

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

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**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas**

S.C. Supreme Court

J. Mark Hayes, II, Circuit Court Judge

**Unpublished Opinion No. 2015-UP-307
(S.C. Ct. App. filed June 24, 2015)**

Allcare Medical, LLC, Respondent,

v.

Ahava Hospice, Inc. f/k/a Ascension Hospice Inc.,
Robert A. Williams, and Lancelot D. Wright,
Defendants,

Of whom Ahava Hospice, Inc. f/k/a Ascension Hospice
Inc., and Lancelot D. Wright are the **Petitioners.**

APPENDIX FOR PETITION FOR A WRIT OF CERTIORARI

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ORIGINAL

THE STATE OF SOUTH CAROLINA
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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Judge J. Mark Hayes, II Spartanburg County

Case No.

Allcare Medical, LLC, Respondent

v.

**Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., Robert A. Wright and
Lancelot D. Wright,**

Defendants,

Of whom

**Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., and Lancelot Wright
are the**

Appellants

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Allcare Medical, LLC,

Plaintiff,

vs.

Ahava Hospice, Inc. f/k/a Ascension
Hospice Inc., Robert A. Williams, and
Lancelot D. Wright;

Defendants.

IN THE COURT OF COMMON PLEAS
2011CP422597

**Order Granting
Summary Judgment**

This matter came before the Court upon Plaintiff Allcare Medical, LLC's ("Allcare") Motion for Summary Judgment against Defendant Ahava Hospice, Inc. ("Ahava") and Defendant Lancelot D. Wright ("Wright"). After reviewing the pleadings on file, the deposition testimony and documents presented to the Court, the arguments of counsel and the applicable case law, the Court makes the following findings of fact and conclusions of law:

1. Allcare is in the business of providing durable medical equipment to various health care providers in the southeast.
2. Ahava is a hospice provider located in the State of South Carolina.
3. Wright is a shareholder of Ahava and its CEO.
4. On March 12, 2008, Allcare entered into a valid written agreement with Ascension Hospice whereby Plaintiff agreed to provide medical equipment and Ascension agreed to pay for the equipment.
5. Pursuant to the terms of the contract, Ascension agreed to pay all fees due within thirty (30) days of receipt of an invoice from Allcare.

QJ

6. Ascension failed to pay the invoices due and owing to Allcare.
7. It is undisputed that Ascension ceased operations and merged with Ahava in January 2011.
8. During the course of litigation, Allcare properly sent a Notice of Deposition to Ahava pursuant to Rule 30(b)(6) specifically requesting that Ahava designate a witness to testify, among other things, about the following topics: any payments made by Ahava to Ascension; the purchase of Ascension; and Ahava's financial accounts. Ahava appointed Glen Gray to testify about these topics on its behalf.
9. Ahava's 30(b)(6) designee testified, in pertinent part, that he is a former employee of Ascension and the current compliance officer for Ahava.
10. Ahava's 30(b)(6) designee testified that Ascension transferred employees, patients, and equipment to Ahava. In addition, he testified that Ahava operated out of the same office space as Ascension.
11. Ahava's 30(b)(6) designee testified that Ahava took over the care of 30 to 40 percent of Ascension's patient list.
12. During the course of discovery, Ahava produced bank statements and checks that showed Ascension and Ahava used the same checking account. When asked whether Ahava shared accounts with Ascension or ever paid the debts of Ascension, the 30(b)(6) designee denied that this happened.
13. When presented with checks and bank statements showing that in fact, on multiple occasions following Ascension's closure, checks were drawn from Ahava's bank account listing Ascension as the account holder, the 30(b)(6) designee

testified that he did not know why these checks were issued.

14. Ahava failed to submit any information to explain why its 30(b)(6) designee could not answer these questions. Ahava further failed to submit any information to contradict or otherwise explain why checks were drawn from its account to pay the debts of Ascension.

15. Based on the record before the Court it is undisputed that on multiple occasions following the merger, Ahava paid Ascension's debts.

16. Based on the record before the Court it is undisputed that Ahava and Ascension shared a checking account.

17. Based on the record before the Court it is undisputed that on multiple occasions following the merger, Ahava paid fees to third parties with which it had no business relationship, but with whom it shared common shareholders.

18. The facts and circumstances set forth above establish that Ahava was a mere continuation of Ascension.

19. The facts and circumstances set forth above establish that Ahava and Ascension merged.

20. Allcare presented a *prima facie* case establishing its right to summary judgment against Ahava.

21. Ahava failed to meet its burden to produce any evidence that created a genuine issue of material fact.

22. Failure by Ahava's 30(b)(6) designee to answer questions for which he was properly noticed to be prepared to testify about does not create a genuine issue of material fact.

23. As a result, no genuine issue of material fact exists and Allcare is entitled to judgment as a matter of law on its breach of contract claim against Ahava.

24. At deposition, Defendant Lancelot Wright admitted he entered into a valid written contract with Plaintiff whereby he agreed to personally guarantee \$200,000 of Ascension's debt, plus interest, costs and attorneys' fees.

25. At deposition, Defendant Lancelot Wright further admitted that he made no payments on the note and that the current principal balance owed exceeds \$200,000.

26. Defendant Wright claimed economic duress as a defense to his liability on the personal guarantee but failed to present any evidence that would give rise to a valid defense of economic duress.

27. By his own admission, Wright agreed to enter into the personal guarantee in order to help his friend Robert Williams; this does not give rise to a claim of economic duress.

28. Allcare submitted a *prima facie* case establishing its right to summary judgment against Lancelot Wright.

29. Lancelot Wright failed to meet his burden to produce any evidence that created a genuine issue of material fact.

30. As a result, no genuine issue of material fact exists and Allcare is entitled to judgment as a matter of law on its breach of contract claim against Lancelot Wright.

WHEREFORE, it is hereby **ORDERED, ADJUDGED** and **DECREED** that:

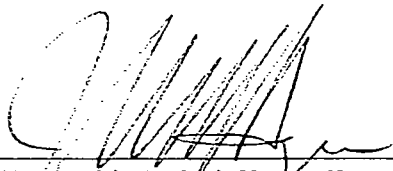
1. There is no genuine issue as to any material fact and Allcare is entitled to judgment as a matter of law against Ahava.

9/11

2. There is no genuine issue as to any material fact and Allcare is entitled to judgment as a matter of law against Lancelot Wright.

IT IS SO ORDERED.

This the 16th day of ~~March~~ ^{May}, 2014.



The Honorable J. Mark Hayes II
Seventh Judicial Circuit

2014 MAY 21 PM 1:00

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

Allcare Medical, LLC,)
Plaintiff,) TRANSCRIPT OF RECORD
-vs-) 2011-CP-42-2597
Ahava Hospice, Inc.,)
et al.,)
Defendant.) March 21, 2014
Spartanburg, South Carolina

B E F O R E:

HONORABLE J. MARK HAYES II, JUDGE

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

ALEXANDRE N. MACCLENAHAN, ESQUIRE
Attorney for the Plaintiff

DARRYL D. SMALLS, ESQUIRE
Attorney for the Defendant

Margaret A. Woods
Circuit Court Reporter

ORIGINAL

1 THE COURT: Alright, so now we'll do ---

2 (Whereupon, a discussion was held off the record.)

3 THE COURT: Alright, we'll move on to the Allcare Allcare
4 Medical vs. Ahava Hospice. I've got down that this is the
5 plaintiff's motion for summary judgment.

6 MR. MACCLENAHAN: That's correct, Your Honor. May it
7 please the Court, Alex MacClenahan here on behalf of, uh,
8 plaintiff Allcare Medical, LLC. Your Honor, we we're here
9 earlier this week and I submitted to you the plaintiff's
10 memorandum of law in support, uh, which I filed with the
11 clerk's office hope, I hope that made it's way back to your
12 office, you've had a chance to look at it. Procedurally
13 before I get into it I just wanna make sure we understand who
14 the parties are here, Your Honor. Allcare Medical has sued
15 Ahava Hospice formally known as Ascension Hospice Robert A.
16 Williams and Lancelot D. Wright. Robert A. Williams also goes
17 by Tony Williams but he's never been served, we've been unable
18 to locate his whereabouts so he's not, though he's still a
19 named defendant, he's not necessarily a party to this summary
20 judgment motion. He's never made an appearance, he hasn't
21 been served or anything, Your Honor, so the only two
22 defendants against whom summary judgment is being made, uh,
23 are Ahava Hospice and Lancelot Wright, both of whom, Your
24 Honor, represented by Mr. Smalls sit at the table across from
25 me so from a procedural standpoint just wanna let the Court

1 aware of, uh, who the parties are that involved in all this.

2 My my client, Your Honor, is Allcare Medical and they run
3 a durable medical equipment company where they supply Dura
4 Medical goods to different health care providers mostly which
5 are hospice. One of the, uh, hospices that they provided this
6 equipment to was Ascension Hospice. Ascension was out of the
7 Columbia area and they entered into an agreement with Allcare
8 whereby Allcare would provide the equipment and Ascension had
9 to pay a rate for the equipment that was used and this went
10 on, they had a written contract for it, Your Honor, which is
11 attached to the complaint in this matter, this went on for a
12 couple a years and then over time Ascension started getting
13 slow with their payments. The payments were due thirty days
14 after receipt of an invoice now and the slow payments began
15 around 2009 time frame and continued on until 2011 at which
16 time Ascension, uh, closed its doors. Now it's interesting to
17 note that the primary shareholder of Ascension was the
18 defendant Robert A. Williams who's not been served, Your
19 Honor. The, uh, after Ascension closed its doors all of its
20 patients that, uh, well let me strike that, many of its
21 patients, Your Honor, were then taken into Ahava Hospice to
22 receive treatment. In addition, many of the same employees
23 came over, Your Honor, Ahava Hospice even used the same office
24 space as Ascension for a period of time, they had the same
25 employees, they, uh, Tony Williams, Robert Williams, became a

1 shareholder in Ascension, um, excuse me, in Ahava after
2 Ascension closed its doors and then the other defendant Lance
3 Wright was also a shareholder of, uh, Ahava and the, uh, this
4 is all in the early 2011 time frame that this happened. The
5 dates from the deposition testimony I took of Ahava's 30(b)(6)
6 representative then of Lance Wright a little fuzzy because
7 there's no paperwork that has been documented, uh, what
8 happened at this time. When Ascension quit operating, it owed
9 my client in excess of \$200,000, in fact, they owed I wanna
10 make sure I get the number right, Your Honor, \$244,467.91 to
11 my client in unpaid invoices plus interest, cost and fees.
12 During this period when, uh, Ascension was beginning to close
13 its doors, it was negotiating with my client on, you know, how
14 do we, how do we fix this so we can keep our medical equipment
15 coming and Tony Williams and then Lance Wright came in and
16 they entered into a personal guarantee with my client and they
17 personally guaranteed \$200,000 of the debt plus interest, cost
18 and fees. After that personal guarantee was signed is when
19 Ascension closed its doors and the patients were transferred
20 over to Ahava. After that happened no one paid my client
21 anymore money. The, uh, to date like I said, Your Honor, my
22 clients owe \$244,467.91 plus interest, cost and fees so
23 there's two, procedurally, You Honor, in this case there's two
24 different cause of action for breach of contract: there's a
25 breach of contract claim that we've alleged against Ahava on

1 the theory of essentially they're a successor in interest to
2 Ascension on the contract that existed between Ascension and
3 my client Allcare Medical, then there's a separate breach of
4 contract action that we filed against Tony Williams and Lance
5 Wright on a personal guarantee so there's two breaches
6 contract, there's two actions concerning two different
7 contracts, uh, that were in place, Your Honor, so we've now
8 moved for summary judgment in -- on both of those claims
9 against Lance Wright and against Ahava based on the deposition
10 testimony and discovery that's taken place in, uh, in this
11 matter today.

12 I'll, let me start I suppose with Lance Wright the
13 personal guarantor. Mr. Wright testified at deposition and I
14 think you will find in the excerpts that I provided, what was
15 cited in my brief, Your Honor, that he admitted, I asked him,
16 "Pursuant to this contract, referring to personal guarantee,
17 you and Tony Williams promised to pay Allcare Medical 200,000,
18 interest at the yearly rate of 6 percent as specified below,
19 do you see that and his answer was, "Correct, yeah." I also
20 went on to say, "And if the lender prevails in the lawsuit to
21 collect on the note, the borrower will pay the lenders cost
22 and the lawyer's fees in the amount the Court finds to be
23 reasonable, did I read that correctly," "Yes," "And that's
24 part of you agreement under the promissory note," and his
25 answer was, "Correct." You see he's admitted that he entered

1 into the contract for \$200,000 and pursuant to the terms of
2 that contract he admitted that he owed \$200,000 plus interest,
3 cost and fees. I asked him then, "Did you make any payments,
4 you personally, Lance," his answer was, "No." And I said,
5 "The payments made are the total amount not owed, not
6 including interest according to my client what we'll present
7 at trial, this is not including interest or fees or anything,
8 it's \$244,467.91, do you have any reason to dispute that
9 that's the amount owed," his answer was, "No." So he admits
10 he entered into contract, he admits he didn't make any
11 payments and he admits that money is owed and that he's
12 responsible for cost, fees associated with the collection, all
13 of that's admitted from his own mouth at deposition under
14 oath, Your Honor.

15 Now they raise this, one of their defenses to the
16 promissory note is they claimed that Mr. Wright somehow was
17 entered into this contract under economic duress and I asked
18 him as well about that and I said to him, he testified and
19 we'll get into testimony, he said specifically the time he
20 entered in a contract he was not a shareholder of Ascension,
21 he was not obligated to pay Ascension's debt personally, that
22 the reason he entered into this contract was he and Tony
23 Williams were friends and he wanted to help out his buddy,
24 alright, and so again, I specifically asked him, "To be clear
25 when you signed this contract, this promissory note that's

1 Exhibit 1, you were not facing any financial pressure
2 regarding that debt, were you," and his answer was, "No." And
3 I said, "Before you signed it you didn't owe the debt," his
4 answer was, "No." I said, "You wanted to help out a friend,"
5 he said, "Right," and I said, "And that's the reason you
6 signed this was to help out a friend," he said, "Correct," and
7 I said, "For no other reason," he said, "I had no other reason
8 besides him being a friend," so again, from his own testimony,
9 their defense of economic duress is gone, he didn't have it,
10 didn't exist, he entered into this agreement simply to help a
11 friend. He had no financial pressure, he didn't owe the debt,
12 he wanted to help out his friend Tony Williams. He admitted
13 no payments were made, admit the contract existed, essentially
14 he admitted everything in our complaint as to the breach of
15 contract on the personal guarantee so for that reason as to
16 Mr. Wright, Your Honor, we believe summary judgment would be
17 appropriate. There is no genuine issue of material fact here,
18 it's all admitted. There's no, there's no issue of law
19 either, I mean, he entered into a contract freely and
20 voluntarily to help out a friend and he didn't pay what was
21 owed so as far as liability is concerned, Your Honor, summary
22 judgment should be entered against Mr. Wright. The, uh, and
23 I'm not, we're not here arguing about damages being, what the
24 number on the damages are, I'm just talkin' strict liability
25 issues here: this man, oh, this man is liable for a breach a

1 contract by his own admission and there's no economic duress.

2 Now the more complicated issue is Ahava, it's Ahava
3 successor in interest. It's important for the Court to know
4 is Tony Williams and Lance Wright at back in 2011 were
5 involved in a lot of businesses together, this is all in Mr.,
6 uh, Wright's deposition testimony. When Ascension closed its
7 doors -- let me back up a second. At deposition Ahava
8 presented Glenn Gray as their 30(b)(6) representative, right,
9 and Mr. Gray is a a, is a lawyer not currently practicing, uh,
10 by his own admission that, well let me strike that 'cause he
11 wouldn't answer the question at deposition, presented him with
12 two disciplinary actions from the state Supreme Court where he
13 was reprimanded for making the first incidents, uh, for
14 falsifying billing records including, uh, and creating fake
15 in, uh, expense reimbursements, he was suspended from the
16 practice of law as a result and in the second instance for
17 submitting, uh, he was reprimanded, for submitting an
18 affidavit that contained false information, so this is a man
19 who's twice by the Supreme Court, our our court has determined
20 is not necessarily upfront and truthful, nevertheless when he
21 was under oath I asked him questions as Ahava's 30(b)(6)
22 representative about Ahava's financial interactions with
23 Ascension and with other clients 'cause their claim is Ahava
24 has nothing to do with Ascension, Ahava's its own separate
25 entity and it started when Ascension went belly up it saw an

1 opportunity to come in and get some new patients and it took
2 it but the testimony of their 30(b)(6) representative shows
3 otherwise, Your Honor. He admitted that Ahava operated for a
4 period of time out of Ascension's former office space. He
5 testified that Ahava hired former Ascension employees
6 including himself, used the same office equipment, used many
7 of the same corporate cars that existed. He testified that
8 after Ascension closed its doors Ahava took over the care of
9 30 to 40 percent of Ascension's patient list and many of the
10 patients that they did not take good care of, take over care
11 for, the reason was those patients were no longer eligible for
12 hospice care, not necessarily that they went elsewhere, it's
13 just they didn't qualify for, uh, hospice care any longer
14 under the regulations and guidelines.

15 THE COURT: You mean they died or they got better?

16 MR. MACCLENAHAN: Well the, there's a six month -- to to
17 be eligible for hospice without, I don't wanna quote it
18 inaccurately, but somewhere along the lines that a doctor has
19 certify that you have six months or less to live and so if
20 you're looking -- living beyond that Medicare or Medicaid,
21 whoever's paying the hospice bills comes in and is like, Well
22 this guy's been in your hospice for twelve months, that seems
23 a little odd, so it has to do with that issue, uh, ---

24 THE COURT: Okay.

25 MR. MACCLENAHAN: --- Your Honor, some of it also is

1 simply they mighta passed away, uh, on there but that has to
2 do with whether they qualify for hospice care, has to do with
3 a 6-month certification from a doctor, uh, and Mr. Gray's
4 testimony was also echoed by Lance Wright's testimony, Lance
5 Wright's the current CEO of Ahava, and so I asked him many of
6 the same questions and he confirmed this that, you know,
7 Ascension took over a good many, uh, excuse me, Ahava took
8 over a good many of Ascension's patients, they hired some a
9 the same employees, worked outta the same office space, uh,
10 had the same office equipment, used the same cars, alright.
11 Then we went into this issue 'cause one of the key things I
12 asked him was, "Well did Ahava pay any debts of Ascension,"
13 and initially their answer, "No, they never had, we didn't pay
14 any debts of Ascension." Well as the deposition went on and I
15 presented him with documents that we, uh, were received in
16 discovery, those revealed in fact Ahava did. At one point
17 Ahava paid over \$50,000 to Ascension and at least three others
18 occasions Ahava paid checks to Comdata Corporation which was a
19 debt owed by Ascension, all of these payments occurred after
20 Ascension closed its doors as, uh, they said, so Ascension
21 apparently is no longer around, doesn't exist anymore, went
22 outta business but here Ahava is paying 50 grand to Ascension,
23 couldn't tell me what it was for, I asked, Paying debts to
24 Comdata Corporation on at least three separate occasions, in
25 addition, Ahava was paying fees to third party companies that

1 it had no business relationship with, this is again from their
2 own testimony of Mr. Gray. Some a these companies that it had
3 no business relationship with were companies that were owned
4 by in some form Lance Wright and/or Tony Williams and Lance
5 Wright testified under oath, Ahava's CEO, that it was a
6 routine business practice to rob Peter to pay Paul, where if
7 one of the companies has money and the other one doesn't, you
8 just transfer it in between them, that's on Page 55 of Lance
9 Wright's deposition, that's attached, Your Honor, to the, to
10 the memorandum that I submitted. So we have this company
11 Ahava that came in, took all of, took 30 to 40 percent of
12 Ascension's patients, took many of its employees, one of them
13 that's submitted as it's 30(b)(6) representative, gained a
14 shareholder that used to be a an Ascension shareholder, used
15 office space, used office equipment, used, uh, the same
16 automobiles, paid debts, but now wants to say, We don't like
17 this debt that's owed to Allcare so we're not responsible and
18 we're a separate company and it can't do that, Your Honor. I
19 submitted, Your Honor, the case of *Simmons vs. Mark Lift*
20 *Industries* which a 2005 case from our Supreme Court and this
21 case outlined South Carolina's rules for determining whether
22 there is successor liability after purchase of assets, so, I
23 mean, the general common law rule is if you purchase assets,
24 you're not necessarily responsible for the debt absent some
25 agreement otherwise our statute that says otherwise but the

1 courts have said there can be circumstances however where
2 we're gonna determine you in fact are a successor in interest
3 here and successor liability occurs, we don't want people
4 defrauding creditors, okay, and it laid out this test that was
5 originally articulated in 1924 and it said there's four things
6 that can make a company qualify as a successor in interest
7 such that they will be liable for the predecessor company's
8 debts. First one, there's an agreement to assume such a debt,
9 well I don't and we're not arguin' that that exists, we
10 haven't seen any agreement to assume the debt; second one, the
11 circumstances surrounding a transaction warrant at finding a
12 consolidation or merger of the two companies, that's one we're
13 gonna address; third, the successor company is a mere
14 continuation of a predessor -- predecessor, excuse me, that's
15 another one we're going to address, or the transaction was
16 entered into fraudulently for the purpose of wrongfully
17 defeating creditors' claims. Now this is a basically what the
18 Court says and you gotta look at each fact here, it's a
19 factual determination, what do the facts show? Well the facts
20 here show that this new company Ahava didn't just buy assets,
21 there's no agreement in place that shows this, there's no
22 written agreement to purchase, it paid debts that belonged to
23 Ascension, it used the same employees, it had the same
24 patients with the same equipment, if that's not continuing on
25 with the business of a predecessor, I'm not sure what would

1 be, Your Honor. You can't just take your business, close it,
2 create some sham sale to a new business, transfer your primary
3 shareholder over and say, Forget the creditors, they don't
4 matter anymore, you're not allowed to do that, otherwise
5 that's what everyone would do. Judge, once once the going got
6 tough close your doors, open up a new company or transfer it
7 to another company and say, Oh, too bad so sad, well you're
8 not allowed to do that, Your Honor. You can't pay the debts
9 of another company and say and pick and choose which ones
10 you're going to pay, you either are responsible for their
11 debts or you're not. You can't just transfer shareholders
12 over and say, Oh, well we're a brand new company. You don't
13 get to rob Peter to pay Paul and that's what these guys have
14 done: they just decided for whatever reason we don't care
15 about Allcare, we're not gonna pay this debt so again, Your
16 Honor, all of this that I'm arguing here, Your Honor, is based
17 on their testimony, it's admissions from them, isn't, this
18 isn't Allcare coming out and saying, Well, Your Honor, we
19 believe all these bad things happened therefore we get summary
20 judgment, this is the defendants admitting that they did these
21 things. The defendants admitted these transactions, they
22 admitted the same employees, they admitted the same office
23 space, they admitted the same patients, they admitted paying
24 debts, well initially they did not but but when presented with
25 checks that showed otherwise they came around and decided to

1 admit it, they admit all this, they just say, Ah, we're still
2 a separate company, by their own admission, Your Honor,
3 they're not. When you look at the four avenues that a su --
4 that successor liability will arise, there's three of 'em of
5 the four that potentially have been met, ---

6 THE COURT: Your ---

7 MR. MACCLENANAHAN: --- the circumstances clearly warrant
8 this.

9 THE COURT: --- your argument is that those four criteria
10 or tests that are laid out in the, uh, *Mark Lift Industries*
11 case that those are four separate tests ---

12 MR. MACCLENANAHAN: Yes, Your Honor, 'cause if you look
13 specifically ---

14 THE COURT: --- so that any one of them that's met then
15 you create the necessary link to have successor liability.

16 MR. MACCLENANAHAN: Absolutely, Your Honor, because when
17 you look at the, uh, and this is I had tabbed on the case that
18 I submitted to Your Honor with some highlights, uh, it's on
19 Page 4 of the printout where it lists this four tests, it
20 says, "In South Carolina, in the absence of a statute,
21 successor or purchasing company ordinarily is not liable for
22 the debts of a predecessor or selling company unless (1)
23 there's an agreement to assume the debts, (2) circumstances
24 surrounding the transaction warrant a finding, (3) the
25 successor company's a mere continuation of predecessor, or (4)

1 it's not "and," it's it's clearly "or," Your Honor, uh, and,
2 in fact, there's actually a a follow-up, another case that
3 came after this that I don't have with me, Your Honor, that
4 also reiterates that it's four, I'll be happy if Your Honor
5 wants after the hearing when I get back to my office I can
6 locate the case and send it to ya, uh, but there is a case
7 that came after this one that said it's you have to meet one
8 of these four tests, it's not a, it's not like proving breach
9 of contract where there's, you know, valid contract
10 consideration, you know, breach and damages, right, there's an
11 "or" in there and it's very clearly an "or" and that "or" has
12 been there since 1924, uh, so we don't have to prove all four
13 of those elements, we have to prove any one of them and I
14 would submit, Your Honor, that based on their own testimony
15 you can pick from 2, 3 or 4 as which one you want. They've
16 done this to wrongfully defeat Allcare's claim as a creditor.
17 They're claimin', We're a new company, we don't owe ya any
18 money. They are a mere continuation of the predecessor. They
19 took the same patients, used same office space, same
20 equipment, so on and so forth as I've already mentioned, Your
21 Honor, that's just continuing on the business of Ascension.
22 They paid Ascension's debts (2) the circumstances surrounding
23 the transaction. This is sort of that catch-all thing and
24 let's just look at this, it's the if it looks like a duck and
25 it walks like a duck, it's a duck, right? I mean, if it looks

1 like a merger, sounds like a merger, well then it's a merger,
2 that's what this is, they're just trying to get out of paying
3 a debt that they owe, they don't wanna pay it and fortunately
4 our legal system doesn't allow that. If you promise to pay
5 someone a debt, you can't go run and hide behind another
6 company and claim you don't owe it so again, Your Honor, by
7 their own admission, there's no issue of fact on this, these
8 are their admissions that Ahava simply is a successor in
9 interest to Ascension and Allcare's entitled to judgment as a
10 matter of law.

11 THE COURT: Alright. Yes, sir.

12 MR. SMALLS: May it please the Court, Your Honor, Darryl
13 Smalls representing Ahava Hospice and Mr. Lance Wright. Uh,
14 counsel has covered a lotta information, I wanna go back over
15 some things that we believe are incorrect and Honor, Your
16 Honor, this is not a closing argument, uh, as you know this is
17 a summary judgment argument and the facts of this case must be
18 read in light most favorable, uh, to the defendants and the
19 facts are in this case are very important. Ahava Hospice was
20 formed and organized in 2010 by separate owners than Ascension
21 Hospice. Ahava Hospice initially was a hospice in Sumter,
22 South Carolina. Uh, when the owners of Ahava Hospice learned
23 that Ascension Hospice was going out of business, they
24 inquired about acquiring the the patients and assuming some of
25 the business that Ascension Hospice has, there was no

1 particular assets sale; in fact, by law that the asset of a
2 hospice is really in patients. You cannot by law sell the
3 patients and I think that's very critical when you talk about
4 this case when counsel talks about they have some of the same
5 patients. Well in hospice, Your Honor, the patients decide
6 where they go, the hospice doesn't decide, the patients and
7 their doctors decide, that's how that works, Your Honor.

8 With regard to, uh, new car leases, uh, there were new
9 car leases, it was a short term lease in this case with with
10 the building and they did this to facilitate the business.
11 This was a entirely separate hospice from Ascension Hospice,
12 Your Honor, and I think it's important to point out factually
13 that Ascension Hospice ceased all business operations in
14 January 2011. Ahava Hospice did not purchase any a these
15 assets of Ascension's prior to or after its closing. Ahava
16 Hospice did not agree or accept to assume liability of the
17 debts and all this is in the record and in the depositions
18 that we have submitted also with with our brief, Your Honor.
19 Ahava always operated separate and independent of Ascension.

20 I think it's important to go where another specific facts
21 of this case, Your Honor, deals with the negotiations that
22 went on in this case. Once Allcare Medical determined that
23 Ahava Hospice was separate and apart, they entered into
24 negotiations with Ahava Hospice, those negotiations ultimately
25 did not result in a contract being signed between Ahava

1 Hospice and Allcare; in fact, the testimony from the CEO
2 Mr. Andre Silva of Allcare indicates that he in fact sent a
3 contract to Ahava Hospice with different terms, they
4 understand they did not have a contract with Ahava Hospice.
5 He emailed that contract, he testified that in his deposition,
6 and ultimately no contract was signed. Specifically with
7 regard to our position, there is enough facts, there's
8 substantial facts, uh, genuine issues of fact before the Court
9 that would deny any type a summary judgement in this case,
10 Your Honor, in fact, there is no contract and we we were gonna
11 file and gonna file summary judgment with regard to a contract
12 between Ahava Hospice and Allcare. The testimony from the CEO
13 of Allcare indicates all the invoices that were printed out
14 only went to Ascension Hospice and that's, uh, Exhibit 1
15 deposition of Andre Silva. There was a signed contract signed
16 in 2008 between Ascension Hospice and Allcare, there was no
17 signed contract between Ahava Hospice and Allcare, even after
18 the -- they negotiated the terms, there was no signed
19 contract. In addition, Mr. Silva testified that there were no
20 payments ever received from Ahava Hospice to Allcare.

21 Essentially the argument that they are making, and I do
22 wanna bring up one point with regard to that, Your Honor, I'm
23 not sure that they even, uh, in their complaint whether they
24 make sufficient grounds for the the complaint and issues they
25 bring forth with regard to succession in interest, that was

1 not even concluded in their complaint, uh, nevertheless if
2 Your Honor finds that the complaint is sufficient for them to
3 continue with this position, it's our position that Ahava
4 Hospice is not a successor to Ascension Hospice. I think the
5 the first case the Supreme Court of South Carolina heard on
6 this was *Brown vs. American -- America Railroad Express*
7 *Company*, uh, in that case the Supreme Court held in absence of
8 a statute a successor or purchasing company ordinarily is not
9 liable for the debts of the predecessor or selling company
10 unless there was as agreement to assume the debt, counsel's
11 already agreed there has not been agreement to assume the
12 debts, uh, the circumstances surroundin' the transactions
13 warrant a finding consolidation mergin' two companies; number
14 three, successor company was a mere continuation, I think
15 that's where they're focusing, that this is a mere
16 continuation. Well we don't have to prove that today, Your
17 Honor, we only have to show that there's sufficient evidence
18 to defeat summary judgment with regard to a mere consolidation
19 of these two companies, a mere continuation. We feel there's
20 not a mere continuation of these companies. Uh, Mr. Gray
21 testified and also, uh, Mr. Wright testified that Ahava did
22 not assume the debts of Ascension, uh, Ahava and Ascension
23 were separate companies with separate Medicare numbers, by law
24 they have to have separate Medicare numbers to operate, Your
25 Honor. If they had one Medicare number, they would operate as

1 one entity. Also, there's a question about the employees.
2 Some employees were hired by Ahava and that was they went
3 through a complete interview process. Some were not hired by
4 Ahava from Ascension and that's in the record also, Your
5 Honor.

6 With regard to equipment, it was a testi -- testimony
7 from Mr. Gray in evidence that we submitted that they did not
8 use the equipment, they brought new equipment, they may have
9 used some of the furniture pieces until they moved to a new
10 location, Your Honor, so clearly there's a question, a genuine
11 question of fact with regard to whether Ahava was a succe --
12 successor in interest to Ascension Hospice, clearly the
13 evidence read in the most li -- in the light most favorable to
14 the defendant would defeat summary judgment.

15 With regard to Mr. Wright's signing a prom -- promissory
16 note, we have expressed from the beginning, uh, there's a
17 duress issue here and if the Court or jury finds that duress,
18 he signed a promissory note upon duress then the contract is
19 void. We believe again there is enough evidence in the
20 deposition testimony to support our duress position at this
21 stage, Your Honor, and duress has been defined as subjecting a
22 person to pressure which overcomes his or her will and forces
23 him or her to comply with the demands. In this case, Your
24 Honor, from the deposition testimony presented by Mr. Silva he
25 admit that when he met with Mr. Wright to discuss the

1 promissory note, his leverage and pressure that he used was
2 that I'm gonna pull all the equipment from the various hospice
3 patients, that was a direct threat made, based upon that
4 threat Mr. Wright agreed to sign a promissory note. His
5 testimony, Mr. Wright's testimony states, "It was a duress
6 situation, it was like under the gun kinda deal with Andre,"
7 he said, "If we don't get something done, we're going to pick
8 up the patient equipment," it was a dire situation according
9 to go Mr. Wright's testimony, I felt it was urgent, it was
10 dire and he needed me on that deal so I signed it. Clearly
11 his testimony showed his state a mind at that point.

12 THE COURT: So he was not a, he did not have an interest
13 in the prior corporation and the contract, if I understand
14 your position correctly, the contract that gave that hospice
15 the machines that the company who had the machines came and
16 said, Okay, you're you're not paying our money so we're gonna
17 have to take the machines immediately thus exposing the
18 patients to a a bad situation and so then this Mr. Wright
19 comes in and says because my friend was under that economic
20 duress that I came to his rescue?

21 MR. SMALLS: That's that's correct, Your Honor, that's
22 posi -- our position, in in addition to that and I think, uh,
23 counsel was pointing out that Mr. Wright did not have a direct
24 financial, uh, he was not on the hook so to speak with regard
25 to this contract that Ascension Hospice had with, uh, Allcare

1 Medical but it's it's critical and I think counsel even point
2 out that Mr. Wright was more than friends with Mr. Williams,
3 they had many many businesses together and I think counsel
4 even stated that so any detrimental business that would happen
5 with regard to Mr. Williams would directly affect Mr. Wright
6 and he's testified to that that in, and in his deposition he's
7 testified to all the different businesses they had together,
8 otherwise it wasn't ju -- just I'm signing this for my friend,
9 it was more than that, it was more than that and we think that
10 it's enough evidence, it's enough evidence that this case
11 should go to a jury on that that issue, specifically when you
12 look at what Mr. Silva said in his deposition, he basically
13 threatened them: pay me, sign this promissory note or I'm
14 gonna pull the -- this equipment regardless of the health
15 consequences of of these patients. Now as you are know these
16 patients are in hospice so at that point doctors had already
17 determined that or estimate that some a these people were
18 unfortunately gonna pass away, some a these people were even
19 on oxygen machines as, uh, Mr. Wright testified in his
20 deposition, he was concerned about the health and also the
21 business issues so whereas he did not have a direct financial
22 dealings, he did have ultimately financial, uh, duress in this
23 case and duress for the fact that he was worried about the
24 individual patients, so clearly there's enough evidence, Your
25 Honor, to get this past the summary judgment case on both

1 issues, uh, it's a question they they say that that my client
2 paid debts of Ascension Hospice, we say they did not. They
3 talk about one spe -- specifically, uh, a Comendon (phonetic),
4 I think some bill that supposedly had paid that's the only one
5 they pointed out and we will dispute that, continue to dispute
6 that with regard to the facts of this case. In addition they
7 point out there was some check paid to Ascension. Even if it
8 was paid, that doesn't show that they were paying any debts of
9 Ascension so, Your Honor, we think it's clearly evidence that
10 support our position, evidence enough to get past the summary
11 judgment stage in this case, uh, and of course there's
12 conflicting evidence, so once you have conflicting evidence,
13 evidence that both sides will point to, Your Honor, we think
14 clearly we have enough to to get past summary judgment. Thank
15 Your Honor.

16 MR. MACCLENANAHAN: May I respond, Your Honor?

17 THE COURT: How how do you get by his argument on the,
18 uh, on the successor liability issue that this is at the
19 summary judgment stage?

20 MR. MACCLENANAHAN: Well I get by this ar -- that argument,
21 Your Honor, based on I'm usin' testimony that comes from Ahava
22 and their 30(b)(6) representative, testimony where he
23 admitted, Your Honor, and if I may approach, I wanna point out
24 to Exhibit 28 of his deposition, uh, ---

25 THE COURT: Is it, is it in what I've got?

1 MR. MACCLENAHAN: The the testimony is but the actual
2 actual exhibit is right here (indicating), Your Honor, and I
3 apologize for not having attached it, it's simply a check.
4 You'll see this (indicating) is a bank statement for Ahava
5 Hospice and this (indicating) is the check that we're
6 referring to and this testimony is referenced in my brief and
7 and it's attached, uh, to the brief and it, and I asked him, I
8 said, uh, You know, earlier on I'd asked him, "Did Ascension
9 and Ahava share bank accounts," and his answer was no that
10 they don't share bank accounts and so then I showed him this
11 bank statement from Ahava and we compared the, uh, you'll see
12 that check, Your Honor, has Ascension's name on it as the
13 payor, the account number on the bottom a that check is the
14 same account number that's on Ahava's and that's from March of
15 2011 after Ascension closed its doors, that's the check, one
16 of the checks paid to Comdata that I asked him about and, uh,
17 I said to him, "Why is Ahava issuing checks on behalf of
18 Ascension naming Ascension on their account number to
19 Comdata," and he said, "I'm trying to make out something below
20 but I can't make it out, I don't know," and I just say, go on
21 to say, "Again Ascension closed their doors in January of
22 2011, didn't they," his answer was, "Correct."

23 THE COURT: Alright, can ya give me a page that you're
24 reading from.

25 MR. MACCLENAHAN: That's Page 71, uh, ---

1 THE COURT: Of?

2 MR. MACCLENAHAN: --- of Mr. Gray's deposition, that
3 would be Exhibit A, Your Honor, and it goes on through, uh, to
4 Page 73, all of which should be attached to my memoranda.

5 THE COURT: I have it.

6 MR. MACCLENAHAN: Okay. So let's begin at the very top a
7 71, uh, Line 4 I, is where I said, "I thought we established
8 earlier that Ahava did not share a bank account with
9 Ascension," and he says, "That's my understanding," and I
10 said, "I thought we also established that Ahava did not pay
11 Ascension's debts, that's what you testified to, correct," his
12 answer was, "That is correct," so then I said, this is
13 referencing Exhibit 28, "That second page is just a list of
14 checks that are issued on that account, the very first column
15 four checks down is that check 3002, right, in the sequence,
16 what's Comdata Corporation, do you know," "Not a clue," and I
17 said, "Again, Ascension closed their doors in January 2011,
18 they -- didn't they," his answer, "That is correct," and Court
19 reporter notes that the witness is examining Exhibit 28 which
20 is this check and bank statement, "This is Exhibit 28, this is
21 from the same month and if we go to the last page there's a
22 check written out of Ahava's account to Comdata on behalf of
23 Ascension Hospice and this is in the amount of \$1,815,
24 correct," "1,815, yes," "So again we have a check that Ahava's
25 writing on behalf of Ascension to this Comdata Corporation

1 whoever", he says, "I don't know what this is for, who Comdata
2 is," and that's when I go on to, I said, "I just wanna make
3 sure we're clear, the testimony on behalf of Ahava is that you
4 don't why two separate occasions in Mar -- March 2011 Ahava
5 Hospice, Inc. wrote two checks on behalf of Ascension Hospice,
6 Inc. to Comdata Corporation, is that correct? You don't know
7 they twice on two separate occasions essentially paid a debt
8 to Ascension Hospice," and he kind of argued with me a little
9 bit, "Well if that's -- if you're -- I'm not going to, I
10 mean..." I said, "They paid on behalf of them, right," and he
11 says, "Well we don't know who Comdata is or whether this
12 payment is a debt or what it is so I can't agree with you on
13 your characterization." I said, "Alright, well they paid
14 Comdata Corporation money on behalf of Ascension, didn't they,
15 twice in March of 2011," his answer was, "There were checks
16 written out at Com -- Comdata and Ascension is listed on the
17 check as the remitter," and I said, "Is there any way for
18 someone to look at that check and know that it's Ahava who
19 wrote that check, their name doesn't appear on there anywhere,
20 does it," he says, "Not that I know of," and then we reiterate
21 that, uh, again as we go on, so Your Honor, I mean, they have,
22 they put Ascension Hospice name on the same bank account and
23 wrote a check to Comdata Corporation and I'm not just pullin'
24 it outta thin air, this is based on documents they've provided
25 in discovery and based on their 30(b)(6) representative's

1 testimony. This is not Allcare Medical creating an issue,
2 this is their own admission, Your Honor, so when they were
3 saying we're in summary judgment you're right but when the
4 other party admits everything that would give rise to
5 successor liability, there's not much for a jury to decide.
6 They admitted by their own testimony that they had a bank
7 account that had the same name, they paid debts, they admitted
8 they had same employees, they admitted they had, uh, same
9 equipment, they used the same office, it's all admitted and
10 then once something's admitted there's there's nothing for the
11 jury to decide on that factual issue so then it becomes a
12 question of law, Your Honor, which is why we're here today is
13 given these admissions does that under the law of South
14 Carolina constitute successor liability for Ahava and, Your
15 Honor, I would submit that it does as a continuation of the
16 business and when you look at, you know, this *Brown* case, Your
17 Honor, that, uh, Mr. Smalls submitted in his memoranda or cite
18 in his memoranda on Page 7, it goes through some of the things:
19 whether successor continue to manufacture the same product
20 line as the predecessor, recognizing that manufacturing
21 activity by its nature involves modification of product lines
22 and elimination of unprofitable items, alright, I mean,
23 they -- they're hospice care, purely ---

24 THE COURT: Well ---

25 MR. MACCLENAHAN: --- the same thing.

1 THE COURT: -- which test are you wanting me to appl --
2 apply, mere continuation or the circumstances of the case
3 warrant, uh, a finding of successor liability or the
4 fraudulent nature?

5 MR. MACCLENANAHAN: Your Honor, I think any of those three
6 apply, that's what ---

7 MR. SMALLS: Your Honor, ---

8 MR. MACCLENANAHAN: --- I would submit, Your Honor. Any of
9 those three apply, all of those three the standards have been
10 met. They're continuing the business of Ascension, that the
11 the circumstances that we're showing of this merger are such
12 that it it added that successor while they should arrive when
13 the circumstances are we're paying debts, we share a bank
14 account, we have employees, we have assets, we have same
15 patients, all of that exists and, you know, I mean, on the
16 fraudulent one, Your Honor, I mean, what other reason would
17 they be doing this just sort of other than not to pay Allcare.
18 They paid other debts, there's Exhibit 28 to their 30(b)(6)
19 representative's, uh, deposition testimony that shows it.

20 THE COURT: But at a summary judgement stage I'm required
21 to view the facts and reasonable inferences therefrom in a
22 light that most favorable to the non-moving party and they
23 want me ---

24 MR. MACCLENANAHAN: Correct.

25 THE COURT: --- to come to the conclusion that, uh, those

1 tests are not met especially at the summary judgment stage.

2 MR. MACCLENAHAN: Well, Your Honor, when I view the
3 lights in the -- I view the facts in the light most favorable
4 to them, that's why I took all of their own testimony. The
5 facts are the facts and the facts are from their own mouths,
6 the horse's mouth, that they paid the debts, that they
7 continued the business, that they employed the same people and
8 they use the same office space and the same automobiles and
9 the same equipment, they gained a common shareholder, those
10 are the facts, I mean, I don't know what other way to view
11 them other than the facts are the facts and they speak for
12 themselves. I'm not trying to twist a fact into something
13 that it's not, it is what it is, they paid the debt, they had
14 a bank account, it's admitted. I mean, once someone admits it
15 is, I mean, I'm not sure what other ways to look at it, Your
16 Honor, that's why I asked these questions of them at
17 deposition so, I mean, I think viewing the li -- even if you
18 view the facts in the light most favorable to them, I don't
19 know what other conclusion the Court can reach, Your Honor,
20 besides these guys continued their business. They shut
21 Ascension down, Tony Williams transferred his ownership share
22 and became an owner of Ahava and they continued operating.
23 They continued doing the same thing, they paid off some of the
24 other debts at the old company, they robbed Peter to pay Paul,
25 just not pay Allcare.

1 THE COURT: Alright, I think I got the arguments.

2 MR. SMALLS: Uh, may it please the Court, Your Honor, ---

3 MR. MACCLENAHAN: Well ---

4 MR. SMALLS: --- I just wanna point out one one thing.
5 Uh, when we talk about the facts, he says we admitted certain
6 things, the testimony he just read from Mr. Gray shows you
7 that there is a question of fact. He asked Mr. Gray, What was
8 that, he said he didn't know, he was not sure what that was,
9 that was no admission, there's no admission. In fact, Page 19
10 we've submitted with our brief Mr. Gray was asked, "Did Ahava
11 pay the debts of any other company besides Ahava's," answer
12 was, "No." Clearly there are facts in evidence to support our
13 position and to be seen in the light most favorable to
14 defendant, Your Honor.

15 MR. MACCLENAHAN: Your Honor, if I may, and it's attached
16 to the the deposition transcript up up here if I may
17 approach, ---

18 THE COURT: Um-hum.

19 MR. MACCLENAHAN: --- a notice of deposition I sent.

20 (Whereupon, counsel approached the bench.)

21 THE COURT: Somethin' fell out.

22 MR. MACCLENAHAN: Oh, thank you. Second, excuse me,
23 second amended notice of deposition pursuant to Rule 30(b)(6),
24 Your Honor, I listed the topics. I put "Any payments made by
25 Ahava to Ascension" as one of the topics. I put "Ahava's

1 financial accounts" as one of the topics. I put "The purchase
2 of Ascension" as one of the topics. This is the guy that they
3 presented as the one who would have the most knowledge to
4 testify and bind the company so if he doesn't know the answer,
5 Your Honor, I mean, who does, I mean, that's why I had the
6 deposition, so he came in and he first said, Oh, we never did
7 that and then when I showed him the evidence that said
8 otherwise he said, I guess we did do that, that's where
9 there's an issue, it's their own issue, they wanted to deny it
10 and then when I presented them documented evidence he
11 couldn't.

