21 **Q** Larkin and I met and we agreed that if Kyle met
22 certain profit goals that he would attain ownership in
23 the company.

24 **A** Yes, sir.

25 **Q** So it was not based on any understanding with

1 Mr. Pertuis, was it?

2 A Larkin and I met. We agreed on certain goals
3 that needed to be attained for Kyle to have ownership in
4 Front Roe. I then subsequently met with Mr. Pertuis and
5 laid that schedule out.

6 Q Yes, sir. And in 9/2008, when this much money
7 is coming out of it --

8 A That is not correct.

9 Q Let me -- let me finish.

10 A Sure. Please. No problem.

11 Q In 2008, when this much money is coming in and
12 you responded to Judge Miller's question that at halftime
13 in 2008, you already made \$200,000, there wasn't enough
14 money made to qualify Kyle for his 10 percent, was there?

15 A If there had been, it would have been granted
16 to him. No, it wasn't. And we didn't make those
17 determinations until the end of the year when the books
18 were finalized.

19 Q Sure. Who's running the books, Mr. Hammond?

20 A It's between my bookkeeper and my CPA.

21 Q Who's putting the data in the hands of those
22 people?

23 A All of management in the company.

24 Q Who's in charge of the management of the
25 company?

1 **A** That would be me.

2 **Q** Thank you, sir. Now, on the day that Mr.
3 Pertuis was fired, you had an understanding that he was
4 going to come up to Lake Lure if he was staying and you
5 would work out these outstanding issues. Wasn't that the
6 understanding?

7 **A** First of all, he was not fired. And yes, there
8 was an understanding that if he chose to stay on with the
9 company, that he would come to Lake Lure as we were going
10 to have a strategy meeting about a variety of the
11 business element.

12 **Q** In fact, you had strategy meetings and regular
13 meetings coaching Kyle to make sure that Kyle did
14 everything you wanted regularly, frequently, daily,
15 didn't you?

16 **A** Pretty much. Yeah.

17 **Q** Yes, sir. And he came to you with a skill set
18 that you needed in order to start up your operation in
19 the late -- in 2000 for the Lake Lure?

20 **A** Not to start it, but to help manage it, yes...

21 **Q** Yes, sir. To teach you folks how to run a full
22 service restaurant instead of a Taco Bell?

23 **A** Absolutely.

24 **Q** Thank you. And in -- furthermore, he brought
25 that restaurant and the other restaurant along and,

1 ultimately, Larkins on the River to being profitable
2 organizations?

3 A He was a member of the management that made
4 that happen, yes.

5 Q Thank you, sir. And he brought them to where
6 they were full service well-regarded restaurants that
7 were profitable?

8 A He was instrumental in part of making that
9 happen, yes.

10 Q And I'm sure you weren't being patronizing, but
11 Mr. Pertuis brought a bunch of energy, skill and
12 diligence to this management team, didn't he?

13 A Yes, he did.

14 Q As a result, he enjoyed some perks like
15 workshops. But he basically brought you out of being a
16 Taco Bell operator to being a full service restaurant
17 operator?

18 A Yes, he was very helpful in helping me
19 understand how to do that.

20 Q Thank you, sir. Now, on that day, Mr. Pertuis
21 told you that he was going to come up to your place at
22 Lake Lure at 9:00. That happened at Fall for Greenville?

23 A That happened the prior day, Sunday.

24 Q Yes, sir. And the fact that he told you he was
25 coming up to Lake Lure meant he was staying, didn't it?

1 A That was the implication, yes.

2 Q He was on his way up to see you when you called
3 him, didn't he?

4 A No, he was in Greenville when I called.

5 Q It was a rainy day and it was a hard day.
6 That's why he was late, wasn't it?

7 A No. He -- excuse me. Go ahead.

8 Q No, it's your turn.

9 A I don't recall what the weather was. I'm
10 sorry, Mr. Wilson.

11 Q Yes, sir. In fact, you told -- you initiated
12 the call to him, didn't you?

13 A Yes. He was about 20 minutes late for our
14 agreed upon meeting time.

15 Q Thank you, sir. And you met over at Larkins on
16 the River?

17 A Yes, we did.

18 Q And what transpired, transpired?

19 A Yes, sir.

20 Q You have a story and, of course, Mr. Pertuis
21 has a story. Do you recall saying, okay, Kyle, at his
22 request -- Kyle, you can go down and tell the folks that
23 you hired that you're going to be gone. You remember
24 that?

25 A I remember he wanted to say goodbye to the

1 staff and I said, well, yeah, sure.

2 Q And you don't have any way of either denying or
3 confirming that when he went down there, the folks told
4 him that Mrs. Hammond already told them that he was
5 leaving?

6 A I'm not surprised that she did that. We knew
7 that was the case. If he was going to stay, he would
8 have come up to the lake where we had plans to meet all
9 day.

10 Q And --

11 A His decision to meet in Greenville met that he
12 was resigning.

13 Q And it's true that Mrs. Hammond's not here?

14 A That is correct.

15 Q She's not going to be here?

16 A Unfortunately, not.

17 Q Yes, sir. And she can't confirm or deny the
18 truth of her telling the staff without having been told,
19 without knowing what had transpired in the conversation.
20 She could not have known that if you had not made your
21 mind up beforehand?

22 A I hadn't made up my mind. Mr. Pertuis did. He
23 knew that if he was going to stay on with the company
24 that he was coming to our home for a strategy meeting.
25 If he chose to leave the company, we were going to meet

1 in Greenville. He chose to meet us in Greenville.

2 Q Oh, Mr. Hammond. Oh, please. If your wife is
3 downstairs with the staff and you are having the
4 conversation which develops that Mr. Pertuis is leaving,
5 how does she already know?

6 A The same way that I did. He told us if he was
7 going to stay, he was coming to the lake for a management
8 meeting. He told the two of us if he was going to meet
9 us in Greenville, it meant that he made the decision to
10 leave the company.

11 Q He goes downstairs. You're still upstairs.
12 There's been no communication about his decision. It was
13 your decision, wasn't it, sir?

14 A No, sir. It was not.

15 Q Now, Mr. Hammond, by 2005, Mr. Pertuis was
16 vested with 10 percent ownership in Beachfront and Lake
17 Point, the two North Carolina corporations?

18 A I don't recall the year but that seems about
19 right.

20 Q It was a five-year vesting schedule. He was
21 hired in 2005 and they vested by 2005?

22 A Yeah. I don't remember if we started in 2000
23 or 2001. I believe whatever --

24 Q Well, I don't want to --

25 A He was a 10-percent owner.

1 Q Yes, sir. And then you brought this -- you and
2 Mrs. Hammond told the owner of the property that you need
3 property, that there is no other commercial property on
4 Lake Lure. You talked her into selling it to you, didn't
5 you?

6 A Yes, we had been trying to do that for years.

7 Q And did you offer that opportunity to Mr.
8 Pertuis?

9 A I did not. One of the reasons was we were
10 concerned about giving this enterprise a longer life and
11 that was the reason to buy the property. It was for the
12 benefit of all the shareholders and it required a capital
13 amount of almost \$200,000 that my wife and I put up. I
14 did not offer that to Kyle to participate in that.

15 Q And did you not think that you had some duty to
16 give him a chance to participate in this opportunity?

17 A No. I was looking after all of our interest
18 and insuring the continued operation of that restaurant.

19 Q Yes, sir.

20 A Buying the real estate was a completely
21 separate entity. We even formed a separate LLC just for
22 that purpose.

23 Q Indeed you did. In fact, over the 30-year
24 fixed rate loan, eventually that property will be
25 absolutely unencumbered and you and Mrs. Hammond will

1 enjoy the benefits of ownership of that property, won't
2 you?

3 A Yes. Or we may sell it, but yes.

4 Q Yes, sir. To the extent that you realize
5 profits were grossing equity, you're not sharing that
6 with Mr. Pertuis, are you?

7 A That has nothing to do with the operating
8 restaurant other than allowing it to continue to operate.

9 Q It's where the operating restaurant lives and
10 it's where the operating restaurant generate the revenues
11 to pay the rent so that you and Mrs. Hammond can enjoy
12 increased equity in the property, isn't that correct?

13 A Not necessarily. The rent that we were paying
14 the landlord prior to inquiring it had escalation
15 schedules in that. By purchasing the property on a fixed
16 rate loan, we were able to usurp increased rent that
17 would have been beyond what the restaurant is currently
18 paying now.

19 Q Now, I asked you in your deposition, after Mr.
20 Pertuis joined, uh, took over -- took on the additional
21 responsibilities FRR, we agree that's --

22 A Sure.

23 Q And after the first year of the loss, the next
24 year was at \$1 million. The next year was at \$2.1
25 million. The third year, it was at \$3.5 million. Did

1 you not agree with me in deposition that those are good
2 numbers?

3 A You talking about the revenue, the top line
4 sales?

5 Q Yes, sir.

6 A That sounds about right.

7 Q Yes, sir. And during that period of the
8 increased revenues, somehow Mr. Pertuis didn't cross the
9 goal line for his vesting, did he?

10 A He cross the first goal line, which is making
11 it profitable.

12 Q From time to time, Mr. Pertuis registered his
13 concern that he didn't have a clear understanding of
14 where the goal line was, didn't he?

15 A No, he didn't have a question about what the
16 goal line was.

17 Q What happened in 2008? Was he asking you have
18 I not qualified for my 10 percent ownership yet?

19 A No, he knew he hadn't qualified. He even
20 stipulated that in one of his documents that he knew he
21 had not yet qualified and he was glad that we were giving
22 him an extra year to meet that qualification.

23 Q And you would agree with me in characterizing
24 Mr. Pertuis' approach to his business relations as
25 professional, objective, non-theatrical?

1 **A** Sure.

2 **Q** Yes, sir.

3 **A** Absolutely.

4 **Q** And in communicating with you his concern about
5 when does he get his 10 percent, he did it in a
6 gentlemanly, orderly, professional manner, didn't he?

7 **A** Yes, he would have.

8 **Q** Yes, sir. So in 2008, he was asking about it.
9 Y'all took a trip to the Napa Valley together?

10 **A** Yes, we did.

11 **Q** And during that trip, I guess there was
12 discussion about the future of the business and where
13 y'all were and what Kyle's goal was?

14 **A** I'm sure we talked about that, yes.

15 **Q** Yes, sir. And this is Exhibit -- Plaintiff's
16 Exhibit number 1. I've just got a part of it here. In
17 response to his questions, you say, we want to hit 100K
18 for our money. Down here, you say we'll keep the current
19 arrangement plus what I hope to be 10 percent this year.
20 Isn't that what you told him?

21 **A** Yes.

22 **Q** You also told him his net street equity was
23 \$250,000. This is in the summer of 2008.

24 **A** Uh-huh.

25 **Q** And you're going to the Napa Valley to do wine

1 tasting and that sort of thing.

2 **A** Right. Right.

3 **Q** Yes, sir. And you will receive shareholder
4 distributions of approximately \$30,000. Did those things
5 happen?

6 **A** No. Unfortunately, the restaurant did not hit
7 the goal that we had hoped it would. But it came close.
8 I don't recall what the distributions were in 2008. They
9 probably were less than what I had anticipated.

10 **Q** Sure. But all this is to make sure he knows
11 that he's got good times ahead. He's got \$250,000 in the
12 net street equity. He's got \$30,000 in distributions
13 coming. You're telling him that that's what's coming,
14 aren't you?

15 **A** Well, in the same letter, I'm also saying that
16 our goal is to have 100,000 monthly income. That didn't
17 happen either. It was based on where I saw the business
18 at that time. 2007 was the best year we ever had at Lake
19 Point restaurants. I thought that was an indication of
20 where it was headed. It continued to decline both in
21 revenue and in profit ever since 2007.

22 **Q** Yes, sir. My question, sir -- and I'd
23 appreciate it if you'd answer my question and I think the
24 judge would be glad to have an explanation. But my
25 question was this paragraph one was what you were

1. representing to Kyle that was going to happen. And he
2. wants to stay involved. He wants to stay creative. He
3. wants to stay energetic. That's what this is about,
4. isn't it?

5. **A** That particular paragraph is about how I viewed
6. the business at that time ---

7. **Q** Yes, sir.

8. **A** --- and what I thought the future would be,
9. yes.

10. **Q** Yes, sir. So Kyle is stressing to you his
11. concern about the lack of clarity, and that's Kyle's
12. word, the lack of clarity about this vesting schedule for
13. FRR, for the River?

14. **A** I don't recall any lack of clarity about the
15. vesting schedule.

16. **Q** Well, we don't have a document for it.

17. **A** No, but we knew what the goal was. We knew
18. what the agreement was.

19. **Q** We know what you and Larkin said the goal was.
20. We don't have a piece of paper that confirms it, do we?

21. **A** No, we don't have a piece of paper that confirm
22. what the goal was for Beachfront.

23. **Q** Right.

24. **A** But we had agreed that we would do.

25. **Q** Yes, sir. But the River, FRR, is the golden

1 goose laying the golden egg, isn't it?

2 **A** Not necessarily.

3 **Q** It's a --

4 **A** That business is going to be dead in nine
5 years. I've got another one in North Carolina that's
6 going to keep on going. I don't know if I'd call that
7 the golden goose.

8 **Q** Oh, please, Mr. Hammond. You are a bright
9 savvy business man. You know that the Larkin name is a
10 brand now, don't you?

11 **A** I would have a lot of customers tell me the
12 opposite. When they go to Larkins on the Lake and they
13 are used to Larkins on the River, it's a completely
14 different experience. They are asking me why are we
15 calling them the same.

16 **Q** Sure. And you've got one in Columbus, North
17 Carolina as well?

18 **A** Yes, we do.

19 **Q** And they are a Larkins. And they are
20 successful. In each in their own way, they are
21 successful, aren't they?

22 **A** No, the one in Columbus actually has been
23 losing money since it opened.

24 **Q** Why are you pumping that money into it?

25 **A** Because I'm on the hook for a bank note and

1 it's cheaper to keep it operating than it is to close it.
2 I'm hoping that at the end of that bank note period, when
3 that note is paid off, that that debt service will
4 actually add the cash flow and we'll be able to keep the
5 business running.

6 Q Once the note's paid off, it would turn
7 profitable and Kyle's got a 10 percent ownership interest
8 in it, doesn't he?

9 A Yes, he does.

10 Q Yes, sir. All right. Let's look at this --
11 this next thing. Here's Kyle, uh, -- excuse me. Here's
12 an email from you dated February the 20th, 2009.

13 A Okay.

14 Q Okay. Thanks for taking the time to work on
15 our partnership agreement. And in truth, you regarded
16 these separate entities as corporations as part of a
17 larger partnership, didn't you?

18 A I'm not sure if I'd use the word "partnership".
19 Each one was a separate entity.

20 Q It's your word, sir, "partnership". Right
21 here.

22 A Well, that's a relationship between Kyle and
23 us.

24 Q Yes, sir. On our partnership agreement.

25 A Yes.

1 Q And his title during this period was Managing
2 General Partner, was it not?

3 A I don't remember what year we changed it. It
4 was Director of Operations. Then it went to Managing
5 Partner.

6 Q Managing General Partner?

7 A Managing Partner is actually what the title
8 was.

9 Q If you will allow me to ask you just a few
10 questions about this exhibit, sir. We were looking to
11 form an umbrella corporation to choose another means to
12 equalize your ownership across the board.

13 A It was something that Kyle requested we look
14 into.

15 Q Sure.

16 A I was happy to do that.

17 Q So he's raising question about where he stands
18 in the equalization of ownership, isn't he?

19 A No, he wasn't raising a question at all. He
20 wanted to try and equalize his ownership across the board
21 and is this a way to do that.

22 Q Oh, please, Mr. Hammond. Is that not raising a
23 question about equalizing the ownership?

24 A No. It's raising a request to equalize
25 ownership.

1 Q And below that, you say we're going to develop
2 a lease between Lake Point and Largo properties?

3 A We had not formalized a lease. So I promised
4 that I would do that.

5 Q Sure. It is there any offer there to let Kyle
6 participate in the ownership and benefits from the
7 ownership of that location up at Lake Lure?

8 A Currently, there are no benefits that -- I'm
9 upside down on that piece of property. I don't know how
10 long that would be. The benefit is to the shareholders
11 of Lake Point because it allows the restaurant to
12 continue.

13 Q The long-term benefit is to you and to Mrs.
14 Hammond, isn't it? Eventually, you're going to pay off
15 that 30-year fixed rate note and you're going to own the
16 unique piece of property on Lake Lure that's available
17 for commercial use.

18 A Yeah. When I'm 80 years old, yeah.

19 Q Well, I just turned 70, so you --

20 A That's positive.

21 Q Down here, it says disperse shareholder
22 distributions on an annual basis according to completed
23 K-1 forms.

24 A Yes.

25 Q This was an issue that Kyle's raised because he

1 was getting something called bonus distributions. He
2 didn't know whether he was getting a bonus or
3 distribution of what, did he?

4 A It should have been clear. I may be
5 responsible for it not being clear. One of the things I
6 asked Kyle to do was talk to our CPA in case I wasn't
7 able to accurately or adequately answer his questions.

8 Q That wasn't the only issue though. It wasn't
9 just this funky bonus distribution thing and not breaking
10 them out. But while you were doing that joint bonus
11 distribution list with Kyle, over here out of Front Roe
12 and out of Lake Point, you are taking distributions,
13 aren't you?

14 A I -- some years, yes, we did take distribution.

15 Q Yes, sir. Now, here's number 7. It's very
16 important that you look at number 7. Can you read out
17 loud for me what number 7 says?

18 A Number 7 says clean up all due to/from
19 shareholder accounts and define treatment of Beachfront
20 sale of ---

21 Q I'm sorry.

22 A Sorry. --- MaLarKie's and opening of the
23 Carolina Grill as it relates to Kyle's payouts and
24 investment requirements.

25 Q All right, sir. Now, what's -- remember my

1 earlier questions about these promissory notes?

2 A Uh-huh.

3 Q And where are they and whether or not they've
4 been serviced. Is this number 7, an acknowledgment that
5 maybe on the books, there hasn't been a proper alignment
6 of the stars?

7 A I think that there -- as we already talked
8 about, there weren't promissory notes in place. There
9 was some confusion that we have about what was booked as
10 a loan to shareholder. So I promised that we would clean
11 that up. We would also take into account the sale of one
12 of the businesses that we had sold. If there is a tax
13 treatment to Kyle about that so that anything that was
14 confusing got cleaned up.

15 Q Sure. And this is February of 2009?

16 A Correct.

17 Q And Mr. Manios is the kind gentleman back there
18 in the back of the room is going to tell us that those
19 shareholder loans are still on the books, aren't they?

20 A Most likely, yes.

21 Q Yes, sir. You haven't cleaned them up, have
22 you?

23 A We cleaned them up in terms of answering
24 questions about why they are there.

25 Q But there's no documentation, is there?

1 **A** Other than the tax returns, none.

2 **Q** There is no evidence of promissory notes,
3 payments of interest or anything else either by you or
4 Mrs. Hammond or by the corporations.

5 **A** Or by Mr. Pertuis. No, there was not.

6 **Q** And there are no checks -- there are no checks
7 available that would show anything like that, are there?

8 **A** Show a repayment?

9 **Q** Interest payments.

10 **A** I don't believe so, no.

11 **Q** And there are no checks are there that show --
12 that would clarify -- you haven't brought checks to show
13 that -- resolve this issue about the bonus distributions,
14 have you?

15 **A** Bonus distributions, I'm not sure if I
16 understand the question.

17 **Q** Sure. There's some question about whether or
18 not Kyle actually testified. I think you heard that he
19 had not received his distributions.

20 **A** Any time that he was entitled to a
21 distribution, he received a distribution. In fact, one
22 of the documents that we talked about yesterday, I
23 clearly stated that as much as possible, I would pay his
24 bonuses as distributions so that they would not receive
25 FICA and Medicare deductions.

1 Q So the bonus of paying those would fall upon
2 him personally rather than the corporation?

3 A No, you don't pay taxes on distribution per
4 say. You pay taxes on your pro rata share of the
5 corporate's net profit.

6 Q Yes, sir.

7 A Which may or may not have anything to do with
8 the distribution method. We've given distributions at
9 Beachfront on years that we lost money.

10 Q Absolutely. Absolutely. Let's turn to the
11 next landmark in this story. This is June '09.

12 A Okay.

13 Q This is from you to Kyle. All right, sir. It
14 shows his current salary at 55, the bonus schedule is 50.
15 It shows he's receiving shareholder distribution, eight
16 percent of net S.D. Now if he's getting net of -- eight
17 percent net of S.D., that means he's an eight percent
18 owner of the three partnership entities.

19 A No, that is not correct.

20 Q Well, he owns 10 percent of one of them,
21 doesn't he?

22 A Yes, he does.

23 Q He owns 10 percent of another one, doesn't he?

24 A Yes, sir.

25 Q And if you add four percent to that, you get 24

1 percent and divide it by three, it comes out at eight
2 percent, doesn't it?

3 A I'm not sure what that arithmetic is
4 illustrating.

5 Q It's illustrating that he owned four percent of
6 Front Roe.

7 A No, it's not. He gets eight percent of the
8 total distributions of the three enterprises.

9 Q How can he get eight percent if he's not a --
10 if he's not 24 percent in the aggregate divided by three?

11 A Mr. Pillsbury went through an example yesterday
12 that shows exactly how the map calculates out to the
13 eight percent. If you're getting 10 percent of one and
14 10 percent of another and one percent of another. It
15 depends on how much distribution you get from each
16 enterprise.

17 Q So we're moving the numbers around again?

18 A No, sir. Not at all.

19 Q All right, sir. Now, you propose option A for
20 \$67,000?

21 A As a base salary, yes.

22 Q Yes, sir. Plus some bonus program. And 10
23 percent of net shareholder distributions.

24 A Yes.

25 Q Did that not mean that he would then be 10

1 percent equalized across the board?

2 A If he hit the goal as I mentioned in the letter
3 -- further down in that same document, yes.

4 Q All right, sir. And then it goes down that you
5 are going to sell a boat to him for 12 grand at one time?

6 A We are going to convey a boat to him, yes.

7 Q Yes, sir. As part of his -- this is his
8 compensation package, isn't it?

9 A Yes, sir.

10 Q Yes, sir. Okay. If we go with Option A, we
11 will extend the original timeline -- original timeline
12 into 2009 if the numbers fall short for 2008.

13 A Correct.

14 Q You get the 10 percent ownership across the
15 board.

16 A Correct.

17 Q Down here, it says -- excuse me. Later in the
18 document, it says in the second paragraph, I'm sure you
19 realize that every dollar that's spent is 90 cents we --
20 and again, that's Mrs. Hammond who is not here --

21 A Yes, sir.

22 Q -- we don't make and 10 cents you don't make?

23 A Yes, it was illustrative.

24 Q Sure. And it illustrates that he owns 10
25 percent?

1 **A** No, it illustrates that once you are a 10
2 percent owner, I want you to start thinking about the
3 business this way. Here is an illustration of my point.

4 **Q** And then here you say our desire and goal is to
5 make it easy for you to assume 100 percent ownership of
6 the company in the event of our death. Above that, it
7 says we are working with Kurt. This is June of 2009.

8 **A** Correct.

9 **Q** We are working with Kurt on the buy/sell
10 agreement and revisions to articles in the corporation
11 and to adequately and legally address buy backs, exit
12 strategy and third party investments.

13 **A** Uh-huh.

14 **Q** In June, you are telling him you're working on
15 the documentation?

16 **A** Yes.

17 **Q** Here's Kyle's response.

18 **A** Uh-huh.

19 **Q** Mark and Larkin, thank you for putting these
20 options together. I've made a slight revision to the
21 bonus target. It shows proposed new plan, \$67,000.
22 Slightly different bonus plan?

23 **A** Correct.

24 **Q** It shows 10 percent of net shareholder
25 distributions. It shows something for a car. It shows

1 the boat, \$12,000, one time. It says shareholder
2 distributions, if I did not achieve 10 percent, we will
3 extend program through '09 in order to equalize current
4 ownership. Distributions going forward after the close
5 of '09 will be 10 percent. He's going to own 10 percent
6 of Front Roe.

7 A Yeah, if he hits the number.

8 Q He didn't put any qualifications on it, sir.
9 Is there any subjunctive or correlative clause whatsoever
10 attached to that sentence? It says distributions going
11 forward after the close of 2009 will be placed on 10
12 percent ownership.

13 A It's relating to the sentence above it which
14 says if you don't achieve 10 percent ownership in 2008,
15 we will extend the current program for 2009 in order to
16 equalize current ownership of 10 percent across the
17 board. That was assuming that the business would perform
18 at a level that would allow him to have that 10 percent
19 ownership. It's also written from Kyle to me.

