

2012-208586

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

FEB 27 2012

Steven H John, Circuit Court Judge

SC Supreme Court

Case No 2007-CP-23-3206

North American Rescue Products, Inc ,

Respondent

v

P J Richardson,

Petitioner

APPENDIX - VOLUME I

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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Steven H John Circuit Court Judge

Case No 2007-CP-23-3206

North American Rescue Products Inc

Appellant/Respondent

v

P J Richardson

Respondent/Appellant

RECORD ON APPEAL
VOLUME I

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30528/1503

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

Steven H John Circuit Court Judge

Case No 07-CP-23-3206

North American Rescue Products, Inc

Appellant-Respondent,

v

P J Richardson

Respondent-Appellant

CERTIFICATE OF SERVICE

I Ann Shuler, an employee of the McNair Law Firm certify that I have served the RECORD ON APPEAL by depositing copies in the United States Mail, postage prepaid on August 25 2010 addressed to the attorneys of record as follows

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Ann Shuler

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Certificate of Counsel

1068

COLUMBIA 1010219v1

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

JUDGMENT IN A CIVIL CASE
CASE NO 2007CP2303206

North American Rescue Products Inc vs P J Richardson

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b) SCRPC ☐ Rule 41(a)
SCRPC (Vol Nonsuit) ☐ Rule 43(k) SCRPC (Settled) ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j) SCRPC ☐ Bankruptcy
- ☐ Binding arbitration subject to right to restore to confirm vacate or modify arbitration award
- ☐ Other _____

IT IS ORDERED AND ADJUDGED

☐ See attached order

☐ Statement of Judgment by the Court

Judgment for the Defendant under specific performance doctrine

Dated at Greenville, South Carolina this
29th day August, 2008.

Court Reporter *April Herron*

[Signature]
PRESIDING JUDGE Steven H John

This judgment was entered on the *29th day August, 2008* and a copy mailed first class this *29th day August, 2008* to attorneys of record or to parties (when appearing pro se) as follows

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP 24/FORM 4

Paul B Wickensimer Clerk of Court

CPFORM-1M

0001

APP_0006

VERDICT FORM

- 1 Did North American Rescue Products Inc and P J Richardson give each other the right to acquire 7.5% of each other's stock?

☒

Yes

No

- 2 Do you find that North American Rescue Products agreed to let P J Richardson acquire 7.5% of the capital stock of North American Rescue Products Inc in exchange for money rather than the issuance of 7.5% of capital stock?

☒

Yes

No

- 3 Can Both parties perform under the 2000 Agreement as amended in Charleston?

☒

Yes

No

- 4 Did the parties (North American Rescue Products Inc and P J Richardson) enter into a contract that is the November 2004 Termination, Settlement and Release Agreement?

☒

Yes

No

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2008 SEP - 2 A 10 44

- 5 If the Termination Settlement and Release Agreement is a contract does it end both parties' rights to acquire 7 5% of the capital stock of each other?

Yes No

a If you answer YES then answer Both i and ii

- i Did P J Richardson reasonably rely on North American Rescue Products Inc to his detriment?

Yes No

- ii Did North American Rescue Products Inc reasonably rely on P J Richardson to its detriment

Yes No

- 6 Do you find that P J Richardson was a Director of North American Rescue Products Inc when the Termination, Settlement and Release Agreement was entered into?

Yes No

a If you answer NO Sk p to Number 8

- 7 Did P J Richardson owe a fiduciary duty to North American Rescue Products Inc when the Termination Settlement and Release Agreement was entered into?

Yes No

- a If you answer NO skip to Number 8
- b If you answer YES, did P J Richardson breach a fiduciary duty owed to North American Rescue Products Inc ?

Yes No

- 1 If you answer NO skip to Number 8
- 11 If you answer YES, should P J Richardson return all or a portion of the \$50 000 paid to Mr Richardson as a Director of North American Rescue Products Inc ?

Yes No

- 1 If YES, how much?

\$

IMPORTANT INSTRUCTIONS FOR THE REMAINING QUESTIONS The Jury must look at both 8 and 9 and then must decide to answer 8 or 9 - not both! After answering 8 or 9, proceed to 9

8 Is P J Richardson entitled to receive 7 5% of the outstanding capital stock of North American Rescue Products Inc ?

X Yes No

a If you answer YES what should P J Richardson pay to North American Rescue Products for 7 5% of the common capital stock?

\$ 2,936,300 00

OR,

9 Did the parties enter into an agreement arising from the

 Yes No

a If you answer NO STOP and notify Bailiff

b If you answer YES

i Did P J Richardson offer to perform under the

 Yes No

i If NO STOP and notify Bailiff

ii If YES, Did North American Rescue Products breach the agreement?

 Yes No

i If you answer YES what damages if any should be paid to P J Richardson by North American Rescue Products Inc ?

a \$

Charles Varner
Foreman

STATL OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PI EAS
COUNTY OF GREENVILI E	)	
North American Rescue Products Inc	)	Civil Action No
	)	2007-CP-23- 3206
Plaintiff	)	
vs	)	COMPLAINT
P J Richardson	)	(Declaratory Judgment)
Defendant	)	(Non Jury)

The Plaintiff complaining of the Defendant would allege and show as follows

NATURE OF THE ACTION

1 This is an action for a declaratory judgment pursuant to S C Code Ann § 15 53
10 et seq

JURISDICTION

2 The Plaintiff is a Delaware corporation with headquarters in Greenville, SC
3 The Defendant maintains a residence in Greenville County South Carolina
4 Because the subject of this action concerns whether Defendant has a right to
purchase shares of stock in Plaintiff which is headquartered in Greenville County SC,
jurisdiction and venue are proper in this Court

FACTS

5 Defendant has demanded of Plaintiff that he be allowed to purchase 7 5% of the
stock of the Plaintiff at \$ 01 per share pursuant to an alleged option agreement between
Defendant and Plaintiff

0006

APP_0011

6 Plaintiff denies that such an option agreement exists, therefore an actual case or controversy exists between the parties because Plaintiff needs a determination of whether it has such an obligation as alleged by Defendant

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)**

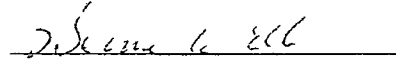
7 The foregoing paragraphs of this Complaint are incorporated herein

8 The demand made by Defendant to Plaintiff to purchase 7.5% of the stock of Plaintiff is improper because no right to do so exists

9 Based upon the foregoing the Plaintiff seeks a declaratory judgment that Defendant is not entitled to purchase any stock in Plaintiff

WHEREFORE having set forth its claim for declaratory relief the Plaintiff prays that the relief sought herein be granted that the Plaintiff be awarded his costs in bringing this action and for such other and further relief as this Court deems just and proper

Respectfully submitted



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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)
2007 AUG 14 11 53 AM JUDICIAL CIRCUIT

North American Rescue Products Inc) Civil Action No 2007 CP 23 3206

Plaintiff)
FILED CLERK OF COURT
GREENVILLE CO S

vs)

P J Richardson,)

Defendant)

ANSWER & COUNTERCLAIM
(Jury Trial Requested)

Defendant P J Richardson ('Richardson) answering the Complaint of Plaintiff
would respectfully show as follows

Unless specifically admitted all allegations in the Complaint are denied

FOR A FIRST DEFENSE

- 1 The allegations contained in Paragraph 1 are admitted
- 2 The allegations contained in Paragraph 2 are admitted
- 3 In relation to the allegations in Paragraph 3, Richardson admits that he owns a
condominium in Greenville County, South Carolina, where he intermittently stays while
visiting the area
- 4 In relation to the allegations in Paragraph 4, Richardson admits that he owns an
option or otherwise possesses a right to own and/or purchase, shares in Plaintiff which is
headquartered in Greenville County
- 5 In relation to the allegations in Paragraph 5 Richardson admits that he has
demanded that he be allowed to purchase 7.5% of the stock of Plaintiff at one cent (\$ 01) per
share pursuant to a binding agreement between the parties

6 In relation the allegations contained in Paragraph 6 Richardson admits that Plaintiff has wrongfully denied the existence of an agreement between North American Rescue Products Inc (NARP) and Richardson wherein 7 5% of the stock of Plaintiff would be delivered to Richardson at a price of one cent (\$ 01) per share

7 With respect to the allegations contained in Paragraph 7 of the Complaint Richardson is informed and believes that no response is necessary To the extent a response is required the Paragraph's allegations are denied

8 The allegations contained in Paragraph 8 of the Complaint are denied

9 The allegations contained in Paragraph 9 of the Complaint and the Prayer for Relief are denied

FOR A SECOND DEFENSE
(Failure to State a Claim)

10 The preceding paragraphs are incorporated herein by reference

11 Plaintiff s claims for declaratory relief fail to state a claim upon which relief can be granted

FOR A THIRD DEFENSE
(Estoppel)

12 The preceding paragraphs are incorporated herein by reference

13 Plaintiff s claims for declaratory relief are barred in whole or in part by the doctrine of estoppel

FOR A FOURTH DEFENSE
(Waiver)