12 THE COURT: Alright.

13 MR. MACCLENAHAN: The, uh, and, Your Honor, I don't know
14 if you want me address the issues on the promissory note as
15 well, the rebutting of that or if you've heard enough, uh, on
16 that, Your Honor, but I had -- have not rebutted I guess what
17 Mr. Smalls, uh, said with regards to the promissory note, if
18 you've heard enough on that, Your Honor, then ---

19 THE COURT: The promissory note ---

20 MR. MACCLENAHAN: Uh, the personal guarantee for Lance
21 Wright or Lance Wright's individual liability.

22 THE COURT: I think I understand that one.

23 MR. MACCLENAHAN: Okay.

24 THE COURT: Okay.

25 MR. SMALLS: Your Honor, I'd like to put one thing on the

1 record please the Court. We have a previous, I have a
2 previous motion to to change venue, I wanna just put on the
3 record we are not waiving that, that motion was heard last
4 year and has not been ruled on, uh, but I wanna just put on
5 the record we're not waiving our change of venue motion.

6 THE COURT: And change of venue was based on?

7 MR. SMALLS: Well, uh, based upon both defendants do
8 business and reside in Lexington County, uh, and we had filed
9 a previous motion with regard to that and that's ---

10 MR. MACCLENAHAN: That motion was heard by Judge Cole
11 several months ago, Your Honor, ---

12 MR. SMALLS: Yeah.

13 MR. MACCLENAHAN: --- and has not been ruled on as well
14 as a motion I had filed to compel deposition testimony, ---

15 MR. SMALLS: Yeah.

16 MR. MACCLENAHAN: --- uh, concerning some issues that are
17 not necessary for the purpose of summary judgment.

18 THE COURT: Those two documents that you showed me since
19 I actually took a look at them you need to, uh, make them part
20 of the record since I've actually looked at them.

21 MR. MACCLENAHAN: I'll be happy to, Your Honor, that and
22 that ---

23 THE COURT: Alright.

24 MR. MACCLENAHAN: --- was this amended notice and Exhibit
25 28, correct?

1 MR. SMALLS: Well -- yeah.

2 THE COURT: Yeah.

3 MR. MACCLENAHAN: Okay, and ---

4 MR. SMALLS: One thing I wanna point out, Your Honor,
5 with Exhibit 28 just for the record counsel requested and
6 received thousands of pages of bank records, thousands of
7 pages, boxes full, in fact, that I I sent to him, uh, I just
8 wanna put that on the record he's received thousands of
9 records and that's the one thing that he's relying on that we
10 don't know at least the testimony is not clear what it is.

11 MR. MACCLENAHAN: Well, Your Honor, I received plenty of
12 documents, that's not the one thing I'm relying on, there's
13 multiple payments to Comdata Corporation that are in there,
14 some of them are wire transfers, um, out of As -- uh, Ahava's
15 bank account, the same one that this check is written out of,
16 Your Honor, uh, so that's that's a check that I'm relying on
17 but to be clear there are multiple transactions in the bank
18 records that we would contend show payments of Ascension
19 debts, payments by Ahava of other debts that it's not
20 obligated on, uh, payments to third party companies that has
21 no business relationship with but that share common
22 shareholders.

23 THE COURT: Alright.

24 MR. MACCLENAHAN: Uh, should I go to the clerk's office
25 and photo copy these, Your Honor?

1 THE COURT: (Nodded in the affirmative.)
2 MR. MACCLENAHAN: Okay.
3 THE COURT: If they won't do 'em back there since it's
4 only four pages, uh, we don't have a clerk in here, well you
5 can take 'em to my secretary and she can co -- copy them ---
6 MR. MACCLENAHAN: Okay. Yeah, they ---
7 THE COURT: --- since they're only four pages. Don't get
8 in the practice of asking a judge to make copies for you.
9 MR. MACCLENAHAN: I I wouldn't, Your Honor. They they
10 normally are very helpful, uh, back there just photocopyin'
11 stuff for me, ---
12 THE COURT: Alright.
13 MR. MACCLENAHAN: --- uh, so I will go get a copy.
14 THE COURT: So this is not on a trial docket or anything.
15 MR. MACCLENAHAN: Uh, not that I'm aware of, Your Honor.
16 THE COURT: Okay.
17 MR. SMALLS: I'm not sure, Your Honor.
18 THE COURT: Alright.
19 MR. SMALLS: We're just waiting for the two motions be
20 decided on.
21 THE COURT: Okay, alright, I will let you know.
22 MR. MACCLENAHAN: Thank you, Judge.
23 THE COURT: Thank you.
24 MR. SMALLS: Thank Your Honor.
25 (No exhibits were given to the court reporter to mark.)

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

ALLCARE MEDICAL, LLC,

Plaintiff,

vs.

CASE NO. 2011-CP-42-2597

AHAVA HOSPICE, INC., fka
ASCENSION HOSPICE, INC.,
ROBERT A. WILLIAMS, and
LANCELOT D. WRIGHT,

Defendants.

COPY

30(b)(6)

DEPOSITION OF: ONDREJ SLIVA

DATE: June 12, 2013

TIME: 11:00 AM

LOCATION: MacClenahan Law Firm, LLC
870 Cleveland Street, Unit 1-D
Greenville, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: MARY ALEWINE POSEY
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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16 Lancelot D. Wright

17
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19 (INDEX AT REAR OF TRANSCRIPT)
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STIPULATION

It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent waives reading and signing of this deposition.

* * * * *

ONDREJ SLIVA,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. SMALLS:

Q. I'm Darryl Smalls, and I'm representing Ahava Hospice and Lance Wright.

And could you please state your name for the record?

A. Ondrej Sliva.

Q. Okay. Sliva.

A. S-l-i-v-a.

Q. Okay. Are you originally from the United States?

A. No, sir. From the Czech Republic.

Q. Okay. All right. And how long have you been here, in the United States?

4

1 A. Since 1998.

2 Q. All right. Have you ever had your
3 deposition taken before?

4 A. No, sir. First time.

5 Q. If I mispronounce your name, I apologize.
6 I will just tell you that.

7 A. I am used to it.

8 Q. I'll prefer to just call you Ondrej. I
9 know I can pronounce that one.

10 A. Please do.

11 Q. But you know you have sworn to tell the
12 truth today.

13 A. Yes, sir.

14 Q. And that whatever you say may be used at a
15 later proceeding.

16 A. Yes, sir.

17 Q. Okay. Are you under the influence of any
18 medication or drugs which would inhibit your ability
19 to tell the truth?

20 A. No.

21 Q. Okay. Please make sure all of your
22 responses are verbal so the court reporter can record
23 them. If you don't understand a question that I ask,
24 just ask me to rephrase it, okay?

25 A. Okay.

1 Q. What is your position at Allcare Medical?

2 A. I am the CEO.

3 Q. You are the CEO?

4 A. Yes, sir.

5 Q. Okay. I've seen on some documents that you
6 were executive director. Is that the same --

7 A. Same position, different name.

8 Q. Okay. And how long have you been the CEO
9 of Allcare?

10 A. Since the beginning. We started in 2004.

11 Q. Okay. Since 2004?

12 A. 2005, actually. I'm sorry.

13 Q. Okay. And prior to you becoming the CEO of
14 Allcare, were you involved in the health care
15 industry?

16 A. Yes, sir.

17 Q. What was your prior employment or job?

18 A. I was a management analyst at Hospice Care
19 of South Carolina.

20 Q. And how long were you at that position?

21 A. For about three years.

22 Q. And then you became CEO of Allcare; is that
23 right?

24 A. Yes.

25 Q. Okay. And prior to you moving to the

6

1 United States, were you involved in health care also?

2 A. No.

3 Q. Okay. What did you do prior to --

4 A. I was still in high school.

5 Q. Okay. So you moved over here right after
6 high school.

7 A. About -- I stayed about a year after high
8 school, in Czech, and did odd jobs, and then I moved
9 here for undergrad.

10 Q. Okay. Where did you go to undergrad?

11 A. UT Chattanooga and Bethune-Cookman College.

12 Q. Oh. Bethune-Cookman?

13 A. Uh-huh.

14 Q. Down in Florida.

15 A. Yes, sir.

16 Q. Okay. And you graduated from
17 Bethune-Cookman or --

18 A. Yes, sir.

19 Q. What was your degree?

20 A. International business.

21 Q. Okay.

22 A. A bachelor of science.

23 Q. And your first job was with Hospice Care?

24 A. Then after undergrad I did my MBA at
25 Gardner-Webb in Boiling Springs, North Carolina.

1 Q. Okay. And after that?

2 A. And then after, my first job was with
3 Hospice Care.

4 Q. Okay. All right. So you are the CEO.
5 Do you have a CFO?

6 MR. MACCLENANAHAN: I'm going to object
7 because we're getting into, now, the corporate
8 structure of the company. I instruct him not to
9 answer, as being beyond the scope of discovery. That
10 will be included in my protective order.

11 MR. SMALLS: Okay. Objection noted for the
12 record.

13 BY MR. SMALLS:

14 Q. As CEO, do you have a president of Allcare?

15 MR. MACCLENANAHAN: Again, same objection.
16 Again in the corporate structure of the company.

17 MR. SMALLS: Okay.

18 BY MR. SMALLS:

19 Q. Again, do you have a vice president, a
20 secretary, or treasurer of Allcare?

21 MR. MACCLENANAHAN: Same objection as to each
22 one of those officers. It's beyond the scope of
23 discovery.

24 MR. SMALLS: Okay.

25 BY MR. SMALLS:

8

1 Q. Who handles the billing and receivable
2 accounts of Allcare?

3 A. Sue Petty.

4 Q. Sue Petty?

5 A. Uh-huh.

6 Q. Is that P-e-t-t-y?

7 A. Yes.

8 Q. And what's her position at Allcare?

9 A. Director of Accounting.

10 Q. Okay. As CEO, do you handle the day-to-day
11 operations of Allcare?

12 A. Yes.

13 Q. Okay. As far as negotiating of contracts,
14 do you handle that --

15 A. Yes.

16 Q. -- or someone else handles that?

17 A. Yes. That's me.

18 Q. Okay. And is Allcare -- tell me what
19 Allcare does, for the record.

20 A. We deliver home medical equipment to
21 hospice patients.

22 Q. Okay. You primarily deal with hospice
23 patients; is that correct?

24 A. Almost exclusively. We have a very small
25 number of patients that are not on hospice.

1 Q. Okay. And is your business generally
2 located throughout South Carolina?

3 A. And the eastern part of Georgia.

4 Q. Okay. How about North Carolina?

5 A. No.

6 Q. Okay. Now, as CEO, you have been presented
7 as the Rule 30(b)(6) witness for Allcare Medical. Do
8 you understand what that means?

9 A. Yes.

10 Q. Okay. That you basically -- the statements
11 you are going to make today are going to be binding
12 on your corporation, Allcare Medical, correct?

13 A. Yes.

14 Q. Okay. Has Allcare ever brought a lawsuit
15 against a hospice before, prior to this?

16 A. No.

17 Q. Okay. On January 22, 2011 you met with
18 Tony Williams and Lance Wright; is that correct?

19 A. Yes.

20 Q. Okay. And that meeting was for what
21 purpose?

22 A. We were discussing the outstanding
23 balance -- the money owed to Allcare Medical.

24 Q. Okay. And when you say outstanding
25 balance, are you referring to the bills that were the

10

1 Ascension Hospice balance? Is that what you're
2 referring to?

3 A. The bills that were invoiced for services
4 delivered to hospice patients served by Ascension and
5 Ahava Hospice.

6 Q. Okay. Now, you said bills billed to. Let
7 me show you, for the record --

8 MR. SMALLS: And we'll have this marked as
9 Exhibit -- I'll have all of these marked as Exhibit
10 1. There's several of these. I'm going to have them
11 all --

12 MR. MACCLENAHAN: That's just the invoices?

13 MR. SMALLS: Well, it's not the invoices.
14 I don't want to clutter up the record with that.
15 It's just the -- yes, the invoices --

16 MR. MACCLENAHAN: And the cover page.

17 MR. SMALLS: And the cover page, yes.

18 MR. MACCLENAHAN: That's fine.

19 MR. SMALLS: There's no need to make copies
20 of those complete invoices.

21 (DFT. EXH. 1, multiple invoices, with cover
22 page, was marked for identification.)

23 MR. SMALLS: Okay. I have a copy for you
24 too, if you want them. I know you've got them but do
25 you want me to give you --

1 MR. MACCLENAHAN: Yes, please.

2 MR. SMALLS: All right. I'll give you
3 those too.

4 BY MR. SMALLS:

5 Q. Let me show you what has been marked as
6 Exhibit 1 for this deposition. Could you identify
7 that for the record, please?

8 A. Those are invoices issued by Allcare
9 Medical.

10 Q. Okay. And these are invoices dated, in no
11 particular order, October 15, 2010; is that correct?

12 A. That's the first one, yes, sir.

13 Q. November 14, 2010?

14 Well, let me change that. That is the due
15 date that you had --

16 A. Right.

17 Q. Let me go back on those invoice dates and
18 start from the beginning.

19 August 31st was the invoice date.

20 A. August. Okay.

21 Q. September 30, 2010.

22 A. I've got it out of order but --

23 September, October --

24 Q. October 31, 2010; is that correct?

25 A. Yes, sir.

12

1 Q. November 30, 2010?

2 A. Yes.

3 Q. January 31, 2011?

4 A. Yes.

5 Q. February 28, 2011?

6 A. Yes.

7 Q. March 31, 2011?

8 A. Yes.

9 Q. I think it's December 31, 2010.

10 A. That's correct.

11 Q. And July 31, 2010.

12 A. Yes. Correct.

13 Q. Okay. Now, as far as your billing, on all
14 of these bills that we have just discussed in Exhibit
15 1, the Bill To on those items were Ascension Hospice;
16 is that correct?

17 A. It says Ascension Hospice because that's
18 how it was originally set up in our system. And we
19 believed that the same company continued serving
20 those patients so we kept sending it to the same
21 place.

22 Q. Okay. But, for the record, it says
23 Ascension Hospice. Every single one of them.

24 A. They do.

25 Q. Okay. Now, when you went to a meeting --

18

1 Exhibit No. 2.

2 (DFT. EXH. 2, e-mails between Mr. Sliva and
3 Tony Williams, was marked for identification.)

4 BY MR. SMALLS:

5 Q. Exhibit No. 2, can you identify that for
6 the record?

7 A. Those appear to be e-mails between myself
8 and Tony.

9 Q. All right. Specifically on Page 3 -- now,
10 I guess, the third page in this document, there's an
11 e-mail from you to Mr. Williams on Wednesday, January
12 26, 2011. The fourth page. I'm sorry. The fourth
13 page.

14 A. Okay.

15 Q. In that e-mail, you made notice of specific
16 things that you needed from Mr. Williams; is that
17 correct?

18 A. Yes.

19 Q. And the final part of that was you stated,
20 anything missing and I am afraid I'm going to have to
21 pull the trigger on pickups; is that correct?

22 A. Correct.

23 Q. Is that a practice of Allcare, to threaten
24 to pull the equipment if the bill's not paid?

25 A. After six months of continuous efforts and

1 But I continuously had to inquire about outstanding
2 balances throughout the year of 2010.

3 Q. Okay. And what about Jacobs? What
4 communications did you have with him?

5 A. The same thing. Even though he wasn't in
6 charge of payments, I would keep him informed because
7 he was the gentleman submitting orders for equipment,
8 so we just had, you know, more generic discussions
9 about equipment being ordered and payments not being
10 received.

11 Q. Okay. Did you have any written
12 communication, whether e-mails or text messages, with
13 Janet and/or Bob?

14 A. I'm sure there were some.

15 Q. Okay. Do you still have those? Because I
16 have not been provided with those?

17 A. I can probably cover some of them. I
18 haven't really searched through for them.

19 MR. MACCLENAHAN: I'll have him look, and
20 if we have them we'll give them to you.

21 MR. SMALLS: Okay.

22 MR. MACCLENAHAN: Those are e-mails with
23 Janet Bussie and -- who was that again?

24 THE WITNESS: Bob Jacobs.

25 MR. SMALLS: Let me have this marked as

16

1 A. Yes.

2 Q. Who else did you discuss it with?

3 A. My primary contact at Ascension was the
4 director, Janet Bussie.

5 Q. Okay.

6 A. And the medical equipment coordinator, Bob
7 Jacobs.

8 Q. And what were your conversations with them?

9 A. I've talked to them frequently and
10 periodically since the beginning of 2010, about the
11 overdue balance, and I kept requiring payments. And
12 we made various accommodations during 2010. And
13 basically the conversations were related to any
14 amounts outstanding and overdue. And they basically
15 made promises and sometimes delivered, sometimes
16 didn't deliver on their promises.

17 Q. When you say they, can you be more
18 specific?

19 A. I am talking about these two individuals
20 that I spoke with. Janet and Bob.

21 Q. Right. Right. What did Janet tell you
22 when you say promises or anything --

23 A. Well, like during the year she would say,
24 we'll send you a payment by this date, and sometimes
25 we would receive the payments, sometimes we wouldn't.

1 Q. Okay. At that meeting with Mr. Wright and
2 Mr. Williams, did you discuss a promissory note?

3 A. Yes, sir.

4 Q. Okay. And what was that promissory note
5 for?

6 A. It was to secure the portion of the amount
7 owed by the hospices.

8 Q. Okay. Now, you mentioned earlier that you
9 had met Mr. Williams before on two other occasions.

10 A. Yes, sir.

11 Q. Once, when the original contract was signed
12 with Ascension; is that correct?

13 A. Correct.

14 Q. Okay. And then another time.

15 A. That's correct.

16 Q. Why did you ask for Mr. Wright to sign a
17 promissory note?

18 A. Because he showed up at the meeting and
19 they presented themselves as partners, and they
20 volunteered to handle the situation together. I
21 didn't request it.

22 Q. Okay. All right. Now, other than
23 Mr. Wright and Mr. Williams, did you discuss these
24 old invoices in Exhibit 1 with anyone else with
25 Ascension Hospice?

14

1 Q. Okay. And if you had removed those medical
2 devices and medical equipment, those patients would
3 have been without medical equipment; is that correct?

4 MR. MACCLENAHAN: Object to the form.

5 You can answer.

6 THE WITNESS: I believe there were plenty
7 of options for those patients to be taken care of.

8 BY MR. SMALLS:

9 Q. Well, I understand. There's plenty of
10 providers of medical equipment. But if you would
11 have just removed them, they wouldn't have had -- it
12 would have been the option of the company to go get
13 someone else; is that correct?

14 A. It would be the option of the patient to,
15 so that the hospice is able to provide them with
16 equipment.

17 Q. Okay. But if you had removed it without
18 the patient getting a new DME, they would have been
19 out of equipment.

20 A. We're always planning to give the patients
21 notice so they have plenty of time to make
22 arrangements or sufficient time to --

23 Q. So it would have been up to the patient to
24 make arrangements; is that correct?

25 A. Right. That's correct.

1 where was that meeting held with Mr. Williams and
2 Mr. Wright on January 22, 2011?

3 A. Wild Hare Restaurant in Columbia.

4 Q. Okay. Let me see that for a minute. I'll
5 put this together.

6 And how long did that meeting last?

7 A. Probably an hour or so.

8 Q. Okay.

9 A. Maybe a little longer.

10 Q. Tell me what was discussed at the meeting.

11 A. The money owed to Allcare Medical for
12 services provided.

13 Q. Okay. At that meeting -- you had never met
14 Mr. Wright before; is that right?

15 A. Correct.

16 Q. Now, had you met Mr. Williams before?

17 A. Only on two different times. The first
18 one, we were signing the general contract, and then
19 one other time during that three-year period we were
20 serving them.

21 Q. Okay. During that meeting, did you
22 actually tell Mr. Williams and Mr. Wright that you
23 were going to remove Allcare's equipment from
24 Ascension's patients?

25 A. I told them we had no other choice.

1 after having no other choice, you know, we just
2 couldn't have afforded it any longer. We had no
3 other choice but to collect our equipment.

4 Q. So that's my question. Is that the
5 practice?

6 At what point do you decide, or is it a
7 policy, when you decide you're going to threaten to
8 pull and then potentially pull the equipment?

9 A. We have never had to do it before.

10 Q. Okay. So it's not a policy. It's the
11 first time you ever had to do it.

12 A. I'm pretty sure it was the first time.

13 Q. Other than these e-mails and the e-mails --
14 the potential e-mails we discussed with Janet and, I
15 guess, Mr. Bob Jacobs, are there any other e-mails or
16 text messages, or any kind of letters, between
17 Ascension and Allcare regarding these prior invoices?

18 A. I don't believe I discussed it with anybody
19 else at Ascension.

20 Q. Okay. Are there any other e-mails or
21 documents other than what we've discussed?

22 A. There was a lot of communication flowing
23 back and forth, so I -- probably there's going to be
24 more e-mails out there, but nothing specific comes to
25 mind.

20

1 Q. Okay. But those e-mails would be just kind
2 of nailed down to those individuals, to either Tony
3 Williams, Lance Wright, Janet -- is it Janet Bussie?

4 A. Bussie.

5 Q. Bussie, and Bob Jacobs? Is that it?

6 A. From Ascension's side. I think there were
7 other individuals involved from Ahava, Reliance.
8 That's pretty much all of the involved parties.

9 Q. Okay. So there may be some other e-mails
10 from other individuals, but, as far as Ascension is
11 concerned, those would be the only e-mails.

12 A. Correct.

13 Q. From those individuals.

14 A. One interaction I might have had with
15 Brandy Neuberger.

16 Q. Okay. And do you think there's an e-mail
17 on that too? Or you can check on that.

18 A. Sure.

19 Q. And we'll just add her to the list.

20 A. Yes.

21 Q. Okay. Now, you had a written and signed
22 contract with Ascension; is that correct?

23 A. Correct.

24 Q. Okay.

25 MR. SMALLS: We'll have this marked as

1 Exhibit 3.

2 (DFT. EXH. 3, original contract, was marked
3 for identification.)

4 BY MR. SMALLS:

5 Q. For the record, can you identify that
6 document, Exhibit 3?

7 A. I believe this is the contract we
8 originally signed with Ascension Hospice.

9 Q. Okay. And if we go to the signature page,
10 I guess it would be Page 4, is that your signature?

11 A. Yes.

12 Q. Okay. And it appears that signing for
13 Ascension Hospice was Robert Williams; is that
14 correct?

15 A. Correct.

16 Q. Okay. And the date of this contract was
17 March 2008; is that correct?

18 A. Correct.

19 Q. Okay. Now, this contract has two
20 exhibits -- or one exhibit. Marked Exhibit A is an
21 attachment.

22 Were there any other parts to this contract
23 that are not included with this Exhibit 3?

24 A. Not that I know of.

25 Q. Okay. Now, I think I want to identify --

2 d that the primary contacts you had with
3 MacClenahan were Janet and Bob Jacobs; is that correct?

4 A. Yes.

5 Q. Okay. At some point -- if you will look at
6 Exhibit 2, do you discuss -- I think the e-mails were
7 back and forth starting in January 24, 2011, on these
8 e-mails.

9 On January 24th, I guess it's the third
10 page on the exhibit, Exhibit 3, that you discuss with
11 Tony -- or e-mail Tony Williams about a new contract
12 for Ahava. Do you recall that?

13 A. We were discussing renegotiating prices
14 going forward.

15 Q. Well, your e-mail -- can you read your
16 e-mail for the record, January 24th at 1:05 PM?

17 A. I thought we would talk about a new
18 contract for Ahava, but we can work it out via
19 e-mail. I will send you wiring info and proposal
20 with PPD quote and contract.

21 Q. Okay. All right. At some point also, I
22 think on January 27th, you sent an e-mail to Mr. Tony
23 Williams. In fact, this one was to Tony and Janet;
24 is that correct?

25 MR. MACCLENAHAN: Which time are you
referring to?

1 BY MR. SMALLS:

2 Q. I'm sorry. January 27, 2011 at 2:31 PM.

3 This is one of the e-mails. Do you recall that?

4 A. This one has both Tony and Janet on it.

5 Q. Right. And it goes on to say -- could you
6 read that for me, what you e-mailed to them?

7 A. Tony and Janet, per your request, attached
8 is the proposed contract with \$4.95 PPD rate. Let me
9 know what you think.

10 Q. Okay. Now, at the bottom of this e-mail,
11 it says there's a PDF, Ahava contract.

12 A. Uh-huh.

13 Q. Do you have a copy of that contract?

14 A. I can probably retrieve it from this
15 e-mail.

16 MR. SMALLS: Okay. We'd like to get that.

17 MR. MACCLENAHAN: Okay. We'll get you a
18 copy of that.

19 Also, and maybe we can go through -- I've
20 got a few things I've got to produce to you, and I've
21 got that list too.

22 MR. SMALLS: Okay. Good. Yes. I was
23 waiting to get that.

24 MR. MACCLENAHAN: So we can go through all
25 of that stuff.

24

1 MR. SMALLS: Okay.

2 MR. MACCLENANAHAN: All right. So this is

3 Ahava --

4 MR. SMALLS: The Ahava proposed contract
5 for 1/27/2011.

6 MR. MACCLENANAHAN: Okay.

7 BY MR. SMALLS:

8 Q. And at some point, I guess that same
9 date -- I don't know if this is earlier or later -- I
10 guess it was -- it was earlier on January 27th. It's
11 on the previous page, at the bottom, on Exhibit 3.

12 MR. SMALLS: This is 3, right?

13 MR. MACCLENANAHAN: It's Exhibit 2.

14 MR. SMALLS: Exhibit 2, for the record.

15 A list of e-mails.

16 BY MR. SMALLS:

17 Q. At the bottom of that -- it's January 27,
18 2011, is an e-mail from you to Mr. Williams, Tony
19 Williams, and it carries over to the next page. And
20 in part of that it says you talked to Tammy again on
21 Tuesday and she repeated she wasn't interested in
22 using Allcare.

23 Now, who are you referring to when you say
24 Tammy on that particular e-mail?

25 A. Tammy McDonald.

1 Q. Okay. And you had communicated with her
2 regarding Allcare --

3 A. The understanding was, after our meeting --
4 what I was told at the meeting is that they were
5 going to pay us what they owe us. We're going to
6 sign and re-contract with new pricing so that they
7 don't get behind and they don't get in trouble again,
8 and we're going to continue working together. And I
9 was given Tammy's phone number to follow up on that.
10 And, when I contacted her, she informed me that she
11 was not interested in using Allcare.

12 Q. Okay.

13 A. But still somebody was using our equipment
14 in January, February and March. Under one name or
15 another, somebody was using the equipment. And
16 nobody paid for it either.

17 Q. Okay. Now, this proposed contract for
18 Ahava, that you e-mailed a PDF to Janet and Tony
19 Williams, did you prepare that contract or is that --

20 A. Yes.

21 Q. Is that your standard contract?

22 A. Yes.

23 Q. Okay. Is that contract pretty similar to
24 the contract that was signed by you and Tony as an
25 agreement in 2008?

26

1 A. It should be very similar. I haven't seen
2 it in a long time so I can't really tell. But we
3 don't vary much in contract language so it should be
4 quite similar.

5 Q. Okay. Now, the proposed contract was never
6 signed by you or Ahava; is that correct?

7 A. Correct.

8 Q. So, going forward, Ahava and Allcare never
9 had a written contract; is that correct?

10 A. In our opinion, we had a contract with
11 Ahava because we signed a contract with Ascension
12 Hospice which turned into Ahava. So we believe that,
13 in fact, we have a contract with Ahava.

14 Q. Okay. My question was: Do you have a
15 signed contract with Ahava?

16 A. We don't have a document that has the Ahava
17 name on it, but we have a contract that was signed by
18 Ascension.

19 Q. Okay. I'm not arguing with you but I'm --
20 all right. My question is: Do you have a signed
21 contract with Ahava in the document?

22 A. I don't believe we have a document that
23 says Ahava on it, but we believe that the contract we
24 have in place is binding by Ahava.

25 Q. I understand your position. My question,

1 just simply, is --

2 MR. MACCLENAHAN: He answered. He said
3 there isn't one.

4 MR. SMALLS: Okay. Just for the record, I
5 want to be clear on that. I don't want to go back
6 and then he says, well, there is one.

7 BY MR. SMALLS:

8 Q. There is not one with Ahava on it; is that
9 correct?

10 A. Correct.

11 Q. Okay. Now, during these negotiations that
12 you had with Ascension, or Mr. Williams, regarding
13 this past due amount, invoices which we have already
14 noted as Exhibit 1, did you ever receive any payment
15 directly from Ahava Hospice, Inc.?

16 A. There were some payments that came from
17 entities that we didn't recognize, so I don't know if
18 Ahava was associated with any of those or not, but we
19 were receiving payments that came from other than
20 Ascension.

21 Q. I understand that. My question was: Do
22 you know if you ever received anything directly, by
23 check, by any other means, directly into your bank
24 account, for Allcare from Ahava Hospice, Inc.?

25 A. None of the payments we received

28

1 specifically said Ahava.

2 Q. Okay. Now, let's go back again. Now, at
3 some point you were discussing the contracts, or a
4 new contract with Ahava, with Tammy McDonald; is that
5 correct?

6 A. Correct.

7 Q. Did you, at some point, send her a copy of
8 this proposed contract?

9 A. I'm not sure if she received a copy of the
10 contract, but I know she was aware of the proposal
11 because she was the one telling me that she didn't
12 like the pricing.

13 Q. Okay.

14 (DFT. EXH. 4, copy of text messages sent
15 between Mr. Sliva and Tony Williams, was filed.)

16 BY MR. SMALLS:

17 Q. Okay. This appears to be a copy of some
18 text messages sent between you and Tony Williams; is
19 that correct?

20 A. Correct.

21 Q. Okay. I think your message, if I'm reading
22 this right, the second one -- could you read that for
23 me? The second. March 3, 2011, at 11:26. I'm not
24 sure if it's AM or PM.

25 A. Have you guys decided? If you buy the

1 equipment we can stop the pickups and wait 'til 3/20
2 for your first monthly payment. Otherwise, we will
3 probably have to speed up the pickups and get lawyers
4 involved regarding the note.

5 Q. Okay. And that was your comment; is that
6 correct?

7 A. Correct.

8 Q. Could you read the March 3, 2011 entry from
9 you to Tony Williams?

10 A. 12:10?

11 MR. MACCLENAHAN: There's multiple ones.

12 THE WITNESS: Yes.

13 BY MR. SMALLS:

14 Q. The first one. The first one. I'm sorry.
15 The first time.

16 A. Looking at 12:10?

17 Q. 12:10, yes.

18 A. You need to call David --

19 MR. MACCLENAHAN: Hold on one second.

20 Just to be clear, you asked him to read the
21 one from him to Tony. The 12:10 one is from Tony to
22 him.

23 MR. SMALLS: Oh. I'm sorry. I'm sorry.

24 BY MR. SMALLS:

25 Q. Don't read that one.

30

1 A. Okay.

2 Q. Don't read that one.

3 Tony Williams sent you a text message on
4 March 3, 2011 at 12:10, according to this document;
5 is that correct?

6 A. Yes.

7 Q. And, in that, he stated you needed to talk
8 to David about equipment and talk to him about buying
9 that equipment; is that correct?

10 A. Yes.

11 Q. Okay. And your response was on the same
12 day, at 12:58; is that right?

13 A. Yes.

14 Q. Okay. Tell me what your response was.

15 A. David is not interested. You guys said you
16 would think about it. Never mind then. We'll do
17 what we have to do.

18 Q. Okay. And you also sent Mr. Williams a
19 text on March 3, 2011 at -- I guess that's 1:25.

20 Could you read that for me?

21 A. I'm sorry. 1:25?

22 Q. It's 13:25, but it's military time.

23 A. Yes. Well, let me know what they say, but
24 I just have a feeling that neither David nor Tammy
25 could care less about your patients and reputation.

1 At least based on the decisions they have made so
2 far. Thought you and Lance could fix it.

3 Q. Okay. And are those your statements to
4 Tony on that particular day?

5 A. Yes.

6 Q. Or some of them, at least.

7 A. Right.

8 Q. Okay. Now, did you also have
9 communications with Ms. Tammy McDonald? I think we
10 talked about that a minute ago.

11 A. Yes.

12 Q. Okay. And I'm going to show you something
13 that -- some e-mails, I think, that went back and
14 forth between, I guess, her and -- I think there's a
15 list of e-mails between you and Ms. McDonald.

16 And I'll have you review this. And you
17 may -- you can take your time to look at it for a
18 minute since I didn't get it --

19 MR. MACCLENAHAN: Well, we haven't received
20 these e-mails in discovery.

21 MR. SMALLS: Well, they're not my e-mails,
22 they're his e-mails. I just got them yesterday.

23 MR. MACCLENAHAN: Oh. I understand.
24 The -- but my point is, we haven't received them in
25 discovery. They were not produced to us in

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1 discovery. It would have been responsive to our
2 requests. I understand if they're from him they'd be
3 responsive to yours as well.

4 MR. SMALLS: Well, I don't --

5 MR. MACCLENAHAN: But they weren't produced
6 pursuant to Rule 30 with enough time ahead of this
7 deposition, so I'm going to ask -- we're going to
8 take a break and I'm going to review this document
9 with him. Because --

10 MR. SMALLS: Oh, that's fine.

11 MR. MACCLENAHAN: -- I can tell now, this
12 document has not been part of discovery.

13 MR. SMALLS: That's fine. I have no
14 problems with you --

15 MR. MACCLENAHAN: Okay.

16 MR. SMALLS: As long as your discussions
17 are limited --

18 MR. MACCLENAHAN: Of course.

19 MR. SMALLS: -- to this document only, I
20 have no problems with it.

21 MR. MACCLENAHAN: All right. Then why
22 don't you give us a minute. I'll go step in my
23 office and I'll be --

24 MR. SMALLS: Yes. That's fine.

25 I'm going to go ahead and have it marked.

1 (DFT. EXH. 5, text messages between Mr. Sliva
2 and Tammy McDonald, was marked for identification.)

3 (A recess transpired.)

4 MR. MACCLENAHAN: This is going to be
5 Exhibit 5?

6 MR. SMALLS: Yes.

7 Okay. All right. For the record, counsel
8 has had an opportunity to discuss Exhibit 5 with his
9 client, and we will proceed on with the questioning.
10 BY MR. SMALLS:

11 Q. Exhibit 5 is e-mails between you and Tammy
12 McDonald; is that correct?

13 A. Yes.

14 Q. Okay. And the e-mails are dated
15 January 27, 2011; January 25, 2011; January 31, 2011;
16 and February 2, 2011; is that correct?

17 A. Yes.

18 Q. And I think the first -- or the e-mail
19 that's on the first page of the exhibit -- you sent
20 an e-mail to Tammy asking if they wanted to continue
21 to have a contract with Allcare; is that correct?

22 A. I think it starts at the bottom here and --

23 Q. Okay. Well, I'll let you clarify it then.

24 A. Sure.

25 Q. Since it came from you.

34

1 A. Yes. I'm telling her, thanks for the phone
2 call we had, and here's the proposed new pricing.
3 And she says, I've reviewed the contract and compared
4 it with Ascension's pricing, and it's simply too
5 high.

6 So after that I offered her another option,
7 which was to buy out the equipment instead of
8 continue the rent.

9 Q. Okay. So on January 27, 2011, Tammy
10 McDonald informed you that she thought that the
11 proposal from Allcare to Ahava was too high; is that
12 correct?

13 A. The proposal I made to her she wasn't happy
14 with.

15 Q. Okay. And the proposal was for Ahava to
16 use Allcare Medical.

17 A. The proposal was to find a solution, how to
18 get out of this mess, and allow the same entity that
19 continued the operations to pay us their debt and
20 continue renting our equipment.

21 Q. Okay. I don't see the proposal. Was there
22 a PDF for that?

23 A. That's the same PDF I believe you saw
24 e-mailed to Tony.

25 Q. Okay. The contract, proposed contract.

1 A. Right.

2 Q. Okay. So when we get that later, you sent
3 to Tammy the same proposed contract that you sent to
4 Tony Williams; is that fair?

5 A. I think that's correct.

6 Q. I don't see a PDF on the end of this,
7 though. That's what I'm --

8 Oh. I'm corrected. I stand corrected. On
9 the second page of Exhibit 5, there is a note --
10 there is a PDF, and it says -- for the record, what
11 does it say? Contract, Ahava Hospice?

12 A. Yes.

13 Q. Okay. Now, that contract that you sent
14 Tammy and the same one you sent Tony, did that
15 contract address any of their prior invoices that
16 Ascension had? Did that contract address that?

17 A. No.

18 Q. Okay.

19 A. But it was understood that as a condition
20 of entering into this new contract the old deal --
21 situation would be resolved.

22 Q. Where is that? Is that anywhere in these
23 documents to Tammy McDonald?

24 A. There was the discussion I had with Lance
25 and Tony, in that meeting.

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1 Q. What I'm asking you is: Was that anywhere
2 in any of these e-mails that Tammy --

3 A. Tammy wasn't involved. I treated Tammy as
4 an employee of the newly-named entity that wasn't
5 aware of the whole situation. That's why I didn't
6 really disclose everything to her.

7 Q. But any proposal you sent her was only that
8 contract, for the record.

9 A. I was asked to send her the new pricing.

10 Q. Okay. What was the price difference?

11 A. They were switching from paying per item to
12 a per diem payment method.

13 Q. Okay. Explain that to me. How was
14 Ascension's contract?

15 A. Ascension was paying for each individual
16 item that they rented a separate price.

17 Q. Okay.

18 A. Versus a per diem system, the hospice would
19 pay a per diem amount for a patient no matter how
20 much equipment that patient is using.

21 Q. Per day.

22 A. Per day.

23 Q. Okay. Now, some of the equipment that was
24 rented -- I mean, this is your business. Some of
25 this equipment, is it, I guess, life preserving, that

1 the person would need it, like oxygen or IV's?

2 A. Usually in hospice situations the equipment
3 that we handle is not life preserving.

4 Q. Okay.

5 A. Usually it's for comfort measures.

6 Q. Okay. Now, in these e-mails sent, in
7 Exhibit 5, on January 27th, I think, Ms. McDonald
8 said that, if you're willing to negotiate or offer a
9 better price, please advise; is that correct?

10 A. Yes. That's correct.

11 Q. Okay. And, at that point, did you offer
12 her a better price?

13 A. No. I already told her that it was the
14 best we could do.

15 Q. Okay. In fact, I think you said, our
16 philosophy has never been to be the cheapest
17 provider, but to be the best; is that correct?

18 A. Correct.

19 Q. All right. Then you went on to state,
20 unfortunately, we wouldn't be able to compete -- is
21 that compete -- or go any lower on the PPD rate.

22 And that's per diem rate?

23 A. Yes.

24 Q. Is that correct?

25 A. Per patient a day.

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1 Q. And you followed up in that same e-mail --
2 just to make sure the record is clear, it's January
3 27, 2011, I guess, at 5:18. You said, another option
4 we have is for you guys to buy out our equipment.
5 Looking briefly at the list of items currently
6 rented, I would estimate the cost to be around ninety
7 thousand dollars; is that correct?

8 A. Yes.

9 Q. Finally -- you said, finally, if none of
10 the options works for you, we don't have a problem
11 discontinuing services and picking up our equipment
12 on February 1st; is that correct?

13 A. Yes.

14 Q. Okay. Now, a minute ago during your
15 deposition, you said you felt like you had a contract
16 with Ahava; is that correct?

17 A. Correct.

18 Q. Now, if you felt like you had a contract
19 with Ahava, why did you send a new document to Tammy
20 McDonald and Tony Williams?

21 A. Because that was the request that Tony and
22 Lance had. They said they had changed their name and
23 they wanted to have the new contract with the new
24 entity and new name on it, and new pricing.

25 Q. Okay. Now, the second part of this third

1 page of the exhibit, it's kind of confusing to me.
2 It says at the bottom -- this list, is that from you
3 or from her?

4 A. That list of patients is probably from us.

5 Q. That's from you?

6 A. Uh-huh.

7 Q. Okay. And were these -- tell me what that
8 list is at the bottom of the page.

9 A. I believe that's the list of patients that
10 still were renting our equipment. At that time I was
11 talking to Tammy.

12 Q. Okay. Now, what is that attached to? I
13 mean, it's just confusing the way it printed out. I
14 mean, you may not know what it is since it didn't
15 come from you, but...

16 A. I believe that table came from me but I
17 don't know why it's printed under her e-mail.

18 Q. That way?

19 A. Yes.

20 Q. Okay. Well, let's go back to the top of
21 that page. This is an e-mail February 2, 2011 at
22 2:22 and it's an e-mail from you to Tammy.

23 A. With Janet and Tony attached.

24 Q. You are correct.

25 A. Or copied.

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1 Q. You are correct. And that e-mail stated
2 that you put together a tentative pickup schedule for
3 the next few days.

4 Now, I -- and correct me if I am wrong, but
5 I'm thinking that this is -- is this the pickup
6 schedule at the bottom?

7 A. It looks like it. Yes.

8 Q. Okay. And it says, I've also written a
9 letter that we would send out to your patients.

10 And I'm assuming that's that letter at the
11 next page; is that correct?

12 A. It looks like it.

13 Q. And you went on to say, before we pull the
14 trigger I want to reach out one more time; is that
15 correct?

16 A. Yes.

17 Q. And I think your -- on February the 2nd
18 your response -- your e-mail, for the record, on
19 February 2nd, is responding to an e-mail from Tammy
20 McDonald on January 31st; is that correct?

21 A. Yes.

22 Q. And, in that e-mail, she stated, Ahava has
23 went with another provider. Please get with Reliant
24 Medical Products to let them know the times of pickup
25 for the patients. They are ready and prepared to

1 deliver equipment whenever you are able to begin
2 pickup.

3 And in response to that, you provided
4 pickup dates and the list in your e-mail. I don't
5 know why it's set up this way, but that's what it
6 appears to be. Is that correct?

7 A. Right. But then you see that we kept our
8 discussion going until -- never mind.

9 Yes, that's correct.

10 MR. SMALLS: Okay. Now, one thing I do
11 want to add to our list is if there are other e-mails
12 that Allcare may have regarding communications with
13 Tammy McDonald during this time period, or any time
14 period that's January, February, March, April or
15 whatever, we would like to get a copy of that also.

16 MR. MACCLENAHAN: Sure.

17 MR. SMALLS: Just add that to the list.

18 MR. MACCLENAHAN: Sure. I'll get it.

19 BY MR. SMALLS:

20 Q. Now, so you had a tentative schedule
21 here --

22 MR. SMALLS: I'm sorry.

23 MR. MACCLENAHAN: That's okay. We're
24 trying to figure out sort of what these attachments
25 are and where they came from.

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1 And if you'll look at the top here, it's
2 from Tammy to David. It's got that little paperclip
3 which usually signifies an attachment, and it says
4 two attachments. And it says, I did send this
5 already.

6 MR. SMALLS: Okay.

7 MR. MACCLENAHAN: So I don't know why
8 Tammy -- how she would have had that without him
9 sending it to her, but --

10 MR. SMALLS: Well, that's what I asked, was
11 that something he sent to her.

12 MR. MACCLENAHAN: Yes. But it looks like,
13 at least on this printout, or whatever, those
14 attachments are actually from Tammy --

15 MR. SMALLS: Right.

16 MR. MACCLENAHAN: -- to David.

17 MR. SMALLS: Right.

18 MR. MACCLENAHAN: Okay.

19 MR. SMALLS: Okay.

20 BY MR. SMALLS:

21 Q. Well, let's -- for the record, though, is
22 it your opinion that you did e-mail Tammy McDonald on
23 February 2nd, and also Janet and Tony, with a
24 tentative list -- or a pickup date, and also a letter
25 that you were sending to patients?

1 A. I have to go from my records, but I don't
2 have any reason to question that.

3 Q. Okay. And these pickup dates were -- if
4 I'm not correct -- I can't read the top of the next
5 page.

6 MR. MACCLENAHAN: Yes. It looks like there
7 may be some information that was not printed, for
8 whatever reason.

9 MR. SMALLS: Yes.

10 BY MR. SMALLS:

11 Q. We'll try to get that either from your
12 notes or your e-mails.

13 But it looks like you had, at least from
14 what we can read, February the 4th, February the 5th,
15 March the 5th, and April the 5th. Were those the
16 dates that you proposed for the pickup?

17 A. It looks like something is off with these
18 dates but --

19 Q. Okay. Well, if you can provide us with
20 that corrected copy. Could we add that to the
21 record, to this, if you have a copy?

22 A. Sure.

23 Q. Okay.

24 So, at some point you reached an agreement
25 with Tammy McDonald to, in fact, pick up the

44

1 equipment; is that correct?

2 A. To transition those patients onto Reliant
3 Medical's equipment.

4 Q. Okay. When did that -- do you have records
5 as to when that occurred?

6 A. Yes. Those pickups occurred through
7 February, until mid March.

8 Q. Okay. Do you have a copy of the documents
9 regarding when the pickups were done?

10 A. I can probably produce most of it out of
11 our computer system.

12 MR. MACCLENAHAN: So what are you asking
13 for, so I can put that in my notes?

14 MR. SMALLS: We're asking for documents
15 that indicate when the equipment was picked up from
16 those patients that were being -- under
17 Ascension's -- when the equipment was picked up by
18 Allcare.

19 MR. MACCLENAHAN: Okay.

20 BY MR. SMALLS:

21 Q. Now, I want to talk to you about this --
22 the letter, still part of Exhibit 5.

23 A. Okay.

24 Q. Once, I guess, Tammy indicated that Ahava
25 was not going to use the services of Allcare, you

1 provided a -- prepared a letter dated February 2,
2 2011; is that correct?

3 A. It appears so.

4 Q. And that letter was addressed to
5 Ascension's clients, Ahava Hospice clients?

6 A. Right.

7 Q. Okay. And in that letter you indicated
8 that they had decided to abruptly discontinue it's
9 partnership with Allcare Medical; is that correct?