20 Q Yes, sir. And it doesn't say may, it doesn't
21 say can, it says going forward at the close of business
22 will be?

23 A Yeah. Those are his words.

24 Q Thank you, sir. Those were his words. Please
25 give me a reasonable timeline and expectation for this to

1 be completed as it is extremely important. What a
2 gentlemanly phrase for saying I want it now. Don't you
3 think?

4 A Sure.

5 Q Yes, sir. Extremely important for me to have
6 this finalized. I know this has been a long process.
7 The long process he's referring to, sir, is getting to
8 where you document where the goal line is, isn't that
9 correct?

10 A No, not at all. It's documenting the
11 employment agreement and a shareholder agreement.

12 Q And the goal line?

13 A No, sir. The goal line was clear before he
14 moved to Greenville.

15 Q Tuesday, June 3rd, 1:37 p.m., Mark Hammond.
16 That's you?

17 A Uh-huh.

18 Q Thank you. Thanks, Kyle. We're looking
19 forward to the next ten years. I'll get these details to
20 Kurt. That's Kurt's response -- Kyle's response. I'll
21 get these details to Kurt. I'll get these details to
22 Kurt to incorporate into the employment agreement and ask
23 him about the timeline as well. You agreed to Kyle's
24 counterproposal, didn't you?

25 A I agreed to the terms of that counterproposal,

1 yes.

2 Q That's my question, sir. You agreed to Kyle's
3 counterproposal?

4 A I agreed to that graph that shows what we're
5 going to pay as a base and what we're going pay as a
6 bonus, what we're going to pay him for life insurance,
7 what we're going to pay him for health insurance and
8 whatever else was in that graph.

9 Q You agreed to Kyle's counterproposal, didn't
10 you, sir?

11 A In answering your question, the way I
12 interpreted his counterproposal was a change in the bonus
13 structure. And I agreed to upping that change that he
14 modified, yes.

15 Q In fact, you performed some of the things right
16 away with Kyle. You moved him up here according to the
17 last, next to last and last line here. You moved him
18 right up to a salary of 67K, didn't you?

19 A Yeah. Things that we could do immediately, we
20 started taking care of right away.

21 Q And fairly promptly, you conveyed the boat to
22 him also?

23 A I believe that's correct.

24 Q And despite your story about the boat,
25 insurance and liability, it was part of his comp package,

1 wasn't it?

2 A It was part of his comp package to enjoy that
3 boat at that location, yes.

4 Q His comp package was he was going to get a boat
5 one time worth \$12,000. Isn't that what he said in his
6 proposal?

7 A Yeah.

8 Q Thank you, sir. And you agreed to that
9 proposal, I think you just told me, didn't you?

10 A Yes, I did.

11 Q Yes, you did. June the 30th. Did you look at
12 those documents that came from Mr. Stodghill's office?

13 A Not in great detail, no.

14 Q They are dated mid-September and early-October,
15 weren't they?

16 A I believe that's the discussion we had earlier,
17 yes.

18 Q 34B shows that some of them were prepared
19 October the first.

20 A Okay.

21 Q Some of them were prepared on September the
22 14th.

23 A Okay.

24 Q Now, I'm going to show you these three
25 documents. I'm not going to ask you to read them here.

1 None of us probably have the time or patience for you to
2 do that. Those documents are not ready. They are not
3 show ready projects yet, are they?

4 A I'm not sure if I understand what you mean.

5 Q They are not ready to be signed?

6 A Probably not. I haven't reviewed them. I
7 don't believe Kyle had reviewed them.

8 Q Look at the last page of the Front Roe
9 proposal.

10 A Okay.

11 Q What kind of signature lines are there on that
12 last page?

13 A There's a signature line for Larkin and a
14 signature line for me.

15 Q Yes, sir. No signature line for Kyle Pertuis?

16 A No, but Larkin is also no longer President. I
17 mean, there have been changes since.

18 Q Yes, sir. And all through -- from '08 to '09,
19 to the fall of '09, Kyle has been asking for
20 documentation and clarity, hasn't he?

21 A He's been asking for documentation of the
22 shareholder agreement.

23 Q For clarity as to his relations with y'all as a
24 shareholder, as an employee. He's been asking for that.

25 A He's been asking for a shareholder agreement to

1 have a legal document. In fact, some of his emails, he's
2 concerned about legalizing the relationship as it relates
3 to him being a shareholder.

4 Q Yes, sir. And you didn't get it done, did you?

5 A I started the process. In fact, even before
6 then, I asked him to start the process.

7 Q He's getting close to the goal line, isn't he?
8 The goal line of owning 10 percent of Front Roe, isn't
9 he?

10 A I hope so.

11 Q As a matter of fact, those documents, one of
12 those documents shows that Front Roe or one of those
13 corporations is in the fashion furniture business?

14 A You want me to read them?

15 Q With all due respect, to Mr. Stodghill, because
16 I do the same thing, lawyers have template agreements
17 that they use for different kinds of situations. Doesn't
18 that reflect that it was a template?

19 A That would certainly --

20 Q Taken from another transaction?

21 A Quite possibly.

22 Q Yes, sir. And there had been absolutely, it
23 was just -- wasn't going to take very long to prepare it,
24 was it?

25 A I can't speak to it. I don't know.

1 Q Changing some names in the document?

2 A I don't know what's involved.

3 Q That took one year and three months?

4 A I don't recall the timeline. I remember, uh,
5 Kyle had his attorney prepare something. We took a look
6 at it. I had some concerns with it. We passed that on
7 to the Stodghill Law Firm.

8 Q Mr. Stodghill is one of the best transaction
9 lawyers in the state.

10 A I believe so.

11 Q It wouldn't take him a year and three months to
12 put together this document, would it?

13 A Unlikely.

14 Q Yes, sir. So what's holding him up?

15 A I can't recall. I can't speak to that.

16 Q You are not responding to Kyle's request for
17 clarity and formalization and documentation of his
18 relationship with the corporations and with y'all, are
19 you?

20 A I'm looking at the date of that as June 30,
21 2009. That's probably a day before -- a few days before
22 the busiest week of the year at Larkins on the Lake. As
23 expedit -- as quickly as I can, I'm chipping away at all
24 the followup items between Kyle and I. There were
25 probably also times that both Kyle and I were very busy

1 in the restaurants.

2 Q Yes, sir. Mr. Hammond, how long would it take
3 you to use your cell phone and call Kurt Stodghill and
4 raise hell -- excuse my language, everybody -- and say I
5 need that document because I've got a real talented
6 fellow with good skill set that we want to hang on to.
7 We've got to go ahead and document his deal. How long
8 would that phone call take you?

9 A Would not have taken long.

10 Q No, sir. And it would not have taken long for
11 Mr. Stodghill to turn those documents around for you.
12 He's obviously got experience in this sort of thing and
13 knows what to do.

14 A Again, I can't speak to that. I do recall even
15 asking Kyle to call Stodghill's law office and follow up.

16 Q Now, let me again refer back to your deposition
17 in my office. I always used to admire that location,
18 that Hot Dog King location. I expect you did too, didn't
19 you?

20 A No, not really.

21 Q Yes, sir. Did you not go ahead and take it
22 over and gut it and put a new business in there?

23 A We sure did.

24 Q Yes, sir. The name of it is Main Street
25 Burgers, Inc.?

1 A That's the corporation, yes.

2 Q Yes, sir. And it operates Mark's Grill there?

3 A Uh, Grill Marks, yes.

4 Q Yes, sir. And in fact, you told me and I
5 understood that the financing for that new enterprise,
6 new restaurant -- and oh, by the way, Lake Point and
7 Beachfront and Front Roe are all restaurants, aren't
8 they?

9 A Yes, they are.

10 Q And this is a new restaurant called Mark --
11 Grill Marks, isn't it?

12 A Yes, it is.

13 Q And the financing from that came from guess
14 where? It came partially from Front Roe Restaurants and
15 from Lake Point.

16 A The corporation did loan money to that new
17 entity, yes.

18 Q Yes, sir. And that entity from the North
19 Carolina entity it lent approximately \$75,000?

20 A That's a reasonable number, yes.

21 Q And it lent about \$200,000 out of Front Roe?

22 A That's correct.

23 Q So \$275,000 out of the corporations that Kyle
24 Pertuis is a shareholder in ---

25 A Uh-huh.

1 Q --- were lent to this new enterprise, which is
2 in the same line of business as the restaurants already
3 in existence?

4 A Yes. We had cash on hand that we were storing
5 because of some issues we were having with the Peace
6 Center. That corporation thought felt it was a good
7 return on that money instead of just holding on to
8 retained earnings.

9 Q Yes, sir. Did you offer Mr. Pertuis an
10 opportunity to participate in that new venture?

11 A No, sir.

12 Q Why not?

13 A He was not a part of our organization other
14 than a shareholder.

15 Q Yes, sir.

16 A The only time we grant any ownership in a new
17 enterprise is with an existing employee.

18 Q Yes, sir.

19 A Just as we had done with Kyle.

20 Q Yes, sir. And you said something very
21 interesting. Forgive me for asking you about this. I
22 think I pointed out this chart, there was a lot of money
23 flowing through during the period of Kyle's involvement
24 with the corporations. I think this doubled somewhere
25 around a million one. Take my word for it.

1 **A** Yes, but again, the \$262,585 is the -- is not
2 the amount loaned in that one year.

3 **Q** Yes, sir. But you certainly wouldn't deny that
4 it's a fair conclusion that at least in distributions and
5 shareholder loans that an awful lot of money was coming
6 -- you were squeezing an awful lot of money out of these
7 corporations, weren't you?

8 **A** I don't understand what you mean by squeezing.

9 **Q** There was money for you and Mrs. Larkin to take
10 home?

11 **A** There was an income stream from the three
12 enterprises, yes.

13 **Q** Yes, sir. Indeed. And y'all were taking it
14 out of the corporation and doing whatever it is that you
15 do with your money?

16 **A** Uh, yes.

17 **Q** And you said that cash on hand at Front Roe was
18 plentiful and that you used some of that cash on hand for
19 the \$200,000 loan to Mark's Grill.

20 **A** Yes, we did.

21 **Q** Yes, sir.

22 **A** And it's already paid over \$3,000 in
23 interest to Front Roe restaurants.

24 **Q** Yes, sir.

25 **A** And we're actually retiring that debt earlier

1 than we --

2 Q Did you bring that promissory note, sir?

3 A Yes, I did.

4 Q Do you have a copy -- do you have -- have you
5 taken any distributions out of Mark -- Grill Marks yet?

6 A I don't believe so. We've taken cash out to
7 repay part of the loans at Front Roe and Lake Point. I
8 think that's all that's actually been pulled out of that
9 business.

10 Q Okay. Now, I asked you if you will recall at
11 your deposition whether or not you had an annual meeting,
12 shareholder's meeting every year in each of those three
13 corporations.

14 A Yes, sir.

15 Q And your answer was?

16 A We have meetings at least once a year but much
17 more often than that normally.

18 Q Is notice of the meeting issued and an agenda
19 presented prior to the meeting?

20 A For the director's meetings, Larkin and I
21 typically just take notes. We do not publish a, uh,
22 invitation. Is that what your question was?

23 Q I beg your pardon. I didn't make it clear.
24 There were no notices of shareholder meetings?

25 A That is correct.

1 Q Shareholder meetings, we're talking about,
2 that's sent out.

3 A That is correct.

4 Q There was no agenda for shareholder meetings
5 sent out for each of these corporations annual meetings?

6 A That is correct, yes, sir.

7 Q And there's no reflection whatsoever that Kyle
8 Pertuis was ever afforded a chance to participate in the
9 election of the members of the board of directors, was
10 there?

11 A I don't believe so, no.

12 Q And given cumulative voting -- you understand
13 about cumulative voting?

14 A No, I really don't.

15 Q I thought you had extensive experience with
16 PepsiCo with their shareholder incentive program.

17 A No, I was one of 100,000 employees that was
18 granted part of their share power plan which allowed for
19 us to have options that we could exercise. It's the
20 extent of my training and experience in shareholder
21 grants or option programs.

22 Q Yes, sir. But from PepsiCo, you obviously took
23 an organizational and business model for these three, now
24 four, restaurant group of entities that you own?

25 A I took a lot of the things I learned from

1 PepsiCo about operating restaurants but I'm not familiar
2 with running a corporation.

3 Q Yes, sir. And you understand, of course, that
4 there has got to be an election every year of a board of
5 directors?

6 A I actually am not that familiar.

7 Q And you don't have any minutes for shareholder
8 meetings with elected board of directors?

9 A I have a lot of meeting notes, but I don't
10 recall specifically it talks about electing directors.

11 Q And you don't have an annual -- you don't have
12 any minutes from an annual meeting of the corporation at
13 which time the directors would select the officers and
14 take up important business for the corporation?

15 A No. We often took up important business for
16 the corporation.

17 Q And were resolutions introduced, passed and
18 voted on?

19 A Uh, Larkin and I would agree on a variety of
20 things, whether it had to do with banking or capital
21 requirements or new business ventures.

22 Q Yes, sir. And I take it that there would be
23 minutes from those directors meetings at which important
24 business was taken up and resolutions reached. Do I
25 assume, sir, that minutes of those meetings and copies

1 and resolutions were distributed to Mr. Pertuis as a
2 shareholder?

3 **A** Often, we would distribute minutes from our
4 discussions. Typically, quarterly reviews. At various
5 times, we would share with Kyle what conversations we
6 were having about the business, where we were going with
7 it, what changes we were going to make with it, whether
8 it be changing a bank that we might use or taking out a
9 new loan or whatever the discussion was.

10 **Q** Yes, sir. Now, when you -- when you and Mrs.
11 Hammond purchased from Rene his estate or that location,
12 that business location, uh, it was a million two?

13 **A** Yeah, it changed. That ballpark. A million
14 two five. Something like that.

15 **Q** Did you do an evaluation on the business?

16 **A** Yes.

17 **Q** Where is it?

18 **A** Uh, in the acquisition file.

19 **Q** Is it here today?

20 **A** It is not.

21 **Q** Who did your -- who did your evaluation for
22 you?

23 **A** I did most of it, sent all the documents to my
24 accountant which I had done for acquiring the business
25 that Lake Point operates. The same thing I had done for

1 acquiring the business that Beachfront operates. In
2 fact, for Front Roe -- for Lake Point, I actually flew my
3 accountant out here. For Front Roe, I did what I always
4 done, took a look at his books, talked to people about
5 the marketplace. I even talked to Knox Wyatt about
6 RiverPlace and what was taken place over there. Provided
7 all the documentation that I received from Rene to my
8 CPA. Had him review the books. We determined a
9 reasonable purchase price. Then it was increased.

10 Q Now, after Mr. Kyle and you parted ways, you
11 had a meeting at which you offered Mr. Kyle for his
12 shares of stock in these three corporations?

13 A I did.

14 Q And I think you told me in your deposition that
15 \$12,000 was a good number for what you offered?

16 A I think that's correct, yes.

17 Q Now, at that point, Kyle owned 10 percent, 10
18 percent and maybe one percent.

19 A Correct.

20 Q Or 10 percent or 8 percent or 4 percent
21 depending on --

22 A One percent of Front Roe.

23 Q Well, this is just -- we're just talking here.

24 A All right.

25 Q You offered him \$12,000 for his interest. Have

1 I got that right?

2 A Yeah.

3 Q I'm going to put eight percent up here because
4 in your paper, you said eight percent of shareholder
5 distribution. Eight percent equalized across the board.
6 We'll talk about that in a minute.

7 A Fair enough.

8 Q \$12,000 for an eight percent interest in a
9 company, three companies. That's what you offered.

10 A I offered him \$12,000.

11 Q Yes, sir. Now, if you take -- I'm sure you're
12 better at math than I am. If you take eight percent and
13 invert it, you multiply this number times 12 and a half,
14 aren't you, if you're going to get the 100 percent value
15 of those three companies.

16 A I'll take your word for it.

17 Q Sure. Multiply 12 and a half percent -- you
18 multiple -- excuse me -- 12.5. Eight times 12.5 is 100
19 percent.

20 A Yes.

21 Q 12 and a half times \$12,000 is about \$148,000
22 for 100 percent of all three corporations.

23 A No. For 10 percent of two corporations and one
24 percent of another corporation. Oh, I'm sorry. I'm
25 sorry. Mr. Wilson, you are correct. I see where you're

1 going with that.

2 Q If I go out there and ask Mr. Manios if he
3 would loan me \$148,000 so I can own three restaurants,
4 you going to take that money?

5 A Uh, at the time, possibly. He would also have
6 to assume all the debt.

7 Q You're going to take the \$148,000 for all three
8 of those restaurants?

9 A I'd take a look at it.

10 Q Thank you, sir. I have no further questions.

11 THE COURT: Redirect.

12 REDIRECT EXAMINATION

13 BY MR. PILLSBURY:

14 Q Uh, Mr. Hammond, a couple of things. One is
15 when you saw Kyle Pertuis at Fall for Greenville, uh,
16 what was his indication to you about whether he was going
17 to stay on board or whether he was going to resign?

18 A I asked him how the week went and kind of where
19 he was at and he said that he made the decision to stay
20 on and he'll see us tomorrow morning at our house at nine
21 o'clock.

22 Q Okay. And then when nine o'clock came and went
23 and at some point thereafter you called him, what did he
24 say?

25 A He said that he had given it some additional

1 thought. He had changed his mind and he wanted to meet
2 us in Greenville.

3 Q And, uh, so who's decision was it to meet in
4 Greenville?

5 A Well, it was an agreed upon arrangement that if
6 he was going to resign, we would meet in Greenville. I
7 don't recall if that was his idea or mine, but that was
8 the mutual agreement that if he was going to stay, he
9 would come to Lake Lure and if he was going to resign, we
10 would meet in Greenville.

11 Q Your answer was better than my question because
12 my question was poor and I apologize. Uh, the, uh, --
13 the decision as far as, uh, meeting in Greenville when he
14 said I will meet you in Greenville, what did that mean?

15 A It meant that he was going to resign. I think
16 I even asked him when I was on the phone with him, So you
17 are resigning? He said yes. It was already understood
18 that if that was his choice, that was fine, we would meet
19 in Greenville and take care of the details.

20 Q And, uh, so as you are traveling from Lake Lure
21 to Greenville, the decision about whether or not he was
22 going to be on board or not, had it already been made by
23 Mr. Pertuis?

24 A Yes.

25 Q Uh, --

1 **A** The entire decision was in his hands. We gave
2 him a week off from the business to think about his
3 future. And whatever he chose, whatever decision he
4 made, we were going to honor it.

5 **Q** You were asked, uh, about some of the, uh, I
6 guess loans to the shareholders based on the tax returns.
7 Is that money that you actually took out that year?

8 **A** Not necessarily. There were often times that
9 the accountant had to adjust for basis for tax purposes.
10 So some of those cash amounts were just really an
11 accounting or tax-related situation.

12 **Q** Okay. And for somebody where economics and
13 accounting was his worse subject in school, what does
14 that mean?

15 **A** It was my second worse. So from what I
16 understand talking to my CPA, there's a limit to what you
17 can, uh, write off, if you will, from a tax standpoint,
18 whether it's depreciation or whether it's other noncash
19 items or any losses. You can't -- from what I
20 understand, you can't write off a lot if you don't have
21 basis. I'm the wrong guy to ask to clarify that.

22 **Q** I guess my point is the innuendo was that
23 somehow you were pulling out \$800,000 cash from Front Roe
24 in 2008. Did you receive 208 -- did you receive \$805,000
25 in cash?

1 **A** Sure wish I had. No, the point that I was
2 trying to make earlier to Mr. Wilson was the beginning of
3 the tax year, the loans to shareholders was \$270,934. At
4 the end of the tax year, the loan to shareholders was
5 \$262,585. It actually was reduced by \$800,000 that year.
6 So instead of the \$805,000 he has there, it was more like
7 60 grand.

8 **Q** I think that is defendant -- it's both a
9 plaintiff and defense exhibit. This is the note that was
10 written in 2008 that has been discussed kind of at
11 length. I'm not going to go through it at length. But
12 you were asked about the current arrangement. The
13 current arrangement for Front Roe, the current
14 arrangement for Lake Point and Beachfront was what?

15 **A** It had already been established that he was a
16 10 percent owner. There wasn't any additional vesting
17 but that was -- it was reiterating that currently you
18 were 10 percent owner of those two entities.

19 **Q** Okay. And as of 2008, was he a 10 percent
20 owner in Front Roe?

21 **A** No. No, it was just also part of the current
22 arrangement was that there was a proper threshold that he
23 needed to attain or that the business needed to attain
24 under his management in order for him to become a 10
25 percent owner.

1 Q And if Front Roe had performed at that level
2 and he was a 10 percent owner in Front Roe, would the
3 projection about the street values be accurate?

4 A Yeah, it should have been. That's how I
5 arrived at that number.

6 Q And where would Front Roe be at that point if
7 he's making the goal that generates, that earns him a 10
8 percent interest.

9 A The company needed to attain a \$500,000 net
10 operating profit. If it had and you combine that with
11 the operating profit of Lake Point and you subtract the
12 losses at Beachfront, I estimated the value of the
13 ownership to be about 250.

14 Q Why is the location of Front Roe, uh, so
15 unique?

16 A Well, one of the things that makes it unique is
17 it's the only, uh, restaurant I know of downtown that has
18 an outdoor patio as part of its lease space. So we are
19 able to serve liquor drinks instead of just beer and
20 wine. Most of the restaurants that have patios, the
21 patios are actually on city property. So it's a
22 competitive reason that it's advantageous. It's location
23 in proximity to the Peace Center. Uh, it's -- it has a
24 view of the river, a view of the grounds, et cetera. I
25 think probably the most important factor is that about

1 half of our volume comes from our catering operations.
2 And that venue affords us the ability to put on a variety
3 of events and generate revenue from catering because of
4 the catering facilities that are incorporated into our
5 lease.

6 Q And as we sit here today, can you think of any
7 other comparable location that meets all of those things?

8 A No.

9 Q Uh, and what is your degree of confidence that
10 at the end of this current lease that it will not be
11 extended?

12 A We have made request, both written and verbal,
13 for the Peace Center in the last couple of years to
14 extend it. All of that has been denied. So I have a
15 very high confidence that it will not be extended.
16 That's further driven by the fact that the Peace Center
17 had originally said they don't want to be involved in the
18 restaurant business. Now, they are running a restaurant.
19 Now, they have an Executive Chef and a Director of Food
20 and Beverage. They are building an infrastructure, if
21 you will, to run food and beverage. So it's more
22 probable and more likely that they would take over that
23 space.

24 Q I want to ask you some questions about Lake
25 Point, Beachfront and Front Roe.

1 A All right.

2 Q And the things that they have in common and the
3 things that they do not have in common.

4 A Okay.

5 Q Okay. They have the -- they have the common
6 directors, right?

7 A That's correct.

8 Q Do they have the common officers?

9 A Yes, they do.

10 Q Okay. Other than those two things, uh, are the
11 three corporations in the same location?

12 A No.

13 Q Do the three corporations share the same
14 telephone number?

15 A No.

16 Q Do the three corporations share the same
17 employees?

18 A No. There are times where an employee from one
19 may work at another. Then they are on that restaurant's
20 payroll for that particular time.

21 Q Is that pretty much the exception and not the
22 rule?

23 A Oh, yeah. The distance alone makes it
24 difficult. Each one has its own management team, staff,
25 et cetera.

1 Q Uh, are the shareholder interest the same in
2 all three corporations?

3 A No, they are not.

4 Q Are they all incorporated in the same state?

5 A No, they are not.

6 Q Do Lake Point and Beachfront file state tax
7 returns in South Carolina?

8 A No, sir.

9 Q Do they file them in North Carolina?

10 A Yes, sir.

11 Q Uh, does Front Roe file state tax returns in
12 North Carolina?

13 A No, sir.

14 Q Do they have separate --

15 THE COURT: How is this in response to cross?

16 MR. PILLSBURY: Because --

17 THE COURT: This is all new matter. How is
18 it in response to cross?

19 MR. PILLSBURY: He is asking -- he was asking
20 about how these entities were all, in essence, one
21 in the same.

22 THE COURT: All right. Go ahead.

23 BY MR. PILLSBURY:

24 Q Uh, do they have separate loan obligations to
25 third parties?

1 **A** Yes, they do.

2 **Q** Do they have separate contracts with third
3 parties?

4 **A** Yes, they do.

5 **Q** Do they have separate accounting records?