14 The preceding paragraphs are incorporated herein by reference

15 Plaintiff's claims for declaratory relief are barred in whole, or in part by the doctrine of waiver

FOR A FIFTH DEFENSE
(Statute of Frauds)

16 The preceding paragraphs are incorporated herein by reference

17 Plaintiff's claims for declaratory relief are barred in whole or in part by the statute of frauds

FOR A SIXTH DEFENSE
(Ratification)

18 The preceding paragraphs are incorporated herein by reference

19 Plaintiff's claims for declaratory relief are barred in whole, or in part by the doctrine of ratification

FOR A SEVENTH DEFENSE
(Improper Declaratory Relief)

20 The preceding paragraphs are incorporated herein by reference

21 Under the facts of the instant case Plaintiff's claims for declaratory relief are improper under the South Carolina Declaratory Judgment Statute as codified at S C Code §15 53-10 *et seq*

IN THE ALTERNATIVE FOR AN EIGHTH DEFENSE
(Mutual Mistake)

22 The preceding paragraphs are incorporated herein by reference

23 In the alternative to the extent Plaintiff relies upon the doctrine of mutual mistake and to the extent a finding of the same is made by the fact finder in this case Richardson would be entitled to be restored to his original position of owning 25% of the outstanding stock in NARP because any agreements terminating superseding or modifying

that ownership interest would be null and void based upon Plaintiff's accepted proof of mutual mistake

FOR A NINTH DEFENSE & BY WAY OF COUNTERCLAIM
(Breach of Contract & Specific Performance)

24 The preceding paragraphs are incorporated herein by reference

25 NARP is a Delaware corporation with its principal place of business in Greenville, South Carolina. NARP is owned in part by Robert Castellani (Castellani)

26 Richardson and Castellani first met in 1994. At that time, NARP was in the business of selling stretchers for use by the military.

27 Richardson owned and operated a company named Reeves Manufacturing, Inc. (later renamed as the Reeves Group, Inc., treated collectively herein as "Reeves")

28 Between 1996 and 2000, Reeves and NARP began doing business with each other.

29 Cross-selling their respective customers became an important aspect of the two companies' business relationship.

30 While each company sold related products, NARP and Reeves frequently had different customers.

31 Frequently, Reeves' customers would buy from NARP and vice versa.

32 In January of 2000, Richardson (on behalf of Reeves and himself) and Castellani (on behalf of NARP and himself) executed an agreement (treated herein as "2000 Agreement") to formalize their respective companies' business relationship.

33 A copy of the parties' 2000 Agreement is attached hereto as Exhibit A and incorporated herein by reference.

34 Pursuant to the 2000 Agreement NARP and Reeves agreed to pay each other commissions equal to 25% of the taxable income of their companies for cross-selling each other's respective products (Exhibit A p 1 ¶4)

35 Also according to the 2000 Agreement Richardson and Castellani each agreed on behalf of Reeves and NARP to issue to each other 25% of the capital stock of their respective companies (Exhibit A p 1 ¶7) Although this stock was never physically issued and exchanged it was understood that each held a 25% interest in the other's company

36 For years the parties operated under the 2000 Agreement and cooperatively assisted each other in growing both companies

37 Some time in 2004 the parties began to rethink the 25% share of capital stock in each other's companies

38 In the Fall of 2004 the parties agreed to amend the percentage each owned in the other party's company from 25% to 7.5% of the common capital stock

39 The parties reduced the 7.5% interest to writing in a "Stock Option Agreement" (treated herein as 'Option Agreement') dated October 4, 2004

40 The Option Agreement is attached hereto as Exhibit B and incorporated herein by reference

41 As provided for in the Option Agreement Richardson obtained an option to purchase 7.5% of the common capital stock in NARP for a price of one cent (\$ 01) per share (Exhibit B p 1 ¶2.2)

42 The Option Agreement further stated Optionee has been elected as a member of the board of directors of NARP Because of his experience and skills it is anticipated that

he will make valuable contributions to the management of NARP in the best interest of NARP and its stockholders (Exhibit B p 1 Recital A)

43 Pursuant to Article 2.1 of the Option Agreement the term of the option lasted for a period of ten (10) years from the date the agreement was executed (Exhibit B p 1 Art 2.2)

44 In November of 2004 the parties executed a companion agreement entitled "Termination Settlement and Release" (treated herein as ' Termination Agreement ')

45 A copy of this agreement is attached hereto as Exhibit C and is incorporated herein by reference

46 Under the terms and conditions of the Termination Agreement both parties released each other from obligations owed under the 2000 Agreement (Exhibit C p 1 ¶3)

47 However, the Termination Agreement specifically reserved Richardson's option right to purchase 7.5% of the outstanding NARP stock

48 Richardson's option rights as conferred by the Option Agreement were kept fully intact under the Termination Agreement

49 The option to purchase 7.5% of the outstanding NARP stock for one cent (\$ 01) per share constituted a material term of the Termination Agreement for Richardson

50 Richardson would not have executed the Termination Agreement if it did not specifically contain this provision

51 Richardson has made a demand to purchase 7.5% of NARP's outstanding stock at one cent (\$ 01) per share as previously agreed upon by the parties

52 Richardson's Option Agreement from October of 2004 constitutes a valid and binding contract between the parties

53 By and through its attorney NARP has refused to honor Richardson's right to purchase 7.5% of NARP's outstanding stock for one cent (\$.01) per share. NARP has therefore breached the Option Agreement with Richardson.

54 Through the Option Agreement Richardson has a right to own 7.5% of the outstanding stock in NARP. Such stock constitutes a unique property interest for which money damages may not adequately compensate Richardson.

55 Richardson is entitled to specific performance of the Option Contract along with money damages accruing during the interim period during which Plaintiff has failed to perform.

56 Alternatively Richardson is entitled to recoup money damages from NARP in an amount equivalent to the value of 7.5% of the NARP stock along with any consequential or interim damages.

57 Alternatively if the Option Agreement and the Termination Agreement are deemed unenforceable due to a finding of mutual mistake of the parties or other legal grounds, Richardson is entitled to be restored to his original ownership position in NARP under the 2000 Agreement. Under such circumstances Defendant is entitled to specific performance of the 2000 Agreement with Plaintiff returning to Richardson his 25% interest in the outstanding shares of NARP plus all payments he was entitled to but did not receive from the date of the attempted but failed termination/modification of the 2000 Agreement.

58 Alternatively Richardson would be entitled to money damages in an amount equal to 25% of the NARP stock as determined by a jury along with all payments he would have been entitled to but did not receive had the parties not attempted to terminate the 2000 Agreement in the first instance.

FOR A TENTH DEFENSE & BY WAY OF COUNTERCLAIM
(Promissory Estoppel)

59 The preceding paragraphs are incorporated herein by reference

60 By and through Castellani Plaintiff made an unambiguous promise to Richardson that he would be able to purchase 7.5% of NARP's stock for one cent (\$.01) per share

61 Richardson reasonably relied upon Plaintiff and/or Castellani's promise with respect to his ability to purchase 7.5% of NARP's outstanding stock

62 Richardson's reliance on Plaintiff's/Castellani's promise was expected and foreseeable by Plaintiff and Castellani

63 Richardson has sustained financial injury as a result of his reliance upon Castellani's/Plaintiff's unambiguous promise

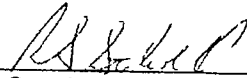
64 Accordingly, Richardson is entitled to recover damages in an amount that would restore him to the position he would have attained had Plaintiff and Castellani fulfilled their promise

WHEREFORE having fully answered the Complaint of the Plaintiff Defendant prays for the following

- A A dismissal of Plaintiff's Complaint with prejudice,
- B The relief of specific performance as requested herein,
- C Alternatively damages in an amount determined by the jury
- D All other relief this Court deems just and proper

NELSON MULLINS RILEY & SCARBOROUGH LLP

By


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Attorneys for P J Richardson

Greenville South Carolina

Aug 17 2007

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)
2008 JUN 27 P 4 28 Civil Action No 2007 CP-23 3206
North American Rescue Products,)
Inc,)
Plaintiff,)
vs)
P J Richardson)
Defendant)

FIRST AMENDED COMPLAINT
(Declaratory Judgment and
Equitable Relief)

The Plaintiff, complaining of the Defendant would allege and show as follows

NATURE OF THE ACTION

1 This is an action for a declaratory judgment pursuant to S C Code Ann § 15 53-10 et seq and for equitable relief

JURISDICTION

2 The Plaintiff is a South Carolina corporation with headquarters in Greenville South Carolina

3 The Defendant maintains a residence in South Carolina

4 Because the subject of this action concerns whether Defendant has a right to purchase shares of stock in Plaintiff which is headquartered in Greenville County South Carolina jurisdiction and venue are proper in this Court

FACTS

5 Defendant has demanded of Plaintiff that he be allowed to purchase 7 5% of the stock of the Plaintiff at \$01 per share pursuant to an alleged option agreement between Defendant and Plaintiff or, in the alternative, that if no such option exists, that Defendant be