10 A. Where do you see that?

11 Q. The first -- second sentence.

12 A. Okay. Yes. That's what it says. But I
13 don't believe that letter actually was ever mailed
14 out.

15 Q. Oh. It was not mailed out.

16 A. No.

17 Q. Okay. Well, what was the purpose of the
18 letter if you weren't going to mail it out?

19 A. It was to notify Tammy that this is one of
20 our options.

21 Q. Okay. But what -- to notify that was your
22 option. Option -- why? What was the purpose in this
23 letter?

24 A. The purpose was to inform the patients that
25 we are going through some difficulties with

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1 Ascension/Ahava Hospice, and that we might have to
2 come and pick up our equipment. But we never ended
3 up sending the communication out.

4 Q. Okay. Now, the letter as written though
5 does cast Ascension/Ahava, as you wrote it, in a
6 negative light. Wouldn't you agree with that?

7 MR. MACCLENAHAN: Object to the form.

8 THE WITNESS: I don't know which light it
9 casts. It just states the facts.

10 BY MR. SMALLS:

11 Q. Okay. The facts as you saw them, correct?

12 A. Facts are facts.

13 Q. Well, the reason you wrote the letter,
14 right?

15 A. That's right.

16 Q. Okay. All right. So you said it's facts,
17 some may say it's opinion, but the bottom line is
18 this was prepared by you. Nobody else prepared it,
19 right?

20 A. That's correct.

21 Q. Okay. All right. Now, you said this
22 letter was never sent out?

23 A. Not to my knowledge. I never sent it out
24 and don't believe anybody else did.

25 Q. Okay. Well, would anybody else send a

1 letter out like to any of the --

2 A. I don't think so.

3 Q. Okay. So if it did go out, it would go out
4 from you.

5 A. Not necessarily.

6 Q. Okay. Who else would send a letter out to
7 patients?

8 A. I don't know of anybody at the company that
9 would send a letter to patients.

10 Q. Okay. Do you know if anybody called the
11 patients and informed them that this was going to
12 occur, that Allcare Medical was no longer going to
13 provide --

14 A. We have routine conversations with our
15 patients, caregivers, nurses, so I can't vouch for
16 any -- for all of the information that was
17 communicated. I mean, it's just ongoing.

18 Q. No. I am asking: Do you know if anybody
19 from Allcare provided specific information to the
20 patients, by calling them or e-mailing them or any
21 kind of communication, of the fact that Allcare was
22 no longer going to provide the medical equipment for
23 them?

24 A. It's possible. Like I said, I don't know
25 what's communicated exactly, but I know we have

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1 periodic contact with patients.

2 Q. Okay. Who typically makes contacts with
3 patients?

4 A. Customer service.

5 Q. Okay. Who works in your customer service
6 department?

7 A. We have eleven people there.

8 Q. Okay.

9 A. At that time we may have had fewer than
10 that.

11 Q. Okay. So in 2011, do you remember who was
12 in customer service?

13 A. No.

14 Q. Approximately how many people were in
15 customer service?

16 A. In 2011?

17 Q. Right.

18 A. Between five to ten.

19 Q. Do you have any employees now, in 2013, who
20 were in customer service in 2011?

21 A. Yes.

22 Q. Do you know their names?

23 A. Not precisely. I can provide the
24 information.

25 Q. Okay. And so the equipment was eventually

1 picked up; is that correct?

2 A. With a few exceptions. I think we were
3 missing a handful of items, but the majority of the
4 equipment got picked up.

5 Q. Okay. Now, the letter you sent, or you
6 thought about sending, was that intended to get
7 Ms. McDonald to change her mind?

8 A. She requested, I believe, the pickup times
9 or their schedule, if I'm not mistaken, so that's
10 what I prepared for her. Or she talked about Reliant
11 Medical being ready, to pick up at any time, so I
12 responded with our ability for pickups.

13 Q. Right. I understand the pickup schedule.
14 What I'm talking about is the letter you dated
15 February 2, 2011. Was that intended to get
16 Ms. McDonald to change her mind about using Allcare?

17 A. Our intent was to show her what our
18 intended pickup schedule was. That's all.

19 Q. Okay. So this letter was attached with the
20 pickup schedule.

21 A. I don't know if it was together or
22 separate. I mean, this e-mail is coming from her so
23 she might have collected it from two of my e-mails or
24 from one of my e-mails, but...

25 Q. Okay. Well, let me ask you this: Have you

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1 ever sent a letter out like this before?

2 A. No.

3 Q. Okay. So it's not your company's procedure
4 to send this type of letter out.

5 MR. MACCLENAHAN: I'm going to object
6 because he said he didn't send the letter out. And
7 you're implying that he sent that letter out.

8 MR. SMALLS: Okay. I'll change that --
9 retract that question.

10 BY MR. SMALLS:

11 Q. Have you ever prepared a letter like this
12 to any other hospice --

13 A. No.

14 Q. -- for any other patient?

15 A. I never had to.

16 Q. Okay. All right. And you said you never
17 sent this letter out; is that correct?

18 A. To the best of my knowledge, I don't
19 believe that that letter was ever mailed out.

20 Q. When your individuals from customer service
21 contacted the patients to let them know that you were
22 going to remove the equipment and have it switched
23 out by another provider, did the customer service
24 individuals indicate that those patients could
25 continue to use your equipment if they went to a

1 hospice which had contracted with you?

2 MR. MACCLENAHAN: I'm going to object
3 because you're getting beyond the scope of the topics
4 that are listed in your 30(b)(6) motion here. It
5 lets you inquire a little bit about the customer
6 service but -- that's to my reading. Nowhere in
7 there do I see where you say, we're going to talk
8 about how the equipment was retrieved from patients.

9 MR. SMALLS: Well, it's important
10 because -- I think if you look at our documents, you
11 know, we need to know the procedure that they have
12 with regard to these invoices, and this is part of it
13 because he's claiming that in January, February and
14 March, that the equipment was still there. So I need
15 to know what was the procedure. I mean, if you
16 object, that's our --

17 MR. MACCLENAHAN: Yes. I'm putting my
18 objection on the record.

19 MR. SMALLS: Are you telling him not to
20 answer?

21 MR. MACCLENAHAN: No. I'm not saying that.

22 MR. SMALLS: All right. That's fine.

23 MR. MACCLENAHAN: I'm just putting an
24 objection on there, that this is beyond the scope of
25 the 30(b)(6) notice.

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1 MR. SMALLS: That's fine.

2 BY MR. SMALLS:

3 Q. Let me ask you this: Did they have a
4 specific detailed response that they were supposed to
5 communicate to the patients?

6 A. None that I know of. I believe they were
7 just informing the patient that we need to pick up
8 our equipment.

9 Q. Okay. Do you know if anyone told the
10 patients that they could go to another hospice other
11 than --

12 A. Not to my knowledge.

13 Q. Okay. Now, one thing I want to point out
14 in your letter. Although you said you didn't send
15 it, you did send it to Ms. McDonald. No. 1 on your
16 letter -- I guess it's numbered No. 1 -- basically
17 says these are the steps that they could take.

18 Could you read that for me?

19 A. Call the new management of Ascension/Ahava
20 Hospice and demand that you are allowed to keep
21 Allcare Medical as your provider of medical
22 equipment. It is your right. You can reach
23 Ms. Tammy McDonald, the president, at (803)260-1593.

24 Q. Okay. The second part was -- read No. 2
25 for me, please.

1 A. Call any of the hospice agencies listed on
2 the attached list and request to be transferred under
3 their care. The listed hospices have contract
4 agreements with Allcare Medical and will be glad to
5 let you continue to use our equipment.

6 Q. Okay. Now, did you have a list with this
7 letter or you didn't?

8 A. I don't believe so.

9 Q. Okay. And please read the final part of
10 this. I mean the bold part. I don't mean the final
11 part.

12 A. Unless you decide to take one of the above
13 steps, our technicians will contact you and arrange
14 for pickup of all of our equipment between
15 February 3rd and the 6th.

16 Q. Okay. So was any letter sent to the
17 patients from your company?

18 A. I really don't believe so.

19 Q. Okay. Can you check your records to see if
20 there was a letter sent?

21 A. Sure.

22 Q. But right now you're saying you don't think
23 a letter was sent.

24 A. No.

25 Q. Is that right?

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1 A. Correct.

2 Q. Okay.

3 MR. MACCLENAHAN: And in your request for
4 production of documents that you sent, the e-mails
5 and stuff would be responsive to some of those
6 requests. But, to be clear, the documents concerning
7 the pickup times of that and the records of this, I
8 don't think were covered by any of your requests.
9 I'm happy to get it for you.

10 MR. SMALLS: I can do another request or
11 you can provide it.

12 MR. MACCLENAHAN: Yes. I mean we can just
13 do it orally. But the -- I mean we didn't inquire
14 into those since they --

15 MR. SMALLS: Right.

16 MR. MACCLENAHAN: But I'll be happy to
17 provide them to you without you having to issue
18 another request, okay?

19 MR. SMALLS: Okay.

20 THE WITNESS: It's going to be hard to get
21 a record of not mailing out a letter.

22 MR. MACCLENAHAN: Well, sure. I mean, all
23 we would have is -- I mean, we wouldn't have proof of
24 mailing one way or the other, obviously, if he -- but
25 I will get you whatever we have to the extent there

1 is anything. I don't know.

2 MR. SMALLS: Right.

3 BY MR. SMALL:

4 Q. And I may have asked you this: Have you
5 ever pulled equipment from a hospice patient for the
6 hospice's failure to pay?

7 A. Can you repeat that?

8 Q. Have you ever had a situation since you
9 have been in business where you've had to pull the
10 equipment because the hospice has not paid your
11 invoices?

12 A. I don't believe we have ever faced that
13 situation.

14 Q. Okay. Okay. Now, because you are the
15 representative for Allcare, and I think you may have
16 covered this, but I want to get your explanation of
17 why you think Ahava owes you money. That's what I
18 want from you.

19 A. Okay. We are of the opinion that Ahava
20 Hospice is just, in fact, the same company as
21 Ascension Hospice because of the common ownership,
22 the common employees, the common offices, and the
23 common patients, and the fact that the company
24 continued using our equipment for a month and a half.
25 We believe that it's pretty clear that the entity,

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1 the company, is the same. It only went through a
2 name change.

3 Q. Okay. Now, let me go back to that last
4 point you made. You said the company continued to
5 use the equipment. For how long?

6 A. A month and a half.

7 Q. A month and a half.

8 A. We didn't pick up all of our equipment
9 until mid March.

10 Q. So February and March you are saying that
11 Ahava used your equipment.

12 A. They were notified of the change in mid
13 January.

14 Q. Okay.

15 A. We were told that Ascension is no more, and
16 we didn't collect all of our equipment until mid
17 March.

18 Q. Okay. Well, let's back up a little bit.
19 Now, why didn't you pick up the equipment earlier
20 than mid March? Because according to your letter
21 dated February 2nd, that you already had a scheduled
22 pickup list -- that you had already prepared it.

23 A. That's what our meeting with Lance and Tony
24 was all about. I was telling them I needed to do the
25 pickup, they were asking me not to.

1 They offered all kinds of assurances,
2 guarantees, and, you know, I was just, I guess,
3 soft-hearted and kept them using our equipment.

4 I was also assured that Ahava Hospice will
5 continue renting our equipment and going forward with
6 the signing new pricing, so I was trying to work it
7 out.

8 Q. Okay. Well, I'm confused, though.
9 Because, and maybe you can explain, on January 31st
10 there's an e-mail, which is Exhibit 5, from Tammy
11 McDonald that point blank says, let me know the time
12 for the pickups for the patients. That's what she
13 said on January 31st.

14 Now, going back with regard to essentially
15 your meeting with Mr. Williams and Mr. Wright,
16 that was on January 22nd. So on January 31st, you
17 were already informed that they weren't going to use
18 you.

19 A. I was informed that she's not intending on
20 paying us, but they kept using our equipment. And I
21 was directed to talk to Reliant about switch-outs,
22 which I sent them a switch-out schedule. They were
23 not able to follow that schedule.

24 They requested a quote on the purchase of
25 the equipment. They were looking at the option of

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1 purchasing the equipment for awhile and then they
2 decided not to go with that either. So they
3 basically were stalling for time until they had an
4 opportunity to get their own equipment.

5 Q. Okay. So --

6 A. But at no point did they tell me, you know,
7 we need you to pick up the equipment, because they
8 didn't have any replacement for it.

9 Q. And when you say they, let's clarify that.

10 A. Anybody from Ahava.

11 Q. Okay. Well, that's confusing, because she
12 said, give me a pickup, on January 31st.

13 A. Right. And I sent the list and they said
14 they are not able to comply with the list, to give
15 them a little more time, to provide them with a quote
16 for purchase. And the conversation continued and
17 nothing got resolved. I was still left to believe
18 that they were interested in resolving it without
19 having to go through the pickups.

20 Q. Okay. Let me get some clarification. You
21 said that Ahava, or Reliant, said they were not able
22 to agree with your pickup list. Who would you talk
23 to specifically?

24 A. I believe it was whoever was the manager at
25 Reliant.

1 Q. Okay. So you talked to, for the record,
2 someone at Reliant DME and they were not able to
3 follow up with your pickup schedule.

4 A. Right.

5 Q. Okay.

6 A. Not interested to do the switch at that
7 time.

8 Q. They said they were not interested to do it
9 at that time?

10 A. They said they couldn't pick it up, and
11 they said that they needed us to leave the equipment
12 in for a little longer, until they figured out what
13 they were going to do.

14 Q. Do you remember the individual that you
15 talked to at Reliant?

16 A. I think it was David.

17 Q. Okay. You talked to David McDonald?

18 A. Not a hundred percent sure, but I believe
19 it was David McDonald.

20 Q. Okay.

21 A. Yes, it was David McDonald. Yeah.

22 Q. Did you also talk to David about
23 potentially buying the equipment and/or having it
24 switched out; is that correct?

25 A. That's correct.

60

1 Q. Okay. And, for the record, it's your
2 understanding from your talking to Mr. McDonald that
3 they could not pick it up on the scheduled date that
4 you provided.

5 A. That's correct.

6 Q. As far as the pickup, I mean, you don't
7 handle that, do you? I mean, as far as your
8 position. I mean, you don't go out and pick it up.

9 A. No.

10 Q. You have individuals in your office that go
11 to pick it up.

12 A. Correct.

13 Q. Okay. Do you have, also, those individuals
14 to make the schedule to pick up or do you handle
15 that?

16 A. We have individuals for that.

17 Q. Okay. Who does that at your office?

18 A. The customer service department.

19 Q. Okay. Again, you wouldn't know who
20 actually handled the coordination of the pickups on
21 this particular --

22 A. Not specifically, no.

23 Q. No. Would your documents that we discussed
24 earlier potentially show that?

25 A. It would show the individual who has

1 entered the pickup into the --

2 Q. Computer?

3 A. Yes.

4 Q. Okay. Did Reliant DME ever provide you
5 with a pickup schedule?

6 A. No. Well, in the end I guess we ended up
7 coordinating with them, so I don't know who worked on
8 the schedule.

9 MR. SMALLS: Let me take a break for a
10 minute.

11 (A recess transpired.)

12 BY MR. SMALLS:

13 Q. I have a few more questions and then I'll
14 be finished.

15 Ondrej, you stated earlier that you thought
16 Tammy McDonald was just an employee, but I want to
17 point out something to you. You thought she was just
18 an employee of Ahava; is that correct?

19 A. At the time I thought so, yes.

20 Q. Okay. Now, but in your letter, the
21 proposed letter that you said you didn't send out,
22 you made note that Tammy McDonald was the president;
23 is that correct?

24 A. Yes. Whatever was her position there.

25 Q. Okay. And, also, I think a few minutes ago

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1 you mentioned that you thought, or you think, that
2 Ascension and Ahava were the same.

3 A. Correct.

4 Q. I think that's what you said. And do you
5 know who the owners -- in 2011 -- I'm sure you know
6 now, but in 2011 did you know who the owners of Ahava
7 were?

8 A. The owners of -- well, based on the
9 conversations that I had with Tony and Lance, I
10 assumed it was them.

11 Q. Okay. Did you think that Tammy McDonald
12 was an owner?

13 A. I didn't know.

14 Q. Didn't know? Did you think she was the
15 owner of Ascension?

16 A. No.

17 MR. SMALLS: Okay. All right. Nothing
18 further.

19 EXAMINATION

20 BY MR. MACCLENAHAN:

21 Q. I have just one, maybe two questions.

22 In Defendant's Exhibit 2, it talked about
23 how -- on January 27, 2011, at 2:31 PM, you sent this
24 contract for -- to renegotiate a price. And you sent
25 it to Tony Williams and Janet Bussie, right?

1 A. Right.

2 Q. Okay. And what is their e-mail addresses
3 that you're sending it to?

4 A. Ascensionhospice.com.

5 Q. Okay. And that's for both of them?

6 A. For both of them.

7 MR. MACCLENAHAN: All right.

8 MR. SMALLS: That's it?

9 MR. MACCLENAHAN: Yes.

10 MR. SMALLS: Nothing further.

11 MR. MACCLENAHAN: Okay.

12 Before we go off the record, just so we can
13 have everything on the record, the statements that I
14 need are June 2012 --

15 MR. SMALLS: Oh, the statements you want.

16 MR. MACCLENAHAN: Yes.

17 MR. SMALLS: Okay.

18 MR. MACCLENAHAN: It's June of 2012,
19 September, October and November of 2011.

20 MR. SMALLS: Give me those dates again.

21 MR. MACCLENAHAN: September, October and
22 November of 2011. So those four months.

23 MR. SMALLS: Thanks. Okay. I'll find
24 them.

25 MR. MACCLENAHAN: That's fine.

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1 MR. SMALLS: If they weren't produced for
2 the first time we'll just get them produced now. It
3 should have been everything but --

4 MR. MACCLENAHAN: Yes. But they're not in
5 the two boxes that I got.

6 MR. SMALLS: Okay.

7 MR. MACCLENAHAN: So I just need to get
8 those.

9 And then I'm getting you the e-mails
10 between Allcare and Janet Bussie, Allcare and Bob
11 Jacobs, Allcare and Brandy -- I don't know what her
12 last name is.

13 MR. WRIGHT: Neuberger.

14 MR. MACCLENAHAN: Neuberger?

15 And then the attachment of the contract.

16 MR. SMALLS: Okay.

17 MR. MACCLENAHAN: And then e-mails with
18 Tammy McDonald.

19 MR. SMALLS: Right.

20 MR. MACCLENAHAN: And then I have any
21 documents that verify the pickup dates.

22 MR. SMALLS: Correct.

23 MR. MACCLENAHAN: And then I have any
24 letters that were sent out to the patients.

25 MR. SMALLS: Correct.

1 MR. MACCLENANAHAN: All right. Is that it?
2 That's what I have written down.

3 MR. SMALLS: Correct.

4 And I may want to get -- well, I can send
5 you a separate discovery request, but I wanted to see
6 who was in customer service in 2011 at Allcare.

7 MR. MACCLENANAHAN: I'll just get it.

8 MR. SMALLS: Okay.

9 I think that's covers it.

10 MR. MACCLENANAHAN: And I don't know -- I
11 haven't talked to him about it, but I have no idea if
12 he even has something that would verify -- show who
13 was in customer service, but I'll find out the answer
14 and I'll let you know, okay?

15 MR. SMALLS: Yes. If you don't have it you
16 don't have it.

17 MR. MACCLENANAHAN: In 2011. In the
18 January -- in this time frame, right? The January to
19 March time frame?

20 MR. SMALLS: Right.

21 MR. MACCLENANAHAN: When all of this was
22 going on.

23 MR. SMALLS: January 2011 and March 2011.
24 That's the time period when --

25 MR. MACCLENANAHAN: Yes.

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1 MR. SMALLS: -- the pickups would have
2 occurred.

3 MR. MACCLENAHAN: Okay.

4 (The deposition was concluded at 12:55 PM.)
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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF SPARTANBURG

3 ALLCARE MEDICAL, LLC,

4 Plaintiff,

5 vs.

CASE NO. 2011-CP-42-2597

6 AHAVA HOSPICE, INC. F/K/A

7 ASCENSION HOSPICE, INC.,

ROBERT A. WILLIAMS and

8 LANCELOT D. WRIGHT,

9 Defendants.

COPY

10 DEPOSITION OF: LANCELOT D. WRIGHT

11 DATE: June 6, 2013

12 TIME: 11:01 a.m.

13 LOCATION: Law Offices of
14 Rikard & Protopapas
1329 Blanding Street
Columbia, South Carolina

15 TAKEN BY: Counsel for the Plaintiff

16 REPORTED BY: ANGELA D. ZUVER,
17 Court Reporter

18 A. WILLIAM ROBERTS, JR., & ASSOCIATES

19 Fast, Accurate & Friendly

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24
25

(INDEX AT REAR OF TRANSCRIPT)

STIPULATIONS

It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent waives reading and signing of this deposition.

* * * * *

LANCELOT D. WRIGHT

being first duly sworn, testified as follows:

EXAMINATION

BY MR. MACCLENAHAN:

Q. Mr. Wright, can you please state your full name for the record.

A. Lancelot Devon Wright.

Q. Have you ever had your deposition taken before?

A. For you mean anything?

Q. Yeah.

A. Yes.

Q. All right. So you understand a little bit about how this process works?

A. Yes.

1 Q. There are a few rules I've got to go
2 over because they require me to go over them. Now
3 that this deposition has begun you can't talk to
4 your lawyer about this case anymore. You can talk
5 to him about the weather, you can talk to him about
6 sports, but you can't talk about this case until
7 this deposition is over. Do you understand that?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes.

11 Q. Another rule, you have to say yes or no
12 because if you nod your head or say uh-huh and
13 huh-uh --

14 A. She can't pick it up.

15 Q. -- she can't pick it up.

16 A. I got you. I got you.

17 Q. So I may ask you is that a yes or is
18 that a no. I'm not trying to be a smart aleck.
19 I'm just trying to clear it up for the record.
20 Okay?

21 A. Yes.

22 Q. If for any reason you need to take a
23 break, please let me know. I would ask that you
24 answer whatever question might be on the table, but
25 if you need to take a break, use the restroom,

1 stretch your legs, need a refill on your coffee or
2 something, just let me know. Okay?

3 A. Yes.

4 Q. All right. If at any time you don't
5 understand one of my questions, please let me know
6 that. Okay?

7 A. Yes.

8 Q. I'll do my best to rephrase it in a way
9 that you do understand it. Okay?

10 A. Okay.

11 Q. As a result, if you answer one of my
12 questions, I'm going to assume that means you
13 understood it. Is that fair?

14 A. Fair enough.

15 Q. Where do you currently live,
16 Mr. Wright?

17 A. 534 Windward Lane, Columbia, 29201.
18 South Carolina.

19 Q. Windward, is that W-I-N-D-W-A-R-D?

20 A. Yes.

21 Q. All one word?

22 A. All one word.

23 Q. How long have you lived there?

24 A. Six years.

25 Q. Is that a house or an apartment?

1 A. House.

2 Q. Who lives there with you?

3 A. Me, my wife and two kids.

4 Q. Are your kids over the age of 18?

5 A. No. 12 and 11.

6 Q. Your wife, what is her name?

7 A. Adrienne Wright.

8 Q. Currently we're in -- this case is
9 pending in Spartanburg County. Do you have any
10 relatives or family members or close personal
11 friends that reside in Spartanburg County?

12 A. None that I know of.

13 Q. Your lawyer has filed a motion to
14 change venue. If the venue gets changed to
15 Richland County, do you have any family members
16 with a last name other than Wright that live in
17 Richland County?

18 A. No.

19 Q. Do you have any -- do you belong to any
20 church or civic groups or anything?

21 A. Yes.

22 Q. What church do you belong to?

23 A. Brooklyn Baptist.

24 Q. All right. Are you a --

25 A. West Columbia. It's in West Columbia.

1 Q. In West Columbia. All right.
2 Are you a member there?
3 A. Yes.
4 Q. Do you serve in a leadership role
5 there?
6 A. Not anymore. I used to be on the
7 board.
8 Q. You were formerly on the board?
9 A. Yes.
10 Q. When was that?
11 A. Probably about eight years ago.
12 Q. So you went off eight years ago?
13 A. Eight years ago.
14 Q. And what was your position on the board
15 there?
16 A. Just a board member.
17 Q. Any other civic groups or organizations
18 that you belong to?
19 A. No, not -- no, not currently.
20 Q. Are you on the board of SC State?
21 A. No, not anymore.
22 Q. You used to be on the board?
23 A. My term expired June of this year.
24 Q. Of 2013?
25 A. Yes.

1 Q. How long was your term?

2 A. Four years.

3 Q. Did you have a position on the board or
4 were you just on the board of trustees?

5 A. I was the chairman of the 1829
6 research.

7 Q. The chairman of the 1829 research?

8 A. Yes.

9 Q. What's that?

10 A. That's where we get federal funds for
11 like the Clyburn Transportation Center to build
12 projects at the university. It's federally funded
13 through 1829 research.

14 Q. Okay. So 1829 just refers to the grant
15 program?

16 A. Yeah. That's the program.

17 Q. I was making sure it wasn't referencing
18 some year, the year of 1829 for some reason.

19 A. No. That's just the federal designee.

20 Q. Are you a shareholder of Ahava Hospice,
21 Inc.?

22 A. Yes.

23 Q. All right. What is your share
24 percentage?

25 A. 52 percent.

1 Q. And have you had 52 percent of the
2 shares of Ahava since Ahava was created?

3 A. No. I started with 30 percent.

4 Q. Let's start from the beginning then.
5 When was Ahava created?

6 A. I want to say May of 2010.

7 Q. When it was initially created, were you
8 a shareholder?

9 A. No.

10 Q. Do you know who created Ahava in May of
11 2010?

12 A. Tammy McDonald and Ed Sloan. I think
13 Tammy started first and Ed was a shareholder and
14 bought in.

15 Q. Okay. And do you know what their
16 division was?

17 A. Then or now?

18 Q. Then.

19 A. Then I'm not sure because Ed has
20 several folks in his investment group. So I want
21 to -- I think their whole comprised of maybe
22 25 percent, and Tammy and her husband owned
23 somewhere between 60 percent -- 50, 60 percent. It
24 might be a little more than that.

25 Q. Who owned the rest then?

10

1 A. I'm not sure exactly the division of
2 it. It was BMSC. I know Tammy, David and I think
3 there was someone else involved. I'm not sure how
4 the --

5 Q. What is BMSC?

6 A. Big Money South Carolina.

7 Q. Is that an LLC or corporation?

8 A. LLC.

9 Q. Are you a member of that corporation?

10 A. No.

11 Q. And have you ever been a member of that
12 LLC?

13 A. No.

14 Q. Have you ever owned shares of that
15 company?

16 A. No.

17 Q. So help explain to me, I guess, what is
18 BMSC's relationship with Ahava.

19 A. Investors.

20 Q. It's an investment group?

21 A. It's an investment group, yes.

22 Q. And so at some point BMSC held shares
23 or owned shares?

24 A. Right. They still own shares.

25 Q. They still own shares?

1 A. Yes.

2 Q. Do you know who owns that investment
3 group?

4 A. Well, it's a combination of folks. Ed
5 Sloan is the managing partner. He's the CFO.

6 Q. Is Ed Sloan different from Charles
7 Sloan?

8 A. Same guy.

9 Q. Same guy. Ed is his middle name?

10 A. Ed is his middle name. Charles Ed
11 Sloan.

12 Q. When did you become an owner in Ahava?

13 A. Probably about two years ago.

14 Q. So that would be 2011?

15 A. Yeah, 2011. I want to say maybe
16 March 2011.

17 Q. And your initial ownership share was
18 what?

19 A. 29 percent.

20 Q. How much did you pay for those shares?

21 A. Probably about 150,000.

22 Q. Was that in cash?

23 A. No. Just over time, I would call it.
24 Just as they needed money we put money in, infused
25 the money into it.

12

1 Q. So when you got the 29 percent in March
2 of 2011 --

3 A. Uh-huh.

4 Q. -- you didn't --

5 A. Yes. I didn't mean to say uh-huh.

6 Q. You didn't put any money into it at
7 that time or --

8 A. Yes. We added money. I put money in
9 over a period of time as they needed the money. So
10 it probably ended up being somewhere between 125
11 and \$150,000 over a period of time.

12 Q. What period of time was that that you
13 put in that amount of money?

14 A. Probably the first -- I would
15 say between 2011 and 2012.

16 Q. All right. So over the course of the
17 first year --

18 A. The first year.

19 Q. -- that you owned shares you put in
20 somewhere between 125 and \$150,000 into Ahava?

21 A. Correct.

22 Q. Of your personal funds?

23 A. Right.

24 Q. All right. And that was cash that you
25 put into it?

1 A. Yes, cash.

2 Q. And when you purchased the shares, the
3 29 percent in March of 2011 --

4 A. Uh-huh.

5 Q. -- was there a purchase agreement in
6 place? Was there anything memorializing that you
7 became a shareholder?

8 A. No. They basically was a cash start
9 and just through -- we did have an agreement with
10 Laten.

11 Q. What is Laten?

12 A. Laten is the holding company for Ahava.

13 Q. Okay.

14 A. And we ended up --

15 Q. That's an LLC?

16 A. That's an LLC. And I'm not sure -- we
17 had an agreement drawn up. There wasn't -- I guess
18 there wasn't any stocks issued then. It was just
19 an agreement, a contract of what my percentage
20 would be with the investment.

21 Q. Okay. And what was your initial
22 investment at that time? If you paid 125 to 150
23 over the course of the year, what was your
24 investment in March?

25 A. Probably \$50,000. I can't -- I don't

14

1 know precisely, but I want to say somewhere around
2 that.

3 Q. And I don't need it to the penny.

4 A. Yeah, probably somewhere around
5 \$50,000.

6 Q. So in March of 2011 you put somewhere
7 around \$50,000 into Ahava; you received 29 percent
8 of the shares?

9 A. Correct.

10 Q. At that time who had the other
11 71 percent of the shares?

12 A. BMSC, Tammy McDonald. I don't think
13 David McDonald. I think David divested his to his
14 wife, to Tammy.

15 Q. At that time?

16 A. Yeah. And Robert Williams.

17 Q. And Robert goes by Tony, right?

18 A. Tony.

19 Q. That's Tony Williams?

20 A. Uh-huh.

21 Q. When you got the 29 percent shares in
22 March -- what was BMSC's shares after you got
23 29 percent?

24 A. I'm not sure.

25 Q. What was Tammy's?

1 A. I know mine was 29, Tony's was 29, then
2 the difference was I guess BMSC and Tammy
3 McDonald's.

4 Q. Do you think that difference was split
5 equally?

6 A. No. I think BMSC had a smaller
7 interest than what Tammy McDonald's was because she
8 was I guess the original ...

9 Q. All right. So the other -- you had 29,
10 Tony had 29, and then the other, what is that,
11 70 --

12 A. No. It was like -- 29 and 29 is 58.
13 So 42.

14 Q. Yeah, the other 42 percent. Sorry. I
15 can't do math.

16 The other 42 percent was split between
17 BMSC and Tammy with Tammy having more than BMSC?

18 A. Yes, I believe that's correct.

19 Q. Did everyone have an equal voting
20 share? Like did each share count equally for
21 voting purposes?

22 A. I'm not sure how that agreement wrote
23 it out as far as -- spelled it out with the voting
24 rights. It was just kind of we'd just meet and
25 make decisions.

16

1 Q. Was it basically a majority rules --

2 A. Majority rules kind of conversations,
3 yeah. So we didn't -- it wasn't one of those proxy
4 type of deals. You know, it was just pretty
5 casual.

6 Q. All right. So you told me that your
7 shares increased since March of 2011 --

8 A. Correct.

9 Q. -- your shares in Ahava increased.
10 What is it now?

11 A. 52 percent.

12 Q. That's right. You told me that. I'm
13 sorry.

14 Was it a gradual increase or did you
15 purchase --

16 A. We had a cash call because we had a
17 shortage of funds. So me and Charles Sloan
18 borrowed --

19 Q. That's Ed Sloan?

20 A. Yeah, Ed Sloan.

21 Q. I just want to make sure we're using
22 the --

23 A. Yeah. I'll call him Ed from now on.

24 We ended up borrowing money from an
25 investor and we ended up buying Tammy and Tony's

1 shares, or Robert or whatever you want to call him
2 in this, buying them out because they couldn't come
3 up with the money.

4 Q. So now it's you have 52 percent and
5 then BMSC has the other 48 percent?

6 A. Correct.

7 Q. And BMSC is Ed Sloan?

8 A. Right. He's the managing --

9 Q. When you say Ed, that's --

10 A. Right. I think Tammy's and Tony's
11 percentage of shares is less than 1 percent. They
12 wasn't totally out. They've got like .8 percent
13 between the two of them.

14 Q. So they still have some nominal share
15 in the company?

16 A. Right.

17 Q. Do they have any voting rights?

18 A. No. Me and Ed have all the voting
19 rights.

20 Q. Are you basically the decision maker
21 now since you're the majority shareholder?

22 A. Well, the way our agreement -- this
23 agreement writes, it's majority. We've both got to
24 agree on major decisions, but I'm the CEO so
25 primary -- I make larger day-to-day --

1 Q. You make the day-to-day decisions?

2 A. Day-to-day decisions, correct.

3 Q. And what did you pay for the
4 additional, what is that, 33 percent shares?

5 A. If I get my math correct, it was
6 somewhere between 60 and \$70,000.

7 Q. When did you do that?

8 A. I want to say a year ago.

9 Q. So around June of 2012?

10 A. Around that time, yeah.

11 Q. Was there a written agreement about
12 that?

13 A. Yes. I got a cash call agreement,
14 yeah, so it's all documented.

15 Q. So total then into Ahava you've put
16 somewhere between 210 and 220,000?

17 A. Close to that, yeah. Somewhere around
18 that range. Yeah, about \$200,000.

19 Q. All right. And that's since March of
20 2011?

21 A. Correct.

22 Q. Because that's when you first got your
23 shares, right?

24 A. Correct. Correct.

25 Q. And you said you got an investor I

1 guess to back you for the second --

2 A. Yes. Me and Ed got a loan. We got an
3 investor to give us a loan for the second cash call
4 because the company was running -- it was running
5 in a deficit.

6 Q. And you both used the same investor?

7 A. Same investor.

8 Q. And who is that investor?

9 A. Jim Moore. He's a good friend of Ed
10 Sloan and he's part of the BMSC group.

11 Q. He's a member of BMSC?

12 A. He's a member of BMSC.

13 Q. Is Moore M-O-O-R-E or M-O-H-R or --

14 A. M-O-O-R-E.

15 Q. So he loaned you 60 to \$70,000?

16 A. Correct.

17 Q. And Ed, somewhere around that number as
18 well?

19 A. Right. A little less than that,
20 but ...

21 Q. He had a different amount of shares, so
22 a little less?

23 A. Correct.

24 Q. Was there a written agreement between
25 you and Jim Moore for that money?

20

1 A. Correct.

2 Q. What are the terms of that agreement?

3 A. We'd pay him back. It was a pay
4 back -- it's a pay back -- we'll finish paying for
5 it in about the next six months. That's a loan.
6 It's a loan agreement, so he didn't get additional
7 shares or anything like that.

8 Q. Yeah. It's a loan with interest,
9 right?

10 A. Correct.

11 Q. Was that loan secured by anything?

12 A. I want to say no. It was just a
13 promissory note.

14 Q. Just a promissory note?

15 A. A promissory note.

16 Q. So currently then the shareholder
17 structure is 52 percent to you, 48 percent to BMSC,
18 correct?

19 A. Correct. And Tony and Tammy
20 .8 percent.

21 Q. Right. They have some nominal share.
22 You mentioned earlier a company called
23 Laten, LLC. What is that?

24 A. That's a holding company for Ahava.

25 Q. So do you own shares of Laten?

1 A. Correct. That 58 percent I own. I own
2 50 percent of Laten, which Laten owns Ahava -- 52
3 percent. Laten owns Ahava.

4 Q. So Laten owns 100 percent of Ahava?

5 A. Correct.

6 Q. All right. So when we're saying you
7 have the shares, it's really Laten has 100 percent
8 of the shares of Ahava and then you own 52 percent
9 of Laten?

10 A. Correct.

11 Q. And then BMSC owns 48 percent of Laten?

12 A. Correct.

13 Q. Does Laten own anything else other than
14 Ahava?

15 A. No.

16 Q. So then for Laten the only two
17 shareholders are you and BMSC?

18 A. Correct.

19 Q. And back in March of 2011 when you
20 first bought into Ahava, was it Laten that bought
21 into Ahava at that time or did you buy into Laten?

22 A. I bought into Laten. I bought into
23 Laten. Laten already owned Ahava.

24 Q. So at that point Laten owned
25 100 percent of Ahava, correct, in March of 2011?

1 A. Correct.

2 Q. You bought into Laten, Tony bought into
3 Laten?

4 A. Correct.

5 Q. And then BMSC and Tammy and David --

6 A. They already was --

7 Q. -- had whatever they had with Laten?

8 A. Right. Correct.

9 Q. Laten is L-A-T-O-N?

10 A. L-A-T-E-N.

11 Q. So you testified earlier, if I remember
12 right, you were the CEO of Ahava?

13 A. Correct.

14 Q. Who is the CEO of Laten?

15 A. There is none. We're just board
16 members. It's just a partnership.

17 Q. It's just a partnership, right, between
18 you and BMSC?

19 A. Right. There are no positions.

20 Q. Does Ahava have board meetings?

21 A. Yes, when me and Ed meet.

22 Q. Do you keep minutes of those board
23 meetings?

24 A. No.

25 Q. Is there a president of Ahava, like a

1 vice president, secretary?

2 A. No.

3 Q. None of those things?

4 A. We comprise all four of those
5 positions.

6 Q. And same for Laten --

7 A. Correct.

8 Q. -- are there officers for that?

9 A. No. There's not officers, just board
10 members, me and Ed.

11 Q. Are there minutes taken of the meetings
12 that Laten has?

13 A. No.

14 Q. When you would have your meetings with
15 Ed, what about Ahava, where do those take place?

16 A. Just at the office.

17 Q. At Ahava's office?

18 A. At Ahava's office.

19 Q. Where is that?

20 A. 7505 Irmo Drive.

21 Q. Is that in Columbia or Irmo?

22 A. Irmo.

23 Q. How long has Ahava been at 7505 Irmo
24 Drive?

25 A. Two years.

1 Q. So since about June of 2011?

2 A. Yes, somewhere around -- probably a
3 little earlier than that. Maybe a little longer.

4 Q. Was it there when you came in in March
5 or was it after that?

6 A. No. It moved after that.

7 Q. All right. So somewhere between March
8 and June of 2011?

9 A. Right. The original office they had
10 was in West Columbia.

11 Q. Now, does Ahava rent the office space
12 at Irmo Drive?

13 A. Correct.

14 Q. Who does it rent it from?

15 A. It's a real estate company we pay. The
16 owners of the building lives in -- they live in
17 Florida.

18 Q. Do you have any ownership interest in
19 the -- in the landlord of that building?

20 A. No. No.

21 Q. It's just something --

22 A. We just rent it.

23 Q. It's just something you rent?

24 A. Yes.

25 Q. All right. How many employees does

1 Ahava have right now?

2 A. About 60.

3 Q. Do you receive a salary from Ahava?

4 A. Yes.

5 Q. What is your salary from Ahava?

6 A. 175,000 annually.

7 Q. Are there any bonuses or things like
8 that?

9 A. Not right now.

10 Q. Any dividends or distributions?

11 A. No. No.

12 Q. The 175, is that for your employment as
13 CEO?

14 A. Correct.

15 Q. What are your duties as CEO of Ahava?

16 A. Run the day-to-day operations, make
17 decisions, marketing.

18 Q. Did Tony Williams -- was he ever -- is
19 he currently a salaried employee of Ahava?

20 A. No.

21 Q. Was he ever a salaried employee of
22 Ahava?

23 A. At one time. At the -- I guess at the
24 beginning he was salary.

25 Q. What was his position?

1 A. He was a co-CEO.

2 Q. So you each were a CEO when you came
3 in?

4 A. Right. Correct.

5 Q. And he received the same salary you
6 did?

7 A. Yes.

8 Q. Has it been 175 the entire time?

9 A. While he was there. About six months.

10 Q. And your salary since you joined in
11 March of 2011 has been 175,000?

12 A. Same. Right.

13 Q. Do you get a company car?

14 A. Yes.

15 Q. Through Ahava?

16 A. Through Ahava. A lease car.

17 Q. A leased car. All right. And what car
18 is that?

19 A. It's a Porsche.

20 Q. And how much -- what's the lease
21 payment on that?

22 A. I have no idea. It's -- all our cars
23 are leased. So it's just tied up in the lease
24 itself, you know.

25 Q. So you have a fleet agreement?

1 A. Yeah, a fleet. We've got 40 cars. All
2 our nurses we provide cars.

3 Q. Do they get to drive Porsches too?

4 A. No. No. Toyota Corollas.

5 Q. Okay. So all 65 employees have a car?

6 A. No, no. Just the nurses, the -- the
7 nurses, social workers and chaplains.

8 Q. So the folks who have to do site
9 visits?

10 A. Right. They have company cars so we
11 can make sure they get there to see the patients.

12 Q. Okay. Are these cars they can take --
13 that they take home at the end of the day or do
14 they park them at the office parking lot?

15 A. No. They take them home. Because
16 we're in 38 counties, so, yeah.

17 Q. Other than the nurses, chaplains,
18 social workers and you, is there anyone else who
19 has a leased car?

20 A. The administrator.

21 Q. Who is that?

22 A. Amanda. She's the nurse in charge.

23 Q. Okay.

24 A. And her assistant.

25 Q. Who is that?

1 A. Amber Compton. She's the assistant
2 administrator.

3 Q. Does Ed Sloan have a company car as
4 well?

5 A. Yes. Yeah, the CFO.

6 Q. What's his company car?

7 A. It's a Mercedes.

8 Q. The fleet agreement for the leases, is
9 that what Laten or is it with Ahava?

10 A. Ahava.

11 Q. And aside from the cars does Ahava pay
12 the gas on the car as well --

13 A. Yes.

14 Q. -- or are you responsible for that?

15 A. No. They pay the gas.

16 Q. Okay. Do they pay the insurance?

17 A. Insurance.

18 Q. Taxes, upkeep?

19 A. Everything for the car. Maintenance as
20 well.

21 Q. And that's for everyone who has a
22 company car?

23 A. Correct. And most of that is covered,
24 the maintenance, you know, because they're new
25 cars, new leases. You know, the dealerships cover

1 it.

2 Q. Cell phone, is that provided by Ahava?

3 A. Yes.

4 Q. 100 percent?

5 A. 100 percent.

6 Q. Anything else? You know, I'm trying to
7 figure out other than your salary and your Porsche
8 what other benefits, you know, are you receiving
9 through your employment with Ahava.

10 A. Just -- that's it. Just salary,
11 vehicle, cell phone.

12 Q. Do you have an expense account?

13 A. It depends. If I take folks out and
14 entertain, I use a company card.

15 Q. You use a company credit card for that?

16 A. Yes. Correct.

17 Q. Do they pay for memberships at any
18 country clubs or --

19 A. Capital City Club. I've got a
20 membership there.

21 Q. Okay. And golf clubs, anything like
22 that?

23 A. Unfortunately, not yet.

24 Q. I'm assuming you get health insurance
25 through Ahava?

30

1 A. Correct, but I pay for it. It comes
2 out of my salary.

3 Q. Understood. And then some sort of
4 retirement. Is it 401(k) or --

5 A. No.

6 Q. 401(b)?

7 A. No.

8 Q. No retirement?

9 A. No retirement.

10 Q. And all these benefits we talked about,
11 you've had those since March of 2011 when you --

12 A. Correct.

13 Q. -- went to work there?

14 A. Yes.. Well, I didn't have the Porsche
15 then. I just got the Porsche Superbowl Sunday, in
16 January.

17 Q. What did you have before then?

18 A. A BMW, but it was my car, my personal
19 car.

20 Q. It was not a --

21 A. It wasn't a company car.

22 Q. Currently what other -- are there any
23 other companies besides Laten, LLC of which you are
24 a shareholder? I don't care if you have mutual
25 funds or something and you own part of a

1 McDonald's, but I mean, you know ...

2 A. I have Hospice Administrative Services,
3 and it actually don't do anything. It's just a
4 company we created. Down the line we might want to
5 do a hospice management company. And I own
6 52 percent of it.

7 Q. Okay. But it's not active, right?

8 A. It's not active.

9 Q. Any other companies?

10 A. That's it.

11 Q. All right. In March of 2011 when you
12 went to go work for Ahava, how about then? Any
13 other companies?

14 A. No. I had a pharmacy and I sold it --

15 Q. What was the name of that?

16 A. -- the year before.

17 National -- say that again.

18 Q. What was the name of the pharmacy?

19 A. National Direct Home Pharmacy and
20 Palmetto Long-Term Care.

21 Q. And you sold that in 2011?

22 A. No. Before that. Probably a year
23 before that.

24 Q. Any others?

25 A. I had several development companies.

32

1 All of it either went under or we sold. Yeah. It
2 was property, real estate.

3 Q. What's GPS Investments, Inc.?

4 A. GPS is a management company that
5 managed the pharmacy and some of our development
6 properties.

7 Q. And so were you a shareholder of that
8 company?

9 A. Yes. I'm not sure what my percentage
10 was, but I was a shareholder of it.

11 Q. Who else was a shareholder of that
12 company?

13 A. Me and Robert Williams.

14 Q. Okay. And when did you sell your
15 shares in that company?

16 A. I didn't sell it. It just went under.

17 Q. It just went under?

18 A. Yeah, it just went under.

19 Q. When did it go under?

20 A. Probably three years ago maybe.

21 Probably about three years ago.

22 Q. In 2010?

23 A. Probably 2010. It might be before
24 then.

25 Q. How about Flat Iron, LLC?

1 A. That was a Robert Williams company. I
2 didn't have any ownership in that.

3 Q. You had no stake in that company?

4 A. No stake in it.

5 Q. Do you know what it did?

6 A. It was something he put together to
7 produce -- I really didn't even know -- I didn't
8 really know how he operated it.