6 **A** Yes.

7 **Q** Do they have separate bank records?

8 **A** Yes, separate banks in some instances.

9 **Q** Do they have separate credit cards for each of
10 the businesses?

11 **A** Yes.

12 **MR. PILLSBURY:** I think that's it. That's
13 all, Your Honor.

14 **THE COURT:** All right.

15 **MR. WILSON:** I have nothing further, Your
16 Honor.

17 **THE COURT:** All right. You may step down.

18 **THE WITNESS:** Thank you, Your Honor.

19 **MR. PILLSBURY:** At this time, we'd call Louis
20 Manios to the stand please, Your Honor.

21 **THE COURT:** All right. Anybody need a break?

22 **MR. PILLSBURY:** Oh, I'm sorry, Your Honor.

23 **THE COURT:** Everybody alright? All right.
24 Let's go.

25 **MR. PILLSBURY:** Okay.

1 **LOUIS MANIOS**

2 having first been sworn, testifies as follows:

3 **THE COURT:** All right. Come on around. Have
4 a seat. State your name.

5 **MR. PILLSBURY:** Mr. Manios --

6 **THE COURT:** State your name for the record.

7 **MR. PILLSBURY:** I'm sorry.

8 **THE WITNESS:** Louis G. Manios.

9 **DIRECT EXAMINATION**

10 **BY MR. PILLSBURY:**

11 **Q** Mr. Manios, can you tell the Court a little bit
12 about yourself?

13 **A** I'm a licensed public accountant. I am
14 partners with Jerry Saad, which is Saad & Manios, LLC.
15 I've been practicing accounting since 1972.

16 **Q** And, uh, over the course -- '72 would be 40
17 years or is my math that bad?

18 **A** I'm sorry. '62.

19 **Q** So 50 years?

20 **A** Yeah, 51 years actually.

21 **Q** Okay. Uh, and, uh, over the course of time,
22 have you served as, uh, -- what kind of work have you
23 done in the accounting field?

24 **A** From the accounting standpoint, it involved in
25 keeping books for different type of businesses,

1. restaurants, manufacturing, doctors, dentists, any type
2. of dentist. Also doing tax returns, tax filing. Been
3. involved in numerous transactions of purchasing
4. businesses, clients selling businesses over the years.

5. **Q** And when you are involved in the transactional
6. side of a business, tell the court a little bit about
7. what your role has been on behalf of the seller. Then
8. we'll look at it on behalf of the buyer.

9. **A** Normally, on the seller, when I have a client
10. who's thinking about selling his business, he will ask me
11. to give him an idea of what the business would be worth.
12. The first thing I would look at is the profitability of
13. the business, the type of profits that it's making so
14. that when he tries to sell it to someone, the person on
15. the other side is going to look at the profits and see
16. what type of income generates as to can they pay their
17. debt, make a living out of it and get it paid off in so
18. many years.

19. **Q** And on the purchaser side, it may somewhat
20. mirror that, but what do you do when you are assisting --

21. **A** It's very similar. The purchaser is going to
22. look at the tax files, look at the tax returns, look at
23. the profit, look at the P&Ls. See if there's been a
24. trend as far as whether the income is going up or going
25. down. That obviously could make a difference because you

1 may have a business that's done extremely well the first
2 two years and then the next two years have potentially
3 gone in sales and net income. Obviously, if that
4 happens, then the purchaser is going to take that into
5 consideration as to what he's willing to pay.

6 Q Now how many transactions have you been
7 involved with where there was an evaluation of a
8 restaurant?

9 A I would say between 75 to 100 transactions.

10 Q And what's been the range of those
11 transactions? From what size restaurants to what size
12 restaurants?

13 A We dealt with restaurants that, mom and pop
14 operation, hot dog stand, fast food, fine dining. So, I
15 mean, gone from restaurants making \$100,000 a year to
16 making \$4-500,000 a year.

17 Q And, uh, in those restaurant transactions, have
18 some of them involved corporate -- acquiring a
19 corporation or buying a corporation?

20 A The majority of the time when somebody's going
21 to buy a business, they don't normally want to buy the
22 corporate structure. They would rather buy the assets of
23 the company, the goodwill of the company and not
24 necessarily the corporate structure.

25 Q Now, uh, have you been qualified as an expert

1 in court before?

2 A I have. I testified as an expert witness.

3 Q What fields have you been qualified as an
4 expert before?

5 A In the status and the value of a restaurant.

6 MR. PILLSBURY: Okay. Uh, at this time, I
7 would tender Mr. Manios as an expert in evaluation
8 of businesses, Your Honor.

9 THE COURT: Voir dire?

10 MR. WILSON: We have no objection to Mr.
11 Manios testifying as to his opinion.

12 THE COURT: He wants you -- are consenting or
13 stipulating that he's qualified as an expert in the
14 evaluation of businesses. That's what he's offering
15 him as.

16 MR. WILSON: Yes, sir. And I agree that he's
17 qualified.

18 THE COURT: Okay. All right.

19 BY MR. PILLSBURY:

20 Q I'm handing you what's been, I believe,
21 admitted as Defendant's Exhibit 28. Does that document
22 look familiar to you?

23 A Yes, this is a document that I prepared.

24 Q Now, as part of your, uh, investigation or --
25 in developing whatever opinions you have regarding these

1 businesses, what things did you look at?

2 **A** I first start with the tax returns. I look at
3 the net profit. After arriving at the net profit of the
4 tax return, I then go back and add back things such as
5 depreciation, interest paid. And I believe that shows in
6 my documentation further back, amortization and officer's
7 wages and amortization. Uh, once I've established that
8 -- could I have a cup of --

9 **Q** Yeah, I was going to --

10 **THE COURT:** Yes, sir. Help yourself.

11 **(WHEREUPON, there is a pause.)**

12 **BY MR. PILLSBURY:**

13 **Q** Sorry. I should have done that before we
14 started.

15 **A** Thank you.

16 **Q** Thank you.

17 **A** So a tax return may show a \$250,000 profit.
18 That's for tax purposes. By the time you add back
19 depreciation, amortization, interest paid, uh, officer's
20 wages would give you a true indication of how much profit
21 the company actually make. So that's the first thing I
22 do to come up with a profit, an actual profit the company
23 made.

24 I compare it with previous years to see if it's
25 close or if it's going up or down. At that time, we take

1 or I take two times that profit. In the past, out of all
2 the restaurants I've ever seen sold, that is a fair
3 number that has been used is two times profit. That's
4 net profit, not taxable profit, but net profit. When you
5 do that -- and in this particular case, I'm talking about
6 Front Roe restaurants. You want me to go through each
7 one individually or just tell you how I do them?

8 Q Let's talk about how you do them generally,
9 then we'll look at the numbers and decide.

10 A Once I come up with a value, then there's other
11 value there, such as, money in the bank, inventory,
12 receivables. These numbers are all added into the
13 original number of the first number I came up with, the
14 net profit. This gives you a total value of your
15 company.

16 Then you have to take out debt because if you
17 were to sell the company to someone off of the street and
18 you told them I want \$1 million for this business, then
19 obviously, he's not going to assume the debt. Then, you
20 have to take out the debt. Whatever debt is on the
21 company, that would be subtracted from the total value.
22 That's how you come up with a bottom line as to what that
23 company is worth.

24 Q And in this -- is this the same process that
25 you used in advising clients over the years when they

1 were seeking to acquire restaurants?

2 A For 50 years, yes.

3 Q Was there anything unique or different that you
4 did in this evaluation that you've done in all the other
5 evaluations for clients?

6 A In this particular case, I have made some
7 adjustments. Not in the original numbers, but I did take
8 into consideration a minority interest. The majority of
9 time the restaurant is sold or bought, you don't have a
10 minority interest involved, so you don't take that into
11 consideration. I did take into consideration the fact
12 that there's not a long-term lease in effect. Obviously,
13 I made an adjustment for that. That's something out of
14 the ordinary that you don't normally see. Most of the
15 time, someone that's going to buy a business, if there's
16 not a long-term lease in effect, they don't even want to
17 buy the business. They don't want to pay for something
18 and then nine years or ten years down the road not have a
19 business.

20 Q And typically, in your experience with clients
21 that you've worked with over the years, what is usually
22 the minimum that they want a lease to be in place to make
23 sure that they are going to be able to operate?

24 A Most of the time, 20 years.

25 Q And, uh, is that -- in your experience, is that

1 a factor that significantly impacts what people would be
2 willing to pay for a business?

3 A The lease, you're talking about?

4 Q Yes.

5 A I don't think there's any question about it.

6 Q We'll get to the particulars in a few minutes,
7 but is that one of the things that impacted the value or
8 your evaluations in these cases?

9 A It did.

10 Q Uh, now, uh, other than the tax returns, what
11 other information did you look for or review?

12 A What other information?

13 Q Yeah. What other information, other than the
14 tax returns, did you look at in coming up with any
15 numbers that you ended up using?

16 A In a couple of restaurants, there was nothing
17 else to look at other than just the net profit and the
18 add backs and subtractions. In Front Roe restaurants, I
19 was given other information, after I initially started on
20 this, that there was a change in -- on the outside events
21 which would affect the catering to Front Roe restaurants.
22 So, at that time, I asked for further information to tell
23 me how much effect potentially that could affect the
24 restaurant. And that would make a difference also in the
25 value.

1 Q Uh, did you -- did you review the QuickBook
2 files -- QuickBooks files?

3 A I did.

4 Q Now, aside from the purpose of -- for
5 evaluation purposes, as somebody who's been an accountant
6 and in the accountant field for over 50 years, what --
7 what would be your assessment as to the QuickBooks files
8 as far as accuracy or information that was in there,
9 things of that nature?

10 A I didn't see anything wrong with the QuickBooks
11 files. I heard a few questions come up about advancement
12 officers or loans officers. Those don't get put on the
13 books. It's not something that you can manufacture. If
14 there's a loan officer on there -- sometimes we call that
15 --

16 MR. WILSON: Your Honor -- excuse me, Mr.
17 Manios.

18 I apologize for being a little late. But this
19 is not an evaluation question. This is another kind
20 of question. He's qualified only to speak as to the
21 evaluation and his methodology in the evaluation.

22 THE COURT: He can state an opinion based on
23 that. Ask the question again.

24 MR. PILLSBURY: Your Honor, I was asking him
25 his review of the QuickBooks files for these three

1 businesses.

2 THE COURT: So he's not stating an opinion.
3 He's just talking about what he looked at in the
4 QuickBooks.

5 MR. PILLSBURY: Right.

6 THE COURT: That's okay.

7 MR. PILLSBURY: Here's what I -- Your Honor,
8 I understand where Mr. Wilson is headed. I can
9 expand offering him on the accounting side just
10 because there were some statements made by Dr.
11 Alford about the status of the QuickBooks files.
12 And so as -- certainly, I can offer him as an expert
13 in the field of accounting as well in his business
14 evaluations.

15 MR. WILSON: May I be heard, sir?

16 THE COURT: Yeah.

17 MR. WILSON: I consented to Mr. Manios'
18 expressing an opinion as to evaluation of the
19 company.

20 THE COURT: Right.

21 MR. WILSON: Mr. Manios is not a CPA -- with
22 all due respect, sir. He's a public accountant.
23 There are no more public accountants. He was
24 practicing prior to the abolition of public
25 accountants in 1967. He is, I don't think,

1 qualified to apply GAAP, Generally Accepted
2 Accounting Principles. I don't think he is
3 qualified to express an opinion as a CPA. Again,
4 with all due respect to Mr. Manios. I think Mr.
5 Pillsbury is going out of bounds --

6 **THE COURT:** Okay. Well, he hadn't offered
7 him. Are you going to offer him?

8 **MR. PILLSBURY:** On the issue -- yes, Your
9 Honor.

10 **THE COURT:** Okay. Well, see if he is
11 qualified. Get into it.

12 **THE WITNESS:** Can I answer Mr. Wilson's, uh,
13 statement that I was not a certified public
14 accountant, which is true. I am a licensed public
15 accountant. I have the same qualifications and do
16 anything that a certified public accountant can do.
17 I can audit. I can --

18 **THE COURT:** Just a -- just -- you go offer
19 him. Then I'm going to give Mr. Wilson a chance to
20 voir dire him.

21 **MR. PILLSBURY:** Your Honor, I would offer
22 him --

23 **THE COURT:** Well, qualify him first.

24 **BY MR. PILLSBURY:**

25 **Q** Well, in the 50 plus years that you've been

1 doing accountant work, what things have you done? What
2 are your experiences?

3 **THE COURT:** What he wants to know is what's
4 your background, training and education in general
5 accounting.

6 **THE WITNESS:** Right.

7 **THE COURT:** Tell us about that.

8 **THE WITNESS:** Well, obviously, I went to
9 Clemson. I finished at Furman. I been a practicing
10 accountant for 51 years. I been doing accounting,
11 general ledger work. I've been certifying financial
12 statements, preparing financial statements, doing
13 certified financial statements for the state of
14 South Carolina. I do compilation reports also in
15 South Carolina.

16 Some 25 years ago or whenever it was, uh,
17 public accountants that had been practicing so long
18 received a license as a licensed public accountant.
19 At that time, they come under the same state board
20 that the CPAs do. They also had the recognition to
21 be certified on anything that they do if they have a
22 license, which I do. I also have a, uh, license
23 from the IRS. A treasure card from the IRS which I
24 took a three-day exam to get my treasure card. I
25 feel like that qualification-wise, I can do anything

1 that a CPA does.

2 **THE COURT:** All right. What are you offering
3 him as?

4 **MR. PILLSBURY:** As an expert in accounting.

5 **THE COURT:** All right. Mr. Wilson --

6 **MR. WILSON:** With his testimony that he does
7 enjoy a license under the same board as a CPA, I'll
8 withdraw my objection. Thank you, sir.

9 **THE COURT:** Okay. All right. Go ahead.

10 **BY MR. PILLSBURY:**

11 **Q** In your review of the QuickBooks files for
12 these three entities, how did they appear to you as far
13 as level of detail and, uh, did the book seem to be in
14 order.

15 **A** The books seemed very much in order. I didn't
16 see any discrepancies. I didn't -- I did not do an
17 audit.

18 **Q** Right.

19 **A** In reviewing, just looking at them and from
20 them, looking at those against the tax returns, they
21 looked pretty much in order.

22 **Q** And the transactions, were you able -- if you
23 had wanted to, would you be able to pretty much
24 reconstruct the transactions over the years based on the
25 QuickBooks files?

1 **A** Sure.

2 **Q** And, uh, was there anything that appeared out
3 of the ordinary or unusual for a business of this type
4 with the QuickBooks files that you reviewed?

5 **A** No.

6 **Q** Did they match the tax returns that had been
7 filed?

8 **A** They do.

9 **Q** Uh, I think where we had started a dialog, you
10 were commenting on some of the discussion that you had
11 heard in the courtroom about distributions or loans to
12 officers. What is it that you were saying in that?

13 **A** First of all, your books are kept on a double
14 entry set of books. That's the way these books were
15 kept, on a double entry set of books. If somebody is
16 going to put money in the company, you just can't
17 manufacture a notes payable to an officer or to an
18 outside party. Some time has to happen to put it on
19 there. Then, also, advancements to officers or loans to
20 officers, some people classify them as advances, some
21 people classify them as loans. Checks written or some
22 type of distribution is taken that is shown as an advance
23 to the officer.

24 **Q** Okay. Now, let's look at the particulars of
25 what you found. Oh, was there any information that you

1 wanted or needed to know about any of these three
2 companies that you didn't receive?

3 **THE COURT:** Let me just interrupt. Is there
4 a distinction between a loan to officer and a loan
5 to a shareholder?

6 **THE WITNESS:** No, sir. Same thing.

7 **THE COURT:** Or a loan to a director? All the
8 same?

9 **THE WITNESS:** It could be the same thing.

10 **THE COURT:** All right. Sorry to interrupt.

11 **MR. PILLSBURY:** No, please. Now, in looking
12 -- I don't know if Your Honor -- was Exhibit 28 part
13 of the packet that you received? And I apologize.
14 I wasn't sure at what point things got included in
15 that notebook.

16 **THE COURT:** 22.

17 **MR. PILLSBURY:** Pardon?

18 **THE COURT:** 22. No, excuse me. No, I got
19 28.

20 **MR. PILLSBURY:** Okay.

21 **THE COURT:** Last one.

22 **BY MR. PILLSBURY:**

23 **Q** In looking at Defendant's Exhibit 28, uh, what
24 was -- what was the orig -- why don't we start with Front
25 Roe on the assessment, which I think, on this document,

1 is on page 2 for some reason. Is that -- yeah. Okay.
2 Okay. And so on that, what is it that you found that net
3 value to be or the originating net value to be?

4 A My original value on Front Roe restaurants was
5 \$1,166,338.

6 Q And, uh, then what is the purpose of the, uh,
7 reduction that was taken on the next line?

8 A By coming up with that net value of a 1.166
9 million that I started with, that was done by taking two
10 times the net profit, which gave me the value of the
11 business. If you go back to the page that says profit
12 impact from new Peace Center because of the use of the
13 Pavilion rent going up, uh, from 250 to 750 per use, it
14 appeared that the Pavilion impact on the bottom line of
15 the net profit would be \$5,625.

16 On the amphitheater, the rental use went from
17 \$500 to \$4000 per use. Based on the number of concerts
18 that they had been using in reducing the concerts, there
19 would be an additional \$7500 more per year paying on 13
20 less events. Also because of the concerts, uh,
21 increasing events from the concerts, you're going to lose
22 that. And by not doing as many, you're going to lose so
23 much per night from dining and concessions. That
24 resulted in a \$31,850 bottom line drop. Then you had the
25 concert tickets that were sold over the past years.

1 That's been a wash. So your estimated impact to your net
2 profit was \$39,350. That's strictly from the
3 amphitheater because of the increasing costs and reducing
4 the events.

5 Genevieve's, which is another restaurant that
6 has opened up in the Peace Center that was not there
7 before. Based on approximately 45 major show days and 25
8 minor show days, you're going to have so many dinners
9 lost on that in direct competition with Front Roe
10 restaurants. The bottom line on that is approximately
11 \$34,000.

12 So if you take the \$56,000 from the Pavilion
13 impact of additional rent, the \$39,000 from the
14 amphitheater of lost profits and the bottom line impact
15 of Genevieve's of \$34,000, this comes to a total of
16 \$78,975. So because I based my value on two times
17 profits, I took two times that \$78,975 and reduced the
18 net value by \$157,000.

19 Q And what was the reduction for notes
20 receivable?

21 A The 256 was a note that is owed to Front Roe
22 by, uh, Larkins Carolina Grill. Larkins Carolina Grill
23 is completely upside down. I doubt very seriously that
24 that money would ever be collected. That's a company
25 that owes over \$1 million and has no assets. I don't

1 think that will ever be collected. I reduce the value by
2 that much money.

3 Q And when you took out those two, uh,
4 deductions, what was the adjusted net value for Front
5 Roe?

6 A That brought the adjusted net value down to
7 752,122.

8 Q And, uh, would it be your opinion that this is
9 what the value would be for a willing buyer that would
10 pay for this particular, uh, business?

11 A That's correct. Before any other adjustments
12 were made.

13 Q Right. And then, uh, what other adjustments --
14 what was the adjustment that you made on the lease?

15 A Well, because of not having a long-term lease,
16 first of all, it's going to be very hard to find a buyer
17 that would be willing to buy a business with less than a
18 10-year lease. It's just -- I don't know that I've ever
19 seen one bought in all the transactions I've ever had
20 with less than a 10-year lease. But somebody may do it,
21 they might would buy it. I discounted the lease by 20
22 percent. I feel like I was gracious in that. I think it
23 could even been more than that. So I reduced the value
24 by \$150,424.

25 Q Uh, I think you covered this. Have you ever

1 assisted anybody in acquiring a restaurant business that
2 had less than a 10-year lease?

3 A No. And I came up with this percentage, not on
4 a minority interest based on the values that Mr. Alford
5 had put on the property. He also used a 16.5 percent
6 minority interest reduction. I used the same percentage.

7 Q Well, I wasn't talking necessarily about the
8 minority interest. What I was referring to, in any of
9 the transactions that you've been involved with in the
10 private sector, has there ever been a restaurant
11 acquisition that you've done or participated in that had
12 less than a 10-year lease on a business?

13 A No.

14 Q And so if my math is right, even before we
15 discount anything for the percentage of interest, the
16 approximate street value of Front Roe is \$602,698?

17 A That is correct.

18 Q And then once you applied a discount for this
19 -- for minority share, tell me what that's about.

20 A Well, you've got a person who has a minority
21 interest in this business and therefore its value is a
22 lot less than what it would normally be. That's the
23 reason you take a discounted value. Now, I did make a
24 statement earlier that you don't normally see -- I have
25 seen people where someone stayed in a corporation, one of

1 the partners got out and sold their interest and so you
2 still wound up 50/50 or 75/25 or something like that.
3 Normally, as far as someone buys a business, they
4 normally buy it complete, 100 percent.

5 Q So once you factored in that discount for less
6 than majority interest, what was the value that you
7 assessed for Front Roe?

8 A 477,598.

9 Q Now, on Lake Point, what was the value, the
10 beginning value that you had for Lake Point?

11 A 189,159.

12 Q How is that calculated?

13 A It was based the same way. I took the profit
14 from the tax return, added back depreciation, added back
15 amortization, added back interest, officer salaries, if
16 there were any. It came up to a number. From that
17 number, I took two times that to come up with the value,
18 the net value. And then from that net value, I would add
19 back the cash, the inventory, the receivables from
20 shareholders or officers and then take out the debt
21 that's owed to come up to that number.

22 Q Now, when you -- when you made these
23 calculations, are the numbers that you came up with
24 within the report itself as far as what numbers you
25 found?

1 A Yes, they are.

2 Q And I wasn't going to go through all of them,
3 but they are all included in Exhibit 28, correct?

4 A That's correct.

5 Q Okay. And then what was the reduction for the
6 notes receivable?

7 A That was also a notes receivable on the books
8 which I additionally added in on monies owed from Larkins
9 Carolina Grill.

10 Q Okay.

11 A And again, it was very doubtful that that
12 165,635 would ever be paid back.

13 Q What did that leave for an adjusted net value?

14 A 23,524.

15 Q And then once you applied the discount, what
16 was the discounted net value factoring in a minority
17 interest?

18 A Again, I took of 3,881, which let a -- left a
19 net discounted value of 19,643.

20 Q Beachfront. Uh, the valuation of Beachfront,
21 what was the direct net value that you determined?

22 A You wanted the final number or beginning
23 number?

24 Q Uh, why don't we do what -- let's see.

25 A I did Beachfront a little different because of

1 the fact there were no profits involved as far as
2 doubling the profits to come up with a value.

3 Q Okay. And it was a poor question on my part.
4 I apologize. That's where I -- what was it that you came
5 up with -- how is it that you got to a number on
6 Beachfront?

7 A Basically, on Beachfront, again, I started with
8 the net profit or loss from the tax return. It showed
9 \$118,000 loss. Added back depreciation, added back
10 interest, added back amortization. There were no wages.
11 That would have made it worth -- the net loss would have
12 been \$67,849. So from that standpoint, to me, there was
13 no value there as far as goodwill or anything such as
14 that.

15 I did put \$100,000 value in there because a lot
16 of improvements have been done to that particular piece
17 of property. That's -- used restaurant equipment is not
18 worth anything if you try to sell it. But I put \$100,000
19 value on it, which I thought was more than being fair. I
20 added cash. I added inventory. That brought you to a
21 total value of \$140,626. Then I took all liabilities off
22 of that. Liabilities were 1.322 million which gave you a
23 net value of -- a negative value of 1,182,281.

24 Q Now, why is it that you would, uh, do the
25 reductions in the value for notes payable to officers and

1 notes payable to related parties?

2 **A** Well, at the time when I prepared this, I left
3 the notes payable to officers in here and the notes
4 payable to related parties. If we were to go back,
5 because these were the first reports that I prepared. If
6 you went back, since I have made an adjustment for the
7 notes receivable of 256 -- 266 on Front Roe of saying I
8 didn't think it would be collected. Then if you took out
9 the 165, which is roughly \$410-420,000, if you reduce
10 that out of related parties, which is what it is, the
11 \$424,351, if you took the 424 out of one million one, it
12 would still be \$760,000 negative.

13 **Q** If, uh, someone was going to purchase the, uh,
14 a 10 percent interest in Lake Point, what was your
15 opinion that that value would be?

16 **A** In Lake Point?

17 **Q** Yes.

18 **A** \$19,643.

19 **Q** And, uh, let me --

20 **A** I'm sorry. \$1,964. Ten percent interest.