0018

APP_0023

recognized as the owner of stock of NARP pursuant to a prior agreement among NARP, Reeves Manufacturing, Inc , Robert Castellani and Defendant

6 Plaintiff denies that such an option agreement exists that Defendant has any right to own any of the stock of NARP, or that Defendant has any rights whatsoever with respect to NARP, therefore an actual case or controversy exists between the parties because Plaintiff needs a determination of whether it has such an obligation as alleged by Defendant

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)**

7 The foregoing paragraphs of this Complaint are incorporated herein

8 The demand made by Defendant to Plaintiff to purchase or otherwise own an interest in the capital stock of Plaintiff is improper because no right to do so exists

9 Based upon the foregoing the Plaintiff seeks a declaratory judgment that Defendant is not entitled to purchase any stock in Plaintiff

**FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)**

10 The foregoing paragraphs of the Complaint are incorporated herein

11 In September 2004, Defendant was elected to the board of directors of Plaintiff, and was compensated \$50,000 00 for his service as such

12 In a meeting held at Atlanta Georgia in October 2004, Defendant with legal counsel and Plaintiff with legal counsel held discussions regarding Defendant's acquisition of a 7 5% interest in Plaintiff but no agreement was reached other than that the Defendant would release any claim he had to ownership in Plaintiff, and Robert A Castellani, president and majority stockholder of Plaintiff would release any claim to ownership in Defendant's company, Reeves Manufacturing, Inc

13 On or before November 14, 2004, while serving on Plaintiff's board, Defendant proffered a document to Mr. Castellani titled 'Agreement of Termination, Settlement and Release (Release)', which Defendant represented was consistent with the agreements of the October 2004 meeting.

14 The provisions of the Release at paragraphs 3 and 4 thereof refer to a separate option for Defendant to purchase 7.5% of the stock of Plaintiff pursuant to the terms of a 'separate Option Agreement dated 15 Dec, 2004'.

15 As a member of the board of directors of Plaintiff, Defendant owed duties to Plaintiff and its shareholders in accordance with applicable law and with Plaintiff's articles of incorporation including a duty of loyalty and a duty to avoid realizing improper benefits from his relationship to Plaintiff.

16 In breach of those duties, Defendant sought to obtain for himself an option to acquire the stock of NARP without regard to whether the consideration for that stock was adequate and without regard to whether the issuance of such an option was in the best interests of NARP.

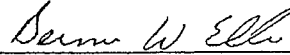
17 Though Defendant's claim to be entitled to acquire or otherwise own stock in Plaintiff is invalid because no option was finally entered into, his attempt to do so in a manner detrimental to the best interests of NARP was a breach of his fiduciary duty.

18 Based upon Defendant's breach of his fiduciary duty, it would be inequitable to allow him to retain the \$50,000.00 fee he was paid, and he should be required to disgorge it.

WHEREFORE, having set forth its claim for declaratory and equitable relief, the Plaintiff prays that the relief sought herein be granted, that the Plaintiff be awarded its costs in bringing

this action for pre judgment interest and for such other and further relief as this Court deems just and proper

Respectfully submitted,



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Attorney for the Plaintiff

Greenville, SC
June 27 2008

1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2018 MAR 17 AM 10 13
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
North American Rescue Products Inc	)	Civil Action No 2007 CP 23 3206
	)	
Plaintiff	)	
	)	
vs	)	<u>AMENDED ANSWER &</u>
	)	<u>COUNTERCLAIM</u>
PJ Richardson	)	(Jury Trial Requested)
	)	
Defendant	)	

Defendant P J Richardson (Richardson) answering the First Amended Complaint
(reated simply as 'Complaint') of Plaintiff would respectfully show as follows

Unless specifically admitted all allegations in the Complaint are denied

FOR A FIRST DEFENSE

1 The allegations contained in Paragraph 1 are admitted

2 The allegations contained in Paragraph 2 are admitted

3 In relation to the allegations in Paragraph 3 Richardson admits that he owns a
condominium in Greenville County South Carolina where he intermittently stays while
visiting the area

4 In relation to the allegations in Paragraph 4 Richardson admits that he owns an
option or otherwise possesses a right to own and/or purchase shares in Plaintiff which is
headquartered in Greenville County

5 In relation to the allegations in Paragraph 5 Richardson admits that he has
demanded that he be allowed to purchase 7.5% of the stock of Plaintiff at one cent (\$ 01) per
share. In the alternative Richardson also admits that he would be entitled to own no less than
7.5% of NARP's stock if the parties' option agreement is deemed unenforceable. To the

content the allegations contained in Paragraph 5 of the Complaint differ from the same they are denied

6 In relation to the allegations contained in Paragraph 6 Richardson admits that Plaintiff has wrongfully denied the existence of an agreement between North American Rescue Products Inc (NARP) and Richardson wherein 7 5% of the stock of Plaintiff would be delivered to Richardson at a price of one cent (\$ 01) per share Alternatively if the option agreement is deemed unenforceable Richardson further admits that NARP has wrongfully refused to acknowledge his 7 5% ownership interest in NARP under a prior stock agreement To the extent the allegations contained in Paragraph 6 differ from the same they are denied

7 With respect to the allegations contained in Paragraph 7 of the Complaint Richardson is informed and believes that no response is necessary To the extent a response is required the Paragraph s allegations are denied

8 The allegations contained in Paragraph 8 of the Complaint are denied

9 The allegations contained in Paragraph 9 of the Complaint are denied

10 With respect to the allegations contained in Paragraph 10 of the Complaint Richardson is informed and believes that no response is necessary To the extent a response is required the Paragraph s allegations are denied

11 With respect to the allegations contained in Paragraph 11 of the Complaint Richardson admits that he was elected to the board of directors of Plaintiff and was compensated for the same In relation to the more specific allegations Richardson craves reference to the applicable business documents that would reflect such information

12 In response to the allegations contained in Paragraph 12 of the Complaint Richardson admits that a meeting occurred in Atlanta Georgia in the fall of 2004 and that legal counsel was present All remaining allegations in the Paragraph are denied

13 In response to the allegations contained in Paragraph 13 of the Complaint Richardson admits that he delivered to Robert Castellani a document entitled, Agreement of Termination Settlement and Release Richardson further admits that the document was consistent with the parties' agreement from Atlanta and was a component part of an overall agreement reached by the parties

14 In relation to Paragraph 14 of the Complaint Richardson craves reference to the document cited in the Paragraph To the extent the Paragraph's allegations differ from the same they are denied Richardson would further show that the document cited in the Paragraph was a component part of an overall deal which he was informed and believed was reached by the parties

15 The allegations contained in Paragraph 15 of the Complaint constitute conclusions of law for which no response is necessary However Richardson does acknowledge that as a member of the Board of Directors of NARP he owed certain duties and obligations to NARP which he honored

16 Richardson denies the allegations contained in Paragraph 16 of the Complaint

17 Richardson denies the allegations contained in Paragraph 17 of the Complaint

18 Richardson denies the allegations contained in Paragraph 18 of the Complaint and the Prayer for Relief

FOR A SECOND DEFENSE
(Failure to State a Claim)

- 19 The preceding paragraphs are incorporated herein by reference
- 20 Plaintiff s claims for relief fail to state a claim upon which relief can be granted

FOR A THIRD DEFENSE
(Estoppel)

- 21 The preceding paragraphs are incorporated herein by reference
- 22 Plaintiff s claims for relief are barred in whole or in part by the doctrine of
estoppel

FOR A FOURTH DEFENSE
(Waiver)

- 23 The preceding paragraphs are incorporated herein by reference
- 24 Plaintiff s claims for relief are barred in whole or in part, by the doctrine of
waiver

FOR A FIFTH DEFENSE
(Statute of Frauds)

- 25 The preceding paragraphs are incorporated herein by reference
- 26 Plaintiff s claims for relief are barred in whole or in part by the statute of
frauds

FOR A SIXTH DEFENSE
(Ratification)

- 27 The preceding paragraphs are incorporated herein by reference
- 28 Plaintiff s claims for relief are barred in whole or in part by the doctrine of
ratification

FOR A SEVENTH DEFENSE
(Improper Declaratory Relief)

29 The preceding paragraphs are incorporated herein by reference

30 Under the facts of the instant case, Plaintiff's claims for declaratory relief are improper under the South Carolina Declaratory Judgment Statute as codified at S.C. Code §15-10 *et seq*

IN THE ALTERNATIVE FOR AN EIGHTH DEFENSE
(Mutual Mistake)

31 The preceding paragraphs are incorporated herein by reference

32 In the alternative to the extent Plaintiff relies upon the doctrine of mutual mistake and to the extent a finding of the same is made by the fact-finder in this case, Richardson would be entitled to be restored to his original position of owning no less than 75% of the outstanding stock in NARP because any agreements terminating, superseding or modifying that ownership interest would be null and void based upon Plaintiff's accepted proof of mutual mistake

FOR A NINTH DEFENSE
(Statute of Limitations)

33 The preceding paragraphs are incorporated herein by reference

34 Plaintiff's claim for breach of fiduciary duty is barred by the applicable statute of limitations

FOR A TENTH DEFENSE
(Laches)

35 The preceding paragraphs are incorporated herein by reference

36 Plaintiff's claim for breach of fiduciary duty is barred by the doctrine of laches

FOR AN ELEVENTH DEFENSE & BY WAY OF COUNTERCLAIM
(Breach of Contract & Specific Performance)

37 The preceding paragraphs are incorporated herein by reference

38 NARP is a Delaware corporation with its principal place of business in Greenville, South Carolina. NARP is owned in part by Robert Castellani (Castellani)

39 Richardson and Castellani first met in 1994. At that time, NARP was in the business of selling stretchers for use by the military.