9 Q. Okay. Do you know where Tony Williams
10 is now?

11 A. We're all trying to find him.

12 No. Last I heard, possibly somewhere
13 in Florida.

14 Q. When is the last time you spoke with
15 him?

16 A. Probably -- I think I bumped into him
17 at Christmas. Me and my wife was going to the
18 movies and he was over at Copper River and --

19 Q. Christmas of 2012?

20 A. Yeah, Christmas of 2012. And it just
21 kind of a hi kind of deal and that was it pretty
22 much. He didn't want to see me.

23 Q. Does he owe you money?

24 A. We've just got a lot -- just a lot of
25 business that kind of he didn't finish or do. So I

1 wouldn't call it owe me money. Just -- he just let
2 a lot of people down.

3 Q. And you'd be one of those people he let
4 down?

5 A. Yes. Because he was a friend.

6 Q. How did you know Tony?

7 A. I met Tony probably about 12 years ago.
8 He needed an easement for his hospice, a hospice
9 house, and I gave it. His partner then was Nicole.
10 She actually -- Nicole called me and said that she
11 worked for a hospice -- I own part of a hospice and
12 they were putting a hospice house -- a building up
13 and they needed an easement. They tried to get it
14 from the doctors that owned the other side of the
15 property and they wanted to charge something like
16 \$100,000. So she asked me would I meet Tony and
17 discuss the easement. So we met over a beer and I
18 liked him and I didn't charge him anything.

19 Q. So you owned the piece of property that
20 abutted some property that he wanted to build on
21 then?

22 A. Correct. Yeah.

23 Q. And that was a doctor's office or the
24 doctor was on the other side?

25 A. The doctor was on the other side.

1 Q. I got you. All right.

2 So he needed a little bit of an
3 easement to do whatever he wanted to do?

4 A. Right. Put his utilities and that kind
5 of stuff in. So we gave it to him.

6 Q. And that was House of Hospice?

7 A. I don't know what they called it. It
8 was Lodge Of --

9 Q. I thought you said House of Hospice.

10 A. Yeah, I think it was a hospice house,
11 but I don't know the name of it.

12 Q. Oh. A hospice house.

13 A. Yeah. Yeah.

14 Q. All right. And so out of that just
15 developed a friendship and a business relationship?

16 A. Correct.

17 Q. How about Ed Sloan, how did you know
18 Ed?

19 A. Met him through Tammy McDonald.

20 Q. And how do you know Tammy?

21 A. Tammy. I met Tammy through Tony.

22 Q. Do you know how Tony knew Tammy?

23 A. I think it was just he was trying to
24 buy her hospice at one time or she was trying to
25 buy his hospice or something like that. Something

1 in the hospice realm.

2 Q. Did they have a personal relationship?

3 A. Yes.

4 Q. I mean a romantic one when I say
5 personal. I don't mean they were just friends.

6 A. Yes.

7 Q. And did they have that relationship in
8 March of 2011 when you guys were --

9 A. Yes.

10 Q. -- coming over to -- purchasing --
11 excuse me -- Ahava?

12 A. Yes. Right.

13 Q. I ask this question of everyone. Have
14 you ever been arrested before?

15 A. In college.

16 Q. What were the --

17 A. Public drunk.

18 Q. That's a standard one for most people.

19 A. Yes, it is.

20 Q. Anything else?

21 A. No.

22 Q. Other than this lawsuit have you ever
23 been a party to a lawsuit?

24 A. Several of them.

25 Q. Are there any pending lawsuits, meaning

1 lawsuits that have not been settled or dismissed or
2 anything, other than this one?

3 A. Yes.

4 Q. Which ones are pending?

5 A. Some of our real estate property that
6 we have, me and Jabron Amir has. It's a lawsuit.
7 They're foreclosing on a property.

8 Q. So there's a foreclosure pending --

9 A. Right.

10 Q. -- on one of your real estate
11 investments?

12 A. Correct.

13 Q. Is that GPS Investments or is that some
14 other company?

15 A. No. This is another company, Sweet
16 Grass Properties or something like that.

17 Q. Any other lawsuits that are pending?

18 A. I think besides credit cards. I've got
19 credit cards.

20 Q. Collection suits?

21 A. Yeah, collections. Other than that --
22 that's it.

23 Q. All right. And are all of those
24 pending in Richland County?

25 A. No. Lexington County.

1 Q. They're all in Lexington?

2 A. I think they're all in Lexington
3 County. You say I can't talk to my attorney.
4 Otherwise I'd ask him.

5 Q. They're pending wherever they're
6 pending. That's not --

7 A. Right. But I believe that's all in
8 Lexington County.

9 Q. Tell me about Ascension Hospice, Inc.
10 Were you a shareholder of Ascension?

11 A. No.

12 Q. Did you work for Ascension at all?

13 A. No.

14 Q. So you had zero relationship with
15 Ascension?

16 A. Zero. I didn't have no interest in
17 Ascension. That was Tony and Nicole. Tony owned
18 80 percent and Nicole owned 20 percent of it.

19 Q. And what's Nicole's last name again?

20 A. Ohrin. It might be something else now.
21 I think she just got married.

22 Q. So you had zero business relationship
23 with Ascension?

24 A. None.

25 Q. Didn't receive a salary from them?

1 A. No.

2 Q. Never received a check or anything like
3 that from them?

4 A. No.

5 (PLF. EXH. 1, Document entitled
6 Promissory Note, was marked for identification.)

7 BY MR. MACCLENAHAN:

8 Q. I'm going to show you what's been
9 marked as Plaintiff's Exhibit 1 to your deposition.
10 I'll let you take a look at that and once you've
11 had a chance to look at it let me know.

12 A. Oh, yeah. I see it.

13 Q. Do you know what this document is?

14 A. Yes.

15 Q. What is it?

16 A. A promissory note.

17 Q. And it's signed by you?

18 A. Me and Robert Williams.

19 Q. So when we turn to Page 2, at the
20 bottom that's your signature?

21 A. Correct.

22 Q. Where it says -- under the printed
23 Lancelot D. Wright your signature follows that?

24 A. You've got it. Right. Correct.

25 Q. Pursuant to this contract, right, you

40

1 and Tony Williams promised to pay Allcare Medical
2 \$200,000 with interest at the yearly rate of 6
3 percent, as specified below? Do you see that right
4 there?

5 A. Correct. Yeah.

6 Q. It has a first payment due on it looks
7 like January 25, 2011, that first payment of
8 20,000, right?

9 A. Correct.

10 Q. And a second payment of 20,000 on
11 January 31, 2011, right?

12 A. Correct.

13 Q. And then there would be two -- excuse
14 me -- 12 additional monthly payments of \$13,770.63
15 on the 20th day of the calendar month beginning on
16 February 25th, right?

17 A. Correct.

18 Q. And if we go down to Paragraph 9 where
19 it says collection costs --

20 A. Uh-huh.

21 Q. -- it says, if lender prevails in a
22 lawsuit to collect on this note, borrower will pay
23 lender's costs and lawyer's fees in an amount the
24 court finds to be reasonable.

25 Did I read that correctly?

1 A. Yes.

2 Q. And that's part of your agreement under
3 this promissory note?

4 A. Correct.

5 Q. Help me understand something.

6 A. Uh-huh.

7 Q. Why did you personally guarantee along
8 with Tony Williams \$200,000 of the debt to Allcare
9 Medical?

10 A. Because Tony was a friend and -- and my
11 understanding from Tony -- and I think I met Ondrej
12 at the Wild Hare, I think, correct?

13 Pretty much, he was going to pick up
14 the equipment if he didn't get an agreement done.
15 And so as a friend and under stress with Tony I
16 agreed. I said, well, I'll sign it with you.

17 Q. And the equipment he was picking up was
18 what?

19 A. I think it was the oxygen. It was
20 patients' critical equipment. Oxygen, wheelchairs.
21 DME equipment.

22 Q. Durable medical equipment, right?

23 A. Right. Right.

24 Q. And so you signed this note just as a
25 favor to Tony?

1 A. Yeah. We did a lot of business
2 together. We was in several businesses together.

3 Q. I understand.

4 A. And he would have done the same thing.
5 It was a duress situation. He would have done the
6 same thing. So he needed me. And I know -- I
7 think it was two days -- it was like an under the
8 gun kind of deal that Ondrej said if he don't get
9 something done he was going to pick that patient
10 equipment up. I think it was like Saturday. I
11 think they were already calling -- Tony said that
12 Ondrej's people was already calling the patients,
13 upsetting them, that they was going to pick up this
14 DME equipment. So it was a dire situation.

15 Q. Did you understand at that point that
16 the hospice was more than six months behind on some
17 of their payments?

18 A. You know, I knew they were in trouble.
19 Now, as far as knowing exactly -- I knew what this
20 was because Ondrej had an agreement as far as what
21 was owed. But, hell, he was one of many debtors
22 that Tony's business was in trouble with.

23 But I felt it was urgent, it was dire,
24 and he needed me on this deal, so I signed it.

25 Q. Have you signed any other promissory

1 notes --

2 A. Oh, hell, man. We have a thousand of
3 them.

4 Q. Hold on. Let me finish my question.

5 A. Okay. All right.

6 Q. Did you sign any other promissory notes
7 just as a favor to Tony to guarantee payment of
8 money that at the time you signed it you had no
9 obligation to pay?

10 A. Say that one more time.

11 Q. Sure. Before you signed this contract,
12 right --

13 A. Correct.

14 Q. -- you didn't personally agree to pay
15 Allcare Medical their invoices, right?

16 A. No.

17 Q. All right. And Allcare Medical
18 couldn't do anything to you to collect that money
19 because you weren't obligated on it, correct?

20 A. Correct.

21 Q. And if I understood your testimony
22 correctly, the reason you signed this was just you
23 wanted to help out Tony?

24 A. Correct.

25 Q. So you took on this obligation as a

44

1 favor to Tony?

2 A. Yeah. I just signed it with him.

3 Q. Yeah. That's right.

4 A. Right.

5 Q. But by signing it you undertook the
6 obligation --

7 A. Right.

8 Q. -- to pay on the note, right?

9 A. Correct.

10 Q. And what I'm trying to --

11 A. Let me tell you this. Because I had a
12 viable business at the time and if needed at that
13 time I felt I could have helped him pay this
14 agreement.

15 Q. I understand.

16 A. And because it was dire straits.
17 Because I felt at that time he would have done the
18 same thing for me.

19 Q. Sure.

20 A. And so that's why I signed it.

21 Q. But what I'm getting at, it wasn't your
22 dire straits at that time, right?

23 A. No.

24 Q. To the extent dire straits existed, it
25 was on Tony and his company?

1 A. Correct.

2 Q. Not on you?

3 A. Correct.

4 Q. So what I'm trying to figure out is
5 during -- with your relationship with Tony did you
6 ever sign any other promissory notes that were like
7 this where you just voluntarily undertook an
8 obligation that otherwise you didn't have?

9 A. I will say this. I will say this. He
10 would have signed something for me.

11 Q. I understand. But I'm just asking:
12 Were there other ones aside from this that you
13 signed for him?

14 A. Probably so. Yeah, we probably --
15 especially real estate. Several real estate deals
16 we went on a promissory note in order to pay, you
17 know, whatever the obligations were.

18 So, I mean, just to -- I mean, it was
19 an emergency for him and so I signed it with him.

20 Q. Okay. But to be --

21 A. And there probably -- and to answer
22 your question, there probably is -- I can't sit
23 here and pull out which ones because we have
24 several business relationships that exploded,
25 imploded or whatever that we were on notes

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1 together.

2 Q. And I guess I want to make sure I
3 understand your answer on this.

4 A. Okay.

5 Q. I'm not talking about notes where you
6 two had a deal together. You know, you guys went
7 in and bought a lot somewhere together --

8 A. Uh-huh.

9 Q. -- and you had to sign a note to the
10 bank, right, because that's a joint business deal.

11 A. Correct. Some of it is.

12 Q. What I'm talking about is Tony came to
13 you and said, Lance, man, I'm in trouble here, can
14 you help me out, and you said, because he was your
15 friend, sure, man, I'll sign whatever you need me
16 to sign, give me that promissory note. Were there
17 other ones like that?

18 A. I would have probably given him money
19 if I had it at that time.

20 Q. Okay.

21 A. So to answer your question, there is
22 probably some, but in a lot of situations -- and it
23 goes both sides, him to me, where if he had the
24 money he would loan it to me, pay back some, some
25 not paid back, some paid back. That's the kind of

1 relationship we had.

2 Q. And, again, to be clear, when you
3 signed this contract, this promissory note that's
4 Exhibit 1 --

5 A. Correct.

6 Q. -- you were not facing any financial
7 pressure regarding that debt, were you?

8 A. No.

9 Q. You didn't owe that debt, did you?

10 A. No. Tony owed the debt.

11 Q. Before you signed it you didn't owe the
12 debt, did you?

13 A. No. No.

14 Q. And if Allcare came and took back their
15 equipment, that didn't affect your economic bottom
16 line, did it?

17 A. No.

18 Q. And the reason --

19 A. It was the patients. It was really
20 just the situation that he was in.

21 Q. Yeah. You wanted to help out a friend,
22 right?

23 A. Right.

24 Q. And that's the reason why you signed
25 this, was to help out Tony?

1 A. Correct.

2 Q. All right. And for no other reason?

3 A. I had no other reason besides him being
4 a friend.

5 Q. And you admit that there is still money
6 owed? There's still a balance owed under this
7 promissory note, right?

8 A. I imagine so. I don't know how much --
9 what exactly Allcare got paid, the amount.

10 Q. Well, you didn't pay the full amount,
11 right, out of your own pocket?

12 A. No. No.

13 Q. So at least as far as this note is
14 concerned, if Tony didn't pay the full amount,
15 which I can assure you he has not, there is still a
16 balance owed, correct?

17 A. I would imagine so.

18 Q. And to the extent there's a balance
19 owed, it would be your obligation to pay that
20 balance, correct?

21 A. Well, I think if we look at the
22 documents or the paper I would say yes.

23 Q. What else is there to look at?

24 A. Well, is that a question --

25 Q. Yeah. What else --

1 A. -- or are you just making a comment?

2 Q. No. What else do you want to look at?
3 If there's something else to look at I want to see
4 it.

5 A. Well, according to the paper that's
6 what it is, whatever is on the paperwork, the
7 document. Ain't nothing else to look at.

8 Q. That's right. That's all there is,
9 right?

10 A. Right.

11 Q. Did you make any payments, you
12 personally, Lance?

13 A. No.

14 Q. Give me one second. I misplaced one of
15 my notes. Here we go.

16 (PLF. EXH. 2, Checking deposit slip
17 dated 3/31/11, was marked for identification.)

18 BY MR. MACCLENAHAN:

19 Q. I'm going to show you what's been
20 marked as Plaintiff's Exhibit 2 and ask you to take
21 a look at that. Have you ever seen that before?

22 A. No.

23 Q. On March 31, 2011 do you know whether a
24 payment was made to Allcare in the amount of
25 \$15,000, a wire payment?

50

1 A. No. I don't think I did. I don't --
2 I'll put it this way. I don't recall seeing it.

3 Q. I understand. I'll represent to you --
4 and you can look into it yourself to verify it --

5 A. Okay.

6 Q. -- this wire transfer was received by
7 Allcare and the sender of that wire transfer was
8 GPS Investments, Inc.

9 A. Okay.

10 Q. All right? The company that you said
11 you were formerly an owner of, part owner of at
12 least, right?

13 A. Right.

14 Q. Did you direct GPS Investments, Inc. to
15 send \$15,000 to Allcare?

16 A. I probably didn't. I would think
17 probably Tony or Brandy or -- I didn't remember
18 saying send 15,000 to them. I don't think I got
19 involved until I think Ondrej was copying me on
20 some e-mails. And I didn't know if Tony wasn't
21 responding or whatever when he said that he was
22 going to sue. I think that's when I got involved
23 in seeing if Tony was going to make sure that they
24 tried to pay them as much as they can.

25 Q. So Tony was an owner of GPS Investments

1 with you?

2 A. He was a partner.

3 Q. A partner. Okay. With you. That's
4 right.

5 Okay. So is it your testimony that
6 your recollection is you had nothing to do with
7 this transfer?

8 A. I don't -- I don't recall that at all,
9 no. I don't think I -- like I said, somewhere --
10 somewhere in that whole deal -- I don't know if
11 Tony wasn't responding to Ondrej and I think Ondrej
12 copied me on a couple of e-mails and then that's
13 what I got involved in at least trying to get them
14 to pay.

15 Q. So did you direct any payments over to
16 Allcare after you signed that promissory note?

17 A. No. Not personally, no.

18 Q. I'm trying to figure out -- because you
19 said that's when you got involved in directing them
20 to pay.

21 A. When you say directing, that I paid out
22 of my money? No, not from my funds, but directed
23 as far as contacting Tony's people to get Ondrej
24 paid. And I think Brandy was the comptroller at
25 the time.

1 Q. The comptroller of who?

2 A. Ascension.

3 Q. Okay. So on March 31, 2011 -- which is
4 the date this was posted, right?

5 A. Right.

6 Q. -- your understanding is Brandy was the
7 comptroller of Ascension at that time?

8 A. Correct.

9 Q. And she somehow --

10 A. Well, I think -- I think this is a -- I
11 didn't get involved until further down the line. I
12 don't think at the beginning because I believe I
13 thought that Tony and them was paying him. So I
14 didn't get involved until later, and it had to be
15 later than March 31st I believe, that whatever was
16 the payment agreement, that Tony wasn't paying
17 Ondrej.

18 Q. Well, help me understand, if you can,
19 why GPS Investments, Inc. was paying \$15,000 of a
20 debt that they -- they didn't have a contract with
21 Allcare, did they?

22 A. No.

23 Q. They didn't sign that promissory note,
24 did they?

25 A. No.

1 Q. As far as I'm aware, and as far as all
2 the documents produced, GPS Investments had nothing
3 to do with Allcare, right?

4 A. No.

5 Q. So why was GPS Investments paying
6 \$15,000 of a debt you, Tony and Ascension, then
7 later Ahava owed?

8 A. That's probably what --

9 MR. SMALLS: I'm going to object to
10 that question because I -- I don't see -- maybe you
11 can point out to me where this says GPS. I mean
12 ...

13 MR. MACCLENAHAN: I'll tell you where
14 we got it from. It's simply I called the bank and
15 I used -- asked them about the account numbers that
16 appear on here and where they came from and the
17 bank told me it was GPS Investments, Inc.

18 MR. SMALLS: Can you get me something?
19 I mean, I'm not disputing that it came from --

20 MR. MACCLENAHAN: Yeah, I'll be happy
21 to get something to verify.

22 MR. SMALLS: I'm just saying you're
23 saying that without anything verifying that.

24 MR. MACCLENAHAN: Yeah.

25 MR. SMALLS: For this particular

1 document. There's nothing on this document that
2 verifies that.

3 MR. MACCLENANAHAN: Well, the account
4 number can verify that, but I understand GPS --

5 MR. SMALLS: I mean, the account number
6 doesn't say GPS. For the purposes of this
7 deposition I just want it on the record that this
8 document --

9 MR. MACCLENANAHAN: You're right.

10 MR. SMALLS: -- does not reflect it.
11 Maybe you have some additional information that
12 will verify that.

13 MR. MACCLENANAHAN: Yeah. I'll get it.
14 I'll be happy to get something from the bank in
15 writing that says that, but I'll just tell you
16 that's what the bank told me, all right, on there?

17 MR. SMALLS: Right.

18 BY MR. MACCLENANAHAN:

19 Q. Why would GPS Investments, Inc. be
20 paying a debt that they didn't owe?

21 A. Well, GPS was a combination of me and
22 Tony's companies we owned together. So if he
23 didn't have it in Ascension, then I'm quite sure if
24 the money was available in GPS to make the
25 payment -- so GPS wasn't obligated to make a

1 payment, but that was a company that me and Tony
2 owned together and we had -- if we had funds --
3 it's kind of like this. He robbed Peter to pay
4 Paul. And if we had money that was available in
5 there for him to pay it then he probably instructed
6 them to pay it out of that account.

7 Q. Did GPS Investments own any shares of
8 Ascension?

9 A. No.

10 Q. Do they own any shares of Ahava?

11 A. No. GPS was just a management company
12 for our development companies, a combination of
13 stuff.

14 Q. So would it be fair to say that it was
15 routine business practice, so to speak, of what --
16 I'll use your phrase, you robbed Peter to pay Paul
17 where if one of your companies has money and the
18 other one doesn't, you'd just transfer it between
19 that and handle that debt and then maybe the one
20 day that company now has the money and you'd send
21 it back?

22 A. Correct.

23 Q. All right. You didn't draw up loan
24 documents about that or anything?

25 A. No. No.

1 Q. You just wrote the checks back and
2 forth and did the wire transfers and --

3 A. Correct.

4 Q. Help me understand another thing.
5 Because I thought earlier you testified that GPS
6 Investments, Inc. went under, and I wrote in my
7 notes you said it went under in 2010, or maybe even
8 earlier than that. If that was the case, why would
9 GPS Investments be --

10 A. It might have the funds.

11 Q. Let me finish my question.

12 A. All right.

13 Q. I know you know the questions, but let
14 me finish.

15 A. Okay.

16 Q. If that were the case, why would GPS
17 Investments be paying monies in March of 2011?

18 A. There was probably money in the
19 checking account.

20 Q. So it was not operational at that time
21 but it still had assets?

22 A. It probably -- assets or we -- or if we
23 have development deals, the money would probably be
24 parked in GPS Investments from a number of things
25 we did.

1 But GPS wasn't actually an actual
2 company. It was a management entity that we used
3 for our development companies. So it wasn't like
4 a -- it didn't have any assets.

5 Q. Well, it had -- assuming the evidence
6 bears it out that GPS indeed made this payment, it
7 had 15 grand, right?

8 A. Right. Right. When I say assets,
9 physical assets.

10 Q. Well, when I say assets, I include cash
11 as an asset. Okay? So at least in March of 2011
12 if GPS did indeed make that transfer, it had at
13 least 15 grand to make that transfer, correct?

14 A. Correct. Obviously.

15 Q. You didn't put 15 grand into that
16 account to make that transfer, did you?

17 A. No. At least I don't think so. I
18 don't think so, but ...

19 Q. So you don't know if you put \$15,000
20 into GPS Investments in March of 2011 to make that
21 payment?

22 A. Well, for this conversation I will say
23 I didn't.

24 (PLF. EXH. 3, Checking deposit slip
25 dated 1/26/11, was marked for identification.)

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1 BY MR. MACCLENAHAN:

2 Q. Mr. Wright, I'm going to show you
3 what's been marked as Plaintiff's Exhibit Number 3.
4 I'll ask you to take a look at that. I'll
5 represent to you -- and again I will be happy to
6 get something from the bank to verify it, but this
7 is a wire transfer in the amount of \$20,000 that
8 was transferred into Allcare Medical's account on
9 January 26, 2011, and the source of this wire
10 transfer, according to the bank, was Flat Iron,
11 LLC, which is one of the companies I asked you
12 about earlier. Do you remember when I asked you
13 about that?

14 A. Right.

15 Q. Did you have any involvement in making
16 this wire transfer?

17 A. No.

18 Q. And if I remember right, you said you
19 had no interest in Flat Iron, LLC?

20 A. No interest in Flat Iron.

21 (PLF. EXH. 4, Document entitled SMS
22 with Lancelot Wright, was marked for
23 identification.)

24 BY MR. MACCLENAHAN:

25 Q. I'll show you what's been marked as

1 Exhibit Number 4.

2 A. Okay.

3 Q. This is a series of SMSs, which are
4 text messages --

5 A. Uh-huh.

6 Q. -- between you and Ondrej Sliva, right?

7 A. Correct.

8 Q. If we go down to sort of the middle of
9 the page, it says from Lancelot Wright March 25,
10 2011. Do you see where I'm reading from?

11 A. Yes. The day before my birthday.

12 Q. All right. Can you read what you wrote
13 there?

14 A. Ondrej, just got your message. Payment
15 will be wired out Wednesday morning. Send wire
16 instructions.

17 Q. So in March, on March 25, 2011, at
18 least, you were involved in discussions with
19 Mr. Sliva concerning payment, correct?

20 A. Correct.

21 Q. And were authorizing some sort of wire
22 transfer, correct?

23 A. Correct.

24 Q. And it said -- so this was on
25 March 25th and it said it will be wired out

60

1 Wednesday morning, correct?

2 A. Correct.

3 Q. Let me look at my calendar here. I'm
4 sure there's some faster way to get to March 2011
5 than tapping at this, but I don't know what it is.
6 Just bear with me.

7 I'm not going to make this an exhibit,
8 but you see my phone. It says March 25, 2011 right
9 up there, right?

10 A. Right.

11 Q. And the 25th of March was a Friday,
12 correct?

13 A. Correct.

14 Q. And according to your text the
15 payment's going to be wired out Wednesday morning,
16 connect?

17 A. Correct.

18 Q. All right. The next Wednesday after
19 the 25th is the 30th according to this calendar?

20 A. Right.

21 Q. And if we look at the date -- excuse
22 me -- that's on Plaintiff's Exhibit Number 2, this
23 \$15,000 wire transfer, what's the date on that?

24 A. That's the 31st.

25 Q. So that's the day after that Wednesday

1 that you said a payment would be wired, correct?

2 A. Correct.

3 Q. And again, that payment is the GPS
4 Investments, Inc. payment that we discussed
5 earlier, right?

6 A. Right.

7 Q. All right. So at least as concerns
8 this payment then you were involved in getting a
9 wire transfer made?

10 A. Obviously, according to this. I knew
11 there was a time when Tony wasn't responding to
12 Ondrej and so I got involved because he copied me
13 on it. I got involved and I probably -- we had the
14 money in GPS and that's probably -- I did have it
15 wired out of there.

16 Q. So you were in fact involved in that
17 wire transfer then?

18 A. Obviously, according to this. I mean,
19 I'm not disputing it.

20 Q. And your involvement included getting a
21 wire transfer from GPS Investments, Inc. over to
22 Allcare in the amount of \$15,000?

23 A. Correct.

24 Q. All right. Did Brandy work at GPS
25 Investments?

1 A. No. Charles Randall was my CFO at the
2 time.

3 Q. Where did Brandy work?

4 A. Ascension.

5 Q. Did she join up at Ahava afterwards?

6 A. Yes, she is employed by Ahava.

7 Q. Let's look at this second to last text
8 that was sent to you -- sent by you. Excuse me.
9 It says, from Lancelot Wright on March 25, 2011.
10 So the same day as the prior text, right?

11 A. Right.

12 Q. Money won't be in until Tuesday,
13 available on Wednesday. We need you to back the
14 agreement up 30 days so we can send 15 K. This is
15 all we can do because all the bills are running
16 behind. Ondrej, this is our best faith effort to
17 take care of this. I will check with Brandy on
18 wire instructions. A lot of info got lost during
19 our transition.

20 What transition was that?

21 A. I'm not sure. But Brandy worked at
22 Ascension, so I figured she would have the wire
23 instructions since she was the comptroller over
24 there. So we probably got the wire instructions
25 from her and Charles made the wire out to them.

1 Q. It was a transfer to Ahava -- the
2 transition was to Ahava, wasn't it --

3 A. No.

4 Q. -- in March of 2011?

5 A. It could have been. I don't think so.
6 It could have been. I'm not sure what I was
7 talking about at that time, a lot of wire
8 instructions got lost during our transition.

9 Q. Well, March of 2011 is when you and
10 Tony got involved in Ahava, correct?

11 A. Correct. But to say that I was talking
12 about that transition, I'm not sure.

13 Q. What other --

14 A. It could be.

15 Q. What other transition was Brandy
16 involved in in March of 2011?

17 A. I don't think I was talking about
18 Brandy.

19 Q. What other transition --

20 A. I will check with Brandy on -- let me
21 just read it.

22 Q. Sure.

23 A. I don't know what that is.

24 I will check with Brandy on wire
25 instructions. A lot of info got lost during our

1 transition.

2 I don't know exactly what I was talking
3 about at that time. And it wouldn't have made a
4 difference as far as with Brandy with Ahava. I
5 don't know if I was talking about just -- I don't
6 know what I was talking about exactly, to be
7 honest.

8 Q. Well, well what other transition was
9 happening in March of 2011?

10 A. I bought into Ahava, got involved into
11 it. I sold -- what else -- I'm not sure. That
12 could be it. I'm not sure. I just knew we needed
13 to get the wire instructions for him. So I'm not
14 sure.

15 MR. MACCLENAHAN: Do you want to take a
16 quick lunch break or something? Do you all need
17 food? The court reporter may want something too.

18 MR. SMALLS: Let me ask you how long
19 you -- I know you've got to guestimate. You can't
20 really -- because it seems you're going on a lot of
21 the questions -- covering a lot of the questions
22 that you put in the 30(b)(6), which is fine.

23 MR. MACCLENAHAN: Well, I know that's a
24 different person that's the 30(b)(6). I'm going to
25 have to ask them all over again later because he

1 can't bind the company.

2 MR. SMALLS: Well, we can agree to bind
3 him because I don't see the need to ask the same
4 questions of somebody else over again. Now, I
5 mean, that's up to you guys.

6 MR. MACCLENAHAN: I think we're going
7 to need to do them separate. And I understand some
8 of it may be repetitive, but I think we're going to
9 need to do them separately.

10 MR. SMALLS: Well, I'm going to hold
11 you completely to this list with the next witness
12 then.

13 MR. MACCLENAHAN: That's fine. But do
14 you all need a lunch break now or no?

15 THE WITNESS: I'm good if I can get a
16 glass of water.

17 MR. MACCLENAHAN: You want to take a
18 break and get a glass of water?

19 THE WITNESS: Yeah.

20 (A recess transpired.)

21 BY MR. MACCLENAHAN:

22 Q. Who owns the Lodge At Ascension?

23 A. Nicole and Tony, but it just was sold.
24 Generations bought it.

25 Q. Is Generations a hospice company or --

66

1 A. No. They're an assisted living
2 facility.

3 Q. Is that what the Lodge At Ascension
4 was, assisted living?

5 A. Right, assisted living.

6 Q. Was it affiliated somehow with
7 Ascension Hospice?

8 A. Yeah.

9 Q. In what way?

10 A. They had the same owners.

11 Q. Was it Homes of Hospice or -- what was
12 it? Hospice House?

13 A. House.

14 Q. Hospice House. There you go. Thank
15 you. Sorry.

16 Did you ever have ownership interest in
17 that?

18 A. No.

19 Q. Did you ever have ownership interest in
20 Reliant Hospice?

21 A. No.

22 Q. Did you ever work with Reliant Hospice?

23 A. No.

24 Q. Did you ever invest money with Reliant
25 Hospice?

1 A. No.

2 Q. Did you ever loan money to Reliant?

3 A. No.

4 Q. Did you ever loan money to Ascension?

5 A. Probably so. There could have been
6 some money from GPS that might have been
7 transferred. I won't call it a loan. If they
8 needed it, I mean, it -- we commingled money all
9 the time kind of like to pay Peter -- rob Peter to
10 pay Paul.

11 Q. Did you ever loan money to Ahava?

12 A. Yes.

13 Q. How much money did you loan to Ahava?

14 A. I'm not sure. Probably have loaned --
15 I have loaned money to them. I don't know the
16 exact figure.

17 Q. That's separate from the 200,000 or so
18 you've put into the company, correct?

19 A. Correct. Correct. I mean, I can loan
20 to Ahava by not taking my paycheck.

21 Q. I understand. Have you done that?

22 A. Oh, yes.

23 Q. Has Ahava paid you on the loans?

24 A. Some. Some they have, some they
25 haven't.

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1 Q. Are the loans memorialized in writing?

2 A. No. Can't make payroll, don't pay me.

3 Q. And down the road they will pay you
4 back?

5 A. Right. When they can, they will pay it
6 back.

7 Q. I think I asked you this, but I can't
8 remember. Have you ever received distributions
9 from Ahava?

10 A. No.

11 Q. And have you ever received bonuses from
12 Ahava?

13 A. No. You did ask me that before.

14 Q. I thought so. I just wanted to make
15 sure.

16 A. You've got to have it to get it.

17 Q. I understand.

18 (PLF. EXH. 5, Document entitled View
19 Check Copy, Bates labeled 734, was marked for
20 identification.)

21 BY MR. MACCLENAHAN:

22 Q. I'd ask you to take a look at that
23 document and then let me know when you're ready.

24 A. Yes.

25 Q. This is a document that Ahava produced

1 in discovery Bates numbered 734 at the bottom. Do
2 you see where that's written in down there in the
3 bottom right?

4 A. Yes.

5 Q. And it's a check from Ahava Hospice
6 made payable to you, correct?

7 A. Correct.

8 Q. In the amount of \$25,000, correct?

9 A. Correct.

10 Q. And it was signed by Ed Sloan?

11 A. Correct.

12 Q. And it says loan repayment, right?

13 A. Right.

14 Q. What's the date on that check?

15 A. March 29th.

16 Q. Of?

17 A. 2011.

18 Q. Okay. What loan did you make back in
19 March 2011, which is back when you purchased your
20 shares? What loan did you make to Ahava?

21 A. You know, I have no idea. We probably
22 put -- I put money in and then when Ahava had it
23 they paid me back.

24 Q. So you put additional money in aside
25 from what you paid for the shares?

1 A. Correct. But to tell you what exactly
2 was the transaction, when I put in and when it paid
3 me back, I'm not sure. But it says loan repayment.

4 And we have done this before. It just
5 depends on what condition -- if we wasn't getting
6 money in and I needed to loan money in, I did it,
7 and then when the money came in, they paid it back.
8 I do the exact same thing now.

9 Q. Well, how do they know how much to pay
10 you back if it's not memorialized in writing?
11 Because 25,000 is a round number. It's not a
12 paycheck that you didn't take, right?

13 A. No. No. That's a loan, yeah. I mean,
14 it could have been 50,000 and they might have paid
15 me back 25,000 at that time. Because we were --
16 the company was -- wasn't cash flowing well because
17 of having an issue with Medicare. And so if we
18 needed 25,000 in and then when the company gets it,
19 I was able to get it back.

20 I don't know exactly if this was 25 of
21 a larger number or it was 25 and he was paying me
22 back 25.

23 Q. Okay.

24 A. You know what I'm saying? I'm not
25 sure.

1 (PLF. EXH. 6, Document entitled View
2 Check Copy, Bates labeled 2543, was marked for
3 identification.)

4 BY MR. MACCLENAHAN:

5 Q. This is Plaintiff's Exhibit Number 6.
6 This was produced in discovery as well. It's Bates
7 numbered 2543 and that's a check from Ahava Hospice
8 to you, correct?

9 A. Yes.

10 Q. And it's dated April 6, 2011, correct?

11 A. Correct.

12 Q. So about a week or so after that
13 \$25,000 check, correct?

14 A. Correct.

15 Q. It's in the amount of \$50,000 and it
16 says in the memo repay loan, correct?

17 A. Correct.

18 Q. Does that help refresh your memory
19 about what the loan might have been?

20 A. You know, I don't know how much of a --
21 this loan was, but Ed was, I guess --

22 Q. So it was at least 75,000?

23 A. Yeah. It probably was, yeah, more than
24 that. But, yeah. It don't -- I don't recollect
25 the certain amount of what the repayment was on it.

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1 It wasn't 50 in and 50 out. Maybe it could have
2 been 75, 100,000 and he was repaying me back the
3 amount that we put as a loan.

4 Q. I want to make sure I understand. It's
5 your testimony that this \$75,000 total, right, the
6 50 and 25,000 --

7 A. Yeah, that's 75.

8 Q. That's separate from the money you put
9 in to purchase your shares?

10 A. Correct.

11 Q. You made a loan on top of the purchase
12 of your shares?

13 A. Correct. Correct.

14 Q. But that loan was not in writing?

15 A. No.

16 Q. And the share purchase was not in
17 writing?

18 A. No.

19 (PLF. EXH. 7, Document entitled View
20 Check Copy, Bates labeled 780, was marked for
21 identification.)

22 BY MR. MACCLENAHAN:

23 Q. This is Plaintiff's Exhibit Number 7.
24 This was produced in discovery by Ahava.

25 A. Yes.

1 Q. This is a check dated May 1, 2012 made
2 payable to you from Ahava Hospice in the amount of
3 \$1,222, correct?

4 A. Correct.

5 Q. And the memo line says March
6 distribution, correct?

7 A. Correct.

8 Q. So you did in fact receive a
9 distribution then?

10 A. Yeah, but it really wasn't a
11 distribution. Just probably if it was paid on a
12 tax of some sort -- we'll pay ourselves a
13 distribution to pay a tax or something like that.
14 With it being that specific number, \$1,222, that
15 was something to pay -- we called it -- we'd code
16 it as a distribution, but it could have been to pay
17 a tax or something.

18 Q. Well, what do you mean to pay a tax?
19 What tax?

20 A. Well, if I had a -- if I had estimated
21 taxes due on my paycheck and -- instead of taking
22 it out of my paycheck Ed could have coded it as a
23 distribution to pay it. Being it's that particular
24 amount, 1,222 bucks, it's just an odd number.
25 Because if I get a distribution, I mean -- I mean,

1 that's an odd number.

2 But it was coded as a distribution. It
3 was probably something else, but I can't tell you
4 exactly what it was. That's just an odd number,
5 1,222. That was to pay something.

6 Q. Do you get paid weekly, biweekly?

7 A. Biweekly.

8 Q. Biweekly. Okay.

9 And I've got a ton of checks that
10 appear to be paychecks. I can produce them, show
11 them all to you, but they all seem to have the
12 amount of \$6,785 plus some change, depending on how
13 it falls. That's your biweekly paycheck?

14 A. Right.

15 Q. Where does Ahava maintain its bank
16 accounts?

17 A. Wells Fargo.

18 Q. Does it have a bank account at any
19 other bank?

20 A. We might have a payroll at Congaree,
21 Congaree Bank. I think Ed just opened up an
22 account there, Congaree. It's a Wells Fargo and
23 Congaree.

24 Q. Other than that do they have a bank
25 anywhere else?

1 A. Not that I know of.

2 Q. When you joined Ahava -- when you
3 purchased your shares of Ahava back in March of
4 2011 what was its patient population,
5 approximately?

6 A. Probably maybe 150 to 200, somewhere in
7 that range.

8 Q. And would it be fair to say that the
9 majority of those patients at that time were former
10 patients at Ascension Hospice?

11 A. Yes.

12 Q. And that the majority of the employees
13 at Ahava, the medical employees, the nurses, social
14 workers and so on, they were employees at
15 Ascension, correct?

16 A. Yes.

17 Q. And in fact when Ahava was operating in
18 March of 2011, they operated out of the same office
19 that Ascension did, didn't they?

20 A. Before March 2011 they had rented
21 space -- Ahava rented space from Ascension --

22 Q. And it was --

23 A. -- before we moved into that 7505.

24 Q. The building you're in now, right?

25 A. Correct. Correct.

1 Q. All right. So when Ascension quit
2 operating then Ahava was operating in that space?

3 A. Part of Ahava was. The main office was
4 in West Columbia. Part of it was working out of
5 there.

6 Q. And the people working out of there
7 were using the same equipment and supplies that the
8 folks at Ascension were using?

9 A. I'm not sure about that. You mean DME
10 supplies or are you talking about office equipment?

11 Q. Office equipment?

12 A. That was leased.

13 Q. Desks, computers, all that stuff.

14 A. Office equipment. Office equipment.

15 Q. It's the same.

16 A. Yeah, but I thought you were talking
17 about DME.

18 Q. I understand. Thank you for helping
19 clarify that.

20 And Ahava used the same bank account
21 that Ascension used, didn't it?

22 A. No. I don't think so.

23 Q. You don't think so?

24 A. I don't think so. Yeah, I don't think
25 they did. I'm pretty sure they didn't.

1 Q. To your knowledge, did Ahava ever pay
2 debts that were owed by Ascension?

3 A. I don't think so. Not to my knowledge.
4 Maybe software or something like that.

5 You know what, I don't think so, but
6 they might have. I don't -- I'm trying to see if I
7 can recall something specific like software. I'm
8 not sure. I'm not sure.

9 Q. But it's a possibility that they robbed
10 Peter to pay Paul, so to speak, like you used with
11 your other companies?

12 A. Yeah, but it wasn't -- Ascension was a
13 separate company from Ahava and I don't think -- I
14 don't know. I don't think they had a shared
15 account or anything like that.

16 Q. Did it -- I'm sorry.

17 A. I'm pretty sure.

18 Q. Did Ascension assume the auto leases
19 that -- excuse me.

20 Did Ahava assume the auto leases for
21 the medical staff?

22 A. Yes. Yeah, they had to do a separate
23 agreement and assign the lease.

24 Q. So it was all the same cars driven by
25 the same people for the most part?

1 A. Right.

2 Q. Give me one second. I'm trying to
3 organize some papers.

4 Did Ahava use any of Allcare Medical's
5 equipment?

6 A. Not to my knowledge.

7 Q. So all those --

8 A. Because Reliant DME took care of the
9 DME equipment for Ahava. Because when -- any
10 patients that came over from Ascension, when
11 Ascension closed, the equipment was changed to
12 Reliant, to the best of my knowledge.

13 Q. So at the time Ascension closed and
14 Ahava took over, those patients --

15 A. Correct.

16 Q. It was at that time that Ahava switched
17 Reliant Medical Supplies, correct?

18 A. Correct. Well, I think before I got
19 involved Ahava already was doing business with
20 Reliant because Tammy and her husband owned Reliant
21 DME.

22 Q. I had another question and it
23 disappeared. It will come back to me.

24 All right. I'm going to show you --
25 instead of making these all one exhibit, because

1 it's essentially the same questions on each of
2 them -- multiple exhibits. This will be one
3 exhibit.

4 (PLF. EXH. 8, Documents entitled View
5 Check Copy, Bates labeled 1390, 351, 2466, 2398,
6 2265, was marked for identification.)

7 BY MR. MACCLENAHAN:

8 Q. I'll show you what's been marked as
9 Plaintiff's Exhibit 8. It's a series of checks
10 that were produced -- I'm sorry. They're all made
11 payable to you --

12 A. Yeah.

13 Q. -- from Ahava.

14 A. Okay.

15 Q. And the reason I want to ask you about
16 these is they're all in different amounts than that
17 6,000 some odd dollar amount that your payroll
18 checks were. So I just want to quickly figure out
19 what that might be for. Okay?

20 A. So your question?

21 Q. I was just waiting for you to finish
22 reviewing them and then I'll ask you questions once
23 you're ready.

24 A. All right. Go ahead.

25 Q. Let's start with the first page which

80

1 should be Bates numbered 1390 at the bottom.

2 A. Okay.

3 Q. That's a check made payable to you from
4 Ahava dated July 2, 2012 in the amount of \$1,233.
5 Any idea what that's for?

6 A. I don't.

7 Q. Is that one of the tax things maybe? I
8 mean, that's a weird number.

9 A. It's a weird number. I would probably
10 say so.

11 Q. 2265 Bates numbered, is that the second
12 one you have?

13 A. I've got 351.

14 Q. All right. I'll skip to that one.
15 Let's try to put them all in the same order.

16 All right. 351.

17 A. What's the date on that? Is that
18 January 17th?

19 Q. Yeah. It looks like January 17, 2012,
20 and it looks -- it's in the amount of \$6,821 and --
21 that's a payroll check. I'm sorry. I looked at
22 the check and it looked like an eight on the check,
23 but it's a six. So we don't -- don't worry about
24 that one.

25 A. All right.

1 Q. All right. What's the next Bates
2 number you've got?

3 A. I've got 2466.

4 Q. That's dated December 30, 2011 in the
5 amount of \$7,128.66. Any idea what that's for?

6 A. No. And it could have been if I might
7 have skipped a payroll and then Ed might have --
8 his way of paying me back. I mean, I don't know
9 exactly what it's for, but I would think he wasn't
10 just giving me money.

11 Q. You've got one -- the next one -- what
12 number do you have?

13 A. 2398.

14 Q. All right. And that's posted
15 December 19, 2011 and it's in the amount of
16 \$7,009.56. Any idea?

17 A. No. It was before Christmas, though.
18 Could have been repaying me back some money. I'm
19 not sure. It looks like the next check is about
20 the same amount.

21 Q. Yeah.

22 A. Yeah, it's for 2,265.

23 Q. Uh-huh.

24 A. So it's something that he was paying me
25 for, paying me back.

1 Q. You don't recall for what, though?

2 A. I can't recall.

3 Q. Do you know what AMPRO International,
4 LLC is?

5 A. Yes.

6 Q. What is that?

7 A. A government security company.

8 Q. Do you own that company or --

9 A. I was an owner in it.

10 Q. When did you divest yourself of shares
11 in that?

12 A. It closed about maybe -- was it two
13 years ago? Don't put me exact on the date. A
14 couple of years.

15 Q. How about First Clearing, LLC?

16 A. I don't know what that is. First
17 Clearing?

18 Q. Yes.

19 A. I don't know. I don't recall. I don't
20 know that what is.

21 Q. Okay. I'll get them if you want, but
22 I'll just represent to you there's a series of
23 checks written by Ahava and up at the top -- you
24 see how this one says Ahava Hospice, Inc.?

25 A. Correct.

1 Q. It says Ahava Hospice of Anderson,
2 Ahava Hospice of Florence on those checks.

3 A. Right.

4 Q. Any idea what those are?

5 A. Yeah. We've got different offices.
6 We've got an Ahava office in Florence, Ahava office
7 in Charleston, and then we just put one in
8 Greenville.

9 Q. And so are just d/b/a names?

10 A. D/b/a.

11 Q. Do you know how much is due and owing
12 on that promissory note to Allcare Medical?

13 A. No. I know you discussed it earlier,
14 but you didn't ever tell me. No.

15 Q. Would you agree that the way to
16 calculate what's due and owing would simply be to
17 take the \$200,000 minus the payments that were made
18 plus any applicable interest? You'd do that --

19 A. That would be logical.

20 Q. Right. Okay. And you understand also
21 that if my client prevails in the lawsuit on that
22 promissory note that it would also include my
23 attorney's fees and the costs associated with
24 obtaining that judgment, right?