21 **Q** Yeah. The -- I know we start with the adjusted
22 net values, the adjusted net value for Lake Point was
23 what?

24 **A** \$23,524.

25 **Q** And then what was the final discounted value?

1 A 19,643.

2 Q And 10 percent of that was?

3 A \$1,964.

4 Q And then on Front Roe, what was the discounted
5 net value that you had for Front Roe?

6 A 477,598.

7 Q And if it's one percent?

8 A 477,775.

9 Q Why don't I round up to six?

10 A Okay.

11 Q And then obviously, Beachfront had zero value?

12 A No value.

13 Q Uh, --

14 A I'd go one step further. If you were trying to
15 consolidate these, you had a \$620,000 negative on
16 Beachfront. Ten percent of that would be a \$6,200 minus.

17 Q Okay. And that's the next thing I wanted to.
18 talk to you about. Just for the sake of argument, we're
19 purchasing all three things at once, uh, what would -- if
20 you take your, uh, -- if you take the net value of Front
21 Roe, uh, what was -- what was the -- why don't we just go
22 with the, uh, -- what would be the easiest way for you to
23 use the same number across the board if we were going to
24 try to combine all three of entities? Do you want to
25 start with the beginning net value or do you want to

1 start -- and let's ignore the minority discount for a
2 moment.

3 A Okay.

4 Q And that's why I was -- what number is the
5 easiest one for you to track across all three?

6 A Well, if we're going to discount the minority
7 interest all together and not take that into
8 consideration, I think what we would do is on Front Roe,
9 we'd start with 752 and subtract the 15424 for the
10 discounted lease.

11 Q Right. So that would be 600 -- that was that
12 figure I had, 602?

13 A Yeah.

14 Q 602,698?

15 A Right.

16 Q And what would be the, uh, --

17 A Lake Point would be 23,524.

18 Q And Beachfront would be what?

19 A We came up with six something a while ago, 620
20 back on the other page. I subtract out the shareholder,
21 I mean, the loan to related parties. 760. I'm sorry.

22 Q So if you actually factor in all three, would
23 collectively they have positive value? If you were
24 required to buy all three based on --

25 A There is no positive value if you are required

1 to buy all three.

2 Q Okay.

3 A It would be a negative value.

4 MR. PILLSBURY: That's all I have, Your
5 Honor.

6 THE COURT: Cross.

7 CROSS-EXAMINATION

8 BY MR. WILSON:

9 Q Mr. Manus, as I understood your testimony, you
10 as a public accountant, not necessarily a certified
11 accountant, are operating under a license that holds you
12 to the same standards as a certified public accountant?

13 A That's correct.

14 Q Thank you, sir. So when you prepare profit and
15 loss statements or statements for consumption by third
16 parties, you follow generally accepted accounting
17 principles?

18 A Correct.

19 Q Thank you, sir. Do you have a copy of your --
20 all your stuff together?

21 A What I prepared?

22 Q Yes, sir. Could I just ask you a few questions
23 about the background stuff? In particular, I'm
24 interested in the page that's captioned Front Roe
25 Restaurants, Inc. d/b/a Larkins on the River. Mr. -- is

1 it Manios or Manios?

2 A Manios.

3 Q Uh, you show -- down there in the lower of the
4 three quadrants, you show a note payable to officers for
5 275,338?

6 A That's correct.

7 Q Did you take a look at the note and look
8 through the books to see whether or not there had been
9 interest that had -- interest had been paid on that note?

10 A I did not.

11 Q Isn't it true up GAAP and under Internal
12 Revenue standards that if a note doesn't enjoy regular
13 periodic payment, that it -- a note to shareholders, it
14 becomes a capital, it becomes capitalized and becomes an
15 asset for the corporation?

16 A Well, not necessarily. It's not a C-
17 Corporation. It's an S-Corporation. I can't tell you
18 why they've got advances to shareholders, notes to
19 shareholders. If you took the advances to shareholders
20 out, just like you got receivables and you've got
21 payables. So you could net amount as far as that part
22 goes. But they don't necessarily have to be put into
23 capital.

24 Q My question, sir -- and perhaps I didn't make
25 it clear. My question is that a note payable to

1 officers, it doesn't enjoy either periodic interest and
2 it's been on the books for a long time, it's not treated
3 as a note payable. It's treated as a capital
4 contribution from the officers or the shareholders.

5 **A** Not when you've got advances to some
6 shareholders. You can offset.

7 **Q** Yes, sir. Additionally, in the liability
8 section, you show common stock as a liability.

9 **A** That's the value of it. Somebody would have to
10 pay that. If you were trying to liquidate this company
11 and you were trying to figure out who is supposed to get
12 what, somebody's got common stock in this company and
13 they've got \$252,000 invested, they'd get that money
14 back.

15 **Q** Yes, sir, if it's a note payable that's, in
16 fact, capitalized and if it's a value of the common
17 stock, those are not liabilities in the corporation, are
18 they, Mr. Manus?

19 **A** They are liabilities if you are trying to
20 liquidate the company. If you are trying to determine
21 who gets what, if you are asking me is it a note, capital
22 stock, no, it is not a note. But if you're going to
23 liquidate discovery and come up with a value, whoever's
24 got this stock -- money invested in stock is entitled to
25 this money back.

1 Q Yes, sir. But it is not a liability of the
2 company, is it, sir?

3 A It's common stock.

4 Q But it's not a liability of the company, is it,
5 sir?

6 A It's a liability if you're trying to put a
7 value on liquidating the company.

8 Q If you are preparing a statement that shows the
9 financial condition of this company, you don't show
10 common stock as a liability of the company.

11 A It goes under liabilities and net worth.

12 Q You're supposed to move that common stock
13 figure down here to the net value, aren't you?

14 A I said it would come under -- no, it would not
15 be added to net value.

16 Q It's the commo -- it's the equity in the
17 company, isn't it?

18 A It's a debt that's owed to the shareholder,
19 money they've got invested in the common stock.

20 Q They don't ever have to -- that doesn't ever
21 have to get repaid, does it, Mr. Manus?

22 A It does if you're going to liquidate and try to
23 determine who gets what.

24 Q It's an asset of the company, isn't it?

25 A Somebody owns that stock, sir.

1 Q Do they have to pay on it?

2 A Liquidate the company, they would be entitled
3 to that money.

4 Q And until that happens, what is it, Mr. Manus?

5 A It shows as common stock.

6 Q Yes, sir. And that's an asset of the company,
7 the equity of the shareholders?

8 A No.

9 Q And the notes payable from the officers that
10 have been on the books since the beginning of time and
11 had not been paid any interest?

12 A I don't know if interest is paid or not, sir.

13 Q That should be capitalized and added to the net
14 value of the company, shouldn't it?

15 A No.

16 Q It doesn't have to be repaid. It's just like
17 shares of stock. When does a corporation have to repay
18 its shareholders?

19 A Let me just clarify something. I could get rid
20 of this notes payable to officers very easily by reducing
21 the receivables from related parties if those are from
22 officers. So receivables are advances to officers.
23 You've got advances to officers on here of \$688,000. I
24 included that in the value of the company. If I wanted
25 to take this notes payable to officers of 275 and take it

1 off the books, I can reduce that directly out of the
2 \$668,000. That did not change these numbers at all. The
3 numbers would stay the same. Regardless of whether I
4 showed it as a notes payable, it wouldn't affect
5 anything.

6 Q Advances to officers, are money given to these
7 shareholders and is a debt from the shareholders back to
8 the officers, back to the corporation, isn't that
9 correct?

10 A They paid taxes on this money.

11 Q Have they? But it's shown as an advance, not
12 as a distribution.

13 A You've got an S-Corporation. An S-Corporation
14 could show \$250,000 profit. Okay. The officers took out
15 150 of that as advances to officers. They've got a K-1.
16 The K-1 showed \$250,000 profit. They paid taxes on that
17 250 in profits. Instead of showing as a distribution,
18 it's just shows an advancement to officers. They've paid
19 taxes on this money already. So that doesn't affect --

20 Q Did you determine that in your review of the
21 books, sir?

22 A There's no other way to put it on the books.
23 Advances to officers, they had to take that money out.
24 That money was given to them in the form of a check or an
25 entry of some type. But the profits, a lot of times, you

1 pay taxes on money you never take it. It could work in
2 reverse. You could turn around and have \$250,000 profit
3 and not take any money out of the company and still pay
4 taxes on 250,000. It's not considered in an S-
5 Corporation whether it's salary or not salary. If you
6 don't show it as salary, then show as an expense. So
7 advances to officers, you pay taxes on it whether you
8 take it out or don't take it out.

9 You decide to leave it in the bank -- I heard
10 earlier about a question about 75,000 taken from one
11 company and 100,000 taken from another company or
12 whatever those numbers were to Grill Marks, whatever that
13 was. I wasn't involved in that. But again, taxes were
14 paid on that money that was taken out even though they
15 didn't get the money personally. It didn't show as
16 distribution. It did not show as a loan to shareholders.

17 Q Mr. Manus, you're telling me that if I make a
18 loan to you with a promissory note that you've got to pay
19 taxes on the amount of money you get under that loan?

20 A No, that's not what I said.

21 Q What did you say?

22 A I said that if you make profit and you don't
23 take the money out, you pay taxes on it regardless. If
24 you turn around --

25 Q I'm asking --

1 **A** If you turn around and take it out in
2 shareholders or in distributions, you pay taxes on it.

3 **Q** If it's a loan to the shareholders -- and we
4 can agree that a loan is the same as an advance?

5 **A** Correct.

6 **Q** Premise being that it's going to be repaid?

7 **A** Correct.

8 **Q** And it's shown as an asset because the money's
9 going to come back into the company.

10 **A** I treated that as value.

11 **Q** Yes, sir. And just so if the loan is from the
12 company to the officers -- if the corporation borrows
13 money from the shareholders, the premise is it's going to
14 have to pay the money back?

15 **A** Correct.

16 **Q** Unless the note is stale, old, and not drawing
17 interest?

18 **A** Like I stated previously, you can offset that
19 number very easily by reducing the advances to officers
20 by reducing the payable to officers. It's the same
21 thing. It doesn't affect anything.

22 **Q** I hate to quote my able adversary, Mr.
23 Pillsbury, but if you can answer my question, we can do
24 fine. My question was, if the corporation lent money to
25 these officers, the premise is that that money is going

1 to come back?

2 A Correct.

3 Q And my next question is, however, where the
4 note is stale, where it hadn't been drawing interest,
5 where it hasn't been reported as a viable operation,
6 where there's no promissory note, then it becomes
7 capitalized?

8 A Not when you've got advances to shareholders.
9 Look, if I had done this tax return, which I did not do,
10 most of my clients -- if I've got advances to
11 shareholders, the majority of time, unless there is a
12 specific reason and there's a notes payable to officers
13 on the books, I just offset and it doesn't affect
14 anything. It doesn't affect the profit or the loss. It
15 doesn't affect the profit or the loss. It doesn't affect
16 the value of the company.

17 Q That's not what your statement shows, sir.

18 A I didn't do the return.

19 Q That's not what your statement --

20 A That's nothing but a bookkeeping entry. You
21 can take the bookkeeping entry and reduce the notes
22 receivable and reduce the notes payable and you've
23 accomplished nothing. It's the same thing.

24 Q That's not what your statement shows in Exhibit
25 28.

1 **A** That's what's on the books. That's what's on
2 the tax return.

3 **Q** Yes, sir. So just bear with me, Mr. Manios, if
4 you concede that note payable to officers on a stale note
5 no interest has been paid on should be capitalized and if
6 you could concede that the common stock is not a
7 liability and add those two figures together, you get
8 about \$500,000 and your net value for Larkins on the
9 River goes up to 1.6 million or 1.7 million, doesn't it?

10 **A** I didn't say that. You said that.

11 **Q** That's the arithmetic. I'm asking you to agree
12 with my arithmetic.

13 **A** I don't agree with what you're saying as far as
14 adding that back to capital. Again, that could be
15 adjusted right back to advances to shareholders.

16 **Q** Yes, sir. If you take that capitalized note,
17 take the common stock equity.

18 **A** I would not capitalize the note. I'm sorry.

19 **THE COURT:** He's asking you a hypothetical
20 question.

21 **BY MR. WILSON:**

22 **Q** May I finish the question?

23 **A** Okay.

24 **Q** If you take shareholder's equity, which is what
25 common stock is ---

1 **A** Okay.

2 **Q** --- and you take the capitalized officer's
3 notes, stale notes, add them to the value, net value on
4 this statement, you come up about 1.6 million, 1.7
5 million?

6 **A** On what you're trying to do, yes.

7 **Q** Thank you, sir. Thank you, sir.

8 **MR. PILLSBURY:** Let him finish his --

9 **THE COURT:** You have anything else you want
10 to say, Mr. Manios, about that?

11 **THE WITNESS:** Again, I mean, that's just his
12 statement. I'm saying that's not what I would have
13 done. I would have reduced the value of the notes to
14 shareholders against notes to officers. Therefore,
15 if I did that, that would not increase the profit or
16 the net value.

17 **BY MR. WILSON:**

18 **Q** Can we take a look at the statement attached to
19 your opinion for Lake Point restaurants? If you would,
20 please, sir; turn to that page. You show a notes payable
21 to related parties. Do you know who those parties are?

22 **A** Those related -- these related parties?

23 **Q** They are your statements. I'm just asking who
24 are the related parties?

25 **A** I would think that's to shareholders.

1 Q Yes, sir. And below that, it says common
2 stock, 12,300?

3 A Right.

4 Q Below that, it says paid in capital.

5 A Right.

6 Q Paid in capital is the same as shareholder's
7 equity, isn't it?

8 A True.

9 Q And there's no obligation on the part of the
10 corporation to return that at any time until the --

11 A Liquidate the company.

12 Q Which is --

13 A Liquidate the company.

14 Q Yes, sir. So if those are assets of the
15 company, again, a stale note, common stock, paid in
16 capital, you add those together and add them to your net
17 value, that pushes the net value up to \$550,000, doesn't
18 it?

19 A The way you are looking at it. But that's not
20 how you would look at it if you were liquidating the
21 companies. That money has to go back to somebody and
22 it's a liability.

23 Q The way I'm looking at it is the way it's
24 recognized under the Generally Accepted Accounting
25 Principles. Don't you agree?

1 **A** It's different if you're trying to figure the
2 value on the company of liquidating the company.

3 **Q** The first thing you've got to do is have a
4 financial statement that shows the value of the company.

5 **A** Correct.

6 **Q** The current financial condition is the
7 foundation of premise for that valuation, isn't it?

8 **A** Correct.

9 **Q** And your schedules do not conform to Generally
10 Accepted Accounting Principles.

11 **A** This was prepared on coming up -- this was not
12 a financial statement that was given to a bank for a loan
13 or anything such as that. This was strictly to come up
14 with a net value of what these companies were worth. And
15 that's it.

16 **Q** Sure. I'm not -- I haven't gotten to
17 discussing your valuation yet. I'm discussing the
18 schedules upon which you based your valuation. I think
19 you conceded that they do not conform to Generally
20 Accepted Accounting Principles because they do not move
21 assets out of the liability section. That is an asset
22 called stale notes that are capitalized and an asset
23 called shareholder's equity, which is capitalized and
24 goes to the bottom line. You think you agree with me on
25 that?

1 **A** Again, like I told you, on notes to officers,
2 loans to officers and notes to officers can be offset
3 with each other. That should not affect anything.

4 **Q** Yes, sir. If you would, could we --

5 **A** I beg your pardon.

6 **Q** I apologize. Can we take a look now at the
7 front page of your -- of your opinion?

8 **A** Sure.

9 **Q** Dear Mr. Pillsbury, I have calculated what I
10 feel is a net value for the following restaurants based
11 upon 100 percent ownership as of December 31st, 2012.
12 Help me understand what net value is.

13 **A** Net value. Again, first of all, you have to
14 arrive at your profit, net profit. To arrive at your net
15 profit, you go back and if you want to take the first one
16 into consideration, which is Front Roe. If you take
17 Front Roe and take the net profit, I believe on my page,
18 it's page 6. I'm sorry. Page 5. Page 5. I took the
19 net income, added back depreciation, added back
20 amortization, added back interest, added back officer's
21 wages, that's net profit.

22 **Q** I'm sorry, sir. I asked you what was the term
23 net value.

24 **A** I'll get to that.

25 **Q** Yes, sir.

1 **A** That's how you come up with your net income.
2 You take your net income and multiply that times two.
3 That gives you the value. You have that value and you
4 got your cash that's on hand. You've got inventory.
5 You've got to take receivables into consideration and
6 advances to officers. Receivables from related parties
7 and advances to officers. That gives you a total value
8 of \$2,250,000. So if you sold this company today, I put
9 a value on it that you could -- if you sold the company
10 for \$937,000 and you collected the cash and inventory,
11 collected your receivables, collected your advances to
12 shareholders, this company is worth \$2,250,000.

13 **Q** Yes, sir.

14 **A** I don't have a problem with it. But out of
15 that \$2.250 million, you've got debt that you've got to
16 pay. To come out with those numbers, you have to take --
17 your payables have to be paid, your notices to officers
18 had to be paid. Notes payable to banks or whoever had to
19 be paid. And whoever invested money in that common stock
20 has to get their money back from the common stock. Then
21 you come down to the bottom line, which is \$1,166,000.
22 That's what that company is worth. That's what the net
23 value of that company is worth if you liquidated it
24 today.

25 **Q** Net value is not a term that's used by

1 accountants, is it, sir?

2 A As I said earlier, I was not doing this to
3 provided a financial statement for a bank or for a -- I
4 prepare certified statements for building contractors,
5 uh, other type of contractors. That's different. I was
6 asked to establish what the value of this company is
7 based if it were to be liquidated. That's what I did.

8 Q I'm curious. I don't mean to -- I do mean to
9 -- I'm bothered by your use of the term feel. The
10 numbers speak for themselves, don't they?

11 A The numbers, I think they do.

12 Q So feeling doesn't have anything to do --
13 there's no subjective dimension to what you're doing
14 here?

15 A Feel?

16 Q Yeah. Look at your first sentence here. Thank
17 you, sir. So that really means that is my opinion?

18 A Yes, it's my opinion.

19 Q Thank you. Is net value the same as book
20 value?

21 A No.

22 Q Is net value the same as fair market value?

23 A I would say pretty close.

24 Q Okay.

25 A I think that's what you can sell it for.

1 Q If you were going to buy a business, would you
2 strive to pay something called net value or would you
3 want to pay fair market value for it?

4 A If I was buying it, whichever is the best deal.

5 Q And vice versa if you were selling it?

6 A That's correct.

7 Q But you would --

8 A Normally, fair market value and net value would
9 be pretty close the same to the same thing.

10 Q Yes, sir. But the number should be fair market
11 value in this case if you'll accept my premise. And that
12 number is probably different from net value.

13 A I would think so.

14 Q Yes, sir. Could you help me understand what
15 return on investment means?

16 A Return on investment?

17 Q Yes, sir.

18 A Well, obviously, if somebody's going to pay a
19 price for something, they want to know how soon they
20 could get their return back on their investment.

21 Q Yes, sir.

22 A How long will it take them to pay the debt, to
23 draw a salary out of that company?

24 Q If you were investing in these companies and
25 calculating your return on investment, would you

1 calculate it on net value or would you calculate it on
2 the cash investment in the business?

3 A Net value.

4 Q All right, sir. Now, in your -- in your
5 opinion, now that we have established that it's an
6 opinion, your opinion speaks, Mr. Manios, about I arrived
7 at the value of each company based on prior year and
8 current tax returns. There are no notes to your
9 schedules. Could you help me understand which years you
10 looked at?

11 A I looked at, uh, '9, '10, '11 and '12.

12 Q Okay. Sorry. I thought you said just two
13 years.

14 A No, I never said that. I just said I looked at
15 previous years tax returns.

16 Q On prior year and current year tax returns.

17 A The current year was 2012.

18 Q Right. And prior year --

19 A Prior years returns. I had those prior years
20 from a schedule that Mr. Alford had made up. I believe
21 he had done '9, '10 and '11 and I did look at those and
22 looked at the tax returns ---

23 Q And I --

24 A --- and --

25 Q Excuse me. I interrupted you and I'm so sorry.

1 **A** Okay.

2 **Q** I'm just reading your letter and it says prior
3 year.

4 **A** Prior years.

5 **Q** All right, sir. Talk to me about minority
6 interest, Mr. Manios. If I'm the majority, and I'm going
7 to buy the minority, why would I be entitled to a
8 minority discount?

9 **A** Well, normally, if you've got minority interest
10 in a company, it's just not as valuable as having a
11 majority interest, therefore, you would discount the
12 minority interest.

13 **Q** Except to the majority?

14 **A** I didn't understand that question.

15 **Q** It would not be as much to any -- worth anybody
16 except to the majority that might want to capture the
17 entire revenue stream?

18 **A** That's possible.

19 **Q** Thank you, sir. Now, when you started
20 considering the future and you looked into the Louis
21 Manios crystal ball, you paid your electric bill so you
22 get to turn it on.

23 **A** Right.

24 **Q** And you looked down the road and you see
25 trouble ahead for Larkins on the River cause it's only

1 got a nine-and-a-half-year lease left, did you look at
2 anything else positive in the future, Mr. Manios, like a
3 new hotel coming in, all those new condos over there.
4 Did you look at those?

5 A Did not.

6 Q Mr. Manios, when you were considering this
7 dismal future in the Manios crystal ball, did you
8 consider that Larkins up in North Carolina and Larkins
9 here on the River and the Larkins up in Columbus, even
10 though they are doing relatively differently, they have a
11 common, they have a common -- they have something in
12 common. It's that name Larkin. Wouldn't you agree with
13 that?

14 A They had the same thing, Larkin. I don't know
15 if that makes any difference.

16 Q Is that Larkin a brand name and for marketing
17 purposes, doesn't it allow them to expand and perhaps
18 move the location and still be able to enjoy the good
19 will that's associated with that name?

20 A If you move the location, I really think that
21 the business would suffer in my opinion.

22 Q Just like if you were from the Mani in the
23 Peloponnese, you'd still be a Maniotes, wouldn't you?

24 A Right.

25 Q Thank you, sir. And your assumption, Mr.

1 Manios, is that that lease ain't going to be renewed? Is
2 that one of the underlying assumptions of your valuation?

3 A My assumption was that the lease would not be
4 renewed.

5 Q Yes, sir.

6 A Based on what I was told. I -- that's what I
7 stated in here.

8 Q And that's an assumption that you accepted?

9 A I did.

10 Q And I think you testified and I think a good
11 part of the 75 or so restaurant transactions that you had
12 are Greek restaurants?

13 A 50 percent of them.

14 Q 50 percent of them. Some mom and pops. Some
15 families and so forth?

16 A Some fine dining.

17 Q And you used a multiple for valuating this
18 thing that you been using for years, certainly in
19 connection with the Greek transactions. I mean no
20 disrespect to you, sir.

21 A I understand.

22 Q Isn't that true?

23 A Yes, sir.

24 Q You know George Grumbus [phonetic spelling]?

25 A Pardon?

1 Q You know George Grumbus?

2 A Yeah.

3 Q You know, Dig?

4 A Yeah.

5 Q Yes, sir. You familiar with their divorce?

6 A I don't know anything in details about their
7 divorce.

8 Q Are you familiar with the case that went to the
9 Court of Appeals in which it was that George Grumbus was
10 claiming \$54,000 in income out of his restaurant and the
11 means test showed that he was getting about 120?

12 A I'm not familiar with that, so I don't know.

13 Q You would agree with me that often times in a
14 lot of these Greek restaurants and the rest of them that
15 there's an awful lot of cash that doesn't show up on the
16 transactional documents?

17 A I wouldn't know about that.

18 Q Yes, sir. But your multiple is not based upon
19 anything but your personal experience?

20 A That's correct.

21 Q And your multiple is at least based in 50
22 percent on Greek restaurant transactions?

23 A Yes.

24 Q And again, I mean no disrespect to.

25 A That's correct.

1 Q Now, did you consider the impact of income
2 taxes on the cash flow of these restaurants?

3 A Did I consider that?

4 Q Yes, sir.

5 A No, I did not.

6 Q Did you take into account that if there was no
7 -- if there was income tax, that it might be worth more
8 money as opposed to if it was a chapter C-Corporation?