40 Richardson owned and operated a company named Reeves Manufacturing, Inc. (later renamed as the Reeves Group, Inc., treated collectively herein as Reeves)

41 Between 1996 and 2000, Reeves and NARP began doing business with each other.

42 Cross selling their respective customers became an important aspect of the two companies' business relationship.

43 While each company sold related products, NARP and Reeves often had different customers.

44 Frequently, Reeves' customers would buy from NARP and vice versa.

45 In January of 2000, Richardson (on behalf of Reeves and himself) and Castellani (on behalf of NARP and himself) executed an agreement (treated herein as 2000 Agreement) to formalize their respective companies' business relationship.

46 A copy of the parties' 2000 Agreement is attached hereto as Exhibit A and incorporated herein by reference.

47 Pursuant to the 2000 Agreement NARP and Reeves agreed to pay each other commissions equal to 25% of the taxable income of their companies for cross selling each other's respective products (Exhibit A p 1 ¶4)

48 Also according to the 2000 Agreement Richardson and Castellani each agreed on behalf of Reeves and NARP to issue to each other 25% of the capital stock of their respective companies (Exhibit A p 1 ¶7) Although this stock was never physically issued and exchanged it was understood that each held a 25% interest in the other's company

49 For years the parties operated under the 2000 Agreement and cooperatively assisted each other in growing both companies

50 Several years later the parties began to rethink the 25% share of capital stock in each other's companies

51 The parties agreed to amend the percentage each owned in the other party's company from 25% to 7.5% of the common capital stock No formal writing was ever executed in relation to the reduction of the parties' ownership interest but both parties agree such a reduction in ownership occurred

52 In the fall of 2004 the parties met in Atlanta (Atlanta Meeting) and once again endeavored to restructure their respective ownership interests in each other's companies

53 During this meeting Richardson believed that he had reached a new agreement with Castellani and NARP Under the new arrangement Castellani agreed to release his interest in Reeves Manufacturing (Reeves) in exchange for 7.5% of the proceeds from the sale of Reeves which was imminently to occur Richardson likewise agreed to release his interest in NARP in exchange for an option to purchase 7.5% of the stock in NARP Each term of the parties' agreement was dependent upon the other terms Under such terms but

Only under such terms Richardson agreed to release his ownership interest in NARP in exchange for an option to purchase 7.5% of NARP stocks for \$.01 per share.

54 The parties memorialized the 7.5% interest contemplated by this arrangement in a document entitled "Stock Option Agreement" (treated herein as "Option Agreement") dated October 4, 2004.

55 The Option Agreement is attached hereto as Exhibit B and incorporated herein by reference.

56 As provided for in the Option Agreement, Richardson obtained an option to purchase 7.5% of the common capital stock in NARP for a price of one cent (\$.01) per share (Exhibit B, p. 1 ¶ 2.2).

57 The Option Agreement further stated: "Optionee has been elected as a member of the board of directors of NARP. Because of his experience and skills it is anticipated that he will make valuable contributions to the management of NARP in the best interest of NARP and its stockholders." (Exhibit B, p. 1 Recital A.)

58 Pursuant to Article 2.1 of the Option Agreement, the term of the option lasted for a period of ten (10) years from the date the agreement was executed. (Exhibit B, p. 1 Art. 2.2.) The parties similarly agreed to execute a companion document entitled "Termination Settlement and Release" (treated herein as "Termination Agreement").

59 A copy of this agreement is attached hereto as Exhibit C and is incorporated herein by reference.

60 Under the terms and conditions of the agreement reached at the Atlanta Meeting, both parties released each other from obligations owed under the 2000 Agreement as modified. (Exhibit C, p. 1 ¶ 3.) However, as also contemplated by the parties in Atlanta, the

Termination Agreement specifically reserved Richardson's option right to purchase 7.5% of the outstanding NARP stock.

61 For Richardson, the option to purchase 7.5% of the outstanding NARP stock for one cent (\$0.01) per share constituted a material term of the overall agreement reached by the parties in Atlanta.

62 Richardson would not have executed the Termination Agreement if NARP had not promised to execute the Option Contract and if he did not believe the parties otherwise had a binding agreement embracing all component parts of the overall agreement.

63 NARP and Cristellani now contend that Richardson has neither a 7.5% ownership interest in NARP nor an option to purchase 7.5% of NARP's outstanding stock.

64 Richardson has made a demand to purchase 7.5% of NARP's outstanding stock at one cent (\$0.01) per share as previously agreed upon by the parties.

65 The parties' agreement in Atlanta and Richardson's Option Agreement from October of 2004 constitute valid and binding contracts between the parties.

66 By and through its attorney, NARP has refused to honor Richardson's right to purchase 7.5% of NARP's outstanding stock for one cent (\$0.01) per share. However, NARP simultaneously contends (mistakenly) that Richardson has released his interest in NARP.

67 NARP has therefore breached the overall agreement and the Option Agreement with Richardson.

68 Through the Option Agreement, Richardson has a right to own 7.5% of the outstanding stock in NARP. Such stock constitutes a unique property interest for which money damages may not adequately compensate Richardson.

69 Richardson is entitled to specific performance of the overall agreement and the Option Contract along with money damages accruing during the interim period during which Plaintiff has failed to perform

70 Alternatively, Richardson is entitled to recoup money damages from NARP in an amount equivalent to the value of his 7.5% option interest of the NARP stock along with any consequential or interim damages

71 NARP has taken the position that the Option Agreement and the remaining documents memorializing the balance of the components of the overall agreement fail to constitute enforceable agreements. If true, Richardson would revert to his prior ownership interest of 7.5% of NARP. Thus, Richardson is alternatively entitled to specific performance of his prior agreement with NARP wherein he possessed a 7.5% ownership interest of the NARP stock.

72 Alternatively, Richardson would be entitled to money damages in an amount equal to no less than 7.5% of the NARP stock as determined by a jury along with all payments he would have been entitled to but did not receive had the parties not attempted to terminate the 2000 Agreement in the first instance.

FOR A TENTH DEFENSE & BY WAY OF COUNTERCLAIM
(Promissory Estoppel)

73 The preceding paragraphs are incorporated herein by reference.

74 By and through Castellani, Plaintiff made an unambiguous promise that Richardson possessed a 7.5% ownership interest in NARP.

75 By and through Castellani Plaintiff further made an unambiguous promise to Richardson that he would be able to purchase 7.5% of NARP's stock for one cent (\$.01) per share.

76 Richardson reasonably relied upon Plaintiff and/or Castellani's promise (on Plaintiff's behalf) with respect to his ownership interest in NARP.

77 Richardson reasonably relied upon Plaintiff and/or Castellani's promise (on Plaintiff's behalf) with respect to his ability to purchase 7.5% of NARP's outstanding stock.

78 Richardson's reliance on Plaintiff's/Castellani's promises in both regards was expected and foreseeable by Plaintiff and Castellani.

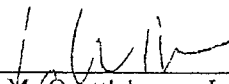
79 Richardson has sustained financial injury as a result of his reliance upon Castellani's/Plaintiff's unambiguous promises.

80 Accordingly, Richardson is entitled to recover damages in an amount that would restore him to the position he would have attained had Plaintiff and Castellani fulfilled their promise.