25 A. If that's what the judge orders.

1 Q. Well, that's what you agreed to, right?
2 Let's take a look here. Paragraph 9, right?

3 A. If that's in there, I agree with it.

4 MR. MACCLENANAHAN: I'm about done with
5 your deposition, I think. Why don't we take just a
6 quick break just so I can go through and make sure
7 I don't need to regroup on something. Okay?

8 THE WITNESS: All right.

9 (A recess transpired.)

10 BY MR. MACCLENANAHAN:

11 Q. The landlord that Ahava is paying, the
12 Florida company, does Tony own an interest in that
13 company?

14 A. No.

15 Q. And you don't have any interest in that
16 company, right?

17 A. No.

18 Q. The payments made -- or the total
19 amount owed not including interest according to my
20 client and what we'll present at trial -- and this
21 is not including interest or my fees or costs or
22 anything -- is \$244,467.81. Do you have any reason
23 to dispute that that's the amount owed?

24 A. No. ,

25 Q. On May 20th of this year where were

1 you?

2 A. Hell, I don't know where I was last
3 week. May 20th?

4 Q. It was the week before Memorial Day.

5 A. Probably home, I'm thinking. I don't
6 know. Let me look at my calendar.

7 Q. Sure.

8 A. Was that Memorial Day?

9 Q. No. It was the week before.

10 A. It was the week before Memorial Day.

11 Q. It was the Monday before Memorial Day.

12 A. Let's see here. I had IET. I imagine
13 I was at the office. I don't have nothing special
14 on my calendar.

15 Q. You weren't out of town or on vacation
16 or anything?

17 A. No.

18 MR. MACCLENAHAN: All right. That's
19 all the questions I have for now.

20 EXAMINATION

21 BY MR. SMALLS:

22 Q. I have a follow-up question for you.
23 In regard to that, did you, Mr. Wright, inform me
24 that you were going to a graduation in Atlanta that
25 week of Memorial Day?

86

1 MR. MACCLENANAHAN: Well, the week of
2 Memorial Day was not May 20th.

3 MR. SMALLS: The date you were
4 referring to.

5 MR. MACCLENANAHAN: Okay. The week of
6 May 20th.

7 THE WITNESS: I had a graduation, yeah,
8 but that wasn't until I think Wednesday.

9 BY MR. SMALLS:

10 Q. Now, you've discussed before that you
11 signed a promissory note, is that correct, that
12 Allcare presented to you, Mr. Wright?

13 A. I thought you were talking to him.

14 Q. No. I'm talking to you.

15 A. I'm sorry.

16 Q. Yes. You signed a promissory note that
17 was signed by -- that you signed for Allcare; is
18 that correct?

19 A. Correct.

20 Q. Now, would you have signed that
21 promissory note --

22 MR. MACCLENANAHAN: I'm going to object
23 to the leading nature of the question.

24 BY MR. SMALLS:

25 Q. Let me rephrase that question then.

1 Prior to signing that document were you informed
2 that Allcare was threatening to pull their
3 equipment?

4 A. Correct. Yes.

5 Q. And what was your belief with regard to
6 pulling that equipment?

7 A. Well, that Tony's patients would have
8 been without equipment if I didn't agree to sign
9 it.

10 Q. And did you hear that from -- did you
11 hear that from a representative of Allcare also?

12 A. When we met with Ondrej, he said it had
13 to have been -- they needed the agreement or he was
14 going to -- I want to say it was a Saturday, that
15 he was going to pull that equipment. I don't know
16 if that was the next day or two days before that.

17 Q. To your knowledge, did Allcare have a
18 contract with Ahava Hospice?

19 A. No.

20 Q. To your knowledge, did Ahava Hospice
21 ever receive a bill from Allcare Medical?

22 A. No.

23 MR. SMALLS: Nothing further.

24 MR. MACCLENAHAN: That's it.

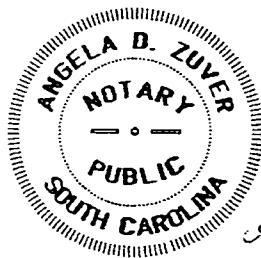
25 (The deposition was concluded at 12:58 p.m.)

1 CERTIFICATE OF REPORTER.
2

3 I, Angela D. Zuver, Court Reporter and
4 Notary Public for the State of South Carolina at
5 Large, do hereby certify that the foregoing
6 transcript is a true, accurate, and complete
7 record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 10th day of June,
13 2013 at Lexington, Lexington County, South
14 Carolina.



23 *Angela D. Zuver*

24 Angela D. Zuver, Court Reporter
25 My Commission expires
July 2, 2014

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

ALLCARE MEDICAL, LLC,

Plaintiff,

vs.

CASE NO. 2011-CP-42-2597

AHAVA HOSPICE, INC. F/K/A

ASCENSION HOSPICE, INC.,

ROBERT A. WILLIAMS and

LANCELOT D. WRIGHT,

Defendants.

COPY

30 (6) (6) DEPOSITION

OF AHAVA HOSPICE,

INC.: GLENN GRAY

DATE: June 6, 2013

TIME: 2:03 p.m.

LOCATION: Law Offices of
Rikard & Protopapas
1329 Blanding Street
Columbia, South Carolina

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: ANGELA D. ZUVER,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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25

(INDEX AT REAR OF TRANSCRIPT)

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STIPULATIONS

It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

* * * * *

GLENN GRAY

being first duly sworn, testified as follows:

EXAMINATION

BY MR. MACCLENAHAN:

Q. Mr. Gray, can you please give me your full name for the record.

A. Glenn Gray.

Q. You've had your deposition taken before?

A. Yes.

Q. I think I was present for one of them. You know how this works. I'm going to ask you some questions. You've got to answer them. If you don't understand my question, let me know. I'll do my best to rephrase it. Okay?

1 A. Okay.

2 Q. Try to make sure you say yes or no
3 instead of nodding your head up and down or back
4 and forth or saying uh-huh and huh-uh. Okay?

5 A. Okay.

6 Q. If you need a break, let me know.
7 We'll take a break. I'll just ask that you answer
8 whatever question might be on the table. Okay?

9 A. Okay.

10 Q. Also, as you know, now that this
11 deposition has begun you can't talk to your lawyer
12 about this case anymore. If you have any
13 questions, you have to direct them to me. Okay?

14 A. Okay.

15 Q. Is that the notice of deposition in
16 front of you?

17 A. The notice of deposition pursuant to
18 Rule 30(b)(6).

19 Q. Okay. We're going to make this the
20 first exhibit to your -- and I've got a copy I'll
21 submit. This will be the first exhibit to your
22 deposition. I'm going to use some of the exhibits
23 from a prior deposition, so it's going to say
24 Exhibit 9, I think, on this one.

25 A. Okay.

1 (PLF. EXH. 9, Second Amended Notice of
2 Deposition Pursuant to Rule 30(b)(6), was marked
3 for identification.)

4 BY MR. MACCLENAHAN:

5 Q. I'll ask you to take a look at this one
6 since this is an official part of the record. You
7 see on Page 1 going onto Page 2 there's a list of
8 17 different topics?

9 A. I do.

10 Q. Today you're here to testify on behalf
11 of Ahava Hospice, Inc. as to each of these topics,
12 correct?

13 A. Correct.

14 Q. And if anyone at Ahava is going to know
15 the answers -- let me rephrase that question.

16 If anyone at Ahava is going to know
17 about these 17 different topics, you would be the
18 person to ask; is that correct?

19 MR. SMALLS: I'm going to object to the
20 form of that question.

21 BY MR. MACCLENAHAN:

22 Q. Is there anyone at Ahava who is going
23 to be able to testify better than you or have more
24 knowledge than you concerning any of these topics?

25 A. That I don't know.

6

1 Q. If at some point that becomes the case
2 where you might say, you know, John Doe at Ahava
3 might be the better person to answer that, will you
4 please tell me?

5 A. Yes.

6 Q. Okay. And you understand that your
7 testimony today on behalf of Ahava is going to bind
8 Ahava as if Ahava itself were testifying, correct?

9 A. I understand.

10 Q. And what is your position at Ahava?

11 A. Corporate compliance officer and human
12 resources, risk management.

13 Q. How long have you held that position at
14 Ahava?

15 A. Corporate compliance office from the
16 day I was hired to the present time. Human
17 resources was probably -- what is this, '13.
18 Probably about September 2012. Somewhere in there
19 I picked that up.

20 Q. When was the beginning of your
21 employment with Ahava?

22 A. I think February 1, 2011.

23 Q. Prior to that where did you work?

24 A. Ascension Hospice.

25 Q. Did you have the same position there?

1 A. No. I was just the compliance officer
2 and then I picked up insurance risk management
3 later on.

4 Q. Do you have an ownership interest in
5 Ahava?

6 A. No.

7 Q. Did you have an ownership interest in
8 Ascension?

9 A. No.

10 Q. Who are the current owners of Ahava?

11 A. The current owners, Lance Wright,
12 Charles Sloan, James Moore, John Benton, Amber and
13 Scott Compton and Beth Sloan, and Tony Williams has
14 a small -- less than 1 percent along with Tammy,
15 less than 1 percent, I think, ownership interest.

16 Q. What about Laten, LLC, do they have an
17 ownership interest in Ahava or does it have an
18 ownership interest in Ahava?

19 A. Yes.

20 Q. What is its ownership interest?

21 A. Well, I mean, Laten is pretty much just
22 a holding company. So when you say an ownership
23 interest...

24 Q. Maybe I can rephrase my question.

25 A. Yes. Please.

8

1 Q. If you were to look at the list of
2 shareholders on the stock certificates for Ahava,
3 would Laten, LLC or Laten Corporation or whatever
4 it's called, would it be on the list of
5 shareholders or is it the only shareholder of
6 Ahava?

7 A. Well, I think Laten, like I said, was a
8 holding company and I guess the easiest way to put
9 it, I would think that the same owners, you know,
10 of Ahava, you know, and the same percentages I
11 think would be listed for Laten as well.

12 Q. Would it be correct to say that all
13 those folks that you listed initially, the
14 individuals, they all own shares in Laten and then
15 Laten owns the shares of Ahava or do I have that
16 mixed up?

17 A. Say that again, please.

18 Q. Sure. You listed a bunch of people
19 earlier, right, a bunch of individuals. Would it
20 be fair to say that those individuals you listed,
21 that the shares that they own are actually shares
22 of Laten and then Laten owns the shares of Ahava?

23 A. I think that's pretty accurate.

24 Q. Okay. So Laten is a holding company
25 and it holds 100 percent of the shares of Ahava and

1 then those people that you mentioned before are who
2 own Laten?

3 A. Correct.

4 Q. What about BMSC, LLC?

5 A. BM -- I'm sorry. Say that again.

6 Q. BMSC, LLC, which I was told stands for
7 Big Money South Carolina --

8 A. I think that's Ed Sloan's LLC, and it
9 may hold his percentage or interest of whatever
10 shares he owns. I'm not sure, but it may be in
11 BMSC. I'm not sure, you know, about that, but I
12 know that belongs to Ed.

13 Q. Other than Lance, Tony and Tammy, all
14 those other individuals you mentioned, all right,
15 those are the ones I want to talk about right now.
16 Do you know whether they own interest in BMSC, LLC
17 or do they own Laten, LLC stocks individually?

18 A. You're asking me if Ed Sloan, the
19 Bentons, the Comptons and Beth Sloan own interest
20 in -- have an interest in Big Money South Carolina,
21 LLC?

22 Q. Yeah.

23 A. I'm not sure.

24 Q. Okay. Because what I'm trying to
25 figure out -- one of the topics I'm trying to

10

1 figure out is who owns Ahava. It's my
2 understanding -- but I want to make sure that I am
3 correct in my understanding -- that Laten, LLC owns
4 100 percent of the shares of the Ahava and then
5 that Lance Wright, Tony Williams, Tammy McDonald
6 and then this BMSC, LLC group own the shares of
7 Laten, but if I'm wrong about that and it's in fact
8 not BMSC and it's all those other individuals, I'd
9 like to know that so I know who owns the company.

10 A. I don't think that -- well, I'm not
11 going to assume. I don't -- I can't answer that.

12 Q. All right. Who at Ahava would have the
13 answer to that so I can figure out who actually
14 owns the company.

15 A. Right. You're talking about BMSC?

16 Q. Yeah. I'm trying to figure out who
17 owns Ahava at the end of the day.

18 MR. SMALLS: I think that's been asked
19 and answered. You asked him who owns a percentage.
20 I want to put this on the record.

21 MR. MACCLENAHAN: Well, you're not
22 allowed to have speaking objections, Darryl. Put
23 your objection on the record.

24 MR. SMALLS: Objection. Asked and
25 answered.

1 BY MR. MACCLENAHAN:

2 Q. The question is on the ownership of
3 Ahava, the -- and I've heard testimony I'm trying
4 to get cleared up here. That Laten, LLC owns
5 Ahava, but then there's other people and another
6 LLC that actually owns Laten.

7 What I'm trying to figured out is, at
8 the end of the day when you track it, who is the
9 actual owner of this company? All right?

10 A. Okay.

11 Q. What I'm understanding from you is you
12 don't necessarily know that answer, who owns the
13 shares of Laten or how they're distributed; you
14 just know Laten owns Ahava.

15 A. Well -- and the percentages -- you were
16 asking about BMSC, and I don't think BMSC, you
17 know, has an ownership interest. I know that's Ed
18 Sloan's.

19 Now, I'm not sure, you know, in terms
20 of -- I've always just seen Charles Ed Sloan. I've
21 never seen BMSC.

22 Q. That's what I'm trying to figure out.

23 All right. So then for Laten I have
24 Lance, Ed, Tony, Tammy. And who are the other
25 individuals?

12

1 A. James Moore.

2 Q. M-O-O-R-E?

3 A. Yes. John and Bonnie Benton, Scott and
4 Amber Compton and Beth Sloan.

5 Q. Compton is spelled like the city of
6 Compton?

7 A. C-O-M-P-T-O-N.

8 Q. Do you know how those shares -- those
9 ownership shares of Laten are divided between those
10 folks?

11 A. In terms of the percentages of
12 ownership?

13 Q. Yes, sir.

14 A. Other than being able to say that the
15 majority of the shares are Lance, Ed -- I think
16 James Moore has about nine. The Bentons may have
17 about five or six, the Comptons about three, and
18 Beth Sloan about one and a half.

19 Q. And Tony and Tammy have less than 1
20 percent?

21 A. Tony is about 0.57 and Tammy is about
22 0.39.

23 Q. 0.39?

24 A. Yeah. And Tony is 0.57.

25 Q. All right. And then does Lance own

1 52 percent of the company?

2 A. I think that's about correct.

3 Q. And then Ed's would be whatever is left
4 after that?

5 A. About 19, 20, I think, if my math is
6 correct. Somewhere in there.

7 Q. I know you testified you're not
8 currently a shareholder of Ahava. Have you ever
9 been?

10 A. No.

11 Q. Does Ahava have any officers?

12 A. Well, Lance is the chief executive
13 officer. The chief financial officer is Ed. Other
14 than that...

15 Q. Do you receive a company car?

16 A. Do I?

17 Q. Yes, sir.

18 A. I do.

19 Q. What car is that?

20 A. A 2010 Mercedes GLK.

21 Q. How much does Ahava pay Lance Wright?

22 A. I believe \$175,000.

23 Q. Has that been his salary since he
24 started working there?

25 A. I believe so, yes.

14

1 Q. Has Tony Williams ever received salary
2 from Ahava?

3 A. During the period of time that he was
4 there, yes.

5 Q. And what was that salary?

6 A. I believe it was also 175.

7 Q. Other than salary what compensation
8 does Ahava provide Lance Wright?

9 A. Other than salary?

10 Q. A company car, benefits, membership
11 dues, those sorts of things as well.

12 A. I believe a company car. Now, when you
13 say membership dues...

14 Q. Country club, commerce club, anything
15 like that.

16 A. No, nothing like that.

17 Q. And he's driving a new Porsche, right,
18 that he got Superbowl Sunday?

19 A. I'm sorry?

20 Q. That he got on Superbowl Sunday.

21 A. I don't know when he got it, but he's
22 driving a Porsche, yes.

23 Q. Do you know what the lease payment is
24 on that Porsche?

25 A. I do not.

1 Q. Who at Ahava would know the answer to
2 that question if not you?

3 A. Probably Ed since he's the chief
4 financial officer.

5 Q. Do you know what the lease payment is
6 on your car?

7 A. I think it's like 634, something like
8 that.

9 Q. A month?

10 A. Yes.

11 Q. And they also pay the taxes? For all
12 the company cars they pay the taxes, insurance,
13 maintenance, upkeep and all that stuff, right?

14 A. Correct.

15 Q. Did Robert Williams receive a company
16 car from Ahava when he was employed there?

17 A. No.

18 Q. Other than a salary did he receive any
19 other benefits, whether it's membership dues, cell
20 phones, computers, whatever?

21 A. Well, I think he had a cell phone. He
22 didn't have a computer. He did not have a
23 computer. He definitely had a cell phone.

24 Q. Did Ahava pay distributions to Lance
25 Wright?

16

1 A. When?

2 Q. Ever.

3 A. I don't think they've ever paid
4 distributions. I'm not aware of any distributions
5 being paid.

6 Q. Again, if not you, who at Ahava would
7 know the answer to that question?

8 A. Probably Ed Sloan.

9 Q. Ed Sloan.

10 Same for Tony Williams, did he ever
11 receive distributions from Ahava?

12 A. I don't think so.

13 Q. Do you know of any partners that have
14 received distributions from Ahava?

15 A. Not that I can think of.

16 Q. How about any shareholders?

17 A. Shareholders, no.

18 Q. Did Lance Wright loan money to Ahava?

19 A. When?

20 Q. Ever.

21 A. Yes.

22 Q. Has he loaned money more than once?

23 A. Yes.

24 Q. How much money has he loaned Ahava?

25 A. I do not know.

1 Q. Has Ahava made payments to Lance Wright
2 for those loans?

3 A. Yes.

4 Q. How much money has Ahava paid Lance
5 Wright for those loans?

6 A. I'm not sure how much they have repaid.

7 MR. SMALLS: I'm going to object to
8 those questions that are not listed on your --

9 MR. MACCLENAHAN: Number 8, any
10 payments by Ahava to Lancelot Wright.

11 MR. SMALLS: Okay. Withdraw that okay.

12 THE WITNESS: I knew there were loans
13 made and I noticed they were repaid, but what
14 amounts I do not know.

15 BY MR. MACCLENAHAN:

16 Q. Do you know if there's still money owed
17 to Lance Wright by Ahava?

18 A. I doubt it, but I'm not sure.

19 Q. Were any of these loans memorialized in
20 writing?

21 A. I do not.

22 Q. If not you, who would know the answer
23 to that question?

24 A. Ed Sloan.

25 Q. As regards to Tony Williams, did

18

1 Ahava -- did he make any loans to Ahava?

2 A. I believe he did.

3 Q. Do you know the amount of those loans?

4 A. I do not.

5 Q. Do you know if any of them are in
6 writing?

7 A. I do not, no.

8 Q. Do you know if Ahava made any payments
9 on those loans to Tony Wright -- Tony Williams?
10 Excuse me.

11 A. I believe they did.

12 Q. Do you know how much they paid back?

13 A. I do not.

14 Q. Do you know if there is still money due
15 and owing to Tony Williams for those loans?

16 A. I don't think so, but I can't say, you
17 know, definitely.

18 Q. Again, would Ed Sloan be the person
19 able to testify to those questions?

20 A. Yes.

21 Q. Did Ahava ever make any payments of
22 money to Ascension?

23 A. No, not that I know of.

24 Q. Again, would Ed Sloan be the person who
25 would know the answer to that question if not you?

1 A. Perhaps.

2 Q. Well, if not Ed, who would be the
3 person I would ask?

4 A. Well, I mean, it's -- I guess Ed would
5 be, other than myself.

6 Q. Okay. Where does Ahava maintain
7 financial accounts?

8 A. Wachovia, which is now Wells Fargo
9 Bank, and most recently -- what's the name of that
10 bank? Congaree Savings.

11 Q. How many accounts does it maintain with
12 Wells Fargo?

13 A. How many accounts?

14 Q. Yes, sir.

15 A. Two or three.

16 Q. Was Ascension Hospice ever a named
17 accountholder on any of the accounts at Wells
18 Fargo?

19 A. No. No.

20 Q. Did Ahava ever pay the debts of any
21 other company besides Ahava?

22 A. No.

23 Q. The cars you guys lease -- Ahava
24 leases, was that a lease agreement that they
25 assumed from Ascension Hospice?

1 A. Entered into their own lease with the
2 leasing -- with the leasing company.

3 Q. Same leasing company?

4 A. Well, yeah. I mean, Walser, yes.

5 Q. Same automobiles that transferred over?

6 A. There were some, yes. I don't think
7 all of them did.

8 Q. Okay. The office I understand -- Ahava
9 is at Irmo Drive now; is that right?

10 A. 7505 Irmo Drive.

11 Q. Prior to that where was Ahava's office?

12 A. From February to May they rented space.

13 Q. What year?

14 A. Excuse me?

15 Q. Of what year?

16 A. 2011.

17 Q. Okay.

18 A. At Woodrow Street. Then they had
19 offices also in West Columbia and also in Sumter.

20 Q. Those offices, the other three offices
21 that you mentioned, not the Irmo Street one, did
22 Ascension Hospice use any of those offices?

23 A. Well, after Ascension closed. So for a
24 brief three-month period they leased the corporate
25 office space that Ascension used to be in from the

1 real estate company.

2 Q. What real estate company?

3 A. Woodrow Street, LLC.

4 Q. Do you know who owns Woodrow Street,
5 LLC?

6 A. I know Tony has an interest -- Williams
7 has an interest in it. I'm not sure who else. But
8 I know he had or has or had an interest in it.

9 Q. What three months overlapping are you
10 referring to? You mentioned there were three
11 months overlapping.

12 A. I didn't say they were overlapping.

13 Q. Then I misunderstood you. What three
14 months are you referring to?

15 A. February, March and April were the
16 three months I was referring to in 2011. Because
17 then we moved to -- we found space in Irmo and then
18 in May -- late April, beginning of May we moved.

19 Q. To the Irmo Street address?

20 A. Yes.

21 Q. When did Ascension close its doors?

22 A. January of 2011.

23 Q. So then in February of 2011 is when
24 Ahava began operating out of Ascension's former
25 offices?

1 A. Well, that was at -- because we already
2 had offices in West Columbia and Sumter. So when
3 you say began operating, we were operating all
4 along. It was just for that --

5 Q. I did not say it began operating. I
6 said began operating out of that office. They
7 began operating out of that office, not the start
8 of operations.

9 A. Well, your question seemed to suggest
10 that. That's why I -- but, yeah, in February, like
11 I said, we entered into that lease, that short-term
12 lease.

13 Q. And that was the same location that
14 Ascension operated out of, right?

15 A. As I said before, yes.

16 Q. Okay. And used the same -- many of the
17 same employees too, correct?

18 A. Not all of them, no.

19 Q. My question wasn't all of them.

20 A. Some of them. Well, the question --
21 there were some employees that were, yes.

22 Q. All right. How many of the employees
23 at that office were former Ascension employees?

24 A. That would be hard to say because some
25 folks were coming and going, and even some of them

1 changed their minds. So there's no way I could
2 accurately say.

3 Q. Was Ahava using the same office
4 equipment that Ascension was using at that office
5 space?

6 A. No.

7 Q. Ahava obtained all new office
8 equipment?

9 A. Well, they had, again, moved stuff down
10 from Sumter and from West Columbia.

11 Q. Did they use any of the office
12 equipment that Ascension used at that office space?

13 A. Not that I know of.

14 Q. So all new to that location? New
15 desks? New chairs?

16 A. There may have been some desks and
17 chairs that were left behind, but for the most part
18 they moved stuff from those other two offices.

19 Q. And did Ahava treat patients that were
20 formerly patients at Ascension?

21 A. There were patients that transferred.
22 Some of the patients of Ascension did transfer
23 their care to us, yes.

24 Q. Would it be fair to say that the
25 majority of Ascension's former patients transferred

1 their care to Ahava?

2 A. It would not.

3 Q. Percentage-wise, how many -- what was
4 the percentage of Ascension patients that
5 transferred their care to Ahava then?

6 A. Well, after all was said and done I
7 would probably say 30, 40, because you have to
8 realize that of those that did transfer many of
9 them were -- we had to take them off because there
10 were no -- they had high benefits periods. So that
11 cut the numbers down significantly even more. So I
12 would probably say 30, 40 at the most.

13 Q. So somewhere between 30 to 40 percent
14 of the patients at Ascension transferred their care
15 to Ahava?

16 A. Well, I'm saying what we ultimately
17 wound up with would be 30 to 40 percent of those
18 patients.

19 Q. So more than that transferred their
20 care, but it then ended up that some of them were
21 no longer eligible for hospice? Am I correct? Am
22 I understanding you correctly?

23 A. I'm sorry. Repeat that.

24 Q. Sure. Is it more than 30 to 40 percent
25 initially transferred, but then when you did the

1 reviews, you found some of them were no longer
2 eligible for hospice? Is that -- you said
3 something about eligibility in your answer, so I'm
4 just trying to understand.

5 A. I think about 210 was what the census
6 was, and maybe about 120 of those transferred, and
7 then immediately probably another, you know, almost
8 half of those had to come off because of the high
9 benefit period.

10 Q. That's what I'm asking. What's the
11 high benefit period that you're --

12 A. Well, they were no longer hospice
13 appropriate.

14 Q. Okay. And after that 30 to 40 percent
15 transferred their care to Ascension, what was the
16 patient population -- excuse me -- transferred
17 their care to Ahava, what was the patient
18 population at Ahava?

19 A. When?

20 Q. After all those folks from Ascension
21 transferred.

22 A. Well, you know, after they transferred,
23 I mean, then, you know, those that were
24 inappropriate were immediately. So it wasn't like
25 there was a, you know -- so it was almost, you

1 know, a simultaneous, you know, happening.

2 Q. Yeah. Once you culled out the ones
3 that weren't eligible anymore.

4 A. What was left in our patient census?
5 Well, it probably was about 60-ish.

6 Q. And how many -- is that 60 Ascension
7 patients or 60 total at Ahava after everything
8 happened? I'm trying to find out what Ahava's
9 patient population was.

10 A. I just know that when all was said and
11 done, you know, the census was about 60, 65. Now,
12 what -- you know, I don't think I can ...

13 Q. That's fine. That's I think what I
14 want.

15 Ahava's patient population once all was
16 said and done was somewhere around 60 to 75?

17 A. 60 to 65.

18 Q. 60 to 65. Okay.

19 And that was in the March 2010 time
20 frame?

21 A. Yeah. And it was low, so...

22 Q. Does Ahava use any of the same
third-party providers that Ascension used after
Ascension shut down?

A. No.

1 Q. So it was all new third-party
2 providers?

3 A. Well, they had their own. Ahava had
4 its own by virtue of the fact that it had always
5 been operating.

6 MR. SMALLS: Excuse me. Which number
7 are you referring to on the list?

8 MR. MACCLENAHAN: Well, that would be
9 related to both 15 and 16.

10 MR. SMALLS: Okay.

11 THE WITNESS: The purchase of -- there
12 was never any purchase of Ascension.

13 BY MR. MACCLENAHAN:

14 Q. Well, that's going to be my next
15 question. Did Ahava purchase Ascension?

16 A. No.

17 Q. Okay. What is your understanding of
18 Ahava's relationship with Ascension?

19 A. What their relationship was?

20 Q. Well, you have a lot of the same
21 employees, correct? You testified to that. You're
22 one of them.

23 A. Yeah.

24 Q. A lot of the same company cars,
25 operating the same office, using the same office

1 equipment, but you didn't buy --

2 A. I didn't say that we used the same
3 office equipment. I mean, I said there was some
4 desks and chairs, but I never said that we used the
5 same office equipment.

6 Q. Okay. Well, that's office equipment.

7 A. Some of the vehicles -- some of the
8 vehicles, yeah. Some of the vehicles, but, again,
9 the -- as I said before, Ahava entered into its own
10 leasing agreement with the leasing company separate
11 and apart from anything that Ascension -- was going
12 on with Ascension.

13 And so when you say what, you know, the
14 relationship was, I guess your characterization of
15 a relationship is what is sort of, you know...

16 Q. Well, how would you describe it then?
17 I mean, that's -- there's one thing, right -- there
18 are multiple ways a company can get rolling and
19 handle things, right? You can just start up your
20 own business and you search out your own clients.
21 You can purchase an old business, right? You can
22 use referrals. I mean, there are all sorts of ways
23 you can end up running a business. All right?

24 A. Yes.

25 Q. Now, Ascension shut down in January of

1 2011 was your testimony, right?

2 A. Yeah.

3 Q. And after that, Ahava began treating
4 somewhere around 40 to 60 patients that were
5 formerly at Ascension. The same two Ahava --
6 excuse me -- Ascension shareholders were now Ahava
7 shareholders, Tony and Lance.

8 A. Lance was never an Ascension
9 shareholder.

10 Q. Excuse me. You're right. I misspoke
11 about that.

12 Tony was now a shareholder. He was a
13 former Ascension shareholder and was now a
14 shareholder of Ahava, correct? Employees changed
15 hands, including you, correct? You used the same
16 office space.

17 A. Well, no. I mean, I was terminated and
18 I had to interview. It wasn't like all of us was
19 just -- you know, we had to interview. In fact, I
20 interviewed twice. So it wasn't that, you know, it
21 was a mass exodus from one company to the other.
22 It was, you know, like I said, a pretty stressful
23 time. You know, we were all let go and we had to
24 interview and some people were hired and some
25 weren't.

30

1 Q. When you were working at Ascension, did
2 anyone from Ahava come in and tell you or any other
3 employees that Ahava was going to -- might purchase
4 Ascension?

5 A. No.

6 Q. Did anyone at Ascension ever tell you
7 that Ahava would purchase Ascension?

8 A. No.

9 (PLF. EXH. 10, Document entitled View
10 Check Copy Bates labeled 2547, marked for
11 identification.)

12 BY MR. MACCLENAHAN:

13 Q. This is a document that was produced in
14 discovery by Ahava. Who is Hands of Hospice?

15 A. That was a thrift store over in West
16 Columbia that was operated at one point by Ahava.
17 It was a thrift shop.

18 Q. So Ahava owned Hands of Hospice?

19 A. I think it was a separate entity, but I
20 think it was a 501(c)3, if I'm not mistaken.

21 Q. Why would Ahava be paying \$2,000 in
22 April of 2011 to Hands of Hospice?

23 A. I mean, there was a myriad of reasons.
24 It could have been a donation that somebody sent to
25 Ahava Hospice or made it payable and of course

1 Ahava had to turn around and pay it to Hands of
2 Hospice. It seems to me that that's probably the
3 most likely scenario because, you know, folks make
4 donations, especially if, you know, they appreciate
5 the care that their loved ones received. They
6 would make contributions, you know, all the time.
7 And so -- and so that would be my first...

8 Q. Do you know whether Ascension had
9 business dealings with Hands of Hospice?

10 A. No.

11 Q. No, you don't know or, no, they didn't?

12 A. They didn't. Ascension had its own --
13 not thrift store, but they had its own charitable
14 501(c)3. They were competitors, so, I mean, it
15 wouldn't be doing business with a competitor.

16 (PLF. EXH. 11, Document entitled View
17 Check Copy Bates labeled 2495, was marked for
18 identification.)

19 BY MR. MACCLENAHAN:

20 Q. This has been marked as Number 11.
21 Have you had a chance to look at that document?

22 A. Yes.

23 Q. This appears to be a check dated
24 April 12th and posted on April 13, 2011 paid to the
25 order of cash in the amount of \$1,000. Is that Ed

1 Sloan's signature at the bottom?

2 A. It looks like it.

3 Q. And it looks like it's endorsed by
4 Amber Compton, correct?

5 A. Correct.

6 Q. Any idea why --

7 A. Well, it says clearly on the memo it's
8 for petty cash.

9 Q. Okay. Explain that to me.

10 A. Well, petty cash is petty cash.
11 Sometimes during the course of -- you know, she may
12 have needed to buy paper supplies. I mean, petty
13 cash is for those small items. They kept a petty
14 cash account.

15 Q. Is Amber Compton an employee of Ahava?

16 A. She is.

17 Q. What is her position at Ahava?

18 A. Assistant administrator I believe is
19 her title.

20 Q. And does she receive a company car as
21 well?

22 A. I believe so.

23 (PLF. EXH. 12, Document entitled View
24 Check Copy Bates labeled 739, was marked for
25 identification.)

1 BY MR. MACCLENAHAN:

2 Q. This has been marked as Exhibit Number
3 12.

4 A. Go ahead.

5 Q. Okay. This is a check again produced
6 in discovery by Ahava. It was posted on March 31,
7 2011. It says pay to the order of Wachovia in the
8 amount of \$60,000, correct?

9 A. That is correct.

10 Q. And again it happens to be Ed Sloan's
11 signature at the bottom, right?

12 A. Yes.

13 Q. And then I'm trying to read what that
14 handwriting up at the top says, but it looks like
15 it says --

16 A. Good luck.

17 Q. -- pay to Robert Williams. I can't
18 read what's on the first line.

19 A. I don't -- I can't -- like I said,
20 from -- based off of this copy -- I don't know what
21 that says.

22 Q. Okay. Any idea why on March 31, 2011
23 Ahava was paying \$60,000 to the order of Wachovia?

24 A. No.

25 Q. And if it does indeed say to pay to

1 Robert Williams up at the top there, any idea why
2 that would be written there?

3 A. I'm not sure. Like I said, I can't
4 make that out.

5 Q. Do you have a reason to dispute that
6 that's what it says? I mean, are you disputing my
7 reading of it or --

8 A. Well, you admit that it's difficult to
9 read, and you don't wear glasses like I do, so ...

10 Q. Well, that's because I don't need
11 glasses and it says to pay to Robert A. Williams.
12 And that would be --

13 A. Okay. Well, that's what you say. Like
14 I said, I can't make it out or see it clearly
15 enough to make it out. So I'm not going to guess
16 as to what it says.

17 Q. Well, let's presume that it does that.
18 Any idea why it would say that?

19 A. No.

20 (PLF. EXH. 13, Document entitled View
21 Check Copy Bates labeled 736, was marked for
22 identification.)

23 BY MR. MACCLENAHAN:

24 Q. This will be Number 13.

25 A. Okay.

1 Q. This is a check posted on March 30th,
2 dated March 29, 2011 in the amount of \$3,000 to
3 you, correct?

4 A. That is correct.

5 Q. And it was for reimbursement of legal
6 fees, correct?

7 A. That is correct.

8 Q. What legal fees are they reimbursing
9 you for?

10 A. I was subpoenaed in another matter to
11 testify and I had incurred that expense and I went
12 to them and asked them to reimburse me.

13 Q. What was the other matter you were
14 subpoenaed to testify in?

15 A. I'm trying to remember the caption of
16 the -- it was a -- I think it was a part of a
17 whistleblower case of some kind.

18 Q. Was it Alisha Knight ex rel United
19 States versus Reliant Medical and Reliant Hospice?

20 A. I believe so, yes.

21 Q. And that was a deposition conducted by
22 Peter Protopapas, correct, the gentleman who you
23 shook hands with downstairs?

24 A. Yes, uh-huh.

25 Q. Ahava was not a part of that lawsuit,

36

1 were they?

2 A. They were not.

3 Q. Were you there testifying on behalf of
4 Ahava?

5 A. I don't think I was. I think I was
6 there as a witness. I'm not sure if I was
7 testifying -- I don't think I was testifying on
8 behalf of Ahava.

9 Q. Okay. Who is First Carolina Risk
10 Management?

11 A. Our former insurance brokers.

12 Q. So any checks made payable to them was
13 for insurance?

14 A. Yeah, and policies.

15 Q. Diversified Medical Services?

16 A. I think they are an infusion or
17 something, if I'm not mistaken. I don't know why I
18 want to say that they were in infusion therapy,
19 but ...

20 Q. Some sort of third-party provider --

21 A. Yeah.

22 Q. -- that provided care to one of your
23 patients?

24 A. Yes.

25 Q. How about Berkshire Hathaway Homestate

1 Companies?

2 A. That's one of the insurers. That's one
3 of our insurers.

4 Q. Okay. So all checks made out to them
5 would be for some --

6 A. For insurance coverage, yes.

7 Q. Reliant Medical Products?

8 A. DME. It's a DME company we used.

9 Q. DME is for durable medical equipment?

10 A. I'm sorry. Durable medical equipment
11 company that we used.

12 Q. Okay. So the payments made to them
13 were for medical equipment that they provided to
14 Ahava?

15 A. Yes.

16 Q. Premium Assignment Corporation?

17 A. Insurance. On some of our policies the
18 amount -- we financed a portion of the payment over
19 the year -- the policy year after putting down a
20 portion of the premium and we financed the rest.
21 So Premium Assignment was -- in conjunction with
22 First Carolina who was the company that financed
23 it.

24 Q. Wildewood Downs?

25 A. That's a nursing home. That's one of

38

1 the facilities that we use.

2 Q. I can show the check if you want, but
3 any reason -- why would you be paying a nursing
4 home?

5 A. Let me see.

6 Q. Let me go ahead and make it an exhibit
7 since we're going to look at it.

8 A. Okay.

9 (PLF. EXH. 14, Document entitled View
10 Check Copy Bates labeled 1728, was marked for
11 identification.)

12 THE WITNESS: Probably it was what was
13 owed to them, room and board, or whatever patient
14 respites they may have. So it was either/or, but
15 yeah, they're a nursing facility.

16 BY MR. MACCLENAHAN:

17 Q. Some sort of patient care?

18 A. Yeah.

19 Q. Did Ahava -- let me rephrase that.

20 The Wells Fargo accounts that Ahava
21 maintains, you said there are two or three, right?

22 A. Well, Ahava -- probably closer to two.
23 I know probably two.

24 Q. Are there any other named account
25 holders of those accounts besides Ahava? Does it

1 own those accounts jointly with anyone?

2 A. No.

3 (PLF. EXH. 15, Document entitled View
4 Check Copy Bates labeled 420, was marked for
5 identification.)

6 BY MR. MACCLENAHAN:

7 Q. I'm going to show you Exhibit Number 15
8 that was produced by Ahava in discovery and ask you
9 to take a look at the top right where it says
10 Hospice House. Do you see where that is?

11 A. Yes, I think so.

12 Q. Okay. Why is Hospice House listed on
13 the check issue by Ahava and in Ahava's bank
14 account if they're not an accountholder?

15 A. Is this the same account?

16 Q. It was produced to me from the same
17 account, yes.

18 A. I'm not sure if it's -- because we
19 don't -- the company doesn't have joint accounts.
20 I'm trying to -- West Columbia. I can't make out
21 the address for Hospice House.

22 MR. SMALLS: I'm going to object to
23 that based on that is the Ahava --

24 THE WITNESS: Yeah, I don't think this
25 is the --

1 MR. SMALLS: I mean, you might have it,
2 but I don't see it.

3 MR. MACCLENANAHAN: You produced it.

4 MR. SMALLS: Right. Well, it might
5 have been mixed and involved in all those
6 documents, but I don't see how this is an Ahava
7 account.

8 THE WITNESS: I don't think it's an
9 Ahava account.

10 BY MR. MACCLENANAHAN:

11 Q. Let me produce -- let me show you this
12 then. This is just going to be for reference.
13 Okay? This was produced to me by Wachovia.

14 A. Hold on. Hold on.

15 Q. Sure.

16 A. Okay.

17 Q. Do you see up here it says Ahava
18 Hospice, Inc., right, Wells Fargo, correct?

19 A. Yeah.

20 Q. And then the account number --

21 A. Yes.

22 Q. -- right? And it's -- I'm not going to
23 get all the zeroes. 2000054782686. And if you
24 look at the account number on this check from
25 Hospice House, it's 20000547828 -- 2686. Excuse

1 me. It's the same account number, isn't it?

2 A. Just a second, please.

3 Q. Absolutely. And in fact the last four
4 digits appear in type up there, 2686. That's the
5 same last four digits, right?

6 A. It would appear to be.

7 Q. All right. So now we've established
8 this check did indeed come from Ahava's bank
9 account with Wachovia, correct?

10 A. It would appear so.

11 Q. All right. So, again, why is a check
12 from Ahava's bank account -- if there's no joint
13 accountholders, why is Hospice House listed up at
14 the top as the accountholder -- as the issuer of
15 the check?

16 A. That's a good question. Tammy McDonald
17 signed it, so she would know.

18 Q. So you don't know why that's listed
19 there?

20 A. No. And the reason -- it goes back to
21 when you were asking me, you know, how many
22 accounts, because I know at some point even though
23 it was still a Wachovia account, I think they
24 established a second -- you know, a new account at
25 Wachovia, you know, at some point.

1 Q. Well, the paper --

2 A. At least -- you know, I could be wrong.

3 Q. The paper I showed you that listed the
4 account with Ahava is from February of 2012, right?
5 That's the one I showed you. Up at the top see it
6 says February 1?

7 A. That's the statement date, February 1st
8 through February 29th, yes.

9 Q. And the check here that was signed by
10 Tammy, Exhibit 15, the date on that is February 28,
11 2011?

12 A. A year before.

13 Q. So at least a year after Ahava still
14 has that same account, right?

15 A. It would appear so, yes.

16 Q. Again, that one needs to stay here.
17 That one I need back.

18 Again, your testimony is you don't know
19 why that is?

20 A. No.

21 Q. Do you know who Carole Clary is?

22 A. Let me see it.

23 Q. That's the payee.

24 A. I do not. Never heard of her.

25 Q. So at least in that instance Ahava's

1 bank accounts were used to write a check on behalf
2 of -- what is it called -- Hospice House and made
3 payable to whoever Carole Clary is and signed by
4 Tammy McDonald, correct?

5 A. Yeah.

6 (PLF. EXH. 16, Document entitled View
7 Check Copy Bates labeled 513, was marked for
8 identification.)

9 BY MR. MACCLENAHAN:

10 Q. So in Exhibit 16 it looks like Ahava
11 Hospice of Florence appears on that check, correct?
12 That's who's up in the left corner there?

13 A. That is correct, uh-huh.

14 Q. And it's the same account ending in
15 2686, right?

16 A. The last four is 2686, yes.

17 Q. Who is Ahava Hospice of Florence?

18 A. It was our Florence -- that's a
19 Florence office, a satellite office at the time.

20 Q. Are they a joint accountholder with
21 Ahava Hospice, Inc.?

22 A. Could be. I'm not sure how this was
23 set up. I mean, to be quite frank with you,
24 because I thought Ahava was just the owner on the
25 account, but apparently it's set up so that there

1 obviously are others. So, you know, based on this
2 it appears that, you know, they're on the account.

3 Q. Well, who other than you would know
4 the -- would be able to testify about that?

5 A. Ed Sloan.

6 Q. So then if there's one that says Ahava
7 Hospice of Anderson, it's the same thing as the
8 Anderson office?

9 A. At the time, yes.

10 (PLF. EXH. 17, Document entitled View
11 Check Copy Bates labeled 549, was marked for
12 identification.)

13 BY MR. MACCLENAHAN:

14 Q. This is Number 17. This is another
15 document produced in discovery from the 2686
16 account, and that one also says Hospice House,
17 doesn't it?

18 A. It appears to, yes.

19 Q. That one was signed by Ed Sloan, not
20 Tammy, right?

21 A. That's correct.

22 Q. Who is James Floyd?

23 A. I do not know.

24 Q. So on at least two occasions then
25 checks were written on behalf of Hospice House out

1 of Ahava's account, correct?

2 A. I'm sorry. I'm still looking at this.

3 Q. No problem. On at least two occasions
4 then checks were written out of Ahava's Hospice's
5 account on behalf of Hospice House, correct?

6 A. Or Hospice House is a party to -- you
7 know, is on the account, which would then, you
8 know, make it a Hospice House account.

9 Q. What is the Lodge At Ascension?

10 A. That was an assisted living facility.

11 Q. Did Ahava had an ownership share in it?

12 A. No.

13 (PLF. EXH. 18, Document entitled View
14 Check Copy Bates labeled 735, was marked for
15 identification.)

16 BY MR. MACCLENAHAN:

17 Q. Exhibit 18, that's a check written on
18 March 29, 2011 to Lodge At Ascension for \$18,000,
19 right?

20 A. That is correct.

21 Q. And it's signed by Ed Sloan, right?

22 A. Correct.

23 Q. Why is Ahava Hospice writing a check
24 for \$18,000 to the Lodge At Ascension?

25 A. I'm not sure what this is for.

1 Q. Did Ahava have employees that worked at
2 Lodge At Ascension?

3 A. No, we didn't have any employees. I
4 was just trying to think of whether we had any
5 patients, but I'm not sure. I don't think we did,
6 but I'm not sure of that. But none of our
7 employees worked there, no.

8 Q. So to your knowledge did Lodge At
9 Ascension loan Ahava any money?

10 A. No.

11 Q. So you have no idea why \$18,000 was
12 paid to the Lodge At Ascension?

13 A. As I said before, I don't know what
14 this was for.

15 Q. Did Ascension use Lodge At Ascension?

16 A. What do you mean did Ascension -- I
17 don't understand the question.

18 Q. Did it send patients to Lodge At
19 Ascension?

20 A. Did it? I think it did. There may
21 have been an occasion or two where it did.

22 Q. And when that was the case, did
23 Ascension (sic) have to pay Lodge At Ascension for
24 the housing of those patients?

25 A. I'm sure it did.

1 Q. But your recollection is Ahava did not
2 have at any patients at the Lodge At Ascension?

3 A. My recollection is that I'm not sure,
4 you know, if they did.

5 Q. Well, if you don't know, who would
6 know?

7 A. Well, Ed wrote the check, so, I mean,
8 he may have some further enlightenment on this.

9 (PLF. EXH. 19, Document entitled View
10 Check Copy Bates labeled 2562, was marked for
11 identification.)