9 A Well, there's income tax involved, so you would
10 that into consideration.

11 Q Sure. But if you had not imputed income taxes
12 to the cash flow, how would that affect your appraisal?

13 A If I imputed income taxes in there, it would
14 probably increase it.

15 Q Yes, sir. It would increase it substantially.

16 A But you don't take that into consideration when
17 you put a value on a business.

18 Q Why?

19 A You just don't.

20 Q Why?

21 A When people are purchasing or selling a
22 business, they don't impute income taxes in there to
23 figure the value of the business. Just never do it.
24 Again, we're not preparing financial statements for a
25 lending institution or for the state where you do have to

1 impute taxes and show taxes.. But you don't do that in
2 something like this when you are trying to set a value.

3 Q All right, sir. So if you agree with me, and
4 I'm not saying that you do, sir, that certain -- certain
5 items shown as liabilities on Larkins on the River and on
6 North Carolina Lake Point, if those are handled according
7 to GAAP, they should go to the bottom line and it
8 increases the value of Lake Front, excuse me, of Larkins
9 on the River and increases that value to a million six, a
10 million seven and it increases the value of Lake Point,
11 the North Carolina corporation to about between five and
12 \$600,000?

13 A In your terminology, yes, but I don't agree
14 that that's the way it should be done.

15 Q And you would agree that those are the proper
16 things to happen under the application Generally Accepted
17 Accounting Principles?

18 A But not in coming up with the value of the
19 business?

20 Q Thank you, sir. I have nothing further.

21 MR. PILLSBURY: Very --

22 THE COURT: Redirect?

23 MR. PILLSBURY: Very quickly.

24 REDIRECT EXAMINATION

25 BY MR. PILLSBURY:

1 Q Mr. Manios, uh, the multiplier used here of two
2 times the net profit, do you apply that same rate in
3 every transaction generically?

4 A Sometimes they even use a lesser number.
5 Again, for example, if you had a business making \$100,000
6 and that's all that was made, it's hard to put two times
7 \$100,000. If tried to sell a business that's making
8 \$100,000 to somebody for \$200,000 and they sit there and
9 say, well, if I'm going to draw a salary for 50 or
10 \$75,000, let's say \$75,000 and it's making \$100,000, that
11 doesn't leave me but \$25,000 to pay off my debt. I can't
12 pay off my debt.

13 In a case like that, we don't use two
14 multiples. We use a lesser multiple. I've used
15 multiples as low as one and a half again based on income.
16 One and a half, two tops. I had a client buy a
17 restaurant two years ago. The restaurant was making 275
18 -- \$275,000 a year. Bought it for \$500,000. A little
19 bit less than two times the multiple. But two times the
20 multiple is about as high a number as you will see that a
21 restaurant sells for.

22 Q And so when he was asking you about all these
23 transactions and that half of them were based on what he
24 referred to as Greek restaurants or Greek transactions,
25 there's a different multiplier that you've applied in

1 each situation?

2 **A** Again, depending on profits.

3 **Q** Right.

4 **A** I mean, if I've got a Greek restaurant that's
5 making \$300,000 a year and I've got a fine dining
6 restaurant making \$300,000 a year. There's no reason for
7 me to figure anything any different. The person who's
8 buying the restaurant is looking at profitability.
9 What's he going to make? What's his debt going to be?
10 He wants to pay his debt off in three years. A
11 restaurant is not like an apartment complex where you buy
12 something and you figure it's going to take you 15 years
13 to pay your debt off. You don't do that in the
14 restaurant business.

15 **Q** All right. Thank you.

16 **THE COURT:** All right. Thank you, sir. You
17 can step down.

18 What?

19 **MR. PILLSBURY:** Your Honor, I was sitting.
20 I'm sorry. Do you --

21 **THE COURT:** I'm not talking to you.

22 **MR. PILLSBURY:** Okay.

23 **THE COURT:** You got any more questions, Mr.
24 Wilson?

25 **MR. WILSON:** I'm unsure, sir. (Pause.)

1 Thank you, Judge. Two more questions.

2 **RECROSS-EXAMINATION**

3 **BY MR. WILSON:**

4 **Q** If you use the standard multiplier of three and
5 three and a half, that's the number to get you your money
6 back in three years, isn't it?

7 **A** And draw a salary.

8 **Q** Yes, sir. Thank you.

9 **THE COURT:** All right. Thank you. You can
10 step down.

11 You have anything else?

12 **MR. PILLSBURY:** We have two more witnesses,
13 but I might just call one of them. I don't know if
14 you want to -- it would be relatively brief -- if
15 you want to finish that now or start in the morning.

16 **THE COURT:** You got any reply?

17 **MR. WILSON:** May I confer with my client?

18 **THE COURT:** Yeah.

19 (WHEREUPON, there is a pause.)

20 **MR. WILSON:** Two or three questions on reply.

21 **THE COURT:** You want to come back tomorrow?

22 **MR. PILLSBURY:** Does Your Honor -- what does
23 Your Honor want to do as far as a closing remarks or
24 do you want to handle it by briefs?

25 **THE COURT:** I just want to know if you want

1 to come back tomorrow and finish up testimony.

2 MR. PILLSBURY: Well, --

3 THE COURT: If you've got the witness --

4 MR. PILLSBURY: Yes. No, we can come back
5 tomorrow.

6 THE COURT: Is that what you want to do?

7 MR. PILLSBURY: Yes.

8 THE COURT: You ready to go with your reply?

9 MR. WILSON: Yes, sir.

10 THE COURT: How long is this witness going to
11 take?

12 MR. PILLSBURY: Very short. I can do it now
13 if you wish.

14 THE COURT: Let's get the witnesses done.
15 Y'all can come back in the morning and yell at each
16 other.

17 MR. PILLSBURY: Okay. All right. I call
18 Kristina Murphy to the stand please.

19 THE COURT: Okay.

20 KRISTINA MURPHY

21 having first been sworn, testifies as follows:

22 THE COURT: Okay. Come on around. Have a
23 seat. Please state your name for the record.

24 THE WITNESS: Kristina Murphy.

25 MR. PILLSBURY: Okay.

DIRECT EXAMINATION**BY MR. PILLSBURY:**

Q Uh, Mrs. Murphy, can you tell the Court a little bit about yourself? Where were you born and raised?

A I was born in Fall River, Massachusetts. My dad was in the military so we moved around an awful lot. Came to Greenville after Hurricane Katrina.

Q And how long have you been in the Greenville area?

A Six years.

Q What have you been doing here in Greenville?

A The day I got to Greenville, I started working at Larkins on the River as the Director of Catering.

Q Director of Catering?

A Uh-huh. Yes, sir.

Q And what all is involved with that process?

A I'm in charge with everything having to do with parties, events, staffing, operations, sales, clients.

Q And, uh, when you started, that would have been 2006?

A Yes, sir. This April was six years.

Q So to whom would you report while you worked at Larkins on the River?

A My direct supervisor is Bob Munnich. For a

1 short time, I worked for Kyle and Mark and Larkin.

2 Q When you say for a short time you worked for
3 Kyle, what was that period? Not timewise, but just very
4 generally, what was going on then?

5 A With catering or my position?

6 Q Yes.

7 A Kyle was the Director of Operations over a
8 couple of restaurants, would be in on some of our
9 meetings and our planning for the year and growth and
10 what we were doing.

11 Q Uh, there were some testimony earlier in the
12 case. How often are you there at Larkins on the River?

13 A Six days a week. Right now, seven days a week.

14 Q Has that pretty much been the case ever since
15 you started?

16 A Yes, sir.

17 Q Uh, and, uh, if you would, there was some
18 testimony early on about how much time the plaintiffs
19 spent at different locations during this career that he
20 worked. How often would you see Mr. Pertuis at Larkins
21 on the River?

22 A For work or at events or in Greenville?

23 Q How about -- let's start with work.

24 A Once a week. Once every two weeks.

25 Q What kind of interaction would you have with

1 him?

2 **A** Staff meetings. Manager meetings. Recap maybe
3 a big weekend.

4 **Q** And what was your experience while he was the
5 Director of Operations? Just in a general sense from a
6 management standpoint.

7 **A** Again, my interaction with him was limited. My
8 position is very operations-oriented, hands-on. You
9 know, a very important part of every day, every hour.
10 Busy weekends, 16 hours. Our interaction was meetings
11 or, uh, recap or numbers once a month.

12 **Q** Uh, was there -- there's been some discussion
13 about coaching or training or things like that. Would
14 any of that -- what was your experience in that field?

15 **A** For me personally?

16 **Q** Yes.

17 **MR. WILSON:** Your Honor, I'm going to object
18 to this with all due respect to Mrs. Murphy.

19 **THE COURT:** Where are you going with it? I
20 guess it's a relevance.

21 **MR. PILLSBURY:** Thank you. It's just there
22 was some testimony -- there was some testimony about
23 the amount of work that he put in in the different
24 locations. This is an employee that was there every
25 day, which is why I said it was very brief.

1 **THE COURT:** You can answer the question if
2 you can remember what it was.

3 **THE WITNESS:** Could you repeat?

4 **BY MR. PILLSBURY:**

5 **Q** Do you remember?

6 **A** Could you repeat it?

7 **THE COURT:** How often did you see Kyle and
8 how much? I guess he's asking what you observed him
9 do.

10 Is that right?

11 **MR. PILLSBURY:** Yes. I mean, what, uh, --

12 **THE WITNESS:** The day-to-day operations as
13 far as events, our interaction was meetings limited
14 to our manager meeting or budget discussions. As
15 far as running a shift?

16 **BY MR. PILLSBURY:**

17 **Q** Yes.

18 **A** That was the operations team.

19 **Q** Uh, do you remember the day that, uh, Kyle
20 resigned?

21 **A** Yes, sir.

22 **Q** Did you have any discussions with him at that
23 point?

24 **A** After everything had happened in their meeting,
25 he pulled me into the office and told me that he's

1 decided to leave the company, to spend more time with his
2 family, that he was rethinking his career path and how
3 much involve -- you know, how busy and how many hours and
4 he felt like it was too much.

5 Q All right. That's all I have.

6 CROSS-EXAMINATION

7 BY MR. WILSON:

8 Q Mrs. Murphy, uh, you don't have any knowledge
9 about any of this agreement or non-agreement between Mr.
10 Pertuis and Mr. Hammond?

11 A No, sir.

12 Q You don't have any knowledge about the
13 financial affairs of the corporation?

14 A His financial affairs?

15 Q Except within the scope of your duties, of
16 course.

17 A I know about the financial part of what I
18 managed.

19 Q Yes. That's what I meant. I'm sorry. But
20 other than that, you don't have -- you don't have any
21 insight into the financial history of these three
22 corporations?

23 A No, sir.

24 Q Thank you.

25 MR. PILLSBURY: That's it, Your Honor.

1 **THE COURT:** You may step down.

2 You got any other witnesses?

3 **MR. PILLSBURY:** Uh, no, Your Honor.

4 **THE COURT:** All right. He rest. Do you got
5 a reply?

6 **MR. WILSON:** Just to reply, Mr. Pertuis would
7 like to take the stand.

8 **THE COURT:** You are still under oath.
9 Thanks.

10 **KYLE PERTUIS**

11 having previously been sworn, testifies as follows:

12 **DIRECT EXAMINATION**

13 **BY MR. WILSON:**

14 **Q** Mr. Pertuis, since your parting of ways from
15 Mr. Hammond, have you received any distributions?

16 **A** Nothing.

17 **Q** Thank you, sir. I have no further questions.

18 **CROSS-EXAMINATION**

19 **BY MR. PILLSBURY:**

20 **Q** Do you know one way or the other whether there
21 had been any distributions?

22 **A** In what time period?

23 **Q** Since you left.

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

25 **Q** That's it. Thank you.

1 **THE COURT:** You ever received any notice of a
2 shareholder's meeting?

3 **THE WITNESS:** I'm sorry. Say that again.

4 **THE COURT:** You received any notice of a
5 shareholder ---

6 **THE WITNESS:** No.

7 **THE COURT:** --- meeting ---

8 **THE WITNESS:** No.

9 **THE COURT:** --- since you left?

10 **THE WITNESS:** Absolutely not.

11 **THE COURT:** You received anything from the
12 corporation with respect to your ownership interest
13 in the business?

14 **THE WITNESS:** Uh, they sent K-1's showing one
15 percent, which we disputed.

16 **THE COURT:** And 10 percent on the others?

17 **THE WITNESS:** Yes.

18 **THE COURT:** Other than that, any other
19 communication?

20 **THE WITNESS:** No.

21 **THE COURT:** Okay. That's all I have.

22 **MR. WILSON:** That concludes the reply, Your
23 Honor.

24 **THE COURT:** All right. See y'all tomorrow
25 morning at 10 o'clock.

1 **MR. PILLSBURY:** Okay.

2 **THE COURT:** What? You want to do it tonight?

3 **MR. WILSON:** No, sir. I was going to beg for
4 a chance to communicate with the court in writing.

5 **THE COURT:** Well, I might give you that
6 chance too.

7 **MR. WILSON:** Thank you.

8 **THE COURT:** I want to know, uh, -- I know
9 y'all mediated. Is there any chance of resolution?
10 This thing -- clearly, there needs to be a
11 separation, total and final complete separation.
12 That's what's got to happen. Have y'all done any
13 discussions about that?

14 **MR. WILSON:** Yes.

15 **MR. PILLSBURY:** Yes. We mediated.

16 **THE COURT:** Okay. So there's no chance so
17 you're going to leave it to me.

18 **MR. WILSON:** Yes, sir.

19 **THE COURT:** I found in these business court
20 cases, they are dealing with pretty sophisticated
21 clients, parties, sophisticated lawyers. You all
22 have been living with this case for a long time.
23 The parties have been living with the facts of the
24 case. You are much more acquainted with what's
25 going on. It's more like a divorce. Nobody's going

1 to be happy when it's all done. It's just a question
2 of whether or not y'all want to bring the misery on
3 yourself or have somebody bring it on you. Think
4 about it overnight.

5 MR. PILLSBURY: Okay. Thank you, Your Honor.

6 THE COURT: One luxury we have in this is
7 there is no rush to decision. Y'all can talk about
8 it tonight. It's not like it's got to be over
9 tomorrow. If you think it would benefit to take a
10 little more time and examine things now that you've
11 seen what each other -- it's all out there. Okay?

12 MR. PILLSBURY: All right.

13 MR. WILSON: Thank you, Your Honor.

14 THE COURT: All right.

15 (WHEREUPON, the proceedings conclude at
16 approximately 5:49 p.m.)
17
18
19
20

kyle pertuis

From: Mark Hammond [Mark@Larkinsontheriver.com]

Sent: Saturday, June 14, 2008 9:06 AM

To: kyle@larkinsontheriver.com

Subject: Some thoughts

Attachments: Kyle notes 2008.doc

Here are some thoughts to think about for our Tuesday meeting.

Have a great weekend.

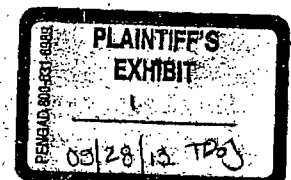
Mark Hammond
Larkin's Restaurants

Exceeding our Guests' Expectations

Internal Virus Database is out-of-date.

Checked by AVG.

Version: 7.5.518 / Virus Database: 269.21.7/1322 - Release Date: 3/9/2008 12:17 PM



Kyle,

I wanted to give you some of our thoughts along with a few Brainstorming options for you to give some thought to as you work to better define a partnership that meets your needs and ours as we all look to our respective future.

We've state our financial goal of \$100K monthly income and have taken the necessary steps that we believe will achieve that result in 2010. Coinciding with that goal is a desire to no longer be involved in the daily operation. Our assumption is that we will still be primary shareholders in the company (ies) and will function more as a board of directors. (Reviewing strategy, analyzing the business, consulting with management on strategic direction to ensure the continued health of the company since our livelihood will depend on the continued success of the business until at some point it is sold/we are bought out.) Of course this means that we need someone to operate the business. Oversee not only the daily operation but also make the decisions that keep the business moving forward. That means setting strategy, analyzing the marketplace, developing and leading a team of professional, passionate operators to run the daily business.

If that's something you want to do and are excited about, then let's look at what can be done to increase your income from the business you run. If you want to do something different, let's talk about what that can look like. Let's make this a win-win for all of us so we all are getting what we want. But first, you have to know what it is that you want to do.

So, some of several options might look like...

1. Keep current arrangement. With 10% of Lake Point and Beachfront plus what I hope will be 10% of Front Roe this year you will own approximately \$250,000 in net street equity on the businesses. You will also receive shareholder distributions of approximately \$30,000 in 2008 from this ownership.
2. Increase ownership through personal investment in business. Just like buying stock in a public company that pays quarterly dividends, the more shares you own, the more you receive in quarterly dividends and the more appreciation you make when the company's value increases. Like any business, you want to invest where you can get the greatest return with the least risk.
3. Create a win-win proposal to receive more equity by creating more shareholder value. If you can drive the companies' bottom line to \$2MM, you could drive your equity to 20%. Drive it to \$5MM you could get 50% equity.



4. Buy out part of the business and run it without us.
5. Get investors to expand the business rapidly. Our share is smaller but of a bigger pie.

We look forward to getting with you on Tuesday to explore these and your thoughts. Have a great weekend.

Mark & Larkin

kyle pertuis

From: Kyle Pertuis [kyle@larkinsontheriver.com]

Sent: Tuesday, January 06, 2009 8:39 AM

To: 'Mark Hammond'

Subject: questions

Here are some of the things I need from you and Larkin as it relates to shareholder docs-

The Insurance policy you have on me dates back about 5 years- shouldn't it be reevaluated as far as the amount of coverage is concerned?

What are your thoughts on disability insurance? And what is your biggest opposition?

What is the current formula for valuating a share of stock in our company? And what is that value?

If I wanted to "buy" an additional 23% of the company to equalize my shares- what would that cost be in todays present value?

What do we have in place in the event that one or both of you should die unexpectedly? Have you considered buyout and buy back provisions?

There is some language in the old docs and more so in the new docs regarding "termination" of a partner- how would you define "cause"?

We have talked about forming an umbrella company- and have created Larkin's Restaurants, Inc. - although this is not really an incorporated entity- we could be asking for trouble- can we form Larkin's Restaurant Group as a holding company through which marketing, consulting, possibly officer salaries are handled?

As I finish defining what I want from an ownership, growth, and compensation stand point it is important for me to really have clarity on what you want your roles to be and when- I enjoy having you as partners and I think we need to spend some time together creating a succession plan- I will give you the input we need on what it will take to continue the growth of the company- and appreciate you and Larkin's interest in what I want- I don't want you all to feel like you can't step out of the business so- if you want to be in it - I need to know at what level and I understand that this is a difficult step- I look forward to many open conversations about expectations on both ends-

I think that is it for now regarding the new docs-

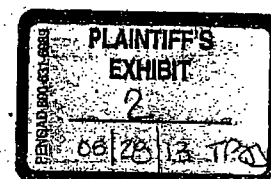
I will have several things compiled for us when you get here as it relates to operation- and will send you and Larkin out a topical outline before Thursday so you can formulate your thoughts-

Kyle Pertuis
Managing Partner
Larkin's Restaurants
828-289-5613

"Exceeding Our Guests Expectations"

www.larkinsonthelake.com Lake Lure, NC
www.larkinsontheriver.com Greenville, SC
www.larkinscarolinagrill.com Columbus, NC

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5/19/2013

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kyle pertuis

From: Kyle Pertuis [kyle@larkinsontheriver.com]
Sent: Friday, March 06, 2009 10:23 PM
To: kyle@larkinsontheriver.com
Subject: FW: Partnership Agreement
Importance: High
Follow Up Flag: Follow up
Flag Status: Flagged

Kyle Pertuis
 Managing Partner
 Larkin's Restaurants
 828-289-5613

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From: Mark Hammond [mailto:Mark@larkinsontheriver.com]
Sent: Friday, February 20, 2009 4:39 AM
To: 'Kyle Pertuis'
Cc: 'Larkin'
Subject: Partnership Agreement

Kyle,

Thanks for taking the time to work on our partnership agreement and share your ideas and concerns with us. As we discussed earlier, I want to get you something in writing to confirm where we are today and where we want to go. Some quick bullets outlining our discussion and agreement:

1. We will look into forming an umbrella corporation or choose another means to equalize your ownership interest across the three companies.
2. Develop a lease between Lake Point and Largo Properties to ensure Lake Point's ability to operate at its current location long term.
3. Re-evaluate your life insurance policy to provide adequate coverage for your family's needs.
4. Look into Key Man life policies for corporate officers as a benefit to the other officers
5. Ensure adequate language is included in the agreement to address any concerns regarding continued ownership and control of the company(s) in the event of a death, divorce or other departure of one of the partners.
6. Disperse shareholder distributions on an annual basis according to completed K-1 forms.
7. Clean up all "due to/from shareholder" accounts and define treatment of Beachfront's sale of

11/11/2011

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MaLarKie's and opening of Carolina Grill as it relates to Kyle's payouts and investment requirements.

8. Create an opportunity for Kyle to own 33% of the company(s) through company loan, revised vesting schedule with development targets or other means agreeable to all parties.

The next steps are:

- Mark to discuss items 1, 3, 4 and 7 with business advisors and report back with clarification and direction on these items by March 1, 2009.
- Mark to write lease for Lake Point to address item 2 by March 31, 2009.
- Mark & Larkin to spell out two or three options to address item 8 and present to Kyle by April 1, 2009 or earlier.
- Kyle to provide initial draft of employment agreement and buy-sell/shareholder agreement to Mark & Larkin including language to address item 5 consistent with our agreement and discussion from yesterday's meeting. Anticipate draft documents to be available by April 30th for initial review.

If I missed any item from our discussion please let me know so I can be sure it gets addressed. We look forward to finalizing these important documents and charting a course together to exceed our individual and collective goals.

Mark & Larkin

MASTER RELATIONSHIP AGREEMENT

(Concerning Ownership and Operations

of

The Larkin's Restaurant Group)

This Master Relationship Agreement dated _____, 2008 (this "Master Agreement"), is made and entered into by and among Kyle Pertuis ("Kyle"); Mark Darrell Hammond ("Mark"); Larkin Lawson Hammond ("Larkin"); Lake Point Restaurants, Inc., a North Carolina Corporation ("Lake Front"); Beachfront Foods, Inc., a North Carolina Corporation ("Beachfront"); and Front Roe Restaurants, a _____ Corporation ("Roe") (collectively the "Parties").

WHEREAS, Kyle, Mark and Larkin (collectively the "Owners" or "Shareholders", sometimes referred to individually as a "Shareholder") are currently the shareholders of Roe, Beachfront and Lake Point (collectively the "Larkin Group Restaurants" or "LGR Entities") which own and operate restaurants in North Carolina and South Carolina.

WHEREAS, Mark and Larkin originally opened Lake Point in 199____, which was the first of the Larkin Group Restaurants to commence operations.

WHEREAS, Mark and Larkin hired Kyle in _____ as a General Manager for Lake Point, with the intention of allowing him an opportunity to acquire or earn a portion of the stock equity in Lake Point.

WHEREAS, over time by and through several agreements, Kyle has acquired a 10% equity interest (____ shares) in Lake Point.

WHEREAS, Beachfront was created in 2001 with Mark and Larkin as the owners of 90% of the issued and outstanding equity shares (____ shares), and Kyle as the owner of 10% (____



(shares) of the issued and outstanding equity shares. Beachfront was initially utilized as the corporate parent for Malarkies restaurant. However, Malarkies was sold and the company subsequently opened a new enterprise known as Larkin's Carolina Grill.

WHEREAS, Roe was formed in 20__ to own, manage and operate "Larkin's On the River" in Greenville, South Carolina. Mark and Larkin established the company and provided Kyle with a right to acquire up to 15% (___ shares) of the equity in the company pursuant to a vesting schedule tied to revenue growth of the company. (At this time Kyle's vested interest in Roe is 6%.)

(WHEREAS, the Parties recognize the singular nature of their arrangement and believe it is the right time to revisit prior agreements, both written and oral, thereby ensuring that each party is assured their interests are protected, to memorialize certain verbal agreements between the Parties and to set forth an exit strategy for the Parties in the event of the death, bankruptcy, or disability of a Party.

WHEREAS, this Master Agreement is intended to set forth specific guidelines for the future conduct of the Parties. This Master Agreement may reference other arrangements and agreements which shall govern the business of the Parties going forward. The Parties intend this Master Agreement to supersede all other agreements between the Parties as it relates to the specific issues enumerated herein.

NOW THEREFORE, for the consideration contained herein and for other good and valuable consideration, the Parties agree as follows:

I. Kyle shall be granted an additional ___ shares of Lake Point; an additional ___ shares of Beachfront; and an additional ___ shares of Roe as documented on Schedule A "Acquisition/Vesting of Additional Shares" attached hereto.