WHEREFORE having fully answered the Complaint of the Plaintiff Defendant prays
for the following

- A A dismissal of Plaintiff's Complaint with prejudice
- B The relief of specific performance as requested herein
- C Alternatively damages in an amount determined by the jury
- D All other relief this Court deems just and proper

NELSON MULLINS RILEY & SCARBOROUGH LLP

By 
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Attorneys for P J Richardson

Greenville South Carolina

7/12 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
North American Rescue Products Inc	)	Civil Action No. 2007 CP 23 3206
	)	
Plaintiff	)	
	)	
vs	)	<u>REVISED AMENDED ANSWER &</u>
	)	<u>COUNTERCLAIM</u>
P J Richardson	)	(Jury Trial Requested)
	)	
Defendant	)	

2008 JUL 25 P 3:16

Defendant P J Richardson (Richardson) answering the First Amended Complaint (treated simply as Complaint) of Plaintiff would respectfully show as follows

Unless specifically admitted all allegations in the Complaint are denied

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5 In relation to the allegations in Paragraph 5 Richardson admits that he has demanded that he be allowed to purchase 7.5% of the stock of Plaintiff at one cent (\$ 01) per share. In the alternative Richardson also admits that he would be entitled to own no less than 7.5% of NARP's stock if the parties' option agreement is deemed unenforceable. To the

extent the allegations contained in Paragraph 5 of the Complaint differ from the same they are denied

6 In relation to the allegations contained in Paragraph 6 Richardson admits that Plaintiff has wrongfully denied the existence of an agreement between North American Rescue Products Inc (NARP) and Richardson wherein 7.5% of the stock of Plaintiff would be delivered to Richardson at a price of one cent (\$ 01) per share. Alternatively if the option agreement is deemed unenforceable Richardson further admits that NARP has wrongfully refused to acknowledge his 7.5% ownership interest in NARP under a prior stock agreement. To the extent the allegations contained in Paragraph 6 differ from the same they are denied

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FOR A SECOND DEFENSE

(Failure to State a Claim)

- 19 The preceding paragraphs are incorporated herein by reference
- 20 Plaintiff's claims for relief fail to state a claim upon which relief can be granted

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- 21 The preceding paragraphs are incorporated herein by reference
- 22 Plaintiff's claims for relief are barred in whole or in part by the doctrine of
estoppel

FOR A FOURTH DEFENSE

(Waiver)

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- 24 Plaintiff's claims for relief are barred in whole or in part by the doctrine of
waiver

FOR A FIFTH DEFENSE

(Statute of Frauds)

- 25 The preceding paragraphs are incorporated herein by reference
- 26 Plaintiff's claims for relief are barred in whole or in part by the statute of
frauds

FOR A SIXTH DEFENSE

(Ratification)

- 27 The preceding paragraphs are incorporated herein by reference
- 28 Plaintiff's claims for relief are barred in whole or in part by the doctrine of
ratification

FOR A SEVENTH DEFENSE
(Improper Declaratory Relief)

29 The preceding paragraphs are incorporated herein by reference

30 Under the facts of the instant case Plaintiff's claims for declaratory relief are
improper under the South Carolina Declaratory Judgment Statute as codified at S.C. Code §15
53-10 *et seq*

IN THE ALTERNATIVE FOR AN EIGHTH DEFENSE
(Mutual Mistake)

31 The preceding paragraphs are incorporated herein by reference

32 In the alternative, to the extent Plaintiff relies upon the doctrine of mutual
mistake and to the extent a finding of the same is made by the fact finder in this case
Richardson would be entitled to be restored to his original position of owning no less than
7.5% of the outstanding stock in NARP because any agreements terminating, superseding or
modifying that ownership interest would be null and void based upon Plaintiff's accepted proof
of mutual mistake

FOR A NINTH DEFENSE
(Statute of Limitations)

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34 Plaintiff's claim for breach of fiduciary duty is barred by the applicable statute
of limitations

FOR A TENTH DEFENSE
(Laches)

35 The preceding paragraphs are incorporated herein by reference

36 Plaintiff's claim for breach of fiduciary duty is barred by the doctrine of laches

FOR AN ELEVENTH DEFENSE & BY WAY OF COUNTERCLAIM
(Breach of Contract & Specific Performance)

37 The preceding paragraphs are incorporated herein by reference

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39 Richardson and Castellani first met in 1994. At that time, NARP was in the business of selling stretchers for use by the military.

40 Richardson owned and operated a company named Reeves Manufacturing, Inc. (treated herein as Reeves)

41 Between 1996 and 2000, Reeves and NARP began doing business with each other.

42 Cross-selling their respective customers became an important aspect of the two companies' business relationship.

43 While each company sold related products, NARP and Reeves often had different customers.

44 Frequently, Reeves' customers would buy from NARP and vice versa.

45 In January of 2000, Richardson (on behalf of Reeves and himself) and Castellani (on behalf of NARP and himself) executed an agreement (treated herein as 2000 Agreement) to formalize their respective companies' business relationship.

46 A copy of the parties' 2000 Agreement is attached hereto as Exhibit A and incorporated herein by reference.

47 Pursuant to the 2000 Agreement NARP and Reeves agreed to pay each other commissions equal to 25% of the taxable income of their companies for cross selling each other's respective products (Exhibit A p 1 ¶4)

48 Also according to the 2000 Agreement Richardson and Castellani each agreed on behalf of Reeves and NARP to issue to each other 25% of the capital stock of their respective companies (Exhibit A p 1 ¶7) Although this stock was never physically issued and exchanged it was understood that each held a 25% interest in the other's company

49 For years the parties operated under the 2000 Agreement and cooperatively assisted each other in growing both companies Throughout this time both Richardson and Castellani acknowledged a 25% ownership interest in each other's companies

50 Several years later the parties began to rethink the 25% ownership interest in each other's companies

51 The parties agreed to amend the percentage each owned in the other party's company from a 25% to 7.5% ownership interest No formal writing was ever executed in relation to the reduction of the parties' ownership interest but both parties agree such a reduction in ownership occurred

52 Throughout the fall of 2004 the parties discussed treating Richardson's ownership interest as an option to purchase stock The parties exchanged draft option agreements reflecting their agreement that Richardson owned a 7.5% equity interest in NARP A copy of these draft option agreements is attached hereto as Exhibit B The draft option agreements reflected that Richardson would have the right to purchase 7.5% of NARP's stock at \$.01 per share

53 In October of 2004 the parties met in Atlanta (Atlanta Meeting) and once again endeavored to restructure their respective ownership interests in each other's companies.

54 Out of this meeting the parties reached a new agreement. Under the new arrangement Castelli agreed to release his interest in Reeves Manufacturing (Reeves) in exchange for 7.5% of the proceeds from the sale of Reeves which was imminently to occur. Richardson likewise agreed to release his interest in NARP in exchange for an option to purchase 7.5% of the stock in NARP (Option Agreement). Each term of the parties' overall agreement was dependent upon the other terms. Under such terms but only under such terms Richardson agreed to release his ownership interest in NARP in exchange for an option to purchase 7.5% of NARP's stock for \$.01 per share as previously discussed by the parties.

55 In November of 2004 the parties executed a companion document entitled Termination Settlement and Release (treated herein as Termination Agreement).

56 A copy of this agreement is attached hereto as Exhibit C and is incorporated herein by reference.

57 Under the terms and conditions of the agreement arising out of the Atlanta Meeting both parties released each other from obligations owed under the 2000 Agreement as modified (Exhibit C p. 1 ¶3). However as also contemplated by the parties in Atlanta the Termination Agreement specifically reserved Richardson's option right to purchase 7.5% of the outstanding NARP stock.

58 For Richardson the option to purchase 7.5% of the outstanding NARP stock for one cent (\$.01) per share constituted a material term of the overall agreement reached by the parties arising out of the Atlanta meeting.

59 Richardson would not have executed the Termination Agreement if NARP had not promised to execute the Option Agreement (or some other mutually acceptable means of preserving his 7.5% interest in NARP in exchange for 7.5% of the proceeds of the Reeves sale) and if he did not believe the parties otherwise had a binding agreement embracing all component parts of the overall agreement.

60 NARP and Castellini now contend that Richardson has neither a 7.5% ownership interest in NARP nor an option to purchase 7.5% of NARP's outstanding stock.

61 Richardson has made a demand to purchase 7.5% of NARP's outstanding stock at one cent (\$0.01) per share as previously agreed upon by the parties.

62 The parties' overall agreement arising out of the Atlanta meeting, including Richardson's Option Agreement, constitute valid and binding terms of a contract between the parties.

63 By and through its attorney, NARP has refused to honor Richardson's right to purchase 7.5% of NARP's outstanding stock for one cent (\$0.01) per share. However, NARP simultaneously contends (mistakenly) that Richardson has released his interest in NARP.

64 NARP has therefore breached the overall agreement, including the Option Agreement, with Richardson.

65 Through the Option Agreement, Richardson has a right to own 7.5% of the outstanding stock in NARP. Such stock constitutes a unique property interest for which money damages may not adequately compensate Richardson.

66 Richardson is entitled to specific performance of the overall agreement and the Option Contract, along with money damages accruing during the interim period during which Plaintiff has failed to perform.

67 Alternatively Richardson is entitled to recoup money damages from NARP in an amount equivalent to the value of his 7.5% option interest of the NARP stock along with any consequential or interim damages.

68 NARP has taken the position that the Option Agreement and the remaining documents memorializing the balance of the components of the overall agreement fail to constitute enforceable agreements. If true, Richardson would revert to his prior ownership interest of 7.5% of NARP. Thus, Richardson is alternatively entitled to specific performance of his prior agreement with NARP wherein he possessed a 7.5% ownership interest of the NARP stock.

69 Alternatively, Richardson would be entitled to money damages in an amount equal to no less than 7.5% of the NARP stock as determined by a jury along with all payments he would have been entitled to but did not receive had the parties not attempted to terminate the 2000 Agreement in the first instance.