12 BY MR. MACCLENAHAN:

13 Q. That's another check in the amount of
14 \$18,000 to the Lodge At Ascension, correct?

15 A. Yes, it appears to be.

16 Q. The date posted was April 15, 2011,
17 right? At the top there in the type.

18 A. Excuse me. Date posted 4/15/11.

19 Q. Okay. And it's signed by Ed Sloan,
20 right?

21 A. Correct.

22 Q. Same as the last one, you don't know
23 why Ahava was paying another \$18,000 just two weeks
24 later?

25 A. I do not.

1 (PLF. EXH. 20, Document entitled View
2 Check Copy Bates labeled 93, was marked for
3 identification.)

4 (PLF. EXH. 21, Document entitled View
5 Check Copy Bates labeled 490, was marked for
6 identification.)

7 BY MR. MACCLENAHAN:

8 Q. Now we have another check to Lodge At
9 Ascension, correct, posted on May 4, 2011, and this
10 one is in the amount of 7,500, correct?

11 A. That was two questions. The first, the
12 answer is yes, 5/4/11, and secondly, 7,500 to the
13 lodge, yes.

14 Q. Again signed by Ed Sloan, right?

15 A. Yes. Appears to be.

16 Q. All right. You don't know why this was
17 paid?

18 A. No. There's nothing on here that would
19 indicate.

20 Q. Okay. I'm going to hand you 21. This
21 was a check posted February 25, 2011 in the amount
22 of \$3,000 made payable to Lodge At Ascension,
23 correct?

24 A. That is correct.

25 Q. Again signed by Ed Sloan, correct?

1 A. Correct.

2 Q. And the memo line for this one says for
3 payroll, right?

4 A. Appears to be, yes.

5 Q. Why is Ahava paying the Lodge At
6 Ascension's payroll?

7 A. I don't think we were. I'm not sure
8 what this -- what this notation is. I guess you'd
9 have -- I mean, Ed would be the person that would
10 know this. But as far as I know...

11 Q. The Lodge At Ascension was not on
12 payroll, was it? It was not an employee of
13 Ahava's?

14 A. No.

15 Q. So what happened was Ahava was paying
16 Lodge At Ascension's payroll, wasn't it?

17 A. That I don't know.

18 Q. I mean, you're the person designated by
19 Ahava to be able to answer about all the financial
20 records that were produced here, and so far
21 virtually every one of those I've been told that Ed
22 Sloan's the guy to talk to --

23 A. Well --

24 Q. -- and not you. So I'm curious why --
25 what your knowledge is concerning all of these

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1 financial records then.

2 A. There are some that I've answered, but
3 obviously there are some that I don't have any
4 knowledge of, and beyond that...

5 Q. When you went to work for Ahava after
6 Ascension shut down, did you keep the same cell
7 phone?

8 A. No.

9 Q. You got a new cell phone number?

10 A. Yes.

11 Q. I'm going to show you what was
12 previously marked as Exhibit 7 to Lance Wright's
13 deposition.

14 A. Okay.

15 Q. Do you see at the bottom of this one
16 March distribution?

17 A. Distribution.

18 Q. Okay. Does that refresh your memory as
19 to whether Ahava paid distributions to Lance
20 Wright?

21 A. Well, obviously they did.

22 Q. And it's your testimony on behalf of
23 Ahava that it is in fact a distribution?

24 A. Based on this check, it appears to be.

25 Q. Well, is it or isn't it?

1 A. Well, based on the check, March
2 distribution.

3 Q. Well, what else do you base it on?

4 A. Well, you know, that's what I'm basing,
5 you know, my answer on, is what I'm seeing here.
6 It says March distribution pay to the order of
7 Lance Wright.

8 Q. These are Exhibits 5 and 6 to Lance
9 Wright's deposition. Are those the repayments of
10 the loan you were testifying about earlier?

11 A. Looks to be.

12 Q. And what's the total of those two
13 checks?

14 A. One check -- the check on Exhibit 5
15 appears to be \$25,000 and the check on Exhibit 6
16 appears to be \$50,000.

17 Q. So presumably Lance Wright loaned at
18 least \$75,000 to Ahava?

19 A. Yes.

20 Q. But that was not memorialized in
21 writing, that loan?

22 A. I don't know.

23 Q. Do you know whether that loan's been
24 paid off? Does Ahava still owe money to Lance
25 Wright?

1 A. Not that I know of, no.

2 Q. Is there a girl named Brandy that works
3 at Ahava -- used to work in the accounts at Ahava?

4 A. There is a young lady named Brandy
5 Neuberger that works in the accounting department
6 at Ahava, yes.

7 Q. Did she also work at Ascension?

8 A. She did.

9 Q. And by March of 2011 Brandy --
10 Ascension was closed at that point, right? Because
11 they closed in January 2011.

12 A. Yes.

13 Q. So by March of 2011 she was working at
14 Ascension -- excuse me -- at Ahava, correct?

15 A. Yes.

16 Q. In April of 2011 was Tammy McDonald
17 working at Ahava?

18 A. April of 2011. I think she had quit or
19 no longer had an active role by that time. April
20 of 2011. We moved in May.

21 Yeah, in April -- I think it all
22 depends on when in April because I think that was
23 the...

24 Q. How about April 25th?

25 A. I'm not sure. I don't think so because

1 I think at some point she had, like I said,
2 resigned and was not actively involved. I'm trying
3 to remember that date, though. I'm drawing a
4 blank.

5 Q. Okay. By May of 2011, May 6, 2011, how
6 about then? Was she employed at Ahava?

7 A. Employed?

8 Q. Yeah.

9 A. I don't think so.

10 Q. How about April 3rd? Was she still
11 employed then? Did she quit sometime in April?

12 A. Yeah. I want to say it was sometime in
13 April that she sent that e-mail. But, again, I'm
14 drawing a blank as to exactly when.

15 Q. So whenever she sent that e-mail that's
16 the day that she resigned, right?

17 A. Yes.

18 Q. Because she sent an e-mail, if I
19 remember right, saying that she was done working at
20 Ahava, right?

21 A. Yes.

22 (PLF. EXH. 22, Document entitled View
23 Check Copy Bates labeled 2538, was marked for
24 identification.)

25 BY MR. MACCLENAHAN:

1 Q. This was is a check produced to me in
2 discovery from Ahava's bank account posted April 6,
3 2011 dated April 4, 2011 payable to Tammy McDonald
4 in the amount of \$3,000 and endorsed by and signed
5 by Tammy McDonald, correct?

6 A. Correct.

7 Q. And it's for her legal fees, correct?

8 A. Yes, sir. That's what it says.

9 Q. What legal fees did Tammy McDonald
10 incur that Ahava had to reimburse her for?

11 A. Well, that she reimbursed herself for.

12 Q. She did it out of Ahava's account,
13 right?

14 A. Yeah. April -- that might have been
15 the Knight -- ex rel Knight. It might have been
16 right around -- it might have been that.

17 Q. She wasn't being reimbursed for
18 testimony she provided on behalf of Ahava, was she?
19 I mean, Ahava wasn't --

20 A. She would not have been testifying on
21 behalf of Ahava.

22 Q. Ahava hadn't been sued at that point,
23 correct?

24 A. No. She was testifying on, you know,
25 her dealings with Reliant Hospice which she was a

1 former owner of. She clearly wasn't testifying on
2 behalf of Ahava.

3 Q. Okay. So would it be fair to say then
4 that she had Ahava reimburse herself -- I mean, she
5 signed it out of Ahava's account to reimburse
6 herself for her own legal fees?

7 A. Yeah.

8 Q. It had nothing to do with Ahava?

9 A. No.

10 Q. All right. Are any employees -- at any
11 point were there any employees at Ahava that
12 received deferred compensation -- received a
13 deferred compensation plan?

14 A. No, not that I know of.

15 (PLF. EXH. 23, Document entitled View
16 Check Copy Bates labeled 2508 and 90, was marked
17 for identification.)

18 BY MR. MACCLENAHAN:

19 Q. I'm going to show you two checks that
20 are jointly labeled as Plaintiff's Exhibit 23.
21 Which one do you have on top, 2508? So the first
22 check was written from Ahava Hospice, Inc.'s
23 account and it was posted, if I look at the top, on
24 April 25th, in the amount \$5,000 to Tammy McDonald
25 and the memo says deferred salary. Do you know

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1 what deferred salary that is?

2 A. Well, obviously a portion of her salary
3 wasn't paid. You know, I mean, there was a -- you
4 have to remember that with the census as low as it
5 was, you know, I think a lot of times that the
6 owners either deferred or, you know, made loans,
7 you know, to keep the company afloat.

8 I mean, it wasn't all, you know,
9 seashells and balloons. I mean, we went through
10 some pretty dire times right after, you know, that
11 early period there. So, I mean, I don't know if
12 this was part of that or, you know...

13 Q. So there was some sort of deferred
14 salary at Ahava then?

15 A. I don't know if it's -- I don't know of
16 any form of deferred salary plan, no. I don't know
17 if it was -- you know, if all the owners did it or
18 if it was only some. I mean, I don't know. That
19 was beyond my pay grade.

20 Q. And the second one that's on there, the
21 second check Bates numbered 90, that one was posted
22 on May 6, 2011, at which point she had already
23 quit, correct?

24 A. Correct. If my memory serves me
25 correct.

1 Q. All right. And she got deferred
2 compensation of \$5,484.56, I think. Yeah.

3 A. Yeah.

4 Q. Both of those signed and endorsed by Ed
5 Sloan, right?

6 A. Yes.

7 Q. When Tony Wright went to work --

8 A. Tony Wright?

9 Q. Excuse me. I always mix them up.
10 Williams. Excuse me.

11 When Tony Williams went to work for
12 Ahava, did he have authority to bind Ahava in
13 contract?

14 A. No, because he wasn't the CEO. So, no,
15 he would not have. I think -- I mean, he was a
16 shareholder and I think that was it.

17 Q. Well, you told me he was co-CEO, I
18 thought.

19 A. I never told you he was co-CEO.

20 Q. Maybe I'm confusing that with Lance's
21 testimony. Someone today told me that.

22 It's your testimony on behalf of Ahava
23 that he was not co-CEO?

24 A. He may have been for some point and
25 then it changed. So the answer to your question is

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1 at some point he was, at some point, and then, like
2 I said, a change was made and...

3 Q. So while he was serving as co-CEO, he
4 would have been able to bind Ahava Hospice in
5 contract, correct, as a chief executive officer?

6 A. I would assume so, yeah.

7 Q. Who is AMPRO International, LLC? Do
8 you need to get that?

9 A. No.

10 That's a security -- or was a security
11 entity out of Washington, D.C.

12 Q. Did they do business with Ahava?

13 A. No.

14 Q. Two separate companies?

15 A. Yeah.

16 Q. No business arrangements?

17 A. Not that I know of.

18 (PLF. EXH. 24, Analyzed Business
19 Checking Account Summary Bates labeled 876 and 880,
20 was marked for identification.)

21 BY MR. MACCLENAHAN:

22 Q. Do you see on the first page this is a
23 bank statement that was produced, Ahava Hospice,
24 Inc. It's the same 2686 bank, if you look at the
25 top there.

1 A. Yeah.

2 Q. I want you to turn to the second page,
3 and about midway through the posted date is
4 February 24th in the amount of \$9,000 to AMPRO
5 International, LLC.

6 A. Uh-huh.

7 Q. Why is Ahava paying AMPRO International
8 \$9,000 if they have no business arrangement?

9 A. That I couldn't answer.

10 Q. Do you know who owns AMPRO
11 International?

12 A. Who owns it? I think that Lance had an
13 interest in it, Tony had an interest in it, and there
14 were others. I know they were part of a group,
15 but -- all of whom at this point I cannot remember.
16 But I know they had an interest in it.

17 Q. But Ahava Hospice, Inc. didn't hire a
18 security company out of Washington, D.C. to do
19 anything, did it?

20 A. Not that I'm aware of.

21 Q. I mean, your hospice patients didn't
22 need security from Washington, D.C., right?

23 A. Come on.

24 Q. I mean, they didn't do anything?

25 A. No.

1 Q. Okay. So for some reason they're
2 shelling out nine grand, in this instance, over to
3 AMPRO, right?

4 A. Well, there looks to be a wire transfer
5 to that company, yes, in that amount.

6 Q. All right. Down at the bottom of that
7 second page, the last two entries there, there's
8 one for \$113.12 and then one for \$22,000. Do you
9 see that?

10 A. Yes.

11 Q. One says Ahava Hospice impound billing
12 impound and then the other -- the \$22,000 one says
13 tax impound. What are those?

14 A. It looks to be -- well, the \$22,000 tax
15 looks to be -- it looks like it was a tax payment
16 of some kind. Billing.

17 Q. Did Ahava owe taxes in February of
18 2012?

19 A. Yeah. I mean...

20 Q. Back taxes is what I'm referring to.

21 A. I think it did at one point have a --
22 had some back taxes.

23 Q. What's the billing impound?

24 A. That I couldn't tell you.

25 Q. Are you aware that in the records that

1 were produced to me I found at least seven payments
2 to AMPRO International, LLC from Ahava?

3 A. In terms of the number, you know, I
4 mean, if you say.

5 Q. Two of the -- I don't have all of them
6 copied, but I'll give you the Bates numbers just so
7 the record can be clear. Two of the payments
8 showed up on Bates number 1040, one in the amount
9 of 8,400 and one in the amount of 8,000. Another
10 one showed up on Bates number 1041 in the amount of
11 7,000. Two more showed up on Bates number 743, one
12 in the amount of 2,000 and one in the amount of
13 12,000. Bates number 746 had a \$10,000 payment and
14 Bates number 880 had a \$9,000 payment.

15 That's a lot of money paid to a company.
16 that it had no business relationship with, isn't
17 it?

18 A. Is that a question?

19 Q. Yeah. Is that a lot of money paid to a
20 company you don't have a business relationship
21 with?

22 A. It's a lot of money that was paid to
23 AMPRO, yes.

24 Q. And there's no business relationship
25 with AMPRO, is there?

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1 A. No, not that I know of.

2 Q. But it does have -- at some point at
3 least it had some common shareholders with Ahava,
4 didn't it?

5 A. Yes. As I told you before, Lance and
6 Tony had an interest in that.

7 Q. Do you know what First Clearing, LLC
8 is?

9 A. First Clearing?

10 Q. Yes, sir.

11 A. Not offhand.

12 Q. Okay. On Bates number 1040 there's a
13 \$53,000 payment to that LLC.

14 A. To First Clearing.

15 Q. And on Bates number 1041 there's a
16 \$26,500 payment to them.

17 A. I have no idea why.

18 Q. Okay. As far as you know, does Ahava
19 have any business relationship with First Clearing,
20 LLC?

21 A. Unless it is either a third-party
22 billing for a vendor or something along those lines
23 I'm not sure.

24 (PLF. EXH. 25, Analyzed Business
25 Checking Account Summary Bates labeled 1167 and

1 1170, was marked for identification.)

2 BY MR. MACCLENAHAN:

3 Q. I'll show you Exhibit Number 25. Again
4 I just put it on the front page just so you can see
5 it's from the Ahava bank account at Wells Fargo.
6 If you turn to the second page, almost towards the
7 bottom there's a date posted of March 16th in the
8 amount of \$100,000 and it says a withdrawal was
9 made in a branch store.

10 A. Okay. I see it.

11 Q. Do you know who withdrew \$100,000 out
12 of Ahava's account?

13 A. I do not.

14 Q. Do you know why that was withdrawn?

15 A. I do not.

16 Q. On behalf of Ahava, can you provide me
17 with any business reason of why that money was
18 withdrawn?

19 A. On that same date it looks to --
20 apparently there was a transfer to a business
21 checking account ending in 9346. So I'm wondering
22 if that \$100,000 may have been --

23 Q. I'm sorry. Where are you referring to?

24 A. Just above on 3/16, \$6,181.25. It
25 looks to be a business checking account that there

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1 was a transfer to on 3/16.

2 Q. Okay.

3 A. And then I'm not sure, you know, if
4 that \$100,000 was perhaps not withdrawn and then
5 deposited into the business checking. I'm not
6 sure. I just noticed that. I mean, that could
7 have certainly -- I mean, that's for a business
8 reason.

9 Q. Well, what business checking account is
10 9346?

11 A. It could have been the other Wachovia
12 account -- excuse me -- Wells Fargo account. Like
13 I said, I'm not sure. I mean, I couldn't --

14 Q. Well, none of that is what it says, is
15 it?

16 A. No, it doesn't say that. I mean, I'm
17 just -- you asked me if there was a business
18 reason, so I'm just --

19 Q. Yeah. I'm asking you to provide one.

20 A. And offhand I cannot, so I'm not going
21 to hazard a guess what they was doing.

22 Q. And that transaction right above it
23 that you're referring to, that's an online
24 transfer, isn't it?

25 A. Yes, it certainly is on that date.

1 Q. It's not a withdrawal made in a branch
2 or a store like the 100,000, is it?

3 A. It is not, no.

4 Q. Who would be authorized to make a
5 \$100,000 withdrawal out of Ahava's account?

6 A. It would have to be --

7 Q. And this was in March of 2012.

8 A. March of 2012. I guess go to the
9 signatories to the account which -- March of 2012.
10 Lance, Ed, possibly Amber.

11 Q. Amber Compton?

12 A. Yeah. Those would be about the only
13 three that I could guess.

14 (PLF. EXH. 26, Analyzed Business
15 Checking Account Summary Bates labeled 491 and 496,
16 was marked for identification.)

17 BY MR. MACCLENAHAN:

18 Q. If I remember correctly, you testified
19 earlier that Ahava did not make any payments to
20 Ascension, correct?

21 A. I believe so, yes.

22 Q. This is Plaintiff's Exhibit Number 26.

23 A. Okay.

24 Q. It's a bank statement from Ahava
25 Hospice from March of 2011. I'd ask you to turn to

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1 the second page.

2 A. Okay.

3 Q. And look at the second to last transfer
4 there.

5 A. Uh-huh, funds transfer sent to BB&T.

6 Q. On March 30th \$52,549.28 was
7 transferred to BB&T, South Carolina, beneficiary of
8 Ascension Hospice. Why was Ahava paying \$52,549.28
9 to Ascension Hospice who closed in January of 2011
10 when it's March 2011?

11 A. It looks like -- I know there was a --

12 MR. SMALLS: Do you have a copy of
13 that?

14 MR. MACCLENANAHAN: I'm sorry. I thought
15 I gave you one. Here you go.

16 THE WITNESS: I'm not sure. I'm not
17 going to hazard a guess. I'm not sure.

18 BY MR. MACCLENANAHAN:

19 Q. Well, again, you were the person
20 designated to testify on these issues, and
21 specifically one of those issues was any payments
22 made by Ahava to Ascension. That's Number 12. And
23 I'm here now asking you specific questions about a
24 payment made by Ahava to Ascension and you're
25 telling me that you don't know why.

1 A. I think I know, but I'm not 100 percent
2 sure.

3 Q. Well, you're the one who was appointed
4 to testify on behalf of them, so --

5 A. I'm aware of that. I'm aware of that.
6 I don't know.

7 Q. I want to be clear for the record then.
8 The person who was appointed to testify about
9 payments made by Ahava to Ascension, their
10 testimony is they don't know why payments were made
11 by Ahava to Ascension, correct?

12 A. On that particular -- on March 30,
13 2012, as to that transaction, no.

14 Q. Is there any other transaction you know
15 of?

16 A. We talked about a lot already, but --

17 Q. To Ascension?

18 A. No. I mean, not to Ascension. I mean,
19 we talked about other --

20 Q. I'm not asking about the other ones,
21 sir.

22 A. Okay.

23 Q. I asked --

24 A. As to this particular one, I do not
25 know.

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1 Q. I asked for someone who could
2 testify --

3 A. Number 12.

4 Q. -- to any payments made by Ahava to
5 Ascension. That's a specific topic I listed there
6 and you were the one appointed by Ahava --

7 A. Yes.

8 Q. -- as the person best able to offer
9 that testimony.

10 MR. SMALLS: I think he's asked and
11 answered it.

12 MR. MACCLENANAHAN: Well, he hasn't
13 answered it.

14 THE WITNESS: Well, I've answered it by
15 saying I can't. I've answered it by saying I don't
16 know.

17 BY MR. MACCLENANAHAN:

18 Q. So the person appointed by Ahava to
19 testify to that issue doesn't know why \$52,000 was
20 paid to Ascension?

21 MR. SMALLS: Is that a question or is
22 that a statement?

23 MR. MACCLENANAHAN: Yeah, that's a
24 question.

25 BY MR. MACCLENANAHAN:

1 Q. Is that right?

2 MR. SMALLS: I think -- I think he's
3 asked -- you've asked that. For the record, that's
4 asked and answered.

5 BY MR. MACCLENAHAN:

6 Q. All right. Well, let's do it one more
7 time. Is that correct?

8 MR. SMALLS: Again, objection. Asked
9 and answered.

10 THE WITNESS: I do not know why that
11 payment was made on that particular transaction.

12 (PLF. EXH. 27, Analyzed Business
13 Checking Account Summary Bates labeled 491 and 493
14 View Check Copy Bates labeled 673, was marked for
15 identification.)

16 BY MR. MACCLENAHAN:

17 Q. This is Number 27. This is a bank
18 statement from March 1, 2011 from Ahava Hospice,
19 correct? I think I may have given -- did I give
20 you two?

21 A. No.

22 Q. I'm sorry. Here.

23 MR. MACCLENAHAN: I'm sorry, Darryl.

24 THE WITNESS: It's a Wachovia business
25 checking statement for Ahava Hospice, yes.

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1 BY MR. MACCLENAHAN:

2 Q. Yeah, for the account ending in 2686,
3 correct?

4 A. Correct.

5 Q. The account we've been talking about
6 this whole time, correct?

7 A. Correct.

8 Q. Let's turn to the last page. This was
9 check number 3002, date posted March 14, 2011 in
10 the amount of \$3,015, correct?

11 A. I'm sorry. Say that once more.

12 Q. Sure. This was check number 3002
13 posted March 14, 2011 in the amount of \$3,015,
14 correct?

15 A. Yes.

16 Q. And it pays to the order of -- it looks
17 like Comdata Corporation. Now, up in the -- again,
18 this is from that 2686 account. Up in the top
19 corner there it says Ascension Hospice, Inc.,
20 doesn't it?

21 A. It does.

22 Q. Why is Ahava issuing checks on behalf
23 of Ascension Hospice, Inc. naming Ascension
24 Hospice, Inc. on their account number to Comdata
25 Corporation?

1 A. I'm trying to make out something below
2 that in the memo, but I can't make that out.

3 I don't know.

4 Q. I thought we had established earlier
5 that Ahava, Inc. did not share a bank account with
6 Ascension Hospice.

7 A. That was my understanding.

8 Q. And I thought we also established
9 earlier that Ahava Hospice, Inc. did not pay
10 Ascension Hospice, Inc.'s debts. That's what you
11 testified to, correct?

12 A. That is correct.

13 Q. That second page is just a list of
14 checks that were issued on this --

15 A. Yeah.

16 Q. -- on that account, and the very first
17 column, four checks down, is that check 3002, right
18 in sequence.

19 What's Comdata Corporation? Do you
20 know?

21 A. Not a clue.

22 Q. Again, Ascension closed their doors in
23 January of 2011, didn't they?

24 A. That is correct.

25 (PLF. EXH. 28, Analyzed Business

1 Checking Account Summary Bates labeled 491, 493 and
2 View Check Copy Bates labeled 630, was marked for
3 identification.)

4 BY MR. MACCLENAHAN:

5 Q. This is Exhibit 28. This is from the
6 same month, and if we go to the last page, that's
7 another check written out of Ahava's account to
8 Comdata Corporation listing on behalf of Ascension
9 Hospice, Inc., and this is in the amount of \$1,815,
10 correct?

11 A. 1,815, yes.

12 Q. So again we have a check that Ahava's
13 writing on behalf of Ascension to this Comdata
14 Corporation, whoever they might be?

15 A. I don't know what this is for or who
16 Comdata is.

17 Q. I just want to make sure we're clear on
18 the record. Your testimony on behalf of Ahava
19 Hospice, Inc. is that you don't know why on two
20 separate occasions in the month of March 2011 Ahava
21 Hospice, Inc. wrote two checks on behalf of
22 Ascension Hospice, Inc. to Comdata Corporation; is
23 that correct? You don't know why they twice -- on
24 two separate occasions they essentially paid a debt
25 of Ascension Hospice?

1 A. Well, that's if you're -- I'm not going
2 to -- I mean --

3 Q. They paid it on behalf of them, right?

4 A. But we don't know who Comdata is or
5 whether this payment is debt or what it is. So I
6 can't agree with, you know, your characterization.

7 Q. All right. Well, they paid Comdata
8 Corporation money on behalf of Ascension, didn't
9 they, twice in March of 2011?

10 A. There were checks written out of that
11 account to Comdata and Ascension is listed on the
12 check as the remitter.

13 Q. Is there any way for someone to look at
14 that check and know that it's Ahava who wrote that
15 check? Their name doesn't appear on there
16 anywhere, does it?

17 A. Not that I see.

18 Q. So in March of 2011 Ahava wrote two
19 separate checks in the name of Ascension Hospice,
20 Inc. to Comdata and paid \$52,549.28 to Ascension,
21 correct?

22 A. Again, there was a wire transfer of
23 that amount into a BB&T account belonging to
24 Ascension. For what it was I don't know.

25 Two payments to Comdata Corp. Again, I

1 don't know what that is, who they are and what the
2 payments are for --

3 Q. And as far as --

4 A. -- or even who -- it just says verbally
5 authorized by your depositor. As to who would have
6 even -- it looks like an electronic check.

7 Q. And since you agreed with me early on
8 in this deposition that you were the person best
9 suited to testify of behalf of the company as to
10 every topic listed in my notice of deposition,
11 there's no one other than you to ask who could give
12 me a better answer, is there? That's Ahava's
13 testimony?

14 A. Well, that's your -- again, as I also
15 said before, Charles Sloan is the CFO, and if
16 there's anyone other than myself, it would be him.
17 I think that's what I said.

18 Q. But you're the person Ahava appointed,
19 aren't you?

20 A. For this deposition, yeah.

21 Q. Yeah. Who is GPS Investments, Inc.?

22 A. GPS. I think that's a management
23 company that the guys had an interest in.

24 Q. What guys?

25 A. Lance and Tony, amongst others.

1 Q. Okay. And did GPS Investment, Inc. do
2 management work for Ahava?

3 A. I don't think so, no.

4 Q. Did Ahava provide hospice care somehow
5 to GPS Investments, Inc.?

6 A. No.

7 Q. I'm going to ask a question about this
8 exhibit. On Exhibit 28 here, front page, there's
9 four separate deposits by GPS Investments, Inc.
10 into Ahava's account. It's all on the first page
11 there. There's one in the amount of \$4,000 --
12 excuse me -- \$4,400 originated out of GPS
13 Investments, correct?

14 A. Yes.

15 Q. All right. Skip that thousand dollar
16 one and go down to the \$12,000 one. GPS
17 Investments, Inc. made a \$12,000 deposit, correct?

18 A. Correct.

19 Q. And then go down to the \$20,000 one.
20 Again that's from GPS Investments, Inc., correct?

21 A. Yes.

22 Q. All right. So they made somewhere
23 around \$36,400 of deposits in the month of
24 March 2011, correct?

25 A. That's correct.

1 Q. Why is GPS Investments, Inc. depositing
2 \$36,000 into Ahava's account if they don't have a
3 business relationship?

4 A. Well, I think that's probably Lance
5 perhaps loaning the company money. That's what it
6 appears to be to me. In that time frame
7 especially.

8 Q. The company didn't pay GPS Investments,
9 Inc. any money, right? They repaid Lance, didn't
10 they? Isn't that what we went through earlier on
11 the loan repayments?

12 A. Well, they were paying him --

13 Q. They paid him \$75,000, right?

14 A. For the ones that were for Lance,
15 correct. And, again, I'm -- just given the time
16 frame and -- that's what it appears to be, if my
17 memory serves me correctly.

18 And I said Lance. It could have been
19 Tony. It could have been Lance. But that's what
20 it appears to be.

21 MR. MACCLENANAHAN: I'm going to take a
22 short break to stretch our legs.

23 (A recess transpired.)

24 BY MR. MACCLENANAHAN:

25 Q. Ascension closed its doors in

1 January 2011 and some amount of its patients
2 transferred over to Ahava. Did Ahava use any of
3 Allcare Medical's equipment after that transfer
4 happened?

5 A. No.

6 Q. So is it your testimony on behalf of
7 Ahava that Allcare Medical's equipment had been
8 returned to it --

9 A. No.

10 Q. Hold on. Let me finish my question so
11 the record is clear -- after Ascension closed its
12 doors?

13 A. Are you done?

14 Q. Yes.

15 A. My testimony is this: Ahava did not
16 use any of Allcare's products because we had our
17 own DME company. The company went out. We swapped
18 it over. Allcare was then formed, and they knew
19 because Allcare had, I think, approached someone in
20 the company about doing business and they said no.

21 And before that, I mean, they had
22 actually contacted patients and were telling
23 patients that their equipment was going to be taken
24 away. So it was just a lot of messiness around, I
25 guess, the end of Ascension.

1 But Ahava certainly did not use any of
2 the equipment or intend to do so, and none was used
3 because, like I said, we had our own DME company
4 which went in and swapped it out.

5 The equipment was there. For some
6 reason Allcare delayed in picking it up. So it
7 just sat there, as far I knew.

8 Q. When did this happen?

9 A. Well, I mean, there were various
10 patients. I mean -- you know, specifically, I
11 mean, you know, I guess as these things were -- the
12 patients were coming on, and those that did have
13 durable medical equipment, they were identified and
14 the equipment was immediately swapped over.

15 Q. Again, my question, though, is: When
16 did Reliant put its equipment in and replace
17 Allcare's medical equipment?

18 A. I think I answered that. I said upon,
19 you know, when the patients transferred and the
20 determination was made that that person was on or
21 using DME.

22 Q. So February of 2011? Ascension closed
23 in January 2011, you told me.

24 A. Yeah.

25 Q. All right.

1 A. So I guess it would have been
2 throughout that period -- that time period, yes.

3 Q. Well, what time period?

4 A. February of 2011.

5 Q. So during -- in February of 2011 at
6 some point in that month your testimony on behalf
7 of Ahava is that Reliant Medical replaced Allcare's
8 equipment and the equipment -- Allcare's equipment
9 was returned to Allcare? Is that your testimony?

10 A. That's not my testimony, not what I
11 said. You're adding to it. I didn't say that it
12 was returned to Allcare. I said that they swapped
13 it out.

14 Q. What happened to it?

15 A. Allcare was notified to come get the
16 equipment and either they -- you know, I think
17 there was some delay. I know it sat there for a
18 while before they finally got it.

19 Q. So the swap-out occurred in February of
20 2011?

21 A. I would say February 2011, yes.
22 Somewhere in that time. February, March, somewhere
23 in there.

24 Q. So somewhere in February or March 2011
25 is when Reliant came in and put its medical

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1 equipment in?

2 A. As the patients trolled over in
3 February, those that were -- that had DME
4 equipment, it was immediately swapped out for
5 Reliant from Allcare because we weren't using
6 Allcare. Allcare was notified, as I understand it,
7 by Reliant and I think also by some folks in the
8 company to pick their equipment up. For some
9 reason there was -- from what I understand, there
10 was a delay in doing so. But the equipment was
11 swapped out and they were notified.

12 Q. How did Ahava notify Allcare?

13 A. Well, when Reliant -- as I say, Reliant
14 notified them, and then -- and I think that calls
15 were placed, if I'm not mistaken, by someone within
16 the company that the equipment was to be picked up.

17 Q. Who made those calls?

18 A. That may have been Janet.

19 Q. Janet Bussie?

20 A. Uh-huh. Or she may have delegated that
21 to her assistant, Marilyn Jackson.

22 Q. And Janet Bussie formerly worked at
23 Ascension and then worked at Ahava after Ascension
24 closed, correct?

25 A. Yes.

1 Q. And she's Tony Wright's sister?

2 A. Tony Wright's?

3 Q. Williams.

4 A. I believe so.

5 Q. She no longer works at Ascension, does
6 she --

7 A. No.

8 Q. -- I mean Ahava?

9 A. No.

10 Q. And what's your opinion of Janet
11 Bussie?

12 MR. SMALLS: Objection. That's not
13 part --

14 THE WITNESS: I don't have an opinion
15 of her one way or the other.

16 MR. SMALLS: That's not part -- that's
17 not part of the requirements as far as his
18 testimony.

19 BY MR. MACCLENAHAN:

20 Q. What's your opinion of her?

21 MR. SMALLS: Again, that's not part --

22 MR. MACCLENAHAN: I understand your
23 objection, but I can still ask my question and he
24 has to answer it.

25 MR. SMALLS: No. He can -- I can tell

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1 him not to answer. That's not part of your -- tell
2 me where that's part of your --

3 MR. MACCLENANAHAN: I'll be happy to pull
4 out Rule 30. And the only times you can instruct a
5 witness not to answer, sir --

6 MR. SMALLS: I'm not instructing him
7 not to.

8 MR. MACCLENANAHAN: All right.

9 MR. SMALLS: I'm asking you a question.
10 Is that part of your --

11 MR. MACCLENANAHAN: Yeah. It goes to
12 some of the facts and allegations of the complaint
13 about the transfer from Ascension to Ahava, and I'm
14 trying to figure out --

15 MR. SMALLS: Again, object to the form.

16 MR. MACCLENANAHAN: -- about this woman
17 who worked at Ascension and then came on to Ahava.

18 MR. SMALLS: Object to the form of the
19 question. You're asking him an opinion about a
20 former employee.

21 THE WITNESS: I don't have an opinion.

22 BY MR. MACCLENANAHAN:

23 Q. So you don't have an opinion as to
24 whether she was a good employee or a bad employee
25 or an average employee?

1 A. I don't have an opinion.

2 Q. You have no opinion about her
3 whatsoever?

4 A. Whatsoever.

5 Q. Is she truthful?

6 A. I have no opinion.

7 Q. You have no reason to doubt her
8 veracity, do you?

9 A. I have no basis on whether to judge
10 whether she's truthful or not truthful.

11 Q. Okay. That wasn't my question. My
12 question was: Do you have a reason to doubt her
13 veracity?

14 MR. SMALLS: Again, objection. Asked
15 and answered.

16 BY MR. MACCLENAHAN:

17 Q. It's a yes or no question.

18 A. Again, I don't have a basis to doubt or
19 to say either way whether she's truthful or not.

20 Q. So the answer is: No, I don't have any
21 reason to doubt her veracity, nor do I have any
22 reason to think that she is truthful; is that
23 right?

24 A. That's what I said.

25 Q. Would you have spoken with Janet Bussie

1 about getting her to call Allcare?

2 A. Would I have spoken to her about
3 getting --

4 Q. Yes, sir. You said she called Allcare
5 or she directed someone to call Allcare. I didn't
6 know if you were the person to tell her to do that.

7 A. Right. That's on the clinical side of
8 things and so that would have most likely been done
9 over there.

10 Q. Who was her supervisor?

11 A. Who was Janet's supervisor?

12 Q. Yes, sir.

13 A. She reported to the CEO.

14 Q. Which CEO since at some point there
15 were two of them? Tony or Lance?

16 A. Well, I think since Lance was around
17 more, it probably would be safe to say Lance.

18 Q. What's the address listed for Ascension
19 Hospice on that check that was written out of
20 Ahava's account?

21 A. It looks to be a P.O. box of some -- if
22 I'm reading the numbers correct, 1367, Irmo, South
23 Carolina -- or SC 29063.

24 Q. And that was a P.O. box that Ascension
25 received mail at, correct?

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1 A. I would assume so, yeah.

2 Q. I'm not necessarily going to make this
3 an exhibit unless I need to, but this is an invoice
4 that was provided in discovery by me and my client
5 that was billed to Ascension and it was mailed to
6 that P.O. Box 1367, wasn't it? That's the address
7 listed there?

8 A. That's what it says.

9 Q. And that address matches the address on
10 this check out of Ahava's account, doesn't it?

11 A. It would appear to.

12 Q. Have you ever been arrested for any
13 reason?

14 A. I'm sorry?

15 Q. Have you ever been arrested for any
16 reason?

17 A. Have I?

18 Q. Yes, sir.

19 A. What does that have to do with this?

20 Q. I ask that of all my witnesses. If you
21 have a criminal record, I'm entitled to go and
22 inquire as to what the criminal record is because
23 some of it might go to your veracity if it was a
24 crime of deceit or dishonor.

25 A. I decline to answer that.

1 Q. In what basis are you declining to
2 answer that?

3 A. I don't think it's none of your damn
4 business.

5 Q. Okay. So am I to understand that
6 absent a court order you're refusing to testify
7 whether you have a criminal record?

8 A. Under the circumstances, yes.

9 (PLF. EXH. 29, State of South Carolina
10 Supreme Court Opinion No. 26602, was marked for
11 identification.)

12 BY MR. MACCLENAHAN:

13 Q. I'm going to hand you Plaintiff's
14 Exhibit 29 which is In The Matter Of Glenn Oliver
15 Gray, Opinion Number 26602 filed February 17, 2009.
16 It's a definite suspension from the South Carolina
17 Supreme Court. Is that an opinion issued by the
18 South Carolina Supreme Court in which you were
19 disbarred from the practice of law for a period of
20 time?

21 A. It speaks for itself.

22 Q. That's not my question. Is that --

23 A. I'm not going to -- like I said, this
24 is beyond the scope of this.

25 Q. Sir, it goes to your truthfulness. All

1 right?

2 MR. SMALLS: Again, I'm going to object
3 too with regard to this.

4 MR. MACCLENAHAN: I'm allowed to
5 impeach him, Darryl.

6 MR. SMALLS: Well, I can -- I'm allowed
7 to put an objection on the record.

8 MR. MACCLENAHAN: Not a speaking one.

9 MR. SMALLS: I haven't had a chance to
10 put the objection on.

11 MR. MACCLENAHAN: Well, you said
12 objection. That's all that needs to be stated.

13 MR. SMALLS: No. I can tell you what
14 the objection is. The objection is it goes past
15 the scope of your notice of deposition.

16 MR. MACCLENAHAN: So are you taking the
17 position that I can't inquire about a witness's
18 veracity?

19 MR. SMALLS: No. That's not -- I'm
20 not -- I'm saying you are going past the scope of
21 what your -- I told you when we came forward I was
22 going to be strict on that.

23 MR. MACCLENAHAN: That's fine.

24 MR. SMALLS: So, I mean, that -- I
25 think that's past the scope. The document speaks

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1 for itself.

2 BY MR. MACCLENAHAN:

3 Q. The South Carolina Supreme Court
4 suspended you from the practice of law because they
5 found you guilty of improper billing entries,
6 didn't they?

7 A. Again, the document speaks for itself.

8 Q. All right. So if the document says
9 that the investigation revealed that you engaged
10 in, quote, excessive and fictitious time entries on
11 client files during the audit period and fictitious
12 travel invoices and tickets, and that in light of
13 this improper billing the law firm claimed it
14 reimbursed \$14,663.31 to the affected clients, you
15 have no reason to dispute that, do you?

16 A. It speaks for itself.

17 Q. Yeah, because that's what happened.

18 A. It speaks for itself.

19 Q. And in fact it says, respondent --
20 that's you -- admitted to the misconduct and did
21 not dispute the amount the law firm calculated for
22 the improper billing and reimbursements, right?

23 A. It speaks for itself.

24 Q. And he further admitted that he did in
25 fact alter the amounts and did so while at work and

1 at home, right?

2 A. It speaks for itself.

3 Q. Okay. And the Supreme Court found,
4 quote, respondent over a period of one year engaged
5 in a pattern of conduct that was deliberate,
6 purposeful, deceitful and fraudulent, correct?

7 A. The document speaks for itself.

8 Q. And not only did respondent overcharge
9 clients for his time, he also altered documents to
10 falsify reimbursement expenses. The Supreme Court
11 found that too, didn't it?

12 A. It speaks for itself.

13 Q. You were required to reimburse a
14 portion of the \$14,000, weren't you?

15 A. The document speaks for itself.

16 Q. And how much of that \$14,000 did you
17 actually reimburse?

18 A. The document speaks for itself.

19 Q. I'm going to ask you once again before
20 I file a motion to compel and ask for sanctions and
21 so on for your refusal to answer about this and
22 give you an opportunity to answer these questions.

23 Are you going to answer these questions
24 concerning your criminal record, to the extent
25 there is one? I don't know. Are you going to

1 answer those questions?

2 A. My previous answer stands.

3 Q. All right. And that previous answer
4 was it was none of my damn business, correct?

5 A. That was the answer.

6 Q. And so that's the answer you want me to
7 pass on to the Court when I file my motion to
8 compel?

9 A. That's you.

10 MR. MACCLENAHAN: And then I'll mark
11 this one too.

12 THE WITNESS: I believe my -- also part
13 of my answer was it was beyond the scope of this
14 deposition notice. That was part of my answer as
15 well.

16 BY MR. MACCLENAHAN:

17 Q. I'll add it to the motion.

18 (PLF. EXH. 30, State of South Carolina
19 Supreme Court Opinion No. 27097, was marked for
20 identification.)

21 BY MR. MACCLENAHAN:

22 Q. This is an opinion from the State of
23 South Carolina Supreme Court, Opinion Number 27097
24 in the matter of Glenn Oliver Gray dated
25 February 29, 2012. Are you aware of this opinion

1 that was issued?

2 A. The document speaks for itself.

3 Q. And that's you, Glenn Oliver Gray,
4 correct?

5 A. The document speaks for itself.

6 Q. Are you denying that it's you?

7 A. Again, the document speaks for itself.

8 Q. The document doesn't say whether it's
9 you or not; it just says Glenn Oliver Gray. I'm
10 asking if that's you.

11 A. And, again, as with the initial
12 document, I have no intention on discussing any
13 aspect of the document. The document speaks for
14 itself.

15 Q. In this document that speaks for
16 itself, the Supreme Court found that you violated
17 the Rules of Professional Conduct, Rule 1.1 as to
18 competence, Rule 1.3 as to diligence, Rule 1.4 as
19 to communication and Rule 5.5 as to the
20 unauthorized practice of law, correct?

21 A. The documents speaks for itself.

22 MR. SMALLS: Again, I'm going to
23 register another complaint with regard to -- what
24 exhibit number is that?

25 MR. MACCLENAHAN: 30.

1 MR. SMALLS: -- 30 as being outside the
2 scope of the notice of deposition.

3 BY MR. MACCLENAHAN:

4 Q. And in February of 2012 the South
5 Carolina Supreme Court issued a public reprimand,
6 correct?

7 A. The document speaks for itself.

8 Q. And in that you admitted the initial
9 affidavit contained a false statement, that you did
10 not intend to mislead the Court or the office of
11 disciplinary counsel; is that correct?

12 A. The document speaks for itself.

13 Q. Does your phone have a calendar on it?

14 A. Was that a question?

15 Q. Yeah.

16 A. I would assume so.

17 Q. Do you maintain your calendar on your
18 phone?

19 A. I do.

20 Q. What were you doing on May 20, 2013?

21 A. I keep everything on -- I have another
22 phone, a personal phone. But given that, you said
23 May 20th?

24 Q. Yes, sir. It was the Monday --

25 A. That day I would been down at MUSC in

1 Charleston.

2 Q. You were at MUSC in Charleston?

3 A. Yes.

4 Q. For what?

5 A. That's none of your business.

6 Q. Well, it is because I noticed a
7 deposition and was informed that you were out of
8 town on vacation.

9 A. No. I was not -- I was down at MUSC in
10 Charleston.

11 Q. It wasn't for a vacation, was it?

12 A. No. If I was at MUSC -- I don't go to
13 vacation at MUSC. But I was at MUSC in
14 Charleston --

15 Q. How about --

16 A. -- for reasons of which --

17 Q. Okay. That's fine.

18 MR. SMALLS: Let him -- no. You asked
19 a question. Let him answer.

20 MR. MACCLENANAHAN: I'm telling him it's
21 fine. I'm not asking about the reasons other than
22 it wasn't vacation.

23 MR. SMALLS: No. He can answer the
24 question.

25 BY MR. MACCLENANAHAN:

1 Q. How about the 21st?

2 A. Of May?

3 Q. Yeah, the next day.

4 MR. SMALLS: Objection. The question
5 is irrelevant.

6 THE WITNESS: I don't think I would
7 have been back.

8 BY MR. MACCLENAHAN:

9 Q. Well, your calendar is there.

10 A. Again, as I said before, I don't
11 maintain my full calendar on this phone.

12 Q. Okay.

13 A. That's a personal matter.

14 Q. And what does that phone say you were
15 doing?

16 A. I don't have any entries on this phone.
17 This is a company phone. I don't put -- well, I
18 put both of my business and, I have, like I said,
19 another phone that I keep that on.

20 Q. Can you show me your calendar where
21 there are no entries?

22 MR. SMALLS: Objection.

23 THE WITNESS: Can I show you my
24 calendar where there --

25 BY MR. MACCLENAHAN:

1 Q. You said there are no entries on that
2 calendar.

3 A. Because I don't keep one.

4 Q. I'm asking you to show that to me,
5 verify that for me.

6 MR. SMALLS: Objection. Again, outside
7 the scope of his deposition.

8 THE WITNESS: No. This is silly.

9 BY MR. MACCLENAHAN:

10 Q. So if I issue a subpoena for those
11 phone records and your calendar, will that come
12 back with zero entries on it?

13 A. (Indicating.)

14 Q. Because I'm going to do that, or you
15 can just show it to me now and we can skip the
16 step.

17 A. On what, May 20th or 21st? Yeah, I
18 will come back because I don't think there's
19 anything on there, on this phone, anyway, because,
20 again, it is a company phone.