II. Kyle has become a valuable asset to the overall business of Larkin Group Restaurants. As such, Mark, Larkin and Larkin Group Restaurants agree to the following:

A. Kyle's compensation and fringe benefit package shall be amended to provide him with the benefits listed on Schedule B. Schedule B shall break down the specific compensation and benefits that shall be paid by each specific entity [this is the only way to generally state a benefit package – unless you establish a parent company which will pay all benefits directly – this would be a better way of doing things if all the entities were owned in the same percentages and a management agreement was then entered with each individual entity]. YOU MAY WANT AN EMPLOYMENT AGREEMENT? If you do we can add an Addendum with an Employment Agreement – attached is a sample Texas based Agreement. Schedule B may be amended at any time only with the consent of all parties hereto.

B. Kyle is currently the _____ Manager of the Larkin Group Restaurants. Kyle cannot be terminated, demoted or otherwise have his job description or benefits changed, except for cause as defined on Schedule C attached hereto.

C. Mark and Larkin agree to provide Kyle with a "right of first refusal" prior to any sale of their interests in any of the entities comprising the Larkin Group Restaurants. The terms of the right of first refusal are provided on the attached Schedule D.

D. The Parties shall purchase sufficient life insurance on Kyle to provide funds to purchase from his estate any interest he has in the Larkin Group Restaurants entities. Kyle agrees that upon his death, he shall obligate his estate to sell all of his interests pursuant to the provision of Schedule E, which shall provide in part that upon

his death his estate shall be entitled to either the proceeds of all life insurance policies held on his life or the actual value of his interests in the Larkin Group Restaurants entities ("Value") whichever is greater. Such purchase shall be consummated within 6 months from the date of death. Additionally, for purposes of valuing his interest in the entities, no minority discounts shall be applied in the determination of Value.

E. Additionally, absent death or disability, the current understanding of the Owners is that Kyle's stock in the LGR Entities may be repurchased upon his separation from the LGR Entities. All such arrangements are hereby null and void and are replaced with the terms listed on Schedule E.

F. Mark and Larkin agree that they shall not dilute Kyle's interest in any of the Larkin Group Restaurants entities without Kyle's express written consent. Additionally all Shareholders agree to impose the restrictions on the sale of interests in the LGR Entities as provided in Schedule F.

G. The Parties agree to amend and clarify the terms of any stock grants made to Kyle. The agreements for the entities are hereby amended to provide as follows:

1. _____;
2. _____; and
3. _____.

H. Mark and Larkin shall provide Kyle with co-sale rights (the right to participate in any sale of a substantial portion of the ownership equity in the LGR Entities) as provided in Schedule G. This is done to prevent him being forced to remain with the entities as a minority owner with new majority owners.

III. Pending approval of tax advisors, the Owners believe it is prudent to amend its policies for providing draws and distributions to the Owners. As each entity has different ownership percentages, the attached Schedule H provides the manner in which draws and distributions shall be made henceforth.

IV. Mark and Larkin hereby grant Kyle an option to purchase additional interests in Larkin Group Restaurants. It is the Parties intent to allow Kyle to purchase additional interests in the entities to allow him to eventually own up to ____% of each entity comprising Larkin Group Restaurants. The terms and conditions of this option are contained in Schedule I attached hereto.

V. In the event of Mark's or Larkin's death, the interest of such decedent shall either be granted to the surviving spouse or be sold back to the appropriate entity at market price, upon terms and conditions as are commercially reasonable for such entity, the surviving Owners and such decedent's estate.

VI. Additional vesting issues for:

- A. Lake Point – amounts and terms;
- B. Beachfront – amounts and terms; and
- C. Roe – amounts and terms.

VII. The Parties agree to revise and amend the appropriate corporate documents to comply with the terms hereof. Further, the specific terms enumerated herein shall supersede any contrary terms or provisions in the governing documents, employment agreements and shareholder agreements of the Parties. Any further modification of the matters contained herein shall require the affirmative consent of all Parties hereto.

VIII. Funding Issues on current projects – Who is responsible?

IX. Guarantees.

X. Ownership of Real Estate – Fair dealing with self-interest contracts.

XI. In the event Mark and Larkin desire to sell their interests in one or more of the LGR Entities Kyle shall have the right to participate in the transaction. His rights shall consist of those contained in Schedule _____

XII. New Ventures. Rights? Obligations? Funding issues? Do you Invest or Vest?
Must you be a signatory to the Agreements?

XIII. Draw schedules.

XIV. Any third party who acquires an interest in any of the LGR Entities subsequent to the date of this Master Agreement agrees to comply with the all of the conditions, obligations, covenants and terms of this Master Agreement and must execute a written acknowledgment (a "Joinder Agreement") as if they had been originally signatory parties to this Master Agreement and that they agree to be bound by the terms hereof, and their spouses must consent in writing to the terms of this Master Agreement.

XV. Standard miscellaneous stuff about jurisdiction, venue, counterparts, etc.

Schedule A

Acquisition/Vesting of Additional Shares

Schedule B

Benefits

Schedule C

"For Cause" Termination

"For Cause" Termination. The Company may discharge Kyle "for cause" without any further liability to Kyle or his estate except to pay accrued but unpaid salary. "Discharge for cause" means termination, upon written notice, limited to one or more of the following reasons:

- a) Fraud, misappropriation, or embezzlement in connection with the LGR Entities as determined by the affirmative vote of all of the Shareholders of the LGR Entities; or
- b) Mismanagement or gross neglect of Employee's duties as determined by the affirmative vote of all of the Shareholders of the LGR Entities; or

Change of Control. In the event of a "change of control" of the Company which results in the Executive being terminated or resigning of his own accord, the Company shall pay him a Severance payment equal to three years base salary (three years base salary shall be determined by adding up the trailing twelve months base salary and multiplying that number by three). A change of control shall occur when

Schedule D

Right Of First Refusal

Notice of Right of First Refusal. A Shareholder desiring to sell, assign transfer or otherwise dispose of all or any part of or interest in the LGR Entities (the "Selling Shareholder") shall give notice in writing (a "Notice of Offer") to the other Shareholders and all of the other Shareholders (the "Continuing Shareholders") stating that the Selling Shareholder has a bona fide offer for the purchase of his Stock (an "Offer"), the number of shares of Stock to be sold pursuant to the Offer, the name and address of each person proposing to purchase such Stock and the sales price and terms of payment of the Offer.

Corporation's Right of Purchase. The Notice of Offer shall constitute an offer to each specific corporate entity, valid for thirty (30) days following the receipt of the Notice of Offer, to sell the Stock subject to the Offer to such entity upon the price and terms proposed in the Offer. ~~Each such entity shall have the option, but shall not be obligated, to purchase all or any portion~~ of the Stock subject to the Offer.

Continuing Shareholder's Right of Purchase. If each such entity does not, within the time specified, exercise its option to purchase all of the Selling Shareholder's Stock that is subject to the Offer, such entity shall immediately notify its Continuing Shareholders, setting forth the number of shares of Stock available for purchase, and the Continuing Shareholders shall then have the option to purchase their pro rata share of the Stock not purchased (determined in accordance with the respective ownership of Stock in such entity by all Continuing Shareholders who exercise this option) for a period of thirty (30) days from the expiration of the entities right of purchase.

Notice of Exercise. If such an entity and/or the Continuing Shareholders elect to purchase all of the Selling Shareholder's Stock that is subject to the Offer, the specific entity, on its behalf and on behalf of the Continuing Shareholders who elect to purchase the Stock subject to the Offer, shall give notice of exercise in writing (a "Notice of Exercise") to the Selling Shareholder within sixty (60) days after the date of receipt of the Notice of Offer.

Permitted Transfer Following Right of First Refusal. If at the end of such second thirty (30) day period the Continuing Shareholders have not elected to purchase all of the remaining Stock of the Selling Shareholder that is subject to the Offer, then neither such entity nor the Continuing Shareholders shall be entitled to purchase any of such Stock and the Selling Shareholder may sell all of the Stock subject to the Offer pursuant to the terms of the Offer for a period of sixty (60) days from the end of such second thirty (30) day period. Notwithstanding the foregoing, any material modification of the Offer made subsequent to the Notice of Offer shall constitute a new Offer and notice in writing must be given again pursuant to this Right of First Refusal.

Schedule E

Buy-Back Provisions

1 Death of Kyle. In the event of the death of Kyle the other Shareholders (or the Company, upon the agreement of such surviving Shareholders) shall have the option to purchase, and upon the exercise of such option the holder(s) of the deceased Shareholder's Common Stock in the LGR Entities shall be obligated to sell, within thirty (30) days after the death of such Shareholder, all, but not less than all, of the shares of Common Stock owned by the deceased Shareholder and his spouse in the LGR Entities, at the price and pursuant to the terms and conditions set forth in Section 8 and Section 9 hereof.

2 Disability of Kyle.

(a) Purchase. In the event of the Disability (hereinafter defined) of Kyle, the other Shareholders (or the Company, upon the agreement of the other Shareholders of the in the LGR Entities) shall have the option to purchase, and, upon the exercise of such option, the disabled Shareholder shall have the obligation to sell, within 90 days after the Shareholder has been rendered Disabled pursuant to Section 2(b), all, but not less than all, of the shares of Common Stock owned by the disabled Shareholder and his spouse in the LGR Entities, at the price and upon the terms and conditions set forth in Section 8 and Section 9 hereof.

(b) Definition of Disability. For purposes of this Agreement, a Shareholder shall be subject to a Disability at such a time as he is unable, due to illness or other incapacity, to perform his normal functions on behalf of the Company for a period in excess of one year.

3 Bankruptcy of Kyle. In the event that Kyle files a petition under the bankruptcy or insolvency laws or has such a petition filed against him which is not dismissed within ninety (90) days, the other Shareholders (or the Company, upon the agreement of the other Shareholders) shall, within thirty (30) days after the expiration of such ninety (90) day period, have the right, but not the obligation, to purchase all, but not less than all, of the shares of Common Stock in the LGR Entities owned by the bankrupt Shareholder on a pro rata basis, at the price and upon the terms and conditions set forth in Section 8 and Section 9 hereof.

4 Divorce of Kyle. In the event of the divorce of Kyle and the spouse of the Kyle receives any shares of Common Stock in the LGR Entities, Kyle shall have the option, within thirty (30) days after such divorce becomes final (the "Initial Period"), to purchase from his spouse, and his spouse hereby agrees to sell to Kyle, all, but not less than all, of the shares of Common Stock in the LGR Entities held by such spouse, at the price and upon the terms and conditions set forth in Section 8 and Section 9 hereof. If Kyle does not exercise his option pursuant to this Agreement, the remaining Shareholders (or the Company upon the agreement of the Shareholders) shall have the option, within ten (10) days after the Initial Period, to purchase from the Kyle's spouse, and Kyle's spouse shall agree to sell all, but not less than all, of the shares of Common Stock held by such spouse, at the price and upon the terms and conditions set forth in Section 8 and Section 9 hereof.

5 Termination of Kyle.

(a) For Cause. In the event Kyle's employment relationship with the Company is terminated For Cause (as defined in Exhibit _____), the remaining Shareholders (or the Company, upon the agreement of the Shareholders of the LGR Entities) shall, within thirty (30) days after such date of termination, purchase all, but not less than all, of the shares of Common Stock as of the date of his termination at the price and upon the terms and conditions set forth in Section 8 and Section 9 hereof.

(b) Without Cause. In the event a Kyle's employment and/or consulting relationship with the LGR Entities is terminated other than For Cause, Kyle shall have the option, within thirty (30) days after such date of termination, to sell, and the remaining Shareholders or the LGR Entities shall have the obligation to buy all, but not less than all, of the shares of Common Stock in the LGR Entities owned by Kyle, at the price and upon the terms and conditions set forth in Section 8 and Section 9 hereof.

(c) Definition of For Cause. For purposes of this Agreement, the termination of a nonfounding shareholder as an employee or consultant of the Company "For Cause" shall mean the termination of Kyle as an employee or consultant of the Company at any time upon

6 Other Involuntary Transfers. In the case of any Transfer of title or beneficial ownership of shares of Common Stock upon default, foreclosure, forfeit, court order or otherwise than by a voluntary decision on the part of a Shareholder, the other Shareholders (or the Company, upon the agreement of the other Shareholders) shall have the option, within thirty (30) days after the Shareholder receives notice of the occurrence of the involuntary transfer, to purchase all, but not less than all, of the shares of Common Stock held by such Shareholder on a pro rata basis, at the price and upon the terms and conditions set forth in Section 8 and Section 9 hereof. This Section 6 shall be applicable to all of the LGR Shareholders.

7 Notice of Transfer. In the event of a Transfer pursuant to Section 3, 4, or 6, the Shareholder whose Common Stock is the subject of such Transfer shall, within three (3) days of such Transfer, furnish written notice to the Company and the other Shareholder indicating that the Transfer has occurred, specifying the name of the person to whom the Common Stock has been transferred, and giving a detailed description of the circumstances giving rise to, and stating the legal basis for, the Transfer.

8 Price

(a) Price. The purchase price per share of the shares of Common Stock to be sold in accordance with Sections 1, 2, 3, 4, 5(a) and (b) and 6 shall be equal to the quotient obtained by dividing (i) the product of the Gross Revenue (hereinafter defined) of each LGR entity for the most recently completed calendar year multiplied by forty percent (40%) by, (ii)

the number of issued and outstanding shares of Common Stock in such LGR entity – The Gross Revenue shall be computed for each entity and the total shall be added together to determine total value of the LGR Entities. For purposes of this Agreement, the term “Gross Revenue” shall mean the receipts during such calendar year before deductions for any purpose.

(b) Special Rule. Notwithstanding anything contained in this Agreement to the contrary, in the event of a purchase and sale resulting from (A) the termination of Kyle’s employment For Cause, (B) Disability due to drug or alcohol abuse, or (C) the resignation or retirement of Kyle, the purchase price shall be an amount equal to the purchase price determined pursuant to Section 8(a) above.

THIS IS ONLY ONE EXAMPLE OF HOW TO DETERMINE VALUE.

Another value option:

Total Value. The Total Value shall be equal to \$2,000,000.00, unless agreed in writing to the contrary by the Shareholders and the Corporation. ~~The Total Corporation Value may be redetermined (upward or downward) at any time by mutual agreement of all the Parties to the Master Agreement. The last previously stipulated Total Value shall control, except that if the Shareholders and the Corporation have not redetermined the Total Corporation Value within one hundred twenty (120) days preceding the occurrence of a purchase event, the Total Value shall be determined in the following manner:~~

A. Mutual Agreement. The Total Value may be determined by the mutual agreement of the selling Shareholder, the LGR Entities and the continuing Shareholders, within thirty (30) days following the notice of a purchase event.

B. Appraisal. If the Parties to the Master Agreement, cannot agree on the Total Corporation Value within thirty (30) days following notice of purchase event, the Parties shall agree on an appraiser within forty-five (45) days of the notice of purchase event, who shall determine the Total Corporation Value as of the Valuation Date. In the event the parties cannot agree on an appraiser, the selling Shareholder on the one hand, and the LGR Entities and the continuing Shareholders on the other hand, shall each appoint an appraiser within forty-five (45) days, and the two appraisers shall appoint a third appraiser within three (3) days thereafter. The third appraiser shall determine the Total Value as of the Valuation Date. In determining the fair market value of the entities, the appraiser shall take into account the cash surrender value of any life insurance policies owned by the LGR Entities. The determination of Total Value shall not include discounts for limited marketability, minority ownership or other similar discounts. The determination of the Total Value by the appraiser selected shall be final and binding. The appraiser selected to determine the Total Value shall deliver to the Corporation a written determination of the Total Value within seventy-five (75) days following the receipt of the notice of purchase event.

Notice of Determination. Upon the determination of the Total Value, the LGR Entities shall immediately give written notice of the determination of the Total Value and the Purchase

Price Per Share for each entity (along with any written determination of an appraiser, if applicable), to the selling Shareholder and the continuing Shareholders.

Appraiser. Each appraiser selected must be independent and experienced in appraising closely held businesses. The selling Shareholder and the continuing Shareholders will each be responsible for the fees and expenses of the appraiser appointed by them. The entities will be responsible for the fees and expenses of the appraiser select to determine the Total Corporation Value.

9 Special Valuation Rule. In the event of Kyle's death, if the LGR Entities (or the surviving Shareholders) hold life insurance on the life of Kyle and the proceeds of such policies exceed the value of his interests in the LGR Entities as determined above, for purposes of the Master Agreement the actual value of Kyle's interests in the LGR Entities shall be the total of any such life insurance proceeds. Kyle's Estate shall be entitled to all proceeds of insurance held by the Parties to the Master Agreement on Kyle's life.

10 Closing Terms and Conditions. The closing, unless mutually agreed otherwise, shall be held within thirty (30) days following the date on which a price is determined. At the closing (i) the selling party shall deliver any certificates representing the interests in the LGR Entities, free and clear of any lien claim or encumbrance, duly endorsed in blank or accompanied by stock powers duly executed in blank in proper form for transfer, and such other documents, including evidence of ownership and authority, as the purchasing party may reasonably request, and (ii) the purchasing party or parties shall deliver to the selling party the entire amount of the purchase price, by certified or cashier's check, or by wire transfer of federal or other immediately available funds.

Schedule F

RESTRICTIONS IMPOSED ON TRANSFER OF STOCK

Restrictions on Transfer of Stock. No Shareholder shall, directly or indirectly, sell, transfer, assign, gift, pledge, hypothecate or otherwise dispose of any of the their interests in the LGR Entities, by operation of law or otherwise, except in accordance with the terms and conditions of this Schedule.

A. Restrictions on Transfer. Notwithstanding any other provision of this Schedule, no Shareholder may transfer, sell, assign, encumber or otherwise dispose of, and no person may acquire, the legal or beneficial ownership of any interests in the LGR Entities without the express unanimous consent of the Owners.

B. Effect of Purported Transfer. Any purported transfer or acquisition in the LGR Entities in violation of this Schedule shall be null and void. The purported transferee shall have no interest in the equities purported to be transferred. Each Shareholder agrees that any such transfer or acquisition may and should be enjoined.

C. Beneficial Ownership. Any purported transfer in violation of this Schedule will not affect the beneficial ownership of the Stock. Thus, a Shareholder making the purported transfer will retain the right to vote and the right to receive dividends and liquidation proceeds. Additionally, a Shareholder making the purported transfer shall continue to report the portion of income or loss allocated in accordance with the provisions of the Code as then in effect.

Schedule G

Co-Sale Rights

Sale Notice. If at any time the Mark and Larkin propose to transfer any interest or interests in the LGR Entities in a transaction not involving the Sale of the one or more of the LGR Entities, then at least thirty (30) days prior to the closing of such transfer, Mark and Larkin shall deliver a written notice (the "Sale Notice") to Kyle offering him the option to participate in such proposed transfer. Such Sale Notice shall specify in reasonable detail the identity of the prospective transferee and the terms and conditions of the transfer.

Tag-Along Notice. Kyle may, within fifteen (15) days of the receipt of a Sale Notice, give written notice (each, a "Tag-Along Notice") to Mark and Larkin stating that he wishes to participate in such proposed transfer and specifying the amount of stock he desires to include in such proposed transfer.

Sale of Shares. If the Kyle does not give Mark and Larkin a timely Tag-Along Notice with respect to the transfer proposed in the Sale Notice, Mark and Larkin may thereafter transfer the Shares specified in the Sale Notice on substantially the same terms and conditions set forth in the Sale Notice. If Kyle gives Mark and Larkin a timely Tag-Along Notice, then Mark and Larkin shall use all reasonable efforts to cause each prospective transferee to agree to acquire all Shares identified in all Tag-Along Notices that are timely given to the Founding Shareholder, upon the same terms and conditions as applicable to Mark and Larkin's Shares. If such prospective transferee is unwilling or unable to acquire all Shares proposed to be included in such sale upon such terms, then Mark and Larkin may elect either to cancel such proposed transfer or to allocate the maximum number of shares that each prospective transferee is willing to purchase among Mark and Larkin and the Kyle giving timely Tag-Along Notices in proportion to such Shareholder's proportionate percentages.

Schedule H

Draws and Distributions

Schedule I

Right to Acquire Additional Equity

Addendum
Sample Employment Agreement (Texas)

EXECUTIVE EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into as of the _____, 2007 (the "Effective Date") by and between _____ (the "Company"), and _____ (the "Executive").

In consideration of the employment of Executive and the compensation the Company agrees to pay Executive, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1) **Employment.** The Company hereby employs Executive and Executive hereby accepts such employment upon the terms and conditions set forth in this Agreement, during the period commencing on _____, 2007, and continuing thereafter until the close of business on _____, 2008, unless earlier terminated in accordance with the provisions of this Agreement (the "Period of Employment").
- 2) **Position and Duties.** Executive will initially have the title of _____, but may later be given a different title by the Company. During the Period of Employment, Executive shall faithfully and diligently devote his business time, attention, skills, and efforts exclusively to the performance of those duties as the Company may assign from time to time, during such times and in such a manner as the Company may reasonably prescribe, and to the furtherance of the business objectives and the best interests of the Company. The Company may change or expand the position, responsibilities and duties of Executive at any time, provided that there is no diminishment of the position or responsibilities.
- 3) **Executive's Compensation.** Executive shall be afforded the following compensation and benefits during the Period of Employment:
 - a) **Salary.** The Company shall pay Executive a salary (the "Salary") of \$_____ on an annualized basis, subject to applicable federal and state withholding requirements, and other withholding elected by Executive.
 - b) **Bonus.** The Executive shall be entitled to a bonus that will allow him up to _____ of salary based upon an agreed final amount approved by the Board of Directors.
 - c) **Stock.** The Company will grant Executive stock in the Company equal to _____.
 - d) **Benefits.** Executive shall be entitled to participate in the employee benefit programs that the Company may elect to provide the Company's Executives generally. Executive shall have the right to participate in all other benefit plans that the Company may, from time to time, offer to all Executives if the Executive meets the eligibility requirements of those plans.
 - e) **Severance.** In the event the Executive is terminated he shall be entitled to the following Severance package:
 - (1) **"For Cause" Termination.** The Company may discharge Executive "for cause" without any further liability to Executive or his estate under this Agreement except to pay accrued but unpaid salary. "Discharge for cause" means termination of Executive, upon written notice, limited to one or more of the following reasons:
 - a) Fraud, misappropriation, or embezzlement by Executive in connection with the Company as determined by the affirmative vote of at least a majority of the Board of Directors (exclusive of Executive if he sits on the Board of Directors); or
 - b) Mismanagement or gross neglect of Executive's duties as determined by the affirmative vote of at least a two-thirds of the Board of Directors (exclusive of Executive if he sits on the Board of Directors); or
 - c) Willful and unauthorized disclosure of Confidential Information (as defined in Section 4(b) of this Agreement) as determined by the affirmative vote of at least a two-thirds of the Board of Directors (exclusive of Executive if he sits on the Board of Directors).
 - (2) **"Not For Cause" Termination.** The Company may, with thirty (30) days written notice discharge Executive at any time and terminate this Agreement. Upon such a "Not For Cause" termination the Executive shall be entitled to a minimum of one year's base salary (base salary shall be determined by adding up the trailing twelve months base salary).
 - (3) **Change of Control.** In the event of a "change of control" of the Company which results in the Executive being terminated or resigning of his own accord, the Company shall pay him a Severance payment equal to three years base salary (three years base salary shall be determined by adding up the trailing twelve months base

salary and multiplying that number by three). A change of control shall occur when

4) Other Representations and Obligations. Executive acknowledges and agrees that his acceptance of the covenants contained in this Section 4 is a condition to employment by the Company and the Company's execution of this Agreement. Executive further acknowledges and agrees that the covenants set forth below are being made by him voluntarily, at the time of his execution of this Agreement and as part of the terms of his employment with the Company. Accordingly, in return for the Company's employment of Executive, the Company's compensation of Executive and disclosure of confidential information to him, and the possible additional grant of stock in the Company to Executive as described herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Executive does hereby agree as follows:

- a) Assistance in Litigation. During the Period of Employment and for three (3) full years thereafter, Executive shall, upon reasonable notice, furnish such information and proper assistance to the Company as may reasonably be required by the Company in connection with any litigation in which the Company is, or may become, a party.
- b) Confidential Information. Executive acknowledges that he may receive information relating to research, development, trade secrets, clients or business affairs (collectively, "Confidential Information") as a result of employment, and agrees to keep all such Confidential Information confidential and not to disclose any such Confidential Information to any third party. Confidential Information does not include (i) information that is, or becomes, public knowledge through no fault of the Executive; (ii) information that becomes available to the Executive legitimately and lawfully from a third party not under a confidentiality obligation to the other party; (iii) information that is independently developed by the Executive without access to the Company's Confidential Information; or (iv) information that is already in the Executive's possession prior to the execution of this Agreement and was not received in anticipation of the execution of this Agreement.
- c) Disclosures Required by Law. In the event that Executive becomes legally compelled to disclose any of the Trade Secrets or Confidential Information, Executive will provide the Company with prompt written notice so that the Company may seek a protective order or other appropriate remedy or may waive compliance with the provisions of Section 4(b). In the event that such protective order or other remedy is not obtained, or that the Company waives compliance with the provisions of Section 4(b), Executive will furnish only that portion of the Trade Secrets or Confidential Information that Executive believes, after receiving advice from counsel, may be legally required.
- d) Restriction on Solicitation of Customers. Executive agrees that he will not, for a period of three (3) years immediately following Executive's termination, on his own behalf or on behalf of any other person or entity, directly or indirectly call on or otherwise contact customers of the Company for the purpose of selling products or services that are competitive with those provided by the Company.
- e) Restriction on Solicitation of Executives. Executive agrees that he will not, for a period of three (3) years immediately following Executive's termination, directly or indirectly contact, solicit, interfere with or attempt to entice in any form, fashion or manner any Employee of the Company: (A) for the purpose of inducing that Employee to work with or for Executive (or with a person or business entity with which Executive is affiliated); or (B) to terminate his employment with the Company.
- f) Non-Competition. Executive shall not, during the period of his/her employment with Company or for a period of three (3) years thereafter, and within a radius of twenty-five (25) miles of any of the cities where Executive has been employed by Company, either directly or indirectly, own, manage, operate, control, be employed by, engage in, participate in, or be connected in any manner with the operation, control, ownership, management, or conduct of any business which is in competition with the business of Company.
- g) Equitable Relief: Reasonableness. Executive acknowledges that the Company may have no adequate means of protecting its rights under this Section 4 other than by securing an injunction (a court order prohibiting Executive from violating this Agreement). Accordingly, Executive agrees that the Company is entitled to enforce this Agreement by obtaining a temporary restraining order, preliminary and permanent injunction and any other appropriate equitable relief in any court of competent jurisdiction. Executive acknowledges that the Company's recovery of damages will not be an adequate means to redress a breach of this Agreement, but nothing in this Section 4 shall prohibit the Company from pursuing any remedies in addition to injunctive relief, including recovery of damages. The parties hereby agree that all provisions and restrictions in this Section 4 are reasonable in nature and are designed to reasonably protect the Company's interest.
- h) Representation. The Company does not desire to acquire from Executive any trade secret, practice, technique or other information that he may have acquired or may in the future acquire from others that is subject to restrictions on disclosure or use. Accordingly, Executive represents warrants and covenants that he has not and will not divulge to the Company any trade secret, practice, technique or other information in violation of the rights of other parties. Executive further represents and warrants that he is free to accept employment with the Company as contemplated by this Agreement, that he is not a party to any agreement or arrangement, whether oral or written, that would constitute a conflict of interest with this Agreement, and that he is not subject to any other obligations, commitments or restrictive covenants of any kind that would in any way hinder or interfere with his acceptance, or the full performance, of his obligations under this Agreement or the exercise of his best efforts in his employment under this Agreement.