FOR A TENTH DEFENSE & BY WAY OF COUNTERCLAIM
(Promissory Estoppel)

70 The preceding paragraphs are incorporated herein by reference.

71 By and through Castellani, Plaintiff made an unambiguous promise that Richardson possessed a 7.5% ownership interest in NARP.

72 By and through Castellani, Plaintiff further made an unambiguous promise to Richardson that he would be able to purchase 7.5% of NARP's stock for one cent (\$.01) per share.

73 Richardson reasonably relied upon Plaintiff and/or Castellani's promise (on Plaintiff's behalf) with respect to his ownership interest in NARP.

74 Richardson reasonably relied upon Plaintiff and/or Castellani's promise (on Plaintiff's behalf) with respect to his ability to purchase 7.5% of NARP's outstanding stock.

75 Richardson's reliance on Plaintiff's/Castellani's promises in both regards was expected and foreseeable by Plaintiff and Castellani.

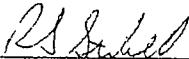
76 Richardson has sustained financial injury as a result of his reliance upon Castellani's/Plaintiff's unambiguous promises.

77 Accordingly, Richardson is entitled to recover damages in an amount that would restore him to the position he would have attained had Plaintiff and Castellani fulfilled their promise.

WHEREFORE having fully answered the Complaint of the Plaintiff Defendant prays
for the following

- A A dismissal of Plaintiff's Complaint with prejudice
- B The relief of specific performance is requested herein
- C Alternatively damages in an amount determined by the jury
- D All other relief this Court deems just and proper

NELSON MULLINS RILEY & SCARBOROUGH LLP

By 
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Post Office Box 10084 (29603 0084)
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(864) 250 2300

Attorneys for P J Richardson

Greenville South Carolina

July 15 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
2008 SEP 15 10 40	)	
North American Rescue Products, Inc ,	)	Civil Action No 2007 CP 23 3206
	)	
Plaintiff,	)	
	)	
vs	)	
	)	PLAINTIFF'S MOTION TO ALTER
P J Richardson,	)	OR AMEND THE JUDGMENT
	)	
Defendant	)	
	)	
	)	

Plaintiff, North American Rescue Products Inc (NARP), moves this Honorable Court pursuant to Rule 52 and Rule 59, SCRCF, to alter or amend the Order granting specific performance to Defendant, P J Richardson ("Richardson") dated August 29 2008 Plaintiff received written notice of the entry of this Order on September 3 2008 A copy of the Order is attached as Exhibit A

The grounds for this motion are that Richardson is not entitled to relief where the jury did not find that a contract had been breached Richardson s conduct was inequitable and the Court did not find that Richardson was ready, willing, and able to perform the contract as found by the jury As Richardson is not entitled to specific performance judgment should be entered in accordance with the jury verdict

In order to grant a remedy a court must first find a corresponding wrong *See Page v Winter*, 126 S E 2d 570 574 (S C 1962) (Bussey, J dissenting) In the present case, the jury did not find the existence of a wrong to be remedied The jury essentially held that no contract had been breached Therefore no remedy should have been awarded to Richardson

GREENVILLE 258875v1

0046

APP_0051

The South Carolina Supreme Court recognizes two alternative remedies to a breach of contract the legal remedy of damages and the equitable remedy of specific performance *McMaster v Strickland* 472 S E 2d 623 (S C 1996) The grant of either remedy however must be predicated on a finding that the contract has been breached "In order to compel specific performance, a court of equity must find (1) there is clear evidence of a valid agreement, (2) the agreement had been partly carried into execution on one side with the approbation of the other and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract" *Ingram v Kasey s Assoc* , 531 S E 2d 287, 291 (S C 2000) (internal citations omitted)

The jury's findings do not support an order compelling specific performance First and foremost the jury did not find that that NARP had breached a contract (Specific performance should be granted only if there is no adequate remedy at law and specific performance is equitable between the parties " *Ingram* , 531 S E 2d at 291) Accordingly, there is no basis for granting Richardson relief for breach of contract The jury simply found the existence of a contract giving Richardson the right to receive 7 5 percent of NARP s capital stock for \$2,936,300 00 The jury did not find and the evidence does not support the conclusion that NARP refused to allow Richardson to purchase 7 5 percent of NARP s stock for \$2 936 300 00 The jury did not even find that Richardson ever attempted to purchase 7 5 percent of NARP s stock for \$2,936,300 00

Also, the evidence was clear that Richardson s conduct in this matter was inequitable in failing to disclose to NARP his belief that he had a contractual right to purchase 7 5 percent of the stock of NARP that was clearly at odds with what NARP believed and in seeking to enforce a contract that did not exist

Additionally neither the jury nor the court found that Richardson 'has been and remains able and willing to perform his part of the contract,' as is required by South Carolina law *Ingram*, 531 S E 2d at 291. The jury did not find that Richardson had tendered or was able and willing to pay \$2,936,300.00 for 7.5 percent of the stock of NARP. Thus, Richardson is not entitled to an award of specific performance.

For the above reasons NARP respectfully requests this Court to amend its Order compelling specific performance and enter judgment in accordance with the jury verdict.

Respectfully submitted,

MCNAIR LAW FIRM, P A



Bernie W. Ellis

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Attorney for Plaintiff

Greenville, South Carolina
September 15, 2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

North American Rescue Products, Inc., et al.)

Civil Action No 2007 CP-23 3206

Plaintiff)

vs)

P J Richardson,)

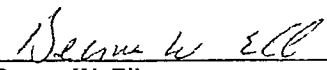
Defendant)

**NOTICE OF WITHDRAWAL OF
PLAINTIFF'S MOTION TO ALTER
OR AMEND THE JUDGMENT**

Plaintiff North American Rescue Products Inc hereby withdraws its Motion to Alter or
Amend the Judgment filed September 15 2008

Respectfully submitted

MCNAIR LAW FIRM P A


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Attorney for Plaintiff

Greenville South Carolina
September 23 2008

GREENVILLE 259233\1

0049

APP_0054

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

Steven H. John Circuit Court Judge

Case No. 07-CP-23-3206

RECEIVED

OCT 09 2008

SC Court of Appeals

North American Rescue Products, Inc.

Appellant

v

P. J. Richardson

Respondent

NOTICE OF APPEAL

YOU WILL PLEASE TAKE NOTICE that North American Rescue Products, Inc. hereby appeals from the Jury Verdict and Order entering Judgment of the Honorable Steven H. John signed on 29th day of August 2008 and filed on September 2, 2008. The Appellant received written notice of the entry of on September 3, 2008.

Robert L. Widener by a.s.
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October 3 2008
Columbia, South Carolina

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Steven H John Circuit Court Judge

Case No 2007 CP-23-3206

North American Rescue Products Inc

Appellant/
Respondent

v

P J Richardson

Respondent/
Appellant

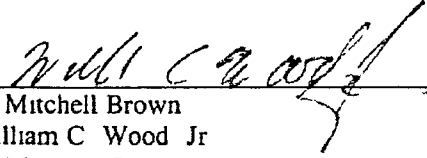
NOTICE OF APPEAL

P J Richardson appeals the judgment of the Honorable Steven H John dated August 29 2008 Respondent Appellant received a notice of appeal from Appellant Respondent on October 6 2008

NELSON MULLINS RILEY & SCARBOROUGH LLP

October 13, 2008

By


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0051

APP_0056

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Attorneys for Appellant / Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

Steven H. John Circuit Court Judge

Case No. 07 CP-23-3206

North American Rescue Products, Inc.

Appellant Respondent

v

P. J. Richardson,

Respondent-Appellant

RECEIVED

NOV 20 2008

SC Court of Appeals

MOTION FOR LIMITED REMAND AND TO HOLD
APPELLATE TIMELINES IN ABEYANCE PENDING A RULING ON REMAND

Pursuant to Rule 224 SCACR and Rule 60(b) SCRCP the Appellant-Respondent (Plaintiff) moves for a limited remand to make a motion under Rule 60(b)(5) SCRCP to have the judgment marked satisfied. To best serve judicial economy Plaintiff further requests that the time for perfecting this cross-appeal (except for production of the already ordered trial transcript) be held in abeyance pending a ruling on remand so that any appeal from any order on remand can be consolidated with this cross appeal. The grounds for this motion are as follows:

(1) Plaintiff commenced this action against the Respondent-Appellant (Defendant) seeking a declaratory judgment that there was no agreement between the parties for Defendant to own or acquire stock in Plaintiff and for breach of fiduciary

defendant answered and counterclaimed for breach of contract and specific performance demanding a jury trial on his counterclaims

(2) The case was tried before a jury without objection by Defendant. The trial court submitted the case to the jury under a special verdict form. Defendant did not object to this procedure or to the form or content of the special verdict form.

(3) The jury answered the questions on the special verdict form and found that Defendant was entitled to receive 7.5% of the outstanding capital stock of [Plaintiff] North American Rescue Products, Inc. for the price of \$2,936,300.00 (Tab A at 4, Ques 8). The trial court denied all post-trial motions by both parties.