21 Q. Because what was represented to the
22 Court was that the 30(b)(6) designee was on
23 vacation for Memorial Day and that was why they
24 could not appear for a deposition.

25 MR. SMALLS: That -- again, that --

1 MR. MACCLENAHAN: Excuse me. Let me
2 finish talking and then you can issue your
3 objection.

4 MR. SMALLS: I will.

5 BY MR. MACCLENAHAN:

6 Q. And assuming you were to be the
7 designee, if I'm understanding correctly, at least
8 as of May 20th you were not on vacation --

9 A. No.

10 Q. -- you were at a hospital for whatever
11 reason that I don't really need to get into, but it
12 wasn't vacation.

13 A. No. Again, as I said, I was at MUSC on
14 the 20th of May and --

15 Q. And the 21st, 22nd, 23rd and 24th,
16 those dates?

17 A. I had -- it was Monday, Wednesday and
18 Friday, so -- and I don't think I came back to
19 Columbia. I think I stayed -- my mom's down there,
20 so I think I just stayed because I was -- I needed
21 to be at the hospital on that Monday, Wednesday and
22 that Friday.

23 Q. Okay. So the week of the 20th you
24 stayed in Columbia -- I mean, excuse me -- in
25 Charleston?

1 A. Yes.

2 Q. Do you dispute -- let me rephrase that.

3 Does Ahava dispute that Ascension
4 Hospice, Inc. had a contract to lease durable
5 medical equipment with Allcare Medical?

6 A. Say that once -- ask the question
7 again.

8 Q. Does Ahava dispute that Ascension had a
9 contract with Allcare Medical for the provision of
10 durable medical equipment?

11 A. Does Ahava dispute that Ascension had a
12 contract? I know Ahava did not. Now, as to, you
13 know, what Ascension may or may not have had...

14 Q. I'm just asking whether Ahava disputes
15 that.

16 A. I can't say whether or not, you know,
17 Allstate -- Allcare -- excuse me -- did or did not.

18 Q. Does Ahava dispute that Ascension owed
19 money to Allcare?

20 A. I can't say whether they did or didn't.

21 MR. SMALLS: I'm going to object to the
22 form of the question. He's not here on behalf of
23 Ascension.

24 MR. MACCLENAHAN: I didn't ask him on
25 behalf of Ascension.

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1 MR. SMALLS: I understand.

2 MR. MACCLENAHAN: I asked him if Ahava
3 disputed it.

4 MR. SMALLS: I understand.

5 BY MR. MACCLENAHAN:

6 Q. Does Ahava dispute that it owes money
7 to Allcare Medical?

8 A. Yes. Ahava never had a contract with
9 Allcare or utilized Allcare in any capacity, so why
10 would it owe it money?

11 Q. But Ahava did at least on three
12 separate occasions -- excuse me -- on two separate
13 occasions pay checks in Ascension's name, correct?
14 We established that earlier.

15 A. Again, there were checks that were
16 written to -- and, again, I don't know who Comdata
17 is or whether it was -- what it was for. So all I
18 can say is that those checks were written to
19 Comdata in the amounts indicated.

20 Q. In Ascension's name, right? That name
21 is on there, right?

22 A. Yeah. Ascension's -- yeah, Ascension's
23 name is on the check, correct?

24 Q. There are at least two checks where
25 that happened?

1 A. I guess so.

2 Q. All right. And we also established
3 that at least on one occasion Ahava paid \$52,000 to
4 Ascension after it closed its doors, correct?.

5 A. There was a wire transfer in that
6 amount.

7 Q. So if Ahava wasn't assuming any of
8 Ascension's debts, why are those two checks
9 written?

10 A. They may not have been debts. I do not
11 know. You're characterizing them as debts, but, I
12 mean, you know, they --

13 Q. Do you write checks to someone you
14 don't owe money to?

15 A. Again, I do not, you know, know the
16 circumstances surrounding the wire transfer or
17 those two checks, but there may have been other
18 reasons, or they could have been, you know, for the
19 checks being written in the wire transfer. Again,
20 I do not know, but I will not agree with the
21 characterization of them as debts because I just
22 don't know.

23 Q. Does Ahava write checks to people that
24 it does not owe money to?

25 A. Does Ahava write checks to people that

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1 it doesn't owe money to? I mean, the company makes
2 charitable givings all the time. They don't owe
3 money to charities.

4 Q. Okay. And was Ahava donating to the
5 Comdata Communications charity on behalf of
6 Ascension?

7 A. Well, that's clearly -- you know,
8 that's silly.

9 Q. So when you write checks -- when you're
10 a business, you write checks because money is owed
11 to someone unless you're making a charitable
12 donation, correct? You don't just give your money
13 out to companies for no reason, correct?

14 A. Again, the checks were written to
15 Comdata as they were, and the wire transfer, you
16 know...

17 Q. I'm not asking about those checks. I'm
18 asking: Does Ahava write checks to people -- other
19 than a charitable donation, does it write checks to
20 people that it doesn't owe money to?

21 A. I mean, there are bonuses and they
22 don't owe folks those. I mean -- I mean --

23 Q. So Ahava paid -- who did Ahava pay a
24 bonus to that didn't earn a bonus?

25 A. Bonuses aren't earned. Bonuses are

1 earned, but they're not -- you know, you're trying
2 to make it seem as though that it is owed. That's
3 what -- I guess that's what I meant to say, that
4 bonuses aren't owed, they're discretionary.

5 Q. All right. And was that a bonus, those
6 two checks?

7 A. I don't think so. No. I mean, you
8 want to play this game, this silliness where, you
9 know -- of course, you know, it's written as it is
10 written. It is written, you know, in the amount.
11 Ascension appears on them. I mean, the
12 circumstances of which, as I said before, I
13 can't -- I don't know who Comdata is or what they
14 were written for.

15 Q. I understand the person best -- with
16 the best knowledge to testify to this issue on
17 behalf of Ahava doesn't know why checks were
18 written with Ascension's name on there. I
19 understand that.

20 And, again, Ahava has no explanation as
21 to why it paid 52 some odd thousand dollars to
22 Ascension?

23 A. As I said before, I do not know the
24 circumstances surrounding that wire transfer.

25 Q. Especially since Ascension was closed

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1 at that point, correct?

2 A. Yeah, they were closed.

3 Q. Yeah. And are there any other entities
4 that Ahava paid -- closed entities that Ahava paid
5 checks to?

6 A. I doubt it. I don't know.

7 Q. Yeah.

8 A. I mean, just because the doors -- they
9 ceased physically. I mean, they were still in the
10 winding up process in terms of -- for a while
11 afterwards. So it wasn't like they just, you
12 know -- yeah, the company closed its doors, but I'm
13 sure that there was windup activity going on.

14 Q. So Ahava paid \$52,000 for
15 Ascension's -- to help Ascension wind up its
16 business affairs?

17 A. That's not what I said.

18 Q. Well, you're the one who brought it up.

19 A. Well, I was just pointing out that, you
20 know, you made it seem as though -- you're
21 characterizing it as when the doors closed, but
22 that was it. The company was, you know --

23 Q. That's what you told me.

24 A. I was just pointing it out, so --

25 Q. So when that deposit was made, was

1 Ascension done operating or was it operating?

2 A. No, it wasn't operating. I mean, it
3 wasn't operating clearly.

4 Q. Was it winding up its business when
5 that was made?

6 A. I don't know the circumstances
7 surrounding that transfer.

8 Q. And, again, you're the person who was
9 designated as best able to testify on behalf of the
10 company for that, correct?

11 A. Not for that specific entry, but just I
12 guess with respect to finances and --

13 Q. For payments made to Ascension, right?

14 A. Well, yes.

15 Q. By Ahava, Number 12, right? That's
16 what that is?

17 A. That's what that is.

18 Q. Okay. Does Ahava dispute the amount
19 that Allcare claims is owed? I need to be clear.
20 I understand that Ahava disputes that its
21 responsible for that. Okay? What I'm asking is:
22 Does Ahava dispute the calculation of that amount?

23 A. Ahava disputes, again, because...

24 MR. SMALLS: I'm going to object to the
25 form of the question because I'm not sure you laid

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1 proper foundation as to what is the determination
2 of that with this witness.

3 BY MR. MACCLENAHAN:

4 Q. You're here to testify of behalf of
5 Ahava. Does Ahava dispute the amount that Allcare
6 claims is owed? Again, I understand it disputes
7 that Ahava's responsible for that amount. I
8 understand that. But does Ahava dispute the
9 amount?

10 A. Well, if it's disputing that it -- I
11 mean, I'm not making out your distinction or
12 understanding your distinction.

13 Q. Well, there's a distinction between
14 saying, I don't owe the money, and saying the
15 calculation is incorrect, the calculation of the
16 money is incorrect. I understand you dispute that
17 you owe -- that Ahava owes the money, okay, and I'm
18 not --

19 A. But its your calculation. How can I,
20 you know, I mean --

21 Q. That's what I'm asking. Does Ahava
22 dispute that calculation?

23 A. Ahava disputes, like I said, that it
24 owes Allcare any money, any sum in any amount
25 calculated by any means.

1 Q. Okay. But does it dispute the
2 calculation, the math?

3 MR. SMALLS: Objection to the form of
4 the question. He doesn't even know the math. How
5 are you asking him a question --

6 MR. MACCLENANAHAN: All right. No
7 speaking objections. Again, it's up to him to
8 answer his questions the way he wants. Don't --

9 MR. SMALLS: Well, my objection --

10 MR. MACCLENANAHAN: Don't feed answers to
11 him --

12 MR. SMALLS: My question --

13 MR. MACCLENANAHAN: -- by telling him not
14 to do stuff, Darryl.

15 MR. SMALLS: -- my objection is to the
16 form of the question.

17 MR. MACCLENANAHAN: All right. Then
18 that's all you've got to say.

19 MR. SMALLS: Okay.

20 MR. MACCLENANAHAN: Let's go off the
21 record for a second.

22 (Off-the-record conference.)

23 BY MR. MACCLENANAHAN:

24 Q. Who is Flat Iron, LLC? Do you know?

25 A. I believe that's an LLC which I think

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1 Tony Williams is a member.

2 Q. What is its business relationship with
3 Ahava?

4 A. I do not believe there is a business
5 relationship with Flat Iron.

6 Q. Let me do this as far as the
7 calculation is concerned. Would you dispute a
8 calculation that simply added up invoices,
9 subtracted payments made and whatever is left is
10 what would be owed? I'm not saying Ahava's
11 obligated for it. I'm just saying: Would you
12 dispute that math?

13 A. As Ahava does not and has not at any
14 time entered into a contractual arrangement with
15 Allcare for any services, any amount that is
16 claimed to be due calculated under any methodology
17 Ahava, again, would object to simply because it
18 does not...

19 Q. So Ahava doesn't agree that you could
20 calculate money owed by taking the total amount
21 owed and subtracting the payments and the balance
22 would be what's owed?

23 A. I think I answered that.

24 Q. No, you didn't.

25 Does Ahava agree with that calculation?

1 A. And, again, as Ahava Hospice does not
2 have a -- and at no time did it have a contractual
3 arrangement or any other type of arrangement with
4 Allcare for any services --

5 Q. What does a contractual arrangement
6 with Allcare have to do with agreeing to how a
7 calculation is made?

8 A. Listen. I -- excuse me. You're
9 interrupting my answer.

10 Q. Well, it's a non-answer, sir. My
11 question had nothing to do --

12 A. You may not like it, but it's my
13 answer.

14 Q. My question had nothing to do with a
15 contractual arrangement between Ahava and Allcare.
16 I didn't ask you that. All right?

17 A. Well, again, that was my answer.

18 Q. What I asked you was: Does Ahava
19 dispute that the way to calculate money owed is to
20 take the total amount owed and subtract any
21 payment --

22 A. And I'm telling you that Ahava does not
23 owe the money. So however you want to compute it,
24 Ahava, you know, would disagree or dispute or --
25 because we simply have no interest about it.

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1 Q. So Ahava disagrees with basic math?

2 A. If that's how you want to calculate,
3 calculate it.

4 Q. So if I owed Ahava \$10,000 and made a
5 \$5,000 payment, Ahava would dispute that I now owe
6 \$5,000? Is that your testimony?

7 A. That's not what I said.

8 Q. All right. Well, then would Ahava
9 dispute that I owed \$5,000 in that scenario?

10 A. I answered the question.

11 Q. That's the first time I asked you that
12 question.

13 MR. SMALLS: Objection. Objection to
14 the form of the question. Argumentative.

15 BY MR. MACCLENANAHAN:

16 Q. If I owed \$10,000 to Ahava and I paid
17 \$5,000 on that debt and the balance left is \$5,000,
18 does Ahava dispute that method of calculation for a
19 debt?

20 MR. SMALLS: Objection. Again, I think
21 we're getting past the scope of this notice of
22 deposition. Objection on the record.

23 THE WITNESS: That's my copy, sir.

24 BY MR. MACCLENANAHAN:

25 Q. I understand.

1 All right. In here is: Defendant's
2 policies, procedures and guidelines related to
3 payment of invoices. All right?

4 And so if an invoice is issued --

5 A. Is that the question, whether we have
6 policies?

7 Q. No, that's not the question. My
8 question is: If an invoice is issued for \$10,000
9 and then \$5,000 is paid to that invoice, does Ahava
10 dispute that \$5,000 is owed?

11 A. Generally speaking -- generally
12 speaking, \$5,000 is owed.

13 Q. That wasn't so hard, was it?

14 A. When you ask the question sensibly.

15 Q. When Ahava produced its bank statements
16 to me in response to our requests for production of
17 documents and then at hearing on a motion to compel
18 it skipped some months of bank statements, any idea
19 why those bank statements for those months were not
20 provided to me?

21 A. I was not aware that any were skipped.

22 MR. SMALLS: Let's go off the record
23 for a minute.

24 (Off-the-record conference.)

25 MR. MACCLENAHAN: While we were off the

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1 record I agreed to provide your lawyer with the
2 months that are missing, and he agreed to go and
3 check and figure out where those are and if he
4 locates them, produce them to me. Is that fair?

5 MR. SMALLS: Yeah. I agree to that.

6 BY MR. MACCLENAHAN:

7 Q. What did you do to prepare for your
8 deposition? I don't want to know your
9 conversations with your lawyer, but what did you do
10 to prepare aside from talking with your lawyer?

11 A. Just I spoke with my lawyer.

12 Q. Okay. Did you review any documents?

13 A. No.

14 Q. Prior to coming in here did you review
15 any of the documents that were produced in
16 discovery?

17 A. Again, any documents of -- no.

18 Are you talking about the notice and
19 then attached to that was the plaintiff's -- a
20 whole bunch of responses? Are you talking about
21 this?

22 Q. Yeah.

23 A. I mean, I looked at the notice to see
24 the subject of -- the subject matters.

25 Q. All right. And as to any one of these

1 17 subject matters, did you look at any other
2 documents to prepare for your testimony today?

3 A. No.

4 Q. Were you the person who gathered the
5 documents that were produced to me?

6 A. I oversaw it, but I was -- I didn't
7 actually do it.

8 Q. Who did it?

9 A. There was a number -- something like
10 all hands on deck on that one. It was a lot of
11 copying and downloading. So let's see. Brandy
12 would have been involved. I think we had some
13 part-time help that chipped in. I think that would
14 have been -- there was like three people that was
15 working on this.

16 Q. You, Brandy and some part-time person?

17 A. Well, I oversaw Brandy, and Brandy --
18 she had two part-time employees that helped her out
19 with the copying and the downloading.

20 Q. Did you provide Ahava's answers to the
21 interrogatories?

22 A. Did I?

23 Q. Yes, sir.

24 A. No.

25 Q. Did you provide Ahava's answers to the

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1 requests for admission?

2 A. No.

3 Q. Did you review either of those -- let
4 me rephrase my question.

5 Did you review the requests for
6 admission prior to your testimony today?

7 A. No.

8 Q. Did you review Ahava's answers to
9 interrogatories prior to your testimony today?

10 A. No.

11 Q. How about the requests for production
12 of documents? Did you review those prior to your
13 testimony today?

14 A. No.

15 Q. How about the answers filed in this
16 case?

17 A. Huh-uh.

18 Q. Is that a no?

19 A. I'm sorry. No.

20 MR. MACCLENAHAN: I think I'm about
21 done. Give me a few minutes just to go through my
22 notes.

23 (Off-the-record conference.)

24 MR. MACCLENAHAN: At this time that's
25 all the questions I have. Your lawyer may have

1 some for you and I may have follow-up depending
2 on...

3 EXAMINATION

4 BY MR. SMALLS:

5 Q. I've just got a few questions,
6 Mr. Gray.

7 Does Ahava have any contract services
8 with Allcare Medical?

9 A. No.

10 Q. Did Ahava ever receive any type of bill
11 or invoice from Allcare Medical for goods or
12 services provided?

13 A. No.

14 Q. Ahava and Ascension have different
15 Medicare numbers; is that correct?

16 A. That is correct.

17 Q. And why is that important?

18 A. Well, no two entities under the
19 regulations -- MS regulations can have the same
20 identical Medicare billing number. I mean -- I
21 mean, that's just -- you have your separate
22 licensing, state license numbers, Medicaid numbers.
23 Again, it's just each entity is assigned its own
24 unique identifier.

25 Q. Now, the process for new employees for

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1 Ahava in, I guess, early 2011, were those employees
2 interviewed?

3 A. Yes.

4 Q. And did they go through a hiring
5 process? Could you explain the process?

6 A. Well, like I said, not everybody was
7 interviewed. They contacted those who -- or
8 every -- you could either apply or were contacted
9 and if you -- if there was an interest, then you
10 were invited to come in and interview. And you'd
11 have to fill out an application -- Ahava employee
12 application -- employment application, and
13 depending on what the job type that you were
14 applying for, I guess, in large part depended on
15 the type of interview and the number of interviews
16 that you underwent. And when I say that, there was
17 clinical and nonclinical.

18 And after that a decision was made,
19 and, of course, if you were hired, you were
20 notified and you came back in and completed the new
21 hire paperwork, and there was an orientation and
22 your 90-day probationary period. And that in a
23 nutshell was the process.

24 Q. Now, also some of the patients that
25 Ascension had did not go to Ahava; is that correct?

1 A. Yeah.

2 Q. Okay. Were those patients given a
3 choice of where -- if they needed hospice services
4 where they could go?

5 A. Well, they all had to be given a
6 choice, I mean, under the regulations. And so,
7 yeah, they would have been given, you know -- or
8 told that they have a choice and -- as to, you
9 know, where they wanted to continue their
10 treatment.

11 Q. One final question. At some point the
12 medical supply equipment was swapped out and -- or
13 used -- you used Reliant Medical Supply; is that
14 right?

15 A. Reliant DME, yes, uh-huh.

16 Q. Okay. Now, was that swapping out over
17 a period of time or was it -- let me rephrase the
18 question.

19 When a new patient came onboard with
20 Ahava, at that point was it switched out?

21 A. You said when a new patient?

22 Q. Right. When a patient transferred from
23 another hospice or -- would that --

24 A. Yeah. In any instance if we got a
25 patient -- not all patients, you know, required DME

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1 generally. I mean, you know, some did, some
2 didn't. For those that did, you know, when they
3 came on, if they were a new patient, then obviously
4 they wouldn't have had -- if they were just
5 diagnosed as being hospice appropriate, obviously
6 they would not have an existing, you know, DME, but
7 if it's a situation where there is a transfer from
8 another hospice, then, I mean, immediately Reliant
9 would be notified and they would immediately switch
10 out the equipment and notify the company which had
11 the prior -- you know, that was providing the
12 services previously of the fact that the equipment
13 was no longer being used and requested that they
14 come and pick up the equipment.

15 MR. SMALLS: Nothing further.

16 EXAMINATION

17 BY MR. MACCLENAHAN:

18 Q. Who has Ahava's Medicare number?

19 A. What do you mean, who has it?

20 Q. I don't know. You said there was some
21 person whose name it was in.

22 A. I didn't say that.

23 Q. All right. Well, what does Ahava --
24 you said Ahava has a different Medicare number than
25 Ascension, right?

1 A. And from other every other hospice,
2 yes.

3 Q. I mean, I'm not -- it's not a trick
4 question, sir. Who filed for Ahava for the
5 Medicare number?

6 A. I believe the administrator back at
7 that time in 2010 would have done that.

8 Q. Okay. And has that Medicare number
9 changed since 2010?

10 A. No. It's a legacy number.

11 Q. And help me out here because I don't
12 necessarily know how the Medicare number works. Is
13 there like -- I mean, does someone sponsor the
14 Medicare number? Like is it in someone's name or
15 just it's like a tax ID number?

16 A. Thank you. It's like a tax ID number.
17 You keep it until you go out of business. And then
18 there's a process. You have to submit forms to
19 terminate the number. Then you have to wait -- you
20 get back a letter from CMS through the third-party
21 administrator, which in this district -- in
22 District 11 it's Palmetto GBA. And you'll get a
23 letter back saying that your -- confirming that the
24 number has been -- that the application to
25 terminate was received and the number has been

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1 terminated effective whatever date.

2 Q. And you were talking about former
3 employees going through an interview process, like
4 former Ascension employees going through an
5 interview process with Ahava. Did Brandy go
6 through -- the girl in billing, did she go through
7 that?

8 A. I would assume so.

9 Q. What was her last name again?

10 A. Neuberger.

11 Q. Neuberger. Is she still employed at
12 Ahava?

13 A. She is.

14 Q. Is that N-E-W-B-E-R-G-E-R or N-E-U? Do
15 you know?

16 A. N-E-U-B-E-R-G-E-R.

17 MR. MACCLENAHAN: All right. I think
18 that's all the questions I have today. Thank you.

19 MR. SMALLS: Nothing further.

20 (The deposition was concluded at
21 5:12 p.m.)
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Allcare Medical, LLC,

Plaintiff,

vs.

Ahava Hospice, Inc. f/k/a Ascension
Hospice Inc., Robert A. Williams, and
Lancelot D. Wright;

Defendants.

IN THE COURT OF COMMON PLEAS
2011CP422597

**Second Amended Notice of
Deposition Pursuant to
Rule 30(b)(6)**

To: Ahava Hospice, Inc. and its attorney Darryl Smalls:

PLEASE TAKE NOTICE that in accordance with the applicable South Carolina Rules of Civil Procedure, counsel for Plaintiff will take the deposition upon oral examination of the witness(es) designated by Ahava Hospice, Inc. ("Defendant") under Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, before a person authorized to administer oaths by the State of South Carolina, beginning on Friday, June 6, 2013 at 1:00 p.m., and continuing from day to day thereafter until adjourned, at the law office of Rikard & Protopapas, 1329 Blanding Street, Columbia, SC 29201.

Defendant is required to designate and make available for examination the appropriate officer(s), partner(s), director(s), managing agent(s), or other person(s) with the most knowledge of the following matters:

1. Defendant's policies procedures, and guidelines relating to the payment of invoices.
2. The terms and conditions of any agreements with Plaintiff.



3. The facts and allegations contained in the pleadings of this case.
4. Lancelot Wright's compensation from Ahava.
5. Lancelot Wright's compensation from Ascension.
6. Robert Williams' compensation from Ahava.
7. Robert Williams' compensation from Ascension.
8. Any payments made by Ahava to Lancelot Wright.
9. Any payments made by Ascension to Lancelot Wright.
10. Any payments made by Ahava to Robert Williams.
11. Any payments made by Ascension to Robert Williams.
12. Any payments made by Ahava to Ascension.
13. The owners of Ahava.
14. The shareholders of Ahava.
15. The purchase of Ascension.
16. Ahava's financial accounts.
17. All documents produced in discovery.

This the 4th day of June, 2013



Alexandre N. MacClenahan, SC Bar # 72507
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Greenville, South Carolina 29601
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ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Allcare Medical, LLC,

Plaintiff,

vs.

Ahava Hospice, Inc. f/k/a Ascension
Hospice Inc., Robert A. Williams, and
Lancelot D. Wright;

Defendants.

IN THE COURT OF COMMON PLEAS

2011CP422597

Certificate of Service

This is to certify that on the 4th day of June, 2013, a true and correct copy of Plaintiff's Notice of Deposition Pursuant to Rule 30(b)(6) was served via e-mail and U.S. Mail, sufficient postage prepaid, to all counsel of record addressed as follows:

Darryl Smalls
P.O. Box 212724
Columbia, SC 29221
darryl.smallslaw@live.com



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ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Allcare Medical, LLC

Plaintiff,

vs.

Ahava Hospice, Inc. f/k/a Ascension
Hospice Inc., Robert A. Williams, and
Lancelot D. Wright

Defendants,

IN THE COURT OF COMMON PLEAS

Case No 2011CP422597

AHAVA HOSPICE AND LANCELOT
WRIGHT'S ANSWER
(Jury Trial Demanded)

The Defendants, Ahava Hospice, Inc. and Lancelot Wright (hereinafter collectively referred to as "Defendants"), by and through their undersigned counsel, without waiving but specifically reserving all defenses, counterclaims, and other legal rights, hereby responds to Plaintiff, Allcare Medical, LLC ("Plaintiff") Complaint as follows:

GENERAL DENIAL

1. Each and every allegation that is not specifically admitted is therefore denied.
2. Further, to the extent that the allegations of the Complaint require interpretation of an alleged contract, covenant, statute, or regulation, Defendants hereby refers the Court to those alleged documents and denies any allegations inconsistent therein.
3. In addition to other matters set forth in this Answer, Defendants deny the allegations of all Paragraphs of the Complaint to the extent they assert legal conclusions inasmuch as such allegations and assertions of legal conclusions must be determined in due course based on all facts and circumstances at issue during this litigation.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 AUG 15 AM 10:01
AHAVA HOSPICE AND LANCELOT
WRIGHT'S BLACKBERRY

FOR A FIRST DEFENSE
(Jurisdiction)

4. Defendants admit the allegations of Paragraph 1 of Plaintiff's Complaint.
5. Defendants deny the allegations of Paragraph 3 of Plaintiff's Complaint since the Defendant Ahava's principal place of business is Lexington County and Defendant Ahava did not assume the assets and liabilities of Ascension.
6. Defendants admit the allegations of Paragraphs 3 and 4 of Plaintiff's Complaint.
7. Defendants deny the allegations of Paragraph 5 of Plaintiff's Complaint.

FOR A SECOND DEFENSE
(Factual Allegations)

8. Defendants reiterate the defenses set forth in Paragraph 1 thru 7 above in response to Plaintiff's Complaint.

9. Defendants admit the allegations in Paragraphs 6 and 7 of Plaintiff's Complaint.
10. Defendants crave reference to the terms and conditions of the documents referenced therein in response to Paragraphs 8 and 9 of Plaintiff's Complaint. To the extent that the allegations of Paragraphs 8 and 9 may be construed to assert liability on the part of the answering Defendants giving rise to damages, the same are denied.

11. Defendants admit the allegations in Paragraph 10 of Plaintiff's Complaint.
12. Defendants deny the allegations in Paragraph 11 of Plaintiff's Complaint.

13. Defendants crave reference to the terms and conditions of the documents referenced therein in response to Paragraphs 13 and 14 of Plaintiff's Complaint. To the extent that the allegations of Paragraphs 13 and 14 may be construed to assert liability on the part of the answering Defendants giving rise to damages, the same are denied.

14. Defendants deny the allegations in Paragraphs 15 thru 19 of Plaintiff's Complaint.

FOR A THIRD DEFENSE
(Breach of Contract-Ahava)

15. Defendants reiterate the defenses set forth in Paragraph 1 thru 14 above in response to Paragraph 20 of Plaintiff's Complaint.

16. Defendants crave reference to the terms and conditions of the documents referenced therein in response to Paragraph 21 of Plaintiff's Complaint. To the extent that the allegations of Paragraph 21 may be construed to assert liability on the part of the answering Defendants giving rise to damages, the same are denied. Defendants specifically deny that Ahava assumed the obligations of Ascension under that contract.

17. Defendants deny the allegations in all of Paragraphs 22, 23 and 24 of Plaintiff's Complaint.

FILED
CLERK OF COURT
SARASOTA COUNTY
2011 AUG 15 PM 11:01
MCHOPPER BLCKLEY

FOR A FOURTH DEFENSE
(Breach of Contract)

18. Defendants reiterate the defenses set forth in Paragraph 1 thru 17 above in response to Paragraph 25 of Plaintiff's Complaint.

19. Defendants crave reference to the terms and conditions of the documents referenced therein in response to Paragraph 26 of Plaintiff's Complaint. To the extent that the allegations of Paragraph 26 may be construed to assert liability on the part of the answering Defendants giving rise to damages, the same are denied.

20. Defendants deny the allegations set forth in Paragraph 27 of Plaintiff's Complaint.

21. Defendants crave reference to the terms and conditions of the documents referenced therein in response to Paragraph 28 of Plaintiff's Complaint. To the extent that the allegations of Paragraph 28 may be construed to assert liability on the part of the answering Defendants giving rise to damages, the same are denied.

22. Defendants deny the allegations set forth in Paragraphs 29, 30, 31 of Plaintiff's Complaint.

23. Defendants deny the allegations set forth in all unnumbered Paragraphs of Plaintiff's Complaint.

FOR A FIFTH DEFENSE

24. The Defendant Ahava Hospice, Inc. did not assume the liabilities of Ascension and has no obligation to the Plaintiff. There is no contractual agreement between Ahava Hospice and Plaintiff.

FILED
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SPARTANBURG COUNTY
2011 AUG 15 AM 11:01
N HOPE BLACKLEY

FOR A SIXTH DEFENSE

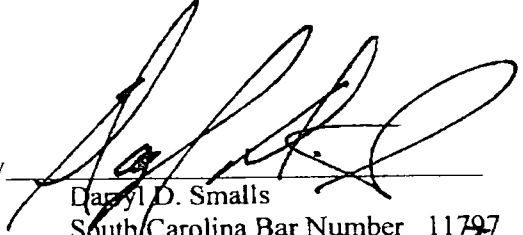
25. The Defendant Wright asserts that any personal guarantees were obtained under duress. There is no contractual obligation between Mr. Wright and the Plaintiff.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants
prays that:

- (1) Plaintiff's Complaint be dismissed with prejudice;
- (2) Plaintiff reimburses defendant for all costs it has incurred in defending this action, including reasonable attorneys' fees;
- (3) For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

By


Darryl D. Smalls
South Carolina Bar Number 11797
455 St. Andrews Road, Bldg E Suite 201
Columbia, S.C 29210
(803) 727-6288 Telephone
Darryl.Smallslaw@live.com

Attorney for Defendants Ahava Hospice Inc. and Lancelotti Wright

Columbia, South Carolina

8/12, 2011

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 AUG 15 AM 11:01
MICHOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Allcare Medical, LLC

Plaintiff(s)

vs.

Ahava Hospice f/k/a Ascension Hospice,
et al.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP-42-2597

(Please Print)

Submitted By: Alexandre N. McClenahan
Address: The McClenahan Law Firm, LLC
819 E. North Street
Greenville, SC 29601

SC Bar #: 72507

Telephone #: 864-382-3340

Fax #: 864-331-3058

Other:

E-mail: alex@mcclenahanlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

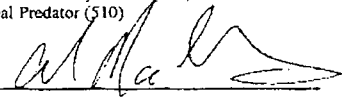
DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20__-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299) Negligence	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Domestic Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstatement Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: 

Date: June 7, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (01/2010)

Page 1 of 2

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FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Allcare Medical, LLC,)

Plaintiff,)

vs.)

Ahava Hospice, Inc. f/k/a Ascension)
Hospice Inc., Robert A. Williams, and)
Lancelot D. Wright;)

Defendants.)

IN THE COURT OF COMMON PLEAS
2011-CP-42-2597

Summons

TO: Ahava Hospice, Inc.
Charles E. Sloan Jr.
308 12th Street
West Columbia, SC 29169

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve an answer to this Complaint upon counsel for Plaintiff, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

June 7, 2011


Alex MacClenahan
SC Bar # 72507
The MacClenahan Law Firm, LLC
819 E. North Street
Greenville, SC 29604
864-332-3840/Fax: 864-331-3058
alex@macclenahanlaw.com
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Allcare Medical, LLC,

Plaintiff,

vs.

Ahava Hospice, Inc. f/k/a Ascension
Hospice Inc., Robert A. Williams, and
Lancelot D. Wright;

Defendants.

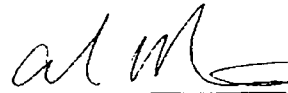
IN THE COURT OF COMMON PLEAS
2011-CP- 42-2597

SUMMONS

TO: Lancelot Wright
534 Windward Lane
Columbia, SC 29212

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve an answer to this Complaint upon counsel for Plaintiff, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

June 7, 2011



Alex MacClenahan
SC Bar # 72507
The MacClenahan Law Firm, LLC
819 E. North Street
Greenville, SC 29604
864-332-3840/Fax: 864-331-3058
alex@macclenahanlaw.com
Attorney for Plaintiff

FILED
JUN 10 2011
CLERK OF COURT



STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Allcare Medical, LLC,

Plaintiff,

vs.

Ahava Hospice, Inc. f/k/a Ascension
Hospice Inc., Robert A. Williams, and
Lancelot D. Wright;

Defendants.

IN THE COURT OF COMMON PLEAS
2011-CP-42-2597

COMPLAINT
[Jury Trial Demanded]

Plaintiff Allcare Medical, LLC, complaining of Defendants Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., Robert A. Williams, and Lancelot D. Wright, alleges and says as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a Limited Liability Company organized under the laws of South Carolina with its principal place of business in Spartanburg County, South Carolina.

2. Upon information and belief, Defendant Ahava Hospice, Inc. is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina. Upon further information and belief, Ahava Hospice, Inc. was formerly known as Ascension Hospice, Inc. and has assumed all of Ascension's assets and liabilities.

3. Upon information and belief, Defendant Robert Williams is an adult citizen and resident of Lexington County, South Carolina.

4. Upon information and belief, Defendant Lancelot Wright is an adult citizen and resident of Lexington County, South Carolina.

5. Jurisdiction and venue are proper in this Court.

FACTUAL ALLEGATIONS

6. Plaintiff Allcare Medical is in the business of providing durable medical equipment to, among others, health care providers like hospice centers.

7. In or around March 2008, Ascension Hospice was in the business of providing hospice services.

8. On or about March 12, 2008, Plaintiff entered into a written contract with Ascension Hospice pursuant to which Ascension agreed to pay Plaintiff for the provision of durable medical equipment.

9. Ascension's payments were due within thirty (30) days of the receipt of an invoice from Plaintiff.

10. During the summer of 2009, Ascension began to fall behind in its payments.

11. Upon information and belief, in or around January 2011, Ahava Hospice purchased Ascension Hospice and assumed all of Ascension's assets and liabilities, including the monies owed to Plaintiff.

12. In January 2011, Allcare demanded payment in full of the monies owed.

13. Robert Williams and Lancelot Wright, principals of Ascension, asked Allcare to agree to a payment plan for Ascension.

14. In exchange for the payment plan, Robert Williams and Lancelot Wright both entered into a written personal guarantee of \$200,000.00 of Ascension's debt.

15. Defendant Ahava is in default because it has failed and refused to make payment on the debt owed to Allcare.

16. Defendants Lance Wright and Robert Williams are in default of the personal guarantee because they have failed and refused to make payment on the debt owed to Allcare.

17. Despite repeated demands for payment, Defendants have failed and refused to bring their account current.

18. As of the filing of this Complaint, Defendant Ahava owes a total of \$244,467.81 and Defendants Robert Williams and Lancelot Wright owe a total of \$200,00.00.

19. Pursuant to the terms of the personal guarantee, Defendants Lancelot Wright and Robert Williams shall pay any costs and attorneys' fees incurred in enforcing the personal guarantee.

FIRST CAUSE OF ACTION
[Breach of Contract - Ahava]

20. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

21. Plaintiff entered into a valid written contract with Ascension Hospice and Defendant Ahava assumed the obligations of Ascension under that contract.

22. Plaintiff fulfilled its obligations under the contract. Specifically, Plaintiff provided durable medical equipment to Defendant Ahava and, prior to that, Defendant Ascension.

23. Defendant Ahava has breached the contract by its failure and refusal to pay the monies owed.

24. Plaintiff has suffered damages of at least \$244,467.81 as a direct and proximate cause of Defendant Ahava's breach of contract.

SECOND CAUSE OF ACTION
[Breach of Contract - Robert Williams and Lancelot Wright]

25. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

26. Plaintiff entered into a valid written contract with Defendants Williams and Wright.

27. Plaintiff fulfilled its obligations under the contract. Specifically, Plaintiff agreed to allow Ahava f/k/a Ascension to make payment under a monthly payment plan.

28. In exchange for the payment plan, Defendants Wright and Williams agreed to personally guarantee \$200,000.00 of the Ahava f/k/a Ascension's debt.

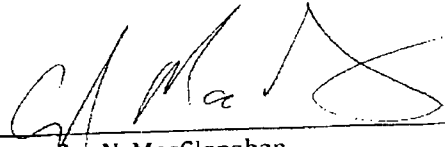
29. Defendants Wright and Williams breached the agreement by failing to pay the monies owed.

30. Plaintiff has suffered damages of at least \$200,000.00 as a direct and proximate cause of Defendants Wright and Williams' breach of contract.

31. Pursuant to the terms of the contract, Defendants Wright and Williams agreed to pay Allcare's costs and attorneys' fees incurred in enforcing the personal guarantee.

WHEREFORE, Plaintiff requests for a judgment against Defendant providing the relief requested herein, including and award of attorneys' fees and costs, a trial by jury, and all other relief the Court deems just and proper under the circumstances.

This the 7th day of June, 2011.



Alexandre N. MacClenahan
SC Bar # 72507
The MacClenahan Law Firm, LLC
819 E. North Street
Greenville, South Carolina 29601
864-382-3340/FAX: 864-331-3058
alex@macclenahanlaw.com

2011 JUN 13 PM 4:08

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Judge J. Mark Hayes, II Spartanburg County

Case No. 2014-001316

Allcare Medical, LLC, Respondent

v.

**Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., Robert A. Wright and
Lancelot D. Wright, Defendants,**

Of whom

**Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., and Lancelot Wright
are the**

Appellants

RECEIVED

DEC 05 2014

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Alexandre N. MacClenahan by depositing a copy of it in the United States Mail, postage prepaid, on December 3, 2014 addressed to, Alexandre N. MacClenahan, 870 Cleveland Street, Unit 1D, Greenville, South Carolina 29601.

Darryl D. Smalls, Attorney at Law

Darryl D. Smalls

P.O. Box 212724

Columbia, SC 29221

(803) 727-6288

Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 22 2014

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

Judge J. Mark Hayes II, Spartanburg County

Appellate Case No. 2014-001316

Allcare Medical, LLC, Respondent

v.

**Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., Robert A. Wright and
Lancelot D. Wright,**

Defendants,

Of whom

**Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., and Lancelot Wright
are the**

Appellants

APPELLANTS' FINAL BRIEF

Darryl D. Smalls, Attorney at Law

Darryl D. Smalls

P.O. Box 212724

Columbia, SC 29221

(803) 727-6288

Attorneys for Appellants

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STATEMENT OF ISSUES ON APPEAL

1. THE CIRCUIT COURT ORDER SHOULD BE REVERSED SINCE NO CONTRACT EXISTED BETWEEN AHAVA HOSPICE AND ALLCARE MEDICAL.

2. THE CIRCUIT COURT ORDER SHOULD BE REVERSED SINCE THERE IS A GENUINE ISSUE OF FACT WHETHER OR NOT AHAVA HOSPICE, INC IS A SUCESSOR IN INTEREST TO ASCENSION HOSPICE.

3. THE CIRCUIT COURT ORDER SHOULD BE REVERSED SINCE THERE IS A GENUINE ISSUE OF FACT WHETHER THE PROMISSORY NOTE SIGNED BY DEFENDANT WRIGHT IS VOID BECAUSE OF DURESS.

STATEMENT OF FACTS

Ahava Hospice was formed and organized as a business entity on January 28, 2010. Ahava Hospice provides medical care and treatment for critically ill patients. The company was based and primarily operated of Sumter, South Carolina. The initial owners of Ahava were Tammy McDonald and Charles Sloan, Jr. Ahava is currently maintains licensure with the South Carolina Department of Health and has a Medicare number which it has had from its inception.

In January 2011, the owners of Ahava Hospice, Inc. learned that Ascension Hospice, Inc. ("Ascension") was going out of business. This created an immediate need for uninterrupted hospice care for the patients of Ascension as well as an opportunity for Ahava to expand its service areas into Richland and Lexington Counties.

Discussions with the principals of Ascension took place during which it was confirmed that Ascension would close its doors on January 31, 2011. Ahava entered into further discussions with Ascension concerning its patient census and its plans regarding notification to its patients or their families regarding the closing of Ascension as well as the status of its corporate office building in Irmo, South Carolina. At that time, Ascension leased office space and a fourteen (14) bed inpatient facility, (formerly known as the Ascension Hospice House) from Woodrow Street, LLC. After confirming that Ascension had given notice to Woodrow Street, LLC of its intent to cease business operations and vacate the above-mentioned premises, Ahava entered into negotiations with Woodrow Street, LLC and ultimately agreed to a short-term commercial lease for the former Ascension corporate office building only.

In January 2011, Ascension Hospice had a patient census of 210. Those patients or his/her families were notified of Ascension's closing by social workers employed by Ascension

Hospice. Upon information and belief, the aforementioned social workers advised each patient or his/her family that they had to option to transfer to Ahava Hospice or any other hospice care provider. If the patient or his/her family decided to transfer to Ahava members of the Ascension nursing staff met with that patient or his/her family to complete the admission paperwork. Approximately, 130 patients or their families chose Ahava for hospice care and services.

Given the critical need for continuity of patient care, Ahava interviewed several nurses, certified nurse's assistants and social workers previously employed by Ascension. Employment offers were extended to several, but not all of the employees interviewed. The majority of the offers were extended to former Ascension nurses, due in part, to established patient/family relationships, competency and experience.

On February 1, 2011, Ahava began operating out of the former Ascension site in Irmo, South Carolina. In summary the facts are as follows:

1. Ascension Hospice ceased all business operations on January 31, 2011.
2. Ahava Hospice did not purchase any assets of Ascension Hospice prior to or subsequent to its closing.
3. Ahava Hospice did not agree to accept or otherwise assume any liabilities, debts or obligations belonging to or incurred by Ascension Hospice.
4. Ahava Hospice has at all times since its inception, operated independently of Ascension Hospice.
5. Upon learning of the closing of Ascension Hospice, Ahava Hospice made inquiries regarding Ascension's patient population and the status of its office lease.

6. Two (2) of the former owners of Ascension were given the opportunity to join the Ahava ownership group. As of this date, only one (1) former Ascension owner is an Ahava shareholder.

SYNOPSIS

In 2008, the plaintiff Allcare Medical entered into a contract with Ascension Hospice to provide durable medical equipment (DME) for hospice patients. *Record p. 40, See Exhibit 1 and Deposition Allcare CEO Ondrej Sliva*. In 2010 Allcare discussed outstanding invoices with Ascension, Robert Williams and Lance Wright. Allcare thru its CEO threatened to remove their equipment from the hospice patients unless Robert Williams and Lance Wright signed personal promissory notes for outstanding invoices. In 2011 Ahava Hospice, Inc. obtained some of Ascension's hospice patients and employees as Ascension ceased doing business. Ahava did not assume the debt of Ascension Hospice. *Record p. 212, Gray dep. P 19 L. 20-22* Allcare entered into unsuccessful negotiations to provide DME for Ahava Hospice. *Record p. 61, See Sliva Dep. P. 22 L 16-19 and Exhibit 3 Proposed contract*. Ahava never signed a contract with Allcare or agreed to continue using Allcare or pay Ascension's outstanding debt with Allcare. Allcare subsequently filed suit against Ahava Hospice, Inc. The plaintiff filed a motion for summary judgment, which after oral arguments was granted by Judge Hayes. Defendants have appealed Judge Hayes's order to the Court of Appeals.

STANDARD OF REVIEW

The South Carolina Rules of Civil Procedure allow the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment

as a matter of law. In determining whether any triable issue of fact exists, the court construes the facts in the light most favorable to the non-moving party. *Laber v. Harvey*, 438 F.3d 404 (4th Cir. 2006). In deciding a motion for summary judgment, the non-moving party is entitled to have the credibility of his evidence as forecast assumed, his version of all that is in dispute accepted, all internal conflicts in it resolved favorably to him, the most favorable of possible alternative inferences from it drawn in his behalf and finally to be given the benefit of all favorable legal theories invoked by the evidence so considered. *Altizer v. Deeds*, 191 F.3d 540 (4th Cir. 1999). Summary judgment should be granted only where it is perfectly clear that no issue of fact is involved and inquiry into the facts is not desirable to clarify the application of the law. *Gillins v. Berkeley Elec. Co-op., Inc.*, 148 F.3d 413, (4th Cir. 1998).

LAW AND ARGUMENT

I. THE CIRCUIT COURT ORDER SHOULD BE REVERSED SINCE NO CONTRACT EXISTED BETWEEN AHAVA HOSPICE AND ALLCARE MEDICAL

Ahava Hospice, Inc. did not Breach a Contract since no contract existed between Ahava and Allcare Medical. There is no contract between Allcare Medical and Ahava Hospice, Inc. This being an action for the breach of contract, the burden was upon the [plaintiff] to prove the contract, its breach, and the damages caused by such breach." *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). In general, a binding contract requires a manifestation of mutual assent to its terms. *Edens v. Laurel Hill, Inc.*, 271 S.C. 360, 364, 247

S.E.2d 434, 436 (1978). Terms such as price, time, and place are indispensable to a binding contract and must be set out with reasonable certainty. *Id*

The elements for a breach of contract are the existence of the contract, its breach, and the damages caused by such breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75124 S.E.2d 602 (1962). In order to recover for breach of contract, a plaintiff must allege and prove (1) the existence of a contract, (2) breach of the contract, and (3) damages caused by the breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

In this case there is no breach of contract because there is no written signed agreement between Allcare Medical and Ahava. In addition there were no acceptance of an offer or agreement to terms of contract. The testimony of Ondrej Sliva CEO of Allcare supports the position that no contract exists. Sliva testified as follows:

There were no invoices for Ahava Hospice only invoices for Ascension Hospice. *Record p. 51*, Sliva Dep. P. 12 L 22-24

There was a signed contract with Ascension Hospice only dated March 2008. *Record p. 59*, Sliva Dep. P 20 L 21-23

Allcare unsuccessfully negotiated with Ahava for a contract. *Record p. 61*, Sliva Dep. P 22 L 16-19. "I thought we would talk about a new contract for Ahava"

No contract signed by Ahava. *Record p. 65*, Sliva Dep. P 26 L 5-7 Dep. 27 L 8-10

Allcare never received any payments from Ahava for equipment. *Record p. 66-67*, Sliva Dep. P 27-28. L25

Clearly, Allcare did not have a contract with Ahava and the summary judgment order against Ahava Hospice, Inc. should be reversed.