5) Survival. Executive's obligations provided in Sections 4(a), 4(b), 4(c), 4(d), a 4(e) above all shall continue in full force and effect for the periods specified in those Section 4 following the termination of the Period of Employment.

6) General Provisions.

- a) Nonassignability. Neither this Agreement nor any right or interest hereunder shall be assignable by Executive.
- b) Entire Agreement; Amendment. This Agreement contains the entire understanding between the parties with reference to the employment of Executive by the Company, and supersedes any prior agreement, understanding or arrangement between Executive and the Company. This Agreement may not be modified or amended except by an instrument in writing signed by all the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of Executive and the Company and their respective heirs, successors and assigns.
- c) Notice. For purposes of this Agreement, written notice shall be effective if personally delivered or if sent by certified mail, return receipt requested, to the parties at the addresses set forth beneath their signatures below, or at such other address that either party may provide the other pursuant to this subsection. For purposes of computing time, all time periods provided under this Agreement will commence on the date notice is deposited in the mail, or if notice is personally delivered, upon receipt of such delivery.
- d) Waiver. No waiver by either party of a breach of any term, provision or condition of this Agreement by the other party shall constitute a waiver of any succeeding breach of the same or any other provision hereof. No such waiver shall be valid unless executed in writing by the party making the waiver.
- e) Severability. In the event that any provision of this Agreement is held to be illegal, invalid or unenforceable, laws, then (i) such provision will be fully severable and this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (ii) the remaining provisions of this Agreement will remain in full force and will not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement; and (iii) there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable.
- f) Governing Law. This Agreement has been executed and delivered in the State of Texas, and its validity, interpretation, performance and enforcement shall be governed by the laws of the State of Texas, without regard to conflicts of law principles.
- g) Reimbursement of Expenses. Executive may be authorized to incur ordinary, necessary and reasonable expenses in connection with the performance of his duties and responsibilities under this Agreement and for the promotion of the business and activities of the Company during the Period of Employment, including, but not limited to, expenses for necessary travel and entertainment and other items of expenses required in the normal and routine course of Executive's employment. The Company will reimburse Executive from time to time for all business expenses incurred pursuant to and in conformity with the provisions of this Section provided that Employee presents to the Company documentation of such expenses necessary to satisfy the reporting requirements of the Internal Revenue Code of 1986, as amended. Such reimbursements will be paid no later than the next payroll cycle after expense reports are submitted to the Company.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal (the individual adopting the word "SEAL" as his seal) as of the day and year first above stated.

EXECUTIVE:

_____(SEAL)
Executive Name:

Address:

0

THE COMPANY:

ATTEST:

Secretary

By: _____
Name: _____
Title: _____

H:\HDB\Pertuis\Master Relationship Agmt.doc

kyle pertuis

From: Mark Hammond [Mark@larkinsontheriver.com]

Sent: Saturday, June 27, 2009 4:09 PM

To: 'Kyle Pertuis'

Subject: Comp Package

Attachments: Kyle Comp review June 09.docx

Kyle, attached is the comp package we reviewed yesterday. Let me know what you and April think.

Mark

*doc Bob
has*

5/19/2013

451



2

Kyle,

This week starts your 10th year with Larkin's Restaurants and it's exciting to look at today as a new starting point for what will undoubtedly be a challenging and rewarding next several years for us all. Below are some options I want to review with you as we look at changes to your competition plan.

	Current/Original	Option A	Option B	Option C
Base Salary	\$55,000	\$67,000	\$75,000	\$80,000
Bonus	\$50,000	\$75,000 Target paid on 85% or greater on sliding scale plus 33% of overage	\$60,000 Target paid on 90% or greater on sliding scale plus 20% of overage	\$30,000 Target paid on 95% or greater on sliding scale plus 10% of overage
Shareholder Dist.	8% of Net SD	10% of Net SD	8% of Net SD	8% of Net SD
Car	\$6,000	\$10,000	\$10,000	\$10,000
Boat	\$0	\$12,000 one time	\$12,000 one time	\$12,000 one time
Family Medical	\$7000	\$7000	\$7000	\$7000
Life Ins.	\$200	\$1000	\$1000	\$1000
Disability Ins.	\$0	\$3500	\$3500	\$3500
Computer/Phone	\$2000	\$2000	\$2000	\$2000
Tax Preparation	\$500	\$500	\$500	\$500
Entertainment	\$1200	\$2400	\$2400	\$2400
Training/Workshops	\$2000	\$2000	\$2000	\$2000
Total Comp	\$138,900 (Inc. \$15K in SD)	\$202,400 (Inc. \$20K in SD)	\$190,400 (Inc. \$15K in SD)	\$165,400 (Inc. \$15K in SD)

If we go with option A, we will extend the original timeline on the River into 2009 if the final numbers for 2008 fall short of what you need under the original agreement to get you to 10% ownership across the board.

As we discussed, revenue increases are nice but they don't count for a thing if the costs go up. As such, bonus payouts are based on controllable profit dollars. Likewise, net profit can change based on Larkin's and my salary, capitol expenditures and other non-controllable expenses. If we choose for the company to charter a yacht for a week, it shouldn't affect your bonus (but it will affect the shareholder distribution).

Under option A, bonus payouts for results that are from 85% to 95% of budget will be at a rate of 50% of target. Under option B, payouts are 50% for results of 90% to 95% and under option C, payouts are 50% for results from 95% to 99%. For option A or B, payouts will be 100% for results achieved that are 96% to 100% and in option C, payouts are 100% for results that are 100% of budget. In 2009 under option A, that means that we can miss our budget CP dollars by \$160,000 and you still get 50% of your bonus.



For results greater than 100% of budget, payouts will be 100% of target plus 33% of overage dollars in option A, 20% of overage dollars in option B and 10% of overage dollars in option C. The only question is whether we base the payout on unit performance or aggregate performance.

I'm sure you realize that every dollar we spend is 90 cents we don't make and 10 cents you don't make. Since we budgeted to SPEND \$4,645,678 this year (not including taxes or principle payments) that's A LOT of 90 cents and 10 cents! A 5% reduction in spending could net you \$23,000 just in additional shareholder distributions plus it will net you \$77,351 in additional bonus payout!

Once we agree on comp structure I will incorporate it into the Employment agreement. We are working with Curt on the Buy-Sell agreement and revisions to articles of incorporation where necessary to adequately and legally address buy-backs, death, divorce, exit strategy, 3rd party investors and all other current and future ramifications to our respective ownership in the three companies. Our desire and goal is to make it easy for you to assume 100% ownership of the company in the event of our death while making sure your family is safe and secure in the event of your death. Your new life insurance policy will immediately address the latter as we get the other details worked out.

Additional ownership will require the company to grow its profit position and market value. This additional ownership can be set aside at today's value and details for its acquisition spelled out in the buy-sell agreement.

Thanks for continuing your efforts to make Larkin's Restaurants the best company it can be and for your willingness to take on the necessary challenges to drive the business forward in a myriad of ways.

Mark & Larkin Hammond

Mark and Larkin,

Thank you for putting these options together. I have made a slight revision in the bonus target and commented below. As we have discussed, It is my goal going forward to work less for wages and more for profit. As we look into the future, I anticipate subsequent conversations as it relates to compensation to see the salary line diminish and the bonus/ shareholder distribution portion increase. I am excited about the next 10 years and being an integral part of the growth of our organization, taking on new areas of responsibility, growing the profitability, market share and therefore my ownership and making an even greater contribution to improving the culture and climate of our business at all levels.

	Current/Original	Proposed NEW PLAN
Base Salary	\$55,000	\$67,000
Bonus	\$75,000	\$80,000 Target paid on 85% or greater on sliding scale plus 33% of overage
Shareholder Dist.	8% of Net SD	10% of Net SD
Car	\$6,000	\$10,000
Boat	\$0	\$12,000 one time
Family Medical	\$7000	\$7000
Life Ins.	\$200	\$1000
Disability Ins.	\$0	\$3500
Computer/Phone	\$2000	\$2000
Tax Preparation	\$500	\$500
Entertainment	\$1200	\$2400
Training/Workshops	\$2000	\$2000
Total Comp	\$138,900 (Inc. \$15K in SD)	\$207,400 (Inc. \$20K in SD)

BASE AND BONUS

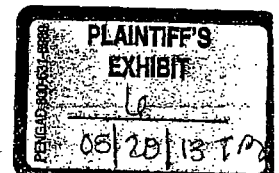
Base Salary adjusted to \$67,000 annually and bonus target of \$80,000 paid out on an *aggregate* basis. Sliding scale for bonus is based on a 50% payout for Total Controllable Profit falling between 85% -95% of budget. Results above 96% of budgeted Total Controllable Profit are paid out at 100% and any results over 100% of Total Controllable Profit will pay out an additional 33%.

SHAREHOLDER DISTRIBUTIONS

If I did not achieve 10% ownership in 2008, we will extend current program through 2009 in order to equalize current ownership at 10% across the board. Distributions going forward after the close of 2009 will be based on 10% ownership.

BENEFITS

Thank you for arranging the transfer of ownership for the boat. We look forward to using it. Medical benefits will remain the same. We will move forward with a 10 year Term Life policy that falls within the \$1000 budgeted. Disability will be added as a company benefit.



I will finalize life insurance details and anticipate hearing from you once Curt has been able to complete our partnership and employment agreements in a timely manner. Please give me a reasonable timeline and expectation for this to be completed as it is extremely important to me to have this finalized. I know this has been a long process (more so than it should have) and look forward to having things in place.

Thank you again

Kyle Pertuis

(6)

kyle pertuis**From:** Mark Hammond [Mark@larkinsontheriver.com]**Sent:** Tuesday, June 30, 2009 1:37 PM**To:** kyle@larkinsontheriver.com**Subject:** RE: Comp

Thanks Kyle. We're looking forward to the next 10 years also. I'll get these details to Curt to incorporate into the employment agreement and ask him about timeline as well.

I'd like you to have Ashley add you to the Grill's payroll at a rate of \$1000/mo. or \$461.54 per pay period. Then let's do \$2500/mo. from the River which will be \$1153.85 per pay period and the balance (\$25,000) of your salary will come from the Lake at the rate of \$2088.33/mo. or \$961.54 per pay period. Just to double check the math, you should have 26 paychecks per year times each of \$461.54, \$1153.85 and \$961.54 respectively for a total annual salary of \$67,000.18. Have her set you up on direct deposit for all three locations.

The increase in the bonus plan is approved and we all hope you exceed it. It will be up to your managers to make that happen but only through your coaching and direction will that become a reality. Keep working smarter, not harder. Watch the data but don't discount your gut instinct.

Please get with Raymond or Michele on the disability. You and I need to discuss how we roll this out. As I mentioned before, if we have to pay 100% of the disability insurance premium, we may only be able to pay 90% of the manager's Blue Cross bill. Ask Michele what other companies our size are doing with regard to premium splits between employer and employee.

See you on Thursday.

Mark

From: kyle@larkinsontheriver.com [mailto:kyle@larkinsontheriver.com]**Sent:** Tuesday, June 30, 2009 12:26 PM**To:** Mark Hammond**Subject:** RE: Comp

Sorry-- here it is

Kyle Pertuis
Managing Partner
Larkin's Restaurants Inc.
828-289-5613

----- Original Message -----

Subject: RE: Comp

From: "Mark Hammond" <Mark@larkinsontheriver.com>

Date: Tue, June 30, 2009 10:22 am

To: "Kyle Pertuis" <kyle@larkinsontheriver.com>

Missing the attachment.



Subject: Re: Stock Repurchase
From: Kyle Pertuis (kylepertuis@yahoo.com)
To: Mark@larkinsontheriver.com;
Cc: lpm@larkinsontheriver.com;
Bcc: kylepertuis@yahoo.com;
Date: Friday, December 4, 2009 5:29 PM

Mark
Just wanted to get back to you before the weekend-

First of all I assume the rescinded offer you are referring to is the same offer that I told you on the phone that I did not believe was a fair valuation and that I needed more information from Mark LeWinter in order to complete a more thorough analysis- Since that time I have not received a call or email from him, nor has my financial advisor, requesting documents for that review. Is there a reason for this? I am sure he has just been busy or out of the office--I left him a message this morning--I will be out through Monday at which time I will try to reach Mark L. again and complete that analysis before you return on Dec 9th so we can have further discussions-

As far as my boat is concerned- I don't know why you continue to bring this up-- I know I was clear on the phone about the fact that it is my boat and there is nothing further to discuss about that. I especially don't appreciate the fact that you are bringing this up again after the slanderous email that Larkin sent and the fact that when you made your initial stock re-purchase offer you also offered to re-purchase the boat from me in order to save me the expense from having to move it-

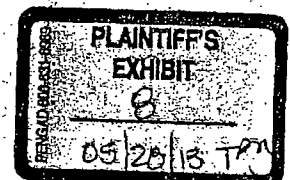
I have every intention to resolve things with you both on fair and ammenable terms- that is all I have ever requested. My decision to move on from Larkin's was based on changes I needed to make to positively impact my life. I represented the brand with the utmost integrity and professionalism. The last 9 1/2 years have given me a tremendous number of experiences, learning opportunities and growth - and for that- I am truly appreciative. Now I am looking forward to every new opportunity and what is truly best for me and my family and wish the same for you and everyone that represents the Larkin's Brand. I continue to promote & support your businesses and the people that represent you on a daily basis and do not appreciate you all taking this direction-

I will be available again after Monday for further correspondence, discussions and to schedule a time to meet when you are in town-

Kyle Pertuis
864-380-0228

From: Mark Hammond <Mark@larkinsontheriver.com>
To: kylepertuis@yahoo.com
Cc: Larkin <LPM@larkinsontheriver.com>
Sent: Wed, December 2, 2009 2:59:44 PM
Subject: Stock Repurchase

Kyle,



<http://us.mg4.mail.yahoo.com/neo/launch?.rand=cflr6vptugpsn>

11/9/2011

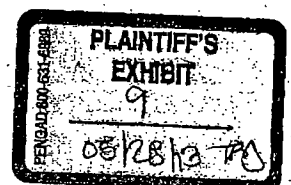
We are rescinding our offer to purchase your stock interest. Should you choose to deliver the Hurricane boat back to us this weekend before the lake goes down for proper storage we will consider further discussions.

Thank you.

Mark Hammond
Larkin's Restaurants
(828) 289-5615

**FRONT ROE RESTAURANTS, INC.,
LAKE POINT RESTAURANTS, INC.,
&
BEACHFRONT FOODS, INC.**

CHARLES L. ALFORD, III, INC.
NOVEMBER 11, 2011



APPRAISAL
OF
FAIR VALUE
OF
100% EQUITY OWNERSHIP
IN
FRONT ROE RESTAURANTS, INC.,
LAKE POINT RESTAURANTS, INC.,
&
BEACHFRONT FOODS, INC.

Effective date of valuations: December 31, 2010

Date of report: November 11, 2011

Appraiser: Charles L. Alford, Ph.D.

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INTRODUCTION

I have been retained by Kyle Pertuis and his counsel to complete analyses of the fair values of 100% ownership interests in the following three business entities:

- Front Roe Restaurants, Inc., d/b/a Larkin's on the River, Greenville, SC
- Lake Point Restaurants, Inc., d/b/a Larkin's Carolina Grill, Columbus, NC
- Beachfront Foods, Inc., d/b/a Larkin's on the Lake, Lake Lure, NC

Purpose of the Analyses

Mr. Pertuis is a former employee and still owns equity interests in the entities. He and the other owners, Larkin Hammond and Mark Hammond, disagree as to the value of Mr. Pertuis' ownership interests. My role is limited to consideration of the fair value of the entities; I do not have an opinion regarding the ownership percentages that can be claimed by Mr. Pertuis.

Standard of Value and Effective Valuation Date

Standard of value – I have considered the fair value of 100% equity interest in each of the entities.

Valuation date – The effective valuation date for each of the analyses is December 31, 2010.

Organization of this Report

This report summarizes my analyses. In the interest of saving time and resources, the report does not include much of the narrative that would be included in reports for other purposes, such as estate planning. Nevertheless, I have attempted to explain thoroughly the assumptions and methodologies that have been applied.

Following parts of this section address relevant issues that may be considered by the final resolution of the disagreement among the owners.

The next section of the report identifies common methodologies that were applied and the value conclusions that were reached.

The next sections address the appraisals of the individual entities and include summary tables showing computations.

A final section of the report identifies the practical implications regarding the potential buy-out of Mr. Pertuis.

Intercompany Transactions

Numerous intercompany transactions have occurred. According to income tax returns, as of the effective valuation date, Lake Point and Beachfront owed Front Roe \$319,000 and \$114,000, respectively, and Lake Point owed Beachfront \$28,000. So far as I have been able to determine, interest has not been paid or accrued on any of the intercompany loans.

Transactions between Companies and Owners

According to income tax returns, as of the effective valuation date, shareholders owed the three entities a total of \$529,000, and at the same time two of the entities (Front Roe and Beachfront) owed the shareholders a total of \$731,000. So far as I have been able to determine, interest has not been paid or accrued on any of the loan transactions between the companies and the owners.

Other Intercompany Issues

Some operating expenses have not been strictly assigned or even prorated among the entities. This is true at least for salaries paid to the three owners, based on information provided by each of them.

Need for Separate Appraisals

So far as possible, I have appraised each of the entities as a stand-alone business. While it would be theoretically possible to complete an appraisal by consolidating the operations and financial statements of the entities, several considerations make that approach unsatisfactory.

- The parties in this matter are not in agreement as to the ownership percentages to which Mr. Pertuis has a claim. Assertions regarding his ownership percentages vary between the parties and among the business entities. If the finder of fact were to determine that his proportionate ownership claims vary, a consolidated analysis would not be helpful.
- The entities are in different locations and are quite diverse in terms of revenues and profitability.
- One of the entities is leased from a related entity owned by Mr. and Mrs. Hammond.

Enterprise Value vs. Equity Value

The enterprise level of value normally reflects the value of the operating entity from the perspective of a buyer. The equity level of value reflects the ultimate value to the seller. A use-

ful analogy is the market value of a home as opposed to its owner's equity. The market value of the home is in no way related to the balance due on the home mortgage. But upon the sale of the home, the final yield to the seller is the market value reduced by the mortgage balance. In the same way, a reference to the so-called "market value" of a business enterprise often reflects what that business would sell for, but it does not reflect the value of the current shares outstanding. That value is the equity value, representing the final yield to the current owners upon selling the business.

Therefore, practical consideration of the likely results of an actual sale of a closely held business suggests that, if the enterprise level of value is based on the projected economic performance of the subject company (income-based valuation), certain factors regarding its financial condition at the time of the anticipated sale or as of the effective valuation date must also be considered. For example, if the business under consideration is undercapitalized, a portion of the new owner's investment might be an injection of working capital, and therefore the entire amount that the new owner is willing to invest will not accrue to the seller. And of course the opposite is also true; that is, an overcapitalized business – such as one with much excess cash – has an additional element of equity value. Or, if the purchaser does not assume certain of the business indebtedness, the ultimate value received by the seller will be less than the established purchase price. On the other hand, if the seller retains certain assets, this represents additional value of the ownership interest over and above the purchase price. In other words, it is usually necessary that certain balance sheet adjustments be applied to the enterprise value in order to arrive at the final estimate of fair value of the ownership share. The analysis described herein includes those adjustments where appropriate.

METHODOLOGY OVERVIEW AND CONCLUSIONS

Standard appraisal practice, legal precedent, and common sense all require that three approaches be considered in a business appraisal: the income approach (valuation based on operating performance), the asset approach (valuation based on market values of assets and liabilities), and the market approach (valuation based on consideration of sales of similar businesses). In reaching my final conclusions, I have considered each of these approaches.

In the cases of Front Roe and Lake Point, I have computed enterprise values based on discounted cash flow and made appropriate balance sheet adjustments to the enterprise values to arrive at the fair value of 100% controlling interest. Specific calculations are identified in the respective sections of this report that address the individual entities.

Beachfront has negative equity and negative normalized earnings. It has no value.

Methodological Commonalities

Initial enterprise value estimates were computed as present value of weighted average three-year cash flows using the following common variable inputs:

- Owner compensation was normalized by adding to reported profit all compensation to owners, including Larkin Hammond, Mark Hammond, and Kyle Pertuis, and subtracting the combined average earnings of General/Operations Managers (\$96,930 in 2010 dollars) and Marketing Managers (\$91,000 in 2010 dollars).¹ These normalized salaries were proportionately allocated among the three entities based on their 2010 revenues. The Hammonds indicate that Mr. Pertuis was not replaced and therefore all of his salary was added back in normalizing incomes. Mr. Pertuis indicates that his salary was \$55,000 through July 2008, and that he was paid by Front Roe and Lake Point. Thereafter (until his employment ended in October 2009) his salary was set at \$67,000 and he was paid by each of the entities.

¹ U. S. Bureau of Labor Statistics, Greenville-Mauldin-Easley, SC, May 2010, SOC codes 111021 and 112021.