(4) The trial court entered judgment for Defendant by attaching the Special Verdict Form to a standard judgment form and ordering thereon. Judgment for the Defendant under specific performance doctrine (Tab A). Thus, the trial court granted Defendant specific performance of the contract found by the jury.

(5) Defendant did not make any motions challenging the above-noted entry of judgment on the jury's special verdict.

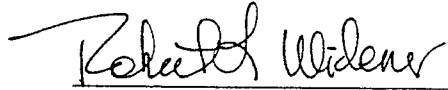
(6) Both parties have appealed. The principal thrust of Plaintiff's appeal will be that there is no binding contract between the parties and therefore Plaintiff is entitled to judgment on all counterclaims by Defendant. It is unknown what issues Defendant will raise in its cross-appeal.

(7) On October 6, 2008, by hand delivery of a letter to Defendant's Counsel, Plaintiff gave notice that, on October 10, 2008, it would tender performance of the judgment of specific performance entered by the trial court on the jury's special verdict to wit: it would deliver 7.5% of its stock to Defendant in exchange for the \$2,936,300.00.

found by the jury and ordered specifically performed by the trial court (Tab B) On October 9 Defendant rejected the tendered performance thus making it clear that Defendant is not ready willing and able to perform the contract found by the jury and ordered specifically performed by the trial court

Based on the foregoing circumstances Plaintiff seeks leave to move before the trial court under Rule 60(b)(5) SCRPC to have the judgment marked satisfied It is likely that the party losing the Rule 60(b)(5) motion will appeal to this Court In the interest of judicial economy any such appeal should be consolidated with the current cross-appeal For this reason Plaintiff further requests that the timelines for perfecting the currently pending cross-appeal be held in abeyance pending a decision on remand

Respectfully Submitted



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Attorneys for Appellant-Respondent

November 19 2008
Columbia, SC

The South Carolina Court of Appeals

North American Rescue Products Inc. Appellant/Respondent

P. I. Richardson

Respondent/Appellant

The Honorable Steven H. John
Greenville County
Trial Court Case No. 2007 CP 27-03206

ORDER

Appellant/Respondent North American Rescue Products Inc. filed a motion for limited remand and to hold appellate timelines in abeyance. After review, the motion is denied. Appellant/Respondent's motion for an extension to file a reply to the motion is granted.

AND IT IS SO ORDERED.

Joseph M. Curcio - A.S.

Columbia, South Carolina

January 27 2009

cc Bernie Wellington Ellis Esquire
Robert L. Widener Esquire

FILED
1/27/09

0056

APP_0061

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

) COURT OF COMMON PLEAS
) 2007-CP-23-3206
)

ORIGINAL

NORTH AMERICAN RESCUE PRODUCTS)
INC)

PLAINTIFF)

VS)

P J RICHARDSON)

DEFENDANT)

VOLUME I
TRANSCRIPT OF RECORD

August 25-29, 2008
Greenville, South Carolina

B E F O R E

THE HONORABLE STEVEN H JOHN, Judge, and a jury

A P P E A R A N C E S

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DOWSE BRAD RUSTIN, IV, ESQ
Attorneys for the Defendant

APRIL HIPPOON
Official Court Reporter

0057

APP_0062

Monday, August 25, 2008

T-2 COURT All right, ladies and gentlemen, my name is Stever Johr and I'm the resident Judge of the 15th Judicial Circuit which covers Horry and Georgetown Counties And by that, you can surmise that circuit judges actually do ride the circuit I've been assigned by the Chief Justice to hold a term of common pleas or civil court this particular week And y'all have been selected out of the total jury venire to potentially be jurors in the case of North American Rescue Products, Inc vs P J Richardson This is essential And there are a lot of parameters to this particular case but it's essentially a contract claim And the parties have made competing claims against each other and you will be called upon to sit through that and come up with a verdict in this particular case

What I'm going to do at this particular time is ask you some particular questions that are -- will give the lawyers some benefit in striking the jury, that is selecting the actual jury for this particular case If I ask you a question and you need to respond to it or answer the question, I'll ask that you stand and then when I recognize you, we'll need to know your name and your juror

0058

APP_0063

1 thing or that Some of what you said, I'm completely fine
2 with, there was a dispute But that's somewhat of a
3 strawman set up by Mr Ellis where he says if they say the
4 lawsuit was an excuse why we didn't get this deal done
5 gets the doors open I want to try to understand because
6 we have done a lot of depositions and looked at them over
7 and over Even Mr Castellani said they had a meeting and
8 they said it's on hold during the suit So it's not even
9 a point of contention I don't want to cut something and
10 then the door be considered open because it's not a
11 disputed point

12 THE COURT Well, it may not be a disputed point, but
13 if he said -- and I don't care if it's by agreement, that
14 the parties agreed to it He says I did this and gave
15 that reason, then I'm going to allow the jury to hear what
16 was it about so they're not completely and totally in the
17 dark

18 All right All right Then -- let's go on to the
19 motion for partial summary judgment or the alternative
20 motion in limine

21 MR ELLIS Thank you, Your Honor Your Honor, the
22 motion for partial summary judgment or in the alternative
23 motion in limine is based primarily on the parole evidence
24 rule and the document merger

25 Your Honor, this lawsuit has developed in a very

0059

APP_0064

1 unusual way We're on our -- I believe that the Defendant
2 is on its fourth set of facts as far as what he is
3 alleging It started out as a claim that the parties
4 entered into a termination agreement -- let me get this
5 It started out that the parties entered into a termination
6 agreement and that Mr Picardson had an option to
7 purchase 7 1/2 percent of the stock of North American
8 Rescue for one penny per share That's his initial claim

9 Now, Your Honor, we amended the pleadings and we got
10 an amended response that said well, he had an option to
11 buy for a penny a share, but it was reached as part of a
12 larger agreement that happened in Atlanta I then
13 notified my friends that they really should not take
14 depositions because the deposition testimony was clear
15 that the parties had not reached an agreement in Atlanta

16 So I got a third set of facts which said that the
17 parties reached a new agreement after Atlanta that Mr
18 Castellani was going to accept some funds, an option would
19 be granted to the Defendant and then the 2000 agreement
20 would be terminated

21 And then in the pretrial brief and in their prior
22 motion for summary judgment hearing, they took a different
23 position And that position is this is part of a larger
24 agreement It involved a charitable trust, that
25 Mr Picardson was going to make a donation to a

0060

APP_0065

1 charitable trust, and that the agreement would be
2 terminated Mr Richardson would get a penny a share

3 Well, after looking at that, I refilled this motion
4 and said wait a minute, under the law in a contract case,
5 the very first thing you do when you start out is the
6 Court is supposed to read the contract and interpret the
7 contract first And say, do we have an ambiguous contract
8 here? If we don't have an ambiguous contract, if there's
9 nothing unclear about the contract, then the contract must
10 be interpreted according to the words used by the party
11 The parole evidence, which is prior or contemporaneous
12 discussions or agreements cannot be used to vary or alter
13 the terms of the words that the parties used in the
14 contract

15 What Mr Richardson has pled is this agreement was
16 supposed to be part of a larger agreement that the parties
17 entered into involving the charitable trust and involving
18 an agreement by Mr Castellani to go along with this And
19 that this agreement is not valid unless it is seen as part
20 of this much larger agreement Well, Your Honor, I would
21 submit to the Court that I think that this agreement, the
22 Agreement of Termination, Settlement and Release is --
23 that's three different things

24 It clearly states in paragraph one, that it
25 terminates the 2000 outline I think we all -- we're all

0061

APP_0066

1 certainly in agreement as to what the 2000 outline was
2 It clearly states the termination of that That means the
3 parties aren't going to operate under it any further

4 Now, the second idea is it says all claims and
5 potential claims under the 2000 outline have been settled
6 That means if we believe he breached the 2000 outline, he
7 didn't pay us our commission that we required him when we
8 entered into it, we can't sue him and, likewise, he can't
9 sue us So it clearly terminated the old outline and it
10 clearly settled any claims, so we're not operating under
11 it We can't sue each other under it And then the third
12 provision of it is that the parties released each other
13 from any and all claims, understanding debts, whatever,
14 arising out from under the 2000 agreement

15 Now, what happened is, obviously, a critical
16 component of this case, is that there was a sentence
17 inserted in this that it is specifically agreed and
18 understood by the parties that the foregoing release is
19 not intended to and shall not release any of the parties
20 from that certain separate option agreement dated 15
21 December, 2004, pursuant to which NARP and RAC, which is
22 Bob, Bob Castellani, agreeing that P J has an option to
23 purchase 7 1/2 percent of the capital stock of NARP

24 Your Honor, I think we are finally to a point in
25 this -- I can't be sure, but I think we're finally to the

0062

APP_0067

1 point, I believe it's been understood that there was no
2 option entered into on the date of December 15th, 2004
3 No option agreement was executed that had that date
4 Furthermore, I think, Your Honor, has noted, 15 December,
5 2004 is after the date that this contract was entered
6 into So this is postdated The position of the
7 Defendant in this case is, you can't -- you can't see this
8 contract in isolation You have to see it as part of this
9 oral agreement that -- you have to see it and then you
10 have to see it as part of -- you have to see it as part of
11 this larger contract