II. THE CIRCUIT COURT ORDER SHOULD BE REVERSED SINCE THERE IS A GENUINE ISSUE OF FACT WHETHER OR NOT AHAVA HOSPICE, INC. IS A SUCCESSOR IN INTEREST TO ASCENSION HOSPICE.

Ahava Hospice, Inc. is not a successor company to Ascension Hospice and has not assumed the liabilities of Ascension. In *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924), the South Carolina Supreme Court held that in the absence of a statute, a successor or purchasing company ordinarily is not liable for the debts of a predecessor or selling company unless (1) there was an agreement to assume such debts, (2) the circumstances surrounding the transaction warrants a finding of a consolidation or merger of the two corporations, (3) the successor company was a mere continuation of the predecessor,^[1] or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924) (successor corporation which purchased part of predecessor's assets was not liable for lost shipment by predecessor, where successor did not assume liability for such debts and predecessor remained a live and going concern with substantial assets).

In determining this issue, a court should consider factors such as (1) whether the successor, taking lawful advantage of the predecessor's accumulated goodwill and reputation, held itself out to the world as a continuation of the predecessor through continued use of the

predecessor's corporate identity, trade names, advertising, or other intellectual property; (2) whether the successor continued to manufacture substantially the same product line as the predecessor, recognizing that manufacturing activity by its nature involves modification of product lines and elimination of unprofitable items; (3) whether the successor retained the predecessor's managers, employees, or sales force; (4) whether the successor continued to use the predecessor's equipment, supplier, dealer, or customer lists; (5) whether the successor assumed those liabilities and obligations of the predecessor ordinarily necessary for the continuation of normal business operations of the predecessor; and (6) whether the successor's officers, directors, or shareholders are substantially the same as the predecessor's. No one factor can be dispositive in this fact-intensive analysis.

In this case Ahava Hospice is not a successor for liability. The Circuit Court's ruling that Ahava Hospice is a successor company to Ascension Hospice is erroneous and fails to address the issues of fact. There is clearly a genuine question of fact whether Ahava is a mere continuation of Ascension. There are multiple factual issues that would require a jury trial. The ownership is almost entirely different. Only one principal from Ascension was involved with Ahava. *Record p. 200*, Gray Dep. P. 7 L. 10-15. Ahava was an existing corporation prior to obtaining some employees and some patients of Ascension. Ahava was incorporated in January 28, 2010. Ahava did not assume debts of Ascension. *Record p. 212*, Gray dep. P 19 L. 20-22 Ahava and Ascension were separate companies with separate Medicare numbers. *Record p. 306*, Gray Dep. P 113. L. 14-16. Prior to leasing office space in Irmo, South Carolina Ahava had offices in West Columbia and Sumter South Carolina. *Record p. 215*, Gray Dep. P. 22 L 1-4.

Ahava did not utilize Ascension equipment but got new property leases and new equipment. *Record p. 213*, Gray Dep. P. 20 L. 1-2; *Record p. 216*, P 23 L. 7-8. Ahava Hospice did not purchase any assets of Ascension Hospice prior to or subsequent to its closing. *Record p. 220*, Gray Dep. P. 27. L. 11-12. Ahava Hospice did not agree to accept or otherwise assume any liabilities, debts or obligations belonging to or incurred by Ascension Hospice. *Record p. 212*, Gray Dep. P.19 L. 20-22 Ahava Hospice only obtained about 30 or 40 percent of the patients from Ascension Hospice. *Record p. 217*, Gray Dep. P. 24, L 6-12. Ahava is an entirely separate company and not a continuation of Ascension and clearly the facts do not support the summary judgment order but creates a genuine issue of fact for a jury.

III. THE CIRCUIT COURT ORDER SHOULD BE REVERSED SINCE THERE IS A GENUINE ISSUE OF FACT WHETHER THE PROMISSORY NOTE SIGNED BY DEFENDANT WRIGHT IS VOID BECAUSE OF DURESS.

The promissory note signed by Defendant Wright is void because of duress and the Defendant presented sufficient evidence to create a genuine issue of fact. Duress is a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition. *Cherry v. Shelby Mut. Plate Glass & Cas. Co.*, 191 S.C. 177, 4 S.E.2d 123 (1939); *Cox & Floyd Grading, Inc. v. Kajima Constr. Servs., Inc.*, 356 S.C. 512, 589 S.E.2d 789 (Ct. App. 2003); *Willms Trucking Co. v. JW Constr. Co.*, 314 S.C. 170, 442 S.E.2d 197 (Ct. App. 1994).

Corpus Juris Secundum defines duress:

"Duress" may be defined as subjecting a person to a pressure which overcomes his or her will and coerces him or her to comply with demands to which he or she would not yield if acting as a free agent. Some definitions of "duress" contain not only the element of pressure overcoming the victim's will but also the element that the pressure or compulsion consists of improper, wrongful, or unlawful conduct, acts, or threats.

Further, "duress" has been defined as the condition of mind produced by the wrongful conduct of another rendering a person incompetent to contract with the exercise of his or her free will power, or as the condition of mind produced by an improper external pressure destroying free agency so as to cause the victim to act or contract without use of his or her own volition, or as unlawful constraint whereby a person is forced to do some act against his or her will.

17A C.J.S. Contracts § 175 (1999) (footnotes omitted).

The central question with respect to whether a contract was executed under duress is whether, considering all the surrounding circumstances, one party to the transaction was prevented from exercising his free will by threats or the wrongful conduct of another. *17A Am. Jur. 2d Contracts* § 218 (2004). Freedom of will is essential to the validity of an agreement. Id.

A party claiming "duress" can prevail if he shows that he has been the victim of a wrongful or unlawful act or threat of a kind that deprives the victim of unfettered will, with the result that he was compelled to make a disproportionate exchange of values. Id.

In order to establish that a contract was procured through duress, three things must be proved: (1) coercion; (2) putting a person in such fear that he is bereft of the quality of

mind essential to the making of a contract; and (3) that the contract was thereby obtained as a result of this state of mind. *In re Nightingale's Estate*, 182 S.C. 527, 189 S.E. 890 (1937). If one of the parties to an agreement is in a position to dictate its terms to such an extent as to substitute his will for the will of the other party thereto, it is not a mutual, voluntary agreement, but becomes an agreement emanating entirely from his own mind. *In re Nightingale's Estate*, 182 S.C. at 547, 189 S.E. at 898; *Willms Trucking Co.*, 314 S.C. at 179, 442 S.E.2d at 202. If a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim. *Willms Trucking Co.*, 314 S.C. at 179, 442 S.E.2d at 202.

Whether or not duress exists in a particular case is a question of fact to be determined according to the circumstances of each case, such as the age, sex, and capacity of the party influenced. *Id.*; see also *Santee Portland Cement Corp. v. Mid-State Redi-Mix Concrete Co.*, 273 S.C. 784, 260 S.E.2d 178 (1979) (stating whether or not duress was present is a question ordinarily determined on a case by case basis). Duress is a defense to an otherwise valid contract. *17A Am. Jur. 2d Contracts* § 218. Duress renders a contract voidable at the option of the oppressed party. *Santee Portland Cement Corp.*, 273 S.C. at 784, 260 S.E.2d at 178.

In this case duress renders Mr. Wright's promissory note void and at a minimum defeats a motion for summary judgment. The facts as considered most favorably to the defendant are as follows: The CEO O Sliva stated in his deposition that he threatened to remove essential equipment from Ascension patients at the time Mr. Wright signed the promissory note. *Record p. 52*, See Sliva Dep. P 13 L 21-25. He went on to say he was going to "pull the trigger on pickups"

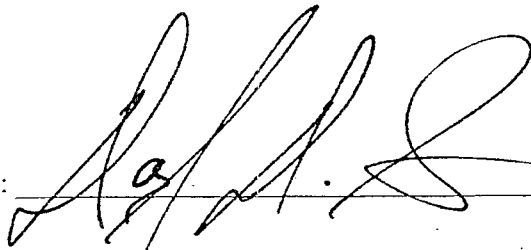
of essential equipment. *Record p. 57*, Sliva dep. p 18 L 19-22 and *Record p. 58*, p. 19 L 1-12. Mr. Sliva clearly coerced Mr. Wright to sign the promissory note based on these threats.

Mr. Wright testified at his deposition " it was a duress situation"... "it was like an under the gun kind of deal with Ondrej said if he don't get something done he was going to pick that patient equipment up so it was a dire situation" "But I felt it was urgent it was dire and he needed me on this deal" *Record p. 147*, Wright p. 42 L. 23-24 "And because it was dire straits". *Record p. 149*, Wright Dep. P. 44 L. 16. Finally Mr. Wright testified, he was under belief that Allcare would pull equipment from the patients who were facing life-threatening illnesses therefore he signed the note. *Record p. 192*, Wright Dep. P. 87 L. 10-16. The facts show that there was coercion and that created a state of mind that Mr. Wright signing the promissory note was not of his free will. Mr. Wright's testimony creates a genuine question of fact to defeat summary judgment.

CONCLUSION

In deciding a motion for summary judgment, the non moving party is entitled to have the credibility of his evidence as forecast assumed, his version of all that is in dispute accepted, all internal conflicts in it resolved favorably to him, the most favorable of possible alternative inferences from it drawn in his behalf and finally to be given the benefit of all favorable legal theories invoked by the evidence so considered. *Altizer v. Deeds*, 191 F.3d 540 (4th Cir. 1999). Based upon the above referenced facts, law and arguments this defendant respectfully request that this court reverse the decision of the Circuit Court since there is clearly genuine issues of fact which defeat this motion for summary judgment.

By: _____



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12/23, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Judge J. Mark Hayes, II Spartanburg County

Case No. 2014-001316

RECEIVED

DEC 22 2014

SC Court of Appeals

Allcare Medical, LLC, Respondent

v.

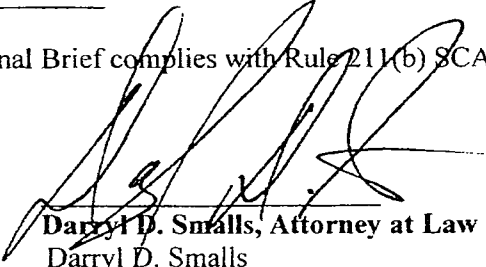
Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., Robert A. Wright and
Lancelot D. Wright,
Defendants,

Of whom

Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., and Lancelot Wright
are the
Appellants

CERTIFICATE OF COUNSEL

The undersigned certified that Appellants' Final Brief complies with Rule 211(b) SCACR.


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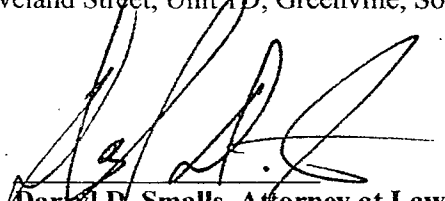
Of whom

Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., and Lancelot Wright
are the

Appellants

PROOF OF SERVICE

I certify that I have served the Appellants' Final Brief on Alexandre N. MacClenahan by depositing a copy of it in the United States Mail, postage prepaid, on December 23, 2014 addressed to, Alexandre N. MacClenahan, 870 Cleveland Street, Unit 1D, Greenville, South Carolina 29601.


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ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Court of Common Pleas
Judge J. Mark Hayes, II, Spartanburg County JAN 06 2015

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Lancelet Wright,

Defendants,

Of whom

Ahava Hospice, Inc. f/k/a Ascension Hospice, Inc. and Lancelot Wright
are

Appellants

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Allcare Medical, LLC ("Allcare") filed suit against Defendants Ahava Hospice, Inc. ("Ahava"), Lancelot Wright ("Wright"), and Robert A. Williams ("Williams") on June 13, 2011. *R. p. 324*. The Complaint alleges a breach of contract claim against Ahava and a separate breach of contract claim against Lancelot Wright and Robert Williams. Defendant Robert A. Williams has not been served in this case and is not a party to this appeal. *R. pp. 324-328*.

Allcare's breach of contract claim against Ahava arises out of Ahava's failure to pay invoices due under a contract that Allcare alleges Ahava assumed when it purchased Ascension Hospice Inc. Allcare's breach of contract claim against Lancelot Wright arises out of Wright's failure to pay money owed to Allcare pursuant to a personal guarantee signed by Wright.

On or about August 12, 2011 Ahava and Wright filed a joint Answer. Ahava denied Allcare's claim for breach of contract on the grounds that it did not assume Ascension's contract with Allcare. *R. pp. 317-318*. Lancelot Wright denied Allcare's breach of contract claim on the grounds that he signed the personal guarantee under duress. *R. p. 318*.

After the conclusion of written discovery and the depositions of Ahava's 30(b)(6) designee, Lancelot Wright, and Allcare's 30(b)(6) designee, Allcare moved for summary judgment against Ahava and Wright as to liability on the breach of contract claims.

The Circuit Court scheduled the hearing for Allcare's Motion for Summary Judgment on March 18, 2014 in front of the Honorable J. Mark Hayes, II. Prior to the hearing, Allcare's counsel served defense counsel with a memorandum of law in support

of summary judgment. Defense counsel requested the court postpone the hearing so that he could prepare a response brief. Allcare's counsel consented to the request and the Court rescheduled the hearing for March 21, 2014. On March 21, 2014 Judge Hayes heard oral argument from both parties and reviewed all pleadings, affidavits, deposition testimony, memoranda of law, and case law submitted by the parties. *R. pp. 6-39.*

On May 16, 2014 Judge Hayes entered an order granting summary judgment for Allcare on the breach of contract claims against both Ahava and Wright. *R. pp. 1-5.* The Court granted summary judgment as to liability only and there has not yet been a determination of damages. Ahava and Wright now appeal Judge Hayes' Order Granting Summary Judgment. For the reasons set forth herein, this Court should affirm the Circuit Court's ruling and deny Appellants' appeal.

FACTUAL SUMMARY

Allcare is in the business of providing durable medical equipment to various health care providers in the southeast. On March 12, 2008, Allcare entered into a valid written agreement with Ascension Hospice whereby Allcare agreed to provide medical equipment and Ascension agreed to pay for the equipment. At the time, Defendant Robert A. Williams was a majority shareholder of Ascension. *R. p. 222, ln. 5-12.* January 2011, Ascension closed its doors and Ahava took over Ascension's operations and Defendant Robert A. Williams became a shareholder and officer of Ahava. *R. p. 214, ln. 21-22; p. 221, ln. 25 – p. 2222, ln. 12; p. 250, ln. 22 – p. 251, ln. 6.*

Ahava is the successor in interest to Ascension

The facts set forth below are not in dispute as they were admitted through the deposition testimony of both Ahava's 30(b)(6) designee and the testimony of Ahava's

CEO, Appellant Lancelot Wright.

Ahava designated its corporate compliance officer, Glen Gray, to testify on its behalf on the following matters:

1. [Ahava]'s policies procedures, and guidelines relating to the payment of invoices.
2. The terms and conditions of any agreements with [Allcare].
3. The facts and allegations contained in the pleadings of this case.
4. Lancelot Wright's compensation from Ahava.
5. Lancelot Wright's compensation from Ascension.
6. Robert Williams' compensation from Ahava.
7. Robert Williams' compensation from Ascension.
8. Any payments made by Ahava to Lancelot Wright.
9. Any payments made by Ascension to Lancelot Wright.
10. Any payments made by Ahava to Robert Williams.
11. Any payments made by Ascension to Robert Williams.
12. Any payments made by Ahava to Ascension.
13. The owners of Ahava.
14. The shareholders of Ahava.
15. The purchase of Ascension.
16. Ahava's financial accounts.
17. All documents produced in discovery.

R. pp. 312-313.

In addition to being Ahava's corporate compliance officer, Mr. Gray is a former employee of Ascension. *R. p. 199, ln. 20-24.* Mr. Gray, an attorney, has twice been reprimanded by the South Carolina Supreme Court. In 2009 the South Carolina Supreme Court suspended Mr. Gray from the practice of law for creating fictitious time entries and expense reimbursements; exhibiting conduct that was "deliberate, purposeful, deceitful, and fraudulent." *R. p. 281, ln. 8 – p. 282, ln. 11.* In 2012 the South Carolina Supreme Court again reprimanded Mr. Gray for submitting an affidavit containing a false statement. *R. p. 283, ln. 22 – p. 285, ln. 12.*

Mr. Gray testified that after Ascension closed its doors, Ahava operated out of Ascension's former office space. *R. p. 215, ln. 5 – ln. 15.* He admitted that Ahava also hired former Ascension employees; used the same office equipment; and kept some of the same corporate cars. *R. p. 220, ln. 20 – p. 221, ln. 15.* He further admitted that Ahava took over the care of 30 to 40 percent of Ascension's patient list. *R. p. 217, ln. 13 – p. 218, ln. 9.*

Mr. Gray's testimony on behalf of Ahava is echoed by the testimony of Ahava's CEO, Appellant Lancelot Wright. Wright testified that in March of 2011 the majority of Ahava's patients and employees were former patients and employees of Ascension. *R. p. 180, ln. 2 – ln. 16.*

Mr. Gray further testified that Ahava in addition to assuming Ascension's patient census and former employees, it also paid Ascension's debts after Ascension ceased operations.

At deposition, Mr. Gray initially denied that Ahava used the same checking account as Ascension. *R. p. 211, ln. 21 – p. 212, ln. 22.* When presented with checks and

bank statements showing that on multiple occasions following Ascension's closure checks were drawn from Ahava's bank account listing Ascension as the account holder, Mr. Grey admitted that on at least two occasions Ahava issued checks on behalf of Ascension to pay bills to Comdata Corporation. *R. p. 263, ln. 8 – p. 266, ln. 12.* Mr. Gray further admitted that in March 2011 Ahava paid over \$52,000.00 to Ascension Hospice. *R. p. 259, ln. 6 – p. 262, ln. 11.* Despite being designated to testify on these specific issues, Mr. Gray testified that he did not know why these checks were issued. *R. p. 260, ln. 7-13; p. 263, ln. 22 – p. 264, ln. 3.* To date, Ahava has failed to provide any evidence, much less specific evidence, to contradict or otherwise explain why Ahava drew these checks from its account to pay the debts of Ascension.

Ahava did not just use its accounts to pay Ascension debts, it also used its accounts to benefit former Ascension employees and shareholders. Ahava used its resources to pay legal fees for former employees of Ascension and also paid fees to companies with which it had no business relationship, but with whom it shared common shareholders. *R. p. 228, ln. 1 – p. 229, ln. 8; p. 254, ln. 5 – p. 255, ln. 6.* Appellant Wright agreed "it was routine business practice" to "rob[] Peter to pay Paul where if one of [the] companies has money and the other one doesn't you'd just transfer it between [companies]..." *R. p. 160, ln. 14 – ln. 22.* Again, none of these facts are disputed, they were freely admitted in deposition by Ahava's 30(b)(6) designee and Wright.

Lancelot Wright personally guaranteed Ascension's debt to Allcare

When Ascension fell further behind in its payments to Allcare, Allcare entered into negotiations with Defendant Lancelot Wright and Defendant Robert A. Williams to secure a personal guarantee. Robert Williams was a shareholder of Ascension and after

Ahava took over Ascension's operations he became a shareholder of Ahava. *R. p. 214, ln. 21-22; p. 221, ln. 25 – p. 222, ln. 12; p. 250, ln. 22 – p. 251, ln. 6.* Lancelot Wright had no ownership interest in Ascension but was a shareholder of Ahava and its current CEO. *R. pp. 125-126.*

Both Robert Williams and Lancelot Wright led Allcare to believe that Ahava was going to take over Ascension and continue the contractual relationship with Allcare. As part of the negotiations, Robert A. Williams and Lancelot D. Wright entered into a written personal guarantee whereby they agreed to be personally responsible for \$200,000.00 of the debt owed to Allcare. In addition, Robert A. Williams and Lancelot D. Wright agreed to pay any costs and attorneys' fees incurred in enforcing the guarantee. These facts are not in dispute as Wright admitted them in his deposition:

Q: Pursuant to this contract, right, you and Tony Williams promised to pay Allcare Medical \$200,000 with interest at the yearly rate of 6 percent as specified below? Do you see that right there?

A: Correct, yeah.

R. p. 144, ln. 25 – p. 145, ln. 5.

Q: --it says, if lender prevails in a lawsuit to collect on this note, borrower will pay lender's costs and lawyer's fees in an amount the court finds to be reasonable. Did I read that correctly?

A: Yes.

Q: And that's part of your agreement under this promissory note?

A: Correct.

R. p. 145, ln. 18 – p. 146, ln. 4.

Q: Did you make any payments, you personally, Lance?

A: No.

R. p. 154, ln. 11 – ln. 13.

Q: The payments made – or the total amount owed not including interest according to my client and what we'll present at trial – and this is not including interest or my fees or costs or anything – is \$244,467.91. Do you have any reason to dispute that that's the amount owed?

A: No.

R. p. 189, ln. 18 – 24.

As Lancelot Wright testified, he entered into an agreement in which he personally guaranteed to pay up to \$200,000, plus interest, costs and fees of the debt owed to Allcare. By his own admission, Lancelot Wright failed to make any payments on the personal guarantee. Interestingly, on appeal, Wright does not contest that he signed a personal guarantee and failed to make payments; rather he claims Judge Hayes erred by failing to find that the promissory note was signed under duress.

However, Wright's own admissions at deposition reveal that there is no dispute that he entered into the contract freely and voluntarily. Wright testified as follows:

Q: And, again, to be clear, when you signed this contract, this promissory note that's Exhibit 1 –

A: Correct.

Q: -- you were not facing any financial pressure regarding that debt were you?

A: No.

Q: Before you signed it you didn't owe the debt did you?

A: No. No.

Q: You wanted to help out a friend, right?

A: Right.

Q: And that's the reason why you signed this, was to help out [Robert A. Williams]?

A: Correct.

Q: All right. And for no other reason?

A: I had no other reason besides him being a friend.

R. p. 152, ln. 2 - p. 153, ln. 4.

Wright admits that he faced no financial pressure regarding the debt when he signed the personal guarantee. He admits that at the time he signed the personal guarantee he did not owe the underlying debt. He admits that when he signed the personal guarantee he did so with "no other reason" than to help out a friend. Mr. Wright freely and voluntarily signed the personal guarantee.

Appellants failed to identify a single reversible error and, for the reasons set forth herein, this Court should affirm Judge Hayes' Order Granting Summary Judgment.

STANDARD OF REVIEW

When reviewing an order granting summary judgment, the appellate court must apply the same standard applied by the circuit court under Rule 56(c) of the South Carolina Rules of Civil Procedure. *John v. Milliman*, 392 S.C. 116, , 708 S.E.2d 766 (S.C. 2011) citing *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (S.C. 2002).

Rule 56 provides that summary judgment may only be granted if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” S.C. R. Civ. P. 56(c). The facts and inferences drawn from the facts must be viewed in the light most favorable to the non-moving party. *Miller v. Leathers*, 913 F.2d 1085, 1087 (4th Cir. 1990). The moving party carries the burden of clearly establishing that no genuine issue of material fact exists. *Froneberger v. Smith et al.*, 406 S.C. 37, 45, 748 S.E.2d 625, 629 (S.C. App. 2013) citing *Miller v. Blumenthal Mills, Inc.* 365 S.C. 204, 220, 616 S.E.2d 722, 730 (S.C. App. 2005). Once that initial burden is met, the non-moving party **must provide specific facts** showing that a genuine issue of material fact exists for trial. *Id.* (emphasis added). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Byerly v. Connor*, 307 S.C. 441, 445, 415 S.E.2d 796, 799 (S.C. 1992).

ARGUMENT

I. THE COURT SHOULD AFFIRM THE CIRCUIT COURT’S ORDER GRANTING SUMMARY JUDGMENT BECAUSE NO GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO WHETHER AHAVA HOSPICE ASSUMED LIABILITY FOR THE CONTRACT BETWEEN ASCENSION AND ALLCARE.

Allcare does not claim that it entered into a written contract with Ahava; rather, Allcare alleges that Ahava assumed Ascension’s contract with Ahava and thereby became liable for the debt. Moreover, the Circuit Court did not find that Ahava entered

into a contract with Ascension. Rather, the Circuit Court held that Ahava merged with Ascension and thereby became liable for Ascension's contract with Allcare. Therefore, Appellant improperly raised the first issue on appeal and it should be dismissed. To the extent a response is required, Respondent addresses the existence of the contract through merger in its second Issue on Appeal set forth below.

II. THE COURT SHOULD AFFIRM THE CIRCUIT COURT'S ORDER GRANTING SUMMARY JUDGMENT BECAUSE NO GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO WHETHER AHAVA HOSPICE MERGED WITH ASCENSION.

Allcare entered into a valid written contract with Ascension Hospice. As set forth above, when Ascension ceased operations, Ahava merged with Ascension and took over Ascension's business operations. It employed the same personnel, treated the same patients, used the same office space, maintained common shareholders and paid some of Ascension's debts. *R. p. 215, ln. 5 – ln. 15; p. 220, ln. 20 – p. 221, ln. 15; p. 217, ln. 13 – p. 218, ln. 9; p. 263, ln. 8 – p. 266, ln. 12; p. 259, ln. 6 – p. 262, ln. 11.*

In order to establish a company as a "successor in interest" that is liable for the debts of a predecessor company, a party must show at least one of the following:

1. There was an agreement to assume such debts; or
2. The circumstances surrounding the transaction warrant a finding of consolidation or merger of the two corporations; or
3. The successor company was a mere continuation of the predecessor; or
4. The transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims.

Simmons v. Mark Lift Industries, 366 S.C. 308, 312, 622 S.E.2d 213 (2005) citing *Brown*

v. American Ry. Express Co., 128 S.C. 428, 123 S.E. 97 (1924).

In *Holloway v. John E. Smith's Sons Co.*, the United States District Court for the District Court of South Carolina found that a merger existed under the mere continuation theory when the business operated out of the same address, retained many of the same employees, continued in the same business with the same customers, and had common shareholders and officers. *Holloway* 432 F. Supp. 454, 456 (D.S.C 1977). Similarly, the South Carolina Supreme Court found that successor liability through merger exists when the buyer and seller share common officers and directors. *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 657 S.E.2d 67, 70 (S.C. 2007). Both the *Holloway* and the *Walton* cases address the exact situation presented in this matter.

In this case, Ahava is clearly a mere continuation of Ascension and the circumstances warrant a finding of merger. By its own admission, after Ascension ceased operations, Ahava continued to employ many of the same employees, it kept 30 to 40% of Ascension's patients; it operated out of the same office space; used some of the same office equipment; paid Ascension's debts; used the same checking account; used the same vehicles; and shared a common shareholder. *R. p. 215, ln. 5 – ln. 15; p. 220, ln. 20 – p. 221, ln. 15; p. 217, ln. 13 – p. 218, ln. 9; p. 263, ln. 8 – p. 266, ln. 12; p. 259, ln. 6 – p. 262, ln. 11*. If it looks like a merger, acts like a merger and sounds like a merger it must be a merger.

Since Ahava merged with Ascension it became liable under the contract with Allcare. As a result, the Circuit Court properly entered summary judgment against Ahava and Respondent respectfully requests that this Court affirm the summary judgment order.

III. THE COURT SHOULD AFFIRM THE CIRCUIT COURT'S ORDER GRANTING SUMMARY JUDGMENT BECAUSE NO GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO WHETHER LANCELOT WRIGHT ENTERED INTO THE PERSONAL GUARANTY FREELY AND VOLUNTARILY.

In order to recover under a claim for breach of contract, the Allcare must show that a valid binding contract existed, that Wright failed to comply with the contract; and that Allcare suffered damage as a proximate result of Defendant's breach. *Fuller v. Easter Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962).

Lancelot Wright admits he entered into a written contract with Plaintiff whereby he agreed to personally guarantee \$200,000 of Ascension's debt, plus interest, costs and attorneys' fees. *R. p. 144, ln. 25 – p. 145, ln. 5; p. 145, ln. 18 – p. 146, ln. 4*. Mr. Wright also admits that he made no payments on the note and that the current principal balance owed exceeds \$200,000. *R. p. 154, ln. 11 – ln. 13; p. 189, ln. 18 – 24*. Wright does not contest that he entered into a valid contract with Allcare; rather, he claims that the contract is void because he entered into it under duress.

In order to void a contract for duress, the defendant must prove: (1) coercion; (2) putting a person in such fear that he is bereft of the quality of mind essential to the making of a contract; and (3) that the contract was thereby obtained as a result of this state of mind. *In re Nightingale's Estate*, 182 S.C. 527, 189 S.E. 890, 897 (S.C. 1937). The party claiming duress must show that he suffered improper external pressure or influence that practically destroys his free agency and causes him to enter into a contract not of his own volition. *McAnn v. Doe*, 377 S.C. 373, 660 S.E.2d 505, 507 (S.C. 2008).

Duress does not exist if the person has a reasonable alternative to entering the contract and fails to take advantage of the alternative. *Id.*

In examining the facts in the light most favorable to Wright, Judge Hayes relied on Wright's own sworn testimony, and this Court should do the same. As set forth hereinabove, Wright admitted that prior to signing the guaranty he was not responsible for any debt owed to Allcare, and that he faced no financial pressure when he signed the contract. *R. p. 152, ln. 2 - p. 153, ln. 4.* Wright admitted that the only reason he entered into the contract was to help out a friend. *Id.* Wright's own testimony reveals that he did not enter into the personal guarantee under duress. Entering into a contract under no financial pressure with the sole reason to help out a friend does not give rise to a defense of duress. If it did, every person who co-signed a loan for a friend could avoid liability simply by claiming duress.

At the summary judgment hearing, Wright failed to present any evidence that would give rise to a valid defense of economic duress. On appeal, Wright still fails to present any evidence that he suffered from duress. In fact, he cites his own testimony that "I felt it was urgent it was dire and he needed me on this deal." *R. p. 147, ln. 23-24.* The "he" that Wright refers to is his friend Robert A. Williams. Surely the defendant's own sworn testimony presents the facts in the most favorable light possible for his position. Wright's sworn testimony reveals that he suffered no economic duress and that the Circuit Court properly entered summary judgment against him.

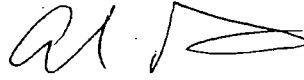
CONCLUSION

In deciding a motion for summary judgment, the Court must examine the facts in the light most favorable to the non-moving party. The Circuit relied on the sworn testimony of both Ahava's designee and Wright in reaching its decision. It is difficult to imagine a more favorable light to view the facts than relying on a party's own admissions.

Ahava's admissions at deposition reveal that there is no genuine issue of material fact that it merged with Ascension and assumed liability of the contract with Ahava. It is undisputed that neither Ascension nor Ahava paid the monies owed under the contract with Allcare. Therefore, the circuit properly entered summary judgment against Ahava and Respondent respectfully requests that this Court affirm the lower court's order.

Wright's admissions also reveal that there is no genuine issue of material fact that he breached his contract with Allcare. Wright admitted that he signed the personal guarantee and that he failed to make any payments to Allcare. Wright's defense that the contract is void because he signed it under duress is not supported by the facts. Wright admitted that he freely and voluntarily entered into the contract. He admits owed no money to Allcare, that he faced no financial pressure to sign the guarantee and that the only reason he agreed to the contract was to help out his friend. This does not support a defense of duress. As such, the Circuit Court properly entered summary judgment against Wright and Respondent respectfully requests that this Court affirm the lower court's order.

This the 5TH day of January 2015.



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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Judge J. Mark Hayes, II, Spartanburg County**

Case No.: 2014-001316

Allcare Medical, LLC,

Respondent

v.

**Ahava Hospice, Inc. f/k/a Ascension Hospice, Inc., Robert A. Wright and
Lancelet Wright,**

Defendants,

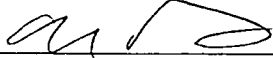
Of whom

**Ahava Hospice, Inc. f/k/a Ascension Hospice, Inc. and Lancelot Wright
are**

Appellants

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.


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**THE STATE OF SOUTH CAROLINA
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Lancelet Wright,**

Defendants,

Of whom

Ahava Hospice, Inc. f/k/a Ascension Hospice, Inc. and Lancelot Wright are

Appellants

CERTIFICATE OF SERVICE

This is to certify that on the 5th day of January, 2015 a true and correct copy of
Final Brief of Respondent was served via U.S. Mail, sufficient postage prepaid, to all
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Allcare Medical, LLC, Respondent,

v.

Ahava Hospice, Inc. f/k/a Ascension Hospice Inc.,
Robert A. Williams, and Lancelot D. Wright,
Defendants,

Of whom Ahava Hospice, Inc. f/k/a Ascension Hospice
Inc., and Lancelot D. Wright are the Appellants.

Appellate Case No. 2014-001316

Appeal From Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

Unpublished Opinion No. 2015-UP-307
Submitted June 1, 2015 – Filed June 24, 2015

AFFIRMED

Darryl D. Smalls, of Darryl D. Smalls, Attorney at Law,
of Columbia, for Appellants.

Alexandre Nicolas MacClenahan, of The MacClenahan
Law Firm, LLC, of Greenville, for Respondent.

PER CURIAM: Ahava Hospice, Inc. (Ahava) and Lancelot Wright appeal the circuit court's order granting summary judgment in favor of Allcare Medical, LLC (Allcare), arguing the circuit court erred in granting summary judgment when (1) no contract existed between Ahava and Allcare; (2) there is a genuine issue of fact whether Ahava is a successor in interest to Ascension Hospice, Inc.; and (3) there is a genuine issue of fact whether the promissory note signed by Wright was void because of duress. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Issues 1 and 2: *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006) ("When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court."); *McNaughton-McKay Elec. Co. of N.C. v. Andrich*, 324 S.C. 275, 279, 482 S.E.2d 564, 566 (Ct. App. 1997) ("Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."); *id.* ("Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ."); *id.* ("In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party."); *Simmons v. Mark Lift Indus., Inc.*, 366 S.C. 308, 312, 622 S.E.2d 213, 215 (2005) ("[I]n the absence of a statute, a successor or purchasing company ordinarily is not liable for the debts of a predecessor or selling company **unless** (1) there was an agreement to assume such debts, (2) the circumstances surrounding the transaction warrants a finding of a consolidation or merger of the two corporations, (3) the successor company was a mere continuation of the predecessor, or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims." (footnote omitted)).

2. As to Issue 3: *Holler v. Holler*, 364 S.C. 256, 266-67, 612 S.E.2d 469, 475 (Ct. App. 2005) ("The central question with respect to whether a contract was executed under duress is whether, considering all the surrounding circumstances, one party to the transaction was prevented from exercising his free will by threats or the wrongful conduct of another."); *id.* at 267, 612 S.E.2d at 475 ("In order to establish that a contract was procured through duress, three things must be proved: (1) coercion; (2) putting a person in such fear that he is bereft of the quality of mind essential to the making of a contract; and (3) that the contract was thereby obtained as a result of this state of mind."); *id.* ("The fear which makes it impossible for a person to exercise his own free will is not so much to be tested by the means employed to accomplish the act, as by the state of mind produced by the means invoked."); *id.* ("Duress is viewed with a subjective test which looks at the

individual characteristics of the person allegedly influenced, and duress does not occur if the victim has a reasonable alternative to succumbing and fails to take advantage of it.").

AFFIRMED.¹

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

RECEIVED
JUL 10 2015
SC Court of Appeals

**APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas**

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2014-001316

Unpublished Opinion No. 2015-UP-307
(S.C. Ct. App. filed June 24, 2015).

Allcare Medical, LLC, Respondent,
v.
**Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., Robert A. Williams, and
Lancelot D. Wright, Defendants,**
**Of whom Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., and Lancelot D.
Wright are the Petitioners**

**AMENDED PETITION FOR REHEARING OF APPELLANT AHAVA
HOSPICE INC.**

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INTRODUCTION

Pursuant to Rule 221(a) and Rule 240 (i), SCACR the Appellant Ahava Hospice, Inc. respectfully petitions this Court for a rehearing of Opinion No. 2015-UP-307 dated, June 24, 2015. Rehearing is warranted when the Court has overlooked or misapprehended an argument. *Kennedy v. S.C. Retirement System*, 349 S.C. 531, 564 S.E. 2d 322 (2001). When the Court fails to address some of the arguments raised in the appeal, "a prima facie case for rehearing has been made." *Covar v. Sallat*, 22 S.C. 265, 272 (1885)

STATEMENT OF THE CASE

In 2008, the plaintiff Allcare Medical entered into a contract with Ascension Hospice to provide durable medical equipment (DME) for hospice patients. *Record p. 40, See Exhibit 1 and Deposition Allcare CEO Ondrej Sliva*. In 2010 Allcare discussed outstanding invoices with Ascension, Robert Williams and Lance Wright. Allcare thru its CEO threatened to remove their equipment from the hospice patients unless Robert Williams and Lance Wright signed personal promissory notes for outstanding invoices. In 2011 Ahava Hospice, Inc. obtained some of Ascension's hospice patients and employees as Ascension ceased doing business. Ahava did not assume the debt of Ascension Hospice. *Record p. 212, Gray dep. P 19 L. 20-22* Allcare entered into unsuccessful negotiations to provide DME for Ahava Hospice. *Record p. 61, See Sliva Dep. P. 22 L 16-19 and Exhibit 3 Proposed contract*. Ahava never signed a contract with Allcare or agreed to continue using Allcare or pay Ascension's outstanding debt with Allcare. Allcare subsequently filed suit against Ahava Hospice, Inc. The plaintiff filed a motion for summary judgment, which after oral arguments was granted by Judge Hayes. Defendants appealed Judge

Hayes's order to the Court of Appeals. On appeal this Court affirmed and the petitioner now seeks a rehearing.

ARGUMENT

1. THE COURT APPEALS OPINION FAILED TO ADDRESS THE PETITIONER'S ARGUMENT THAT THE CIRCUIT COURT ORDER SHOULD BE REVERSED SINCE NO CONTRACT EXISTED BETWEEN AHAVA HOSPICE AND ALLCARE MEDICAL

The Court's opinion failed to address the Petitioner's argument that the circuit court order should be reversed since no contract existed between Ahava Hospice and Allcare Medical. In this case there is no breach of contract because there is no written signed agreement between Allcare Medical and Ahava. In addition there were no acceptance of an offer or agreement to terms of contract. The testimony of Ondrej Sliva CEO of Allcare supports the position that no contract exists. Sliva testified as follows:

There were no invoices for Ahava Hospice only invoices for Ascension Hospice. *Record p. 51, Sliva Dep. P. 12 L 22-24*

There was a signed contract with Ascension Hospice only dated March 2008. *Record p. 59, Sliva Dep. P 20 L 21-23*

Allcare unsuccessfully negotiated with Ahava for a contract. *Record p. 61, Sliva Dep. P 22 L 16-19. "I thought we would talk about a new contract for Ahava"*

No contract signed by Ahava. *Record p. 65, Sliva Dep. P 26 L 5-7 Dep. 27 L 8-10*

Allcare never received any payments from Ahava for equipment. *Record p. 66-67, Sliva Dep. P 27-28. L25*

Clearly, Allcare did not have a contract with Ahava and the summary judgment order against Ahava Hospice, Inc. should be reversed.

2. THE COURT OF APPEALS OPINION MISAPPREHENDS THE PETITIONER'S ARGUMENT THAT THERE IS A GENUINE ISSUE OF FACT WHETHER OR NOT AHAVA HOSPICE, INC. IS A SUCESSOR IN INTEREST TO ASCENSION HOSPICE.

The Court's Opinion addressing whether there is a genuine issue of fact is confusing and misapprehends the Petitioner's argument. In this case Ahava Hospice is not a successor for liability. The Circuit Court's ruling that Ahava Hospice is a successor company to Ascension Hospice is erroneous and fails to address the issues of fact. There is clearly a genuine question of fact whether Ahava is a mere continuation of Ascension. There are multiple factual issues that would require a jury trial. The ownership is almost entirely different. Only one principal from Ascension was involved with Ahava. *Record p. 200*, Gray Dep. P. 7 L. 10-15. Ahava was an existing corporation prior to obtaining some employees and some patients of Ascension. Ahava was incorporated in January 28, 2010. Ahava did not assume debts of Ascension. *Record p. 212*, Gray dep. P 19 L. 20-22 Ahava and Ascension were separate companies with separate Medicare numbers. *Record p. 306*, Gray Dep. P 113. L. 14-16. Prior to leasing office space in Irmo, South Carolina Ahava had offices in West Columbia and Sumter South Carolina. *Record p. 215*, Gray Dep. P. 22 L 1-4. Ahava did not utilize Ascension equipment but got new property leases and new equipment. *Record p. 213*, Gray Dep. P. 20 L. 1-2; *Record p. 216*, P 23 L. 7-8. Ahava Hospice did not purchase any assets of Ascension Hospice prior to or subsequent to its closing. *Record p. 220*, Gray Dep. P. 27. L. 11-12. Ahava Hospice did not agree to accept or

otherwise assume any liabilities, debts or obligations belonging to or incurred by Ascension Hospice. *Record p. 212*, Gray Dep. P.19 L. 20-22 Ahava Hospice only obtained about 30 or 40 percent of the patients from Ascension Hospice. *Record p. 217*, Gray Dep. P. 24, L 6-12. Ahava is an entirely separate company and not a continuation of Ascension and clearly the facts do not support the summary judgment order but creates a genuine issue of fact for a jury.

3. THE COURT OF APPEALS OPINION MISAPPREHENDS THE PETITIONER'S ARGUMENT THAT THERE IS A GENUINE ISSUE OF FACT OF DURESS.

In this case duress renders Mr. Wright's promissory note void and at a minimum defeats a motion for summary judgment. The facts as considered most favorably to the defendant are as follows: The CEO of Allcare Medical O Sliva stated in his deposition that he threatened to remove essential equipment from Ascension patients at the time Mr. Wright signed the promissory note. *Record p. 52*, See Sliva Dep. P 13 L 21-25. He went on to say he was going to "pull the trigger on pickups" of essential equipment. *Record p. 57*, Sliva dep. p 18 L 19-22 and *Record p. 58*, p. 19 L 1-12. Mr. Sliva clearly coerced Mr. Wright to sign the promissory note based on these threats.

Mr. Wright testified at his deposition " it was a duress situation"... "it was like an under the gun kind of deal with Ondrej said if he don't get something done he was going to pick that patient equipment up so it was a dire situation" "But I felt it was urgent it was dire and he needed me on this deal" *Record p. 147*, Wright p. 42 L. 23-24 "And because it was dire straits". *Record p. 149*, Wright Dep. P. 44 L. 16. Finally Mr. Wright testified, he was under belief that

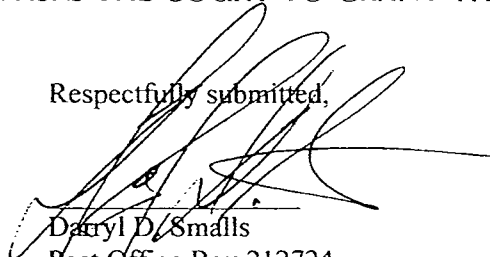
Allcare would pull equipment from the patients who were facing life-threatening illnesses therefore he signed the note. *Record p. 192, Wright Dep. P. 87 L. 10-16.* The facts show that there was coercion and that created a state of mind that Mr. Wright signing the promissory note was not of his free will. Mr. Wright's testimony creates a genuine question of fact to defeat summary judgment.

CONCLUSION

FOR THE REASONS STATED, PETITIONER ASKS THE COURT TO GRANT THE PETITION FOR REHEARING

July 10, 2015

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Judge, Spartanburg County

Appellate Case No. 2014-001316

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SC Court of Appeals

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v.

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Lancelot D. Wright,

f/k/a Ascension Hospice Inc., Robert A. Wright and

Defendants,

Of whom

Ahava Hospice, Inc. f/k/a Ascension Hospice Inc., and Lancelot Wright
are

Appellants

CERTIFICATE OF SERVICE

I CERTIFY THAT I HAVE SERVED THE PETITION BY DEPOSITING A COPY OF IT
IN THE UNITED STATES MAIL, POSTAGE PREPAID, JULY 9 ADDRESSED TO
ATTORNEY OF RECORD:

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July 9, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Judge, Spartanburg County

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July 10, 2015

The South Carolina Court of Appeals

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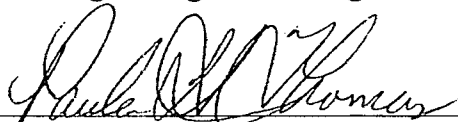
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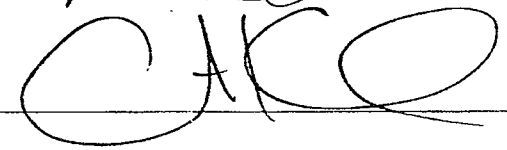
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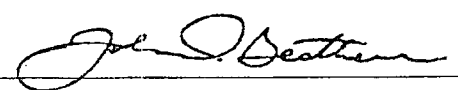
Appellate Case No. 2014-001316

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.


J.


J.

Columbia, South Carolina

FILED

August 20, 2015

cc: Darryl D. Smalls, Esquire
Alexandre Nicolas MacClenahan, Esquire
The Honorable J. Mark Hayes, II