- The present value discount rate was computed at 16.05%, as follows:

	Risk-free rate (10-year treasuries)	3.29%
plus	Equity premium (Ibbotson ²)	6.70%
plus	Size premium (Ibbotson 10z)	12.06%
plus	Industry risk premium (Ibbotson)	- 1.99%
	Discount rate for non-controlling interest	20.06%
divided by	1 + control premium	1.25
	Discount rate for controlling interest	16.05%

- Projected annual capital expenditures were based on average net capital outlays for Front Roe and Beachfront. For Lake Point, the projection was \$2,000 annually.
- Gross cash flow was tax-affected, and after-tax cash flow was projected to increase at 2.8% annually, the long-run rate of inflation projected by the Social Security Administration.³
- I have assumed that the seller of any one of the entities would retain excess working capital, other financial assets (due from owners, due from related companies, employee advances, etc.) and all liabilities. Required working capital was based on the top quartile ratio of sales to working capital for full service restaurants.⁴ I have assumed that the buyer of any one of the entities would acquire fixed assets as part of the purchase price. Intangible assets were assigned no incremental value.
- In considering market transactions, I did not include any evaluation of sales of publicly traded companies, judging that comparables could not be found in that population, even after appropriate adjustments. I did consider two sources of information regarding private transactions: Pratt's Stats and BizBuySell. The Pratt's Stats database included sales of restaurants. The BizBuySell website lists restaurants for sale in South Carolina and North Carolina. The latter lists offering prices only, not actual sales prices. The Pratt's Stats database for NAICS code 722110 (full service restaurants) included over 600 transactions. Transactions were screened to eliminate those

² Morningstar, Ibbotson SBBI 2011 Valuation Handbook.

³ Social Security Administration, 2011 OASDI Trustees Report, Table V.B1, "Principal Economic Assumptions."

⁴ The Risk Management Association, *Annual Statement Studies: Financial Ratio Benchmarks*, 2009-2010.

occurring before 1/1/2000. Also eliminated from consideration were franchises, fast food restaurants, non-dinner facilities, ethnic specialty, other specialty (microbrewers, organic, sports bars, pizza, gift shops, etc.). Finally, I limited the Pratt's Stats comparables for each of the three entities to restaurant with sales no less than 50% and no more than 200% of the subject company. The screening resulted in 21 comparables for Front Roe, 77 for Beachfront, and 48 for Lake Point. I also reviewed the trend in Pratt's Stats multiples over the period 2000-2010. For all restaurant sales, the average annual multiple of sales and multiple of EBITDA trended downward during the period.

Value Conclusion – Front Roe

I have concluded that the fair value of 100% ownership interest in Front Roe on December 31, 2010 was \$1,376,000.

Value Conclusion – Lake Point

I have concluded that the fair value of 100% ownership interest in Lake Point on December 31, 2010 was \$507,000.

Value Conclusion – Beachfront

I have concluded that the fair value of 100% ownership interest in Beachfront on December 31, 2010 was \$0.

FRONT ROE RESTAURANTS, INC.

Exhibits 1-7 summarize the computations leading to the computed equity value of 100% ownership interest in Front Roe.

The normalized operating results only reflect adjustments for market wages to owners. I have not included any adjustments for personal benefits that may have accrued to owners other than their salaries. Mr. Pertuis believes that Mr. and Mrs. Hammond may have derived benefits that did not represent essential business expenses. Additionally, Mr. Pertuis may have himself derived some similar benefits. I do not have any substantive documentation regarding this. If in fact any of the owners received any such benefits, my value computations are understated.

The selected enterprise value is the computed present value of cash flows. This value falls within the range of value benchmarks evidenced in the Pratt's Stats database.

Exhibit 1
Front Roe Restaurants, Inc.
Larkin's on the River, Greenville, SC
Operating Results
Tax Basis

	2008	2009	2010
Gross Receipts, net of returns and allowances	3,192,299	3,051,020	3,594,309
Cost of Goods Sold			
Materials			
Beginning Inventory	43,867	74,855	77,792
Purchases	912,940	892,337	1,089,803
Ending Inventory	74,855	77,792	97,779
Total Materials Cost	881,952	889,400	1,069,816
Labor	815,209	809,786	897,238
Other			
Payroll Taxes	110,842	103,623	118,008
Restaurant and Cleaning Supplies	33,132	44,724	49,405
Total Other	143,974	148,347	167,413
Total Cost of Goods Sold	1,841,135	1,847,533	2,134,467
Gross Profit	1,351,164	1,203,487	1,459,842
Operating Expenses			
Compensation of Officers		30,000	60,000
Salaries and Wages	36,066		
Repairs and Maintenance	14,521	27,814	18,857
Rents	110,272	117,734	123,594
Taxes and Licenses	8,483	15,045	15,944
Interest	73,095	57,000	53,627
Depreciation	68,780	65,610	56,603
Advertising	42,353	53,807	65,447
Amortization	39,997	39,997	39,997
Auto and Truck Expense	23,686	24,966	16,194
Bank Charges	65,204	71,718	89,178
Catering and Event	258,340	259,251	281,239
Dues and Subscriptions	1,704	1,176	724
Education and Training	5,382	3,730	7,387
Gifts	865	3,111	1,403
Insurance	46,667	51,358	57,057
Janitorial	5,076		
Laundry and Cleaning	49,824		
Legal and Professional	15,121	18,969	14,848
Linen Service		37,566	52,306
Meals and Entertainment	475	188	594
Miscellaneous	699	2,077	365
Office Expense	7,338	7,156	9,232
Outside Services	20,870	37,972	56,216
Pest Control	1,695	1,746	1,620
Postage	1,442	1,088	736
Printing	9,098	6,181	7,015
Promotion	1,134	4,767	5,404
Seasonal Decorations	1,260	519	3,489
Security	454	482	1,234
Telephone	12,751	14,084	13,512
Trash Collection	6,194	6,774	6,412
Travel	5,007	1,796	4,232
Uniforms		4,737	6,599
Utilities	54,842	52,621	56,404
Web Site Maintenance	971	1,792	3,974
Total Operating Expenses	989,666	1,022,832	1,131,443
Operating Profit	361,498	180,655	328,399
Miscellaneous Income		12,279	9,708
Total Profit	361,498	192,934	338,107

Exhibit 2
Front Roe Restaurants, Inc.
Larkin's on the River, Greenville, SC
Normalized Operating Results
Tax Basis

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Total Profit	361,498	192,934	338,107
Wage adjustment			
Wage additions			
Wages paid to Mark Hammond		30,000	60,000
Wages paid to Larkin Hammond			
Wages paid to Kyle Pertuis	27,500	21,194	
Wage subtractions			
Normalized wages for General/Operations Manager -- allocation	(59,969)	(61,468)	(63,005)
Normalized wages for Marketing Manager -- allocation	(56,300)	(57,707)	(59,150)
Total wage adjustment	<u>(88,768)</u>	<u>(67,981)</u>	<u>(62,155)</u>
Normalized profit	272,730	124,953	275,953
Interest expense	73,095	57,000	53,627
Normalized EBIT	<u>345,825</u>	<u>181,953</u>	<u>329,580</u>
Non-cash expenses			
Depreciation	68,780	65,610	56,603
Amortization	39,997	39,997	39,997
Total non-cash expenses	<u>108,777</u>	<u>105,607</u>	<u>96,600</u>
Normalized EBITDA	454,602	287,560	426,180
Net capital outlays	<u>(13,640)</u>	<u>(64,737)</u>	<u>(28,673)</u>
Normalized cash flow	<u>440,962</u>	<u>222,823</u>	<u>397,507</u>
Normalized owners' discretionary income (normalized cash flow + capital outlays + normalized wages for GM)	<u>514,570</u>	<u>349,028</u>	<u>489,184</u>

Exhibit 3
Front Roe Restaurants, Inc.
Net Asset Value
Income Tax Basis
December 31, 2010

ASSETS		
Current Assets		
Cash	49,147	
Inventories	97,779	
Other		
Due from Beachfront	114,009	
Due from Lake Point	319,281	
Employee Advance	10,901	
Total Other	<u>444,191</u>	
Total Current Assets		591,117
Fixed Assets -- Net		197,019
Intangible Assets -- Net		373,316
Loans to Shareholders		<u>454,685</u>
TOTAL ASSETS		1,616,137
LIABILITIES		
Current Liabilities		
Credit Card Payable	8,207	
Line of Credit	95,000	
Payroll Taxes Payable	1,554	
Sales Tax Payable	<u>23,927</u>	
Total Current Liabilities		128,688
Loans from Shareholders		275,388
Mortgages, Notes, Bonds Payable		<u>639,850</u>
TOTAL LIABILITIES		1,043,926
OWNERS' EQUITY		572,211

Exhibit 4

Front Roe Restaurants, Inc.

Enterprise Value Benchmark Based on Present Value of Projected Cash Flow

Normalized EBITDA	384,710
Average capital outlays	<u>(35,810)</u>
Normalized pretax cash flow	348,901
Imputed corporate tax*	<u>136,071</u>
Normalized after-tax cash flow*	<u><u>212,829</u></u>
Enterprise value benchmark (Present value of cash flow with 2.8% annual growth rate)	<u><u>1,606,501</u></u>

* Assumes future depreciation expense equals future capital outlays.

Exhibit 5

Front Roe Restaurants, Inc.

Enterprise Value Benchmarks Based on Pratt's Stats Market Transactions

Selling Price Expressed as a Multiple of	Mean multiple, excluding outliers	Enterprise Value Indicator
Discretionary Earnings	3.06	1,496,903
Sales	0.31	1,114,236
EBITDA	4.05	1,726,027
EBIT	4.82	1,588,573

Exhibit 6
Front Roe Restaurants, Inc.
Balance Sheet Adjustments to Compute Equity Value

Cash plus inventories -- 12/31/2010	146,926	
Required working capital, per RMA top quartile	<u>118,234</u>	
Excess working capital		28,692
Other assets remaining with or credited to seller		
Due from Beachfront**	**	
Due from Lake Point	319,281	
Due from shareholders	454,685	
Employee advances	<u>10,901</u>	
Total assets remaining with or credited to seller		813,559
Liabilities remaining with seller		
Credit card payable	(8,207)	
Line of credit	(95,000)	
Payroll taxes payable	(1,554)	
Sales tax payable	(23,927)	
Due to shareholders	(275,388)	
Mortgages, notes, bonds payable	<u>(639,850)</u>	
Total liabilities remaining with seller		(1,043,926)
Net balance sheet adjustment to enterprise value to arrive at equity value		(230,367)

** Amount due from Beachfront deemed of no value.

Exhibit 7

Front Roe Restaurants, Inc.

**Computation of Fair Value of 100%
Equity Interest**

Selected enterprise value	\$ 1,606,501
Balance sheet adjustment	<u>(230,367)</u>
Equity value	<u>\$ 1,376,135</u>
rounded to	<u>\$ 1,376,000</u>

LAKE POINT RESTAURANTS, INC.

Exhibits 8-14 summarize the computations leading to the computed equity value of 100% ownership interest in Lake Point.

The normalized operating results only reflect adjustments for market wages to owners. I have not included any adjustments for personal benefits that may have accrued to owners other than their salaries. Mr. Pertuis believes that Mr. and Mrs. Hammond may have derived benefits that did not represent essential business expenses. Additionally, Mr. Pertuis may have himself derived some similar benefits. I do not have any substantive documentation regarding this. If in fact any of the owners received any such benefits, my value computations are understated.

The selected enterprise value is the computed present value of cash flows. This value falls within the range of value benchmarks evidenced in the Pratt's Stats database.

Exhibit 8
Lake Point Restaurants, Inc.
Larkin's on the Lake, Lake Lure, NC
Operating Results
Tax Basis

	2008	2009	2010
Gross Receipts, net of returns and allowances	1,623,378	1,483,778	1,511,742
Cost of Goods Sold			
Materials			
Beginning Inventory	14,588	20,222	15,810
Purchases	557,047	513,159	513,690
Ending Inventory	20,222	15,810	17,281
Total Materials Cost	551,413	517,571	512,219
Labor	323,817	333,603	318,008
Other			
Payroll Taxes	59,669	54,671	47,872
Restaurant and Cleaning Supplies	23,553	36,708	46,515
Total Other	83,222	91,379	94,387
Total Cost of Goods Sold	958,452	942,553	924,614
Gross Profit	664,926	541,225	587,128
Operating Expenses			
Compensation of Officers	95,608	59,555	67,738
Salaries and Wages		37,289	
Repairs and Maintenance	24,323	22,357	22,654
Rents	165,200	182,965	187,522
Taxes and Licenses	2,235	2,649	3,220
Interest	2,007	3,479	2,619
Depreciation	11,835	10,800	6,927
Advertising	26,470	30,961	26,292
Amortization	12,267	12,267	12,267
Auto and Truck Expense	452	0	710
Bank Charges	35,578	36,755	37,699
Dues and Subscriptions		526	806
Education and Training	1,243	535	1,780
Gifts	815		1,086
Insurance	36,002	32,825	34,772
Legal and Professional	7,201	6,462	13,372
Linen Service		11,875	9,764
Meals and Entertainment	180	75	
Miscellaneous	2,885	902	1,495
Moving Expense		1,950	
Office Expense	3,491	2,612	2,384
Outside Services	23,919	7,822	7,573
Pest Control	1,859	2,157	1,729
Postage	378	820	863
Promotion			2,751
Security	443	554	693
Telephone	10,564	8,406	8,132
Trash Collection	4,048	3,491	3,664
Travel	913	1,824	2,407
Uniforms	5,604	6,780	4,486
Utilities	43,477	32,002	39,387
Total Operating Expenses	518,997	520,695	504,792
Operating Profit	145,929	20,530	82,336
Miscellaneous Income	1,786	8,365	3,889
Total Profit	147,715	28,895	86,225

Exhibit 9
Lake Point Restaurants, Inc.
Larkin's on the Lake, Lake Lure, NC
Normalized Operating Results
Tax Basis

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Operating Profit	147,715	28,895	86,225
Wage adjustment			
Wage additions			
Wages paid to Mark Hammond	0	0	0
Wages paid to Larkin Hammond	95,608	59,555	67,738
Wages paid to Kyle Pertuis	27,500	21,194	0
Wage subtractions			
Normalized wages for General/Operations Manager -- allocation	(23,065)	(23,641)	(24,233)
Normalized wages for Marketing Manager -- allocation	(21,654)	(22,195)	(22,750)
Total wage adjustment	<u>78,389</u>	<u>34,913</u>	<u>20,756</u>
Normalized profit	226,104	63,808	106,981
Interest expense	2,007	3,479	2,619
Normalized EBIT	<u>228,111</u>	<u>67,287</u>	<u>109,600</u>
Non-cash expenses			
Depreciation	11,835	10,800	6,927
Amortization	12,267	12,267	12,267
Total non-cash expenses	<u>24,102</u>	<u>23,067</u>	<u>19,194</u>
Normalized EBITDA	252,213	90,354	128,794
Net capital outlays	(2,050)	(78,958)	(33,895)
Normalized cash flow	<u>250,163</u>	<u>11,396</u>	<u>94,899</u>
Normalized owners' discretionary income (normalized cash flow + capital outlays + normalized wages for GM)	<u>275,278</u>	<u>113,995</u>	<u>153,026</u>

Exhibit 10
Lake Point Restaurants, Inc.
Net Asset Value
Income Tax Basis
December 31, 2010

ASSETS		
Current Assets		
Cash	308,179	
Inventories	<u>17,281</u>	
Total Current Assets		325,460
Fixed Assets -- Net		117,744
Intangible Assets -- Net		33,729
Loans to Shareholders		<u>74,560</u>
TOTAL ASSETS		551,493
LIABILITIES		
Current Liabilities		
Accounts Payable	20,055	
Due to Beachfront	27,866	
Due to Front Roe	319,281	
Sales Tax Payable	<u>2,780</u>	
Total Current Liabilities		<u>369,982</u>
TOTAL LIABILITIES		369,982
OWNERS' EQUITY		181,511

Exhibit 11

Lake Point Restaurants, Inc.

Enterprise Value Benchmark Based on Present Value of Projected Cash Flow

Normalized EBITDA	136,550
Average capital outlays	<u>(44,841)</u>
Normalized pretax cash flow	91,709
Imputed corporate tax*	<u>27,513</u>
Normalized after-tax cash flow*	<u><u>64,196</u></u>
Enterprise value benchmark (Present value of cash flow with 2.8% annual growth rate)	<u><u>484,573</u></u>

* Assumes future depreciation expense equals future capital outlays

Exhibit 12.

Lake Point Restaurants, Inc.

Enterprise Value Benchmarks Based on Pratt's Stats Market Transactions

Selling Price Expressed as a Multiple of	Mean multiple, excluding outliers	Enterprise Value Indicator
Discretionary Earnings	5.01	766,660
Sales	0.32	483,757
EBITDA	3.31	426,306
EBIT	3.60	394,558

Exhibit 13

Lake Point Restaurants, Inc.

Balance Sheet Adjustments to Compute Equity Value

Cash plus inventories -- 12/31/2010	325,460	
Required working capital, per RMA top quartile	<u>35,239</u>	
Excess working capital		290,221
Loans to shareholders		
Total assets remaining with or credited to seller	<u>74,560</u>	364,781
Liabilities remaining with seller		
Accounts Payable	(20,055)	
Due to Beachfront **	**	
Due to Front Roe	(319,281)	
Sales Tax Payable	<u>(2,780)</u>	
Total liabilities remaining with seller		<u>(342,116)</u>
Net balance sheet adjustment to enterprise value to arrive at equity value		<u>22,665</u>

** Amount due to Beachfront excluded from adjusted net asset value of Beachfront, and therefore excluded here as well.

Exhibit 14

Lake Point Restaurants, Inc.

Computation of Fair Value of 100% Equity Interest

Selected enterprise value	\$ 484,573
Balance sheet adjustment	<u>22,665</u>
Equity value	<u>\$ 507,238</u>
rounded to	<u>\$ 507,000</u>

BEACHFRONT FOODS, INC.

Exhibits 15-16 summarize the reported and normalized operating results of Beachfront, 2008-2010. All measures of operating results show losses. As an operating entity, Beachfront does not have enterprise value in excess of its adjusted net asset value.

Exhibit 17 shows that the adjusted net asset value of Beachfront is negative as well. Excluding loans to and from shareholders, Beachfront would have a small positive adjusted net asset value. Realistically, however, if the entity were sold any net proceeds would be used to partially satisfy obligations, including those to shareholders. Therefore final proceeds due to ownership would be \$0.

Exhibit 15
Beachfront Foods, Inc.
MarLarkKies Grill & Bar / Larkin's Carolina Grill, Columbus, NC
Operating Results
Tax Basis

	2008	2009	2010
Gross Receipts, net of returns and allowances	607,155	780,878	673,942
Cost of Goods Sold			
Materials			
Beginning Inventory	0	7,359	10,641
Purchases	224,022	312,681	238,228
Ending Inventory	7,359	10,641	9,184
Total Materials Cost	216,663	309,399	239,685
Labor	188,522	196,887	177,660
Other			
Payroll Taxes	26,177	26,387	26,063
Restaurant and Cleaning Supplies	16,126	28,593	22,239
Total Other	42,303	54,980	48,302
Total Cost of Goods Sold	447,488	561,266	465,647
Gross Profit	159,667	219,612	208,295
Operating Expenses			
Salaries and Wages		4,385	9,000
Repairs and Maintenance	3,925	8,684	14,130
Rents	58,779	70,529	68,061
Taxes and Licenses	5,614	2,605	2,416
Interest	20,062	27,054	26,045
Depreciation	140,458	48,694	35,614
Advertising	34,398	38,921	33,565
Amortization	133	133	133
Auto and Truck Expense	1,042	574	256
Bank Charges	11,142	18,055	16,337
Dues and Subscriptions	370	535	280
Education and Training		360	129
Insurance	15,949	22,551	15,711
Legal and Professional	3,780	5,690	3,445
Linen Service	10,089	11,080	9,352
Meals and Entertainment	25	14	
Miscellaneous	5,134	179	734
Moving Expense	1,997		
Office Expense	5,411	2,270	1,008
Outside Services	6,254	8,280	7,835
Pest Control	1,140	1,473	1,251
Postage	129	236	243
Promotion			750
Security	522	802	1,359
Telephone	6,358	4,967	4,830
Trash Collection		680	326
Travel		470	
Uniforms	4,306	1,445	1,135
Utilities	27,907	36,557	37,173
Total Operating Expenses	364,924	317,223	291,118
Operating Profit	(205,257)	(97,611)	(82,823)
Other Income			556
Total Profit*	(205,257)	(97,611)	(82,267)

* Excluding gain or loss on sale of assets

Exhibit 16
Beachfront Foods, Inc.
MarLarkies Grill & Bar / Larkin's Carolina Grill, Columbus, NC
Normalized Operating Results
Tax Basis

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Operating Profit	(205,257)	(97,611)	(82,267)
Wage adjustment			
Wage additions			
Wages paid to Mark Hammond			
Wages paid to Larkin Hammond			
Wages paid to Kyle Pertuis		7,444	
Wage subtractions			
Normalized wages for General/Operations Manager -- allocation	(9,226)	(9,457)	(9,693)
Normalized wages for Marketing Manager -- allocation	(8,662)	(8,878)	(9,100)
Total wage adjustment	(17,887)	(10,890)	(18,793)
Normalized profit	(223,144)	(108,501)	(101,060)
Interest expense	20,062	27,054	26,045
Normalized EBIT	(203,082)	(81,447)	(75,015)
Non-cash expenses			
Depreciation	140,458	48,694	35,614
Amortization	133	133	133
Total non-cash expenses	140,591	48,827	35,747
Normalized EBITDA	(62,491)	(32,620)	(39,268)
Normalized capital outlays	(2,000)	(2,000)	(2,000)
Normalized cash flow	(64,491)	(34,620)	(41,268)
Normalized owners' discretionary income (normalized cash flow + capital outlays + normalized wages for GM)	(53,266)	(23,164)	(29,575)

Exhibit 17
Beachfront Foods, Inc.
Accounting and Adjusted Net Asset Values
Income Tax Basis
December 31, 2010

	-----Accounting Values-----	-----Adjusted Values-----
ASSETS		
Current Assets		
Cash	26,871	26,871
Inventories	9,184	9,184
Due from Lake Point	<u>27,866</u>	
Total Current Assets	63,921	36,055
Security Deposits	4,043	4,043
Fixed Assets -- Net	497,924	497,924
Intangible Assets -- Net	745	
Capitalized Costs -- Greenwood	1,685	
Loans to Shareholders	<u>60</u>	<u>60</u>
TOTAL ASSETS	568,378	538,082
LIABILITIES		
Current Liabilities		
Due to Front Roe	114,009	
Line of Credit	45,250	45,250
Sales Tax Payable	<u>3,832</u>	<u>3,832</u>
Total Current Liabilities	163,091	49,082
Loans from Shareholders	456,052	456,052
Mortgages, Notes, Bonds Payable	<u>443,219</u>	<u>443,219</u>
TOTAL LIABILITIES	1,062,362	948,353
OWNERS' EQUITY	(493,984)	(410,271)

IMPLICATIONS REGARDING BUY-OUT OF PERTUIS SHARES

The fair values reported on page 6 are the computed proceeds to 100% equity ownership upon the sale of each of the entities. Upon the sale of each entity, amounts due from shareholders would be collected and amounts due to shareholders would be distributed prior to distributions of net proceeds of the sale. The resulting transactions would yield net proceeds of \$1,376,000 for 100% equity ownership of Front Roe, \$507,000 for 100% equity ownership of Lake Point, and \$0 for 100% equity ownership of Beachfront.

Of course sales of these entities to an unrelated third party are not expected to occur. In fact, I presume that the end result will be that Mr. Pertuis will sell his ownership interests in the companies to the other owners. If the finder of fact accepts the fair value computations herein and also determines that the amounts due to Mr. Pertuis are equal to the respective fair values times his respective ownership interests, the net proceeds to Mr. Pertuis should be the sum of these amounts plus or minus any amounts due to him from the companies or from him to the companies. Values computed by me do not include any loans that may exist between Mr. Pertuis and the companies.

APPRAISER'S QUALIFICATIONS

I hold the Bachelor of Arts Degree in Economics from Wofford College, 1968 and the Ph.D. in Economics and Business Administration from the University of Alabama, 1971.

I was a member of the Economics and Business Administration faculty at Furman University for 32 years, serving at various times as Chair of that Department and Chair of the University Faculty.

I have been engaged in over fifty cases to complete analyses of privately owned companies. I have offered expert opinions in state, federal, and family courts on such matters on many occasions, and have never failed to be qualified as an expert in appraisal of privately owned companies. In addition to having been retained by attorneys and their clients, I have been appointed as the Court's expert in business appraisal matters in South Carolina Circuit Court and South Carolina Family Court.

I have also been retained on numerous occasions to offer opinions regarding company values when litigation was not an issue.

Following are my résumé and a summary of my testimony since 2006. This summary is maintained pursuant to Federal Rules.