12 Your Honor, I would bring to the Court's attention,
13 one thing in the case that's real clear, number six, the
14 entire agreement This agreement sets forth the entire
15 agreement and understanding of the parties relating to the
16 subject matter contained herein and merges all prior
17 discussions and agreements, both oral and written, between
18 the parties The contract that Mr Richardson drafted --
19 his lawyer drafted and he asked us to sign says there are
20 no other agreements And yet, they want to introduce that
21 this was part of a larger agreement

22 Your Honor, I think that the proper resolution of
23 this particular issue is this, this is a clear agreement
24 that terminated the 2000 outline It settled all claims
25 under the 2000 outline And if they have an option cated

0063

APP_0068

1 December 15th, 2004, or can prove that that's what it
2 refers to, this agreement doesn't invalidate it This
3 agreement does not say that the validity of this agreement
4 is contingent upon the existence of an option It doesn't
5 say that This merely says it shall not release that
6 certain separate option agreement

7 So under this agreement, if we come forward and we
8 sued him for -- claiming he owes us money, well, you pull
9 out this and you say no, that's released, can't do that
10 If he comes forward with an option dated December 15th,
11 2004, you look at this and you say, well, that's not
12 released That doesn't mean you still don't have to prove
13 your option You still have to prove your option This
14 option agreement may be invalid for other reasons If
15 there's an option agreement, it may be invalid for other
16 reasons All this says is this agreement, we want to
17 terminate it It doesn't say that it has to be valid
18 And what you can see from the handwriting is it was
19 understood that the parties had not yet entered into it

20 Your Honor, I think there's several cases that play
21 into this Your Honor, in Crafton vs Brown, it was a
22 guarantee, the borrower in that case made exactly the same
23 arguments that the Defendant is making here about the
24 written guarantee being a part of a larger agreement You
25 can't just look at the guarantee, this is part of an

0064

APP_0069

1 overall agreement to lend 20 to 25 million dollars And
2 what the Court of Appeals said is this is precisely the
3 evidence, the parole evidence rule seeks to bar That's
4 what you can't put in The contract he presented to us
5 says there are no other agreements

6 Your Honor, so the question is well, what about his
7 ability -- what about interpreting this otherwise? Your
8 Honor, in the case of McMaster vs Strickland -- and I can
9 hand up a highlighted copy to the Court Your Honor,
10 McMaster vs Strickland Court of Appeals case in which he
11 purchased some property, bought some land intending to use
12 it for homesites Once he entered into the contract, he
13 was not able to use the property for homesites because he
14 couldn't get wetlands permits So the trial court said
15 well, the seller's responsibility was to deliver good and
16 marketable title to the property And the -- so the trial
17 court had held that the seller didn't deliver good and
18 marketable title

19 And what the Court of Appeals said is the trial judge
20 confused the concepts of title and marketability with use
21 and value They went on to say this simply boils down to
22 a case of the purchaser taking a calculated business risk
23 The fact that he is dissatisfied with the results will not
24 excuse him from the contract without some condition stated
25 in the contract allowing his reputation of the same I

0065

APP_0070

1 rote again, will not excuse him from the contract without
2 some condition stated in the contract allowing his
3 reputation of the same. The record is clear that all
4 parties, including purchaser, were aware of the wetland
5 nature of the property and successfully obtaining the
6 permit to build the property. Although, the purchaser
7 believed he would be successful obtaining the necessary
8 permits, no exception is placed in the contract.

9 Your Honor, if you go to their most recently amended
10 answer, I think what they allege and I believe it's in
11 paragraph 59 of their answer -- of their revised amended
12 answer and counterclaim, excuse me, they allege Richardson
13 would not have executed the termination agreement if NARP
14 had not promised to execute a document that some of the
15 mutually acceptable means in preserving his 7 1/2 percent
16 interest in NARP in exchange for 7 1/2 percent of the
17 proceeds of the Reeves sale. And he didn't believe the
18 parties had a binding agreement.

19 Your Honor, I think that the reason McMaster vs
20 Strickland is so on point in this case is that what the
21 Defendant is trying to do is to confuse the terms shall
22 not release that separate option agreement dated
23 December 15th, 2004, which is contingent upon the
24 existence of an option agreement. As we say, Your Honor,
25 what happens to this agreement if an option is entered

0066

APP_0071

1 Into? Five years down the road, Mr Richardson comes to
2 exercise his option and it turns out it wasn't validly
3 executed Turns out it wasn't for good consideration
4 Turns out that he has otherwise breached a duty that
5 doesn't make that option enforceable Does that mean his
6 termination agreement is invalidated going back to 2004?
7 No It just means that these words say this agreement
8 doesn't invalidate the option It doesn't mean that
9 something else doesn't invalidate the option And, Your
10 Honor, since you see that it's postdated, it shows that an
11 option was never entered into And that he knew that an
12 option was not entered into and he signed it

13 Now, one of the arguments that have been made by the
14 Defendant in this is well, we think those were blank at
15 the time this was signed Well, Your Honor, in a -- in
16 Tom Policing Company vs Audit Market (p1), it says, "A
17 writing is incomplete as an agreement where a contract is
18 blank as to material matters left into it unless the
19 admissions may be supplied in other parts of such writing
20 and blanks subsequently and lawfully filled in

21 Well, Your Honor, you have a situation here where Mr
22 Richardson filled this out He put in and postdated it
23 December 15th, 2004 Your Honor, it is also the rule that
24 in a contract where there are conflicting provisions,
25 where there's a handwritten provision that conflicts with

0067

APP_0072

1 a typewritten provision or a printed provision, then the
2 handwritten provision controls

3 So, when you look at this contract -- I'll hand it up
4 to Your Honor, this is Hawkirs vs Creerville Development
5 Company -- Corporation, I'm sorry When you look at this
6 contract, what you have is an agreement to terminate the
7 2000 agreement, release all claims and a statement that
8 this will not invalidate a contract that the parties have
9 not yet entered into Because it's dated December 15th,
10 2004 To the extent that there's some conflict between
11 where it says by which the parties have granted Under
12 Hawkirs vs Creerville Development Corporation and other
13 cases, the handwritten provisions control

14 Your Honor, I think that the right way to approach
15 this and the correct way to look at the contract and
16 approach it is to say this is not an ambiguous contract
17 What it purports to do is not -- it's not something that
18 can be read in more ways than one It's a termination of
19 the preexisting arrangement It sells everything And
20 then the question is okay, can he prove the existence of
21 an option dated December 15th? That's what I think -- I
22 would, of course, like it if the Judge grants my entire
23 motion and throws the whole case out But what the trial
24 of the case is about I don't think is whether or not they
25 entered into an agreement They did They entered into

0068

APP_0073

1 this contract This is exactly why Mr Picardson when he
2 asked us to sign it at a time that he knew there was not a
3 disagreement to this option agreement The question is,
4 is there an option agreement? Because I don't think there
5 is in any way a valid reading of this contract to say that
6 this contract is not valid unless there is an option
7 agreement That's simply not what the words say

8 Well, let's look at the question we had in our motion
9 in limine, can you prove the existence of an option? Your
10 Honor and I won't belabor that because it's in writing in
11 our motion and explains The answer to that, Your Honor,
12 is no And the reason is NARP is a Delaware Corporation
13 and under the Internal Affairs Doctrine, which is
14 statutorily adopted in South Carolina, and I think it's
15 the rule pretty much everywhere, Delaware law controls the
16 existence of stock options and how they're carried out
17 That's a matter of Delaware corporate law Under Delaware
18 corporate law, a stock options has to meet certain
19 requirements and has to be done in a certain way It has
20 to be in writing The terms have to be set forth in the
21 certificate of incorporation or in a resolution, which has
22 to be adopted by -- it has to be set forth or it has to be
23 incorporated by the record It's a very, very specific,
24 difficult thing to do

25 Your Honor, as much as these guys are friends of

0069

APP_0074

1 mine, one of the things in their response to my motion for
2 summary judgment that really, really bothered me is
3 they're making an argument in this case that well, you can
4 take the drafts between the lawyers and find an option
5 there Mr Stodghill, NARP's lawyer, sent a draft option
6 over to Mr Richardson Mr Richardson's lawyer sent a
7 draft back that said well, one of the things the Court can
8 do is see where these things agree and find an option
9 agreement That is not the law It is not the law that
10 the Court can find the existence of an agreement where the
11 lawyers are exchanging drafts Cited a case in court
12 where meeting of the minds can never be found based upon
13 negotiations of the parties Obviously, if you could find
14 an agreement based upon written negotiations, written
15 drafts between lawyers, lawyers could never exchange
16 drafts These things that the lawyers sent to each other
17 said draft And they're trying to tell the Court that you
18 can find an option based upon these exchanges between
19 parties

20 So, Your Honor, I think it's very clear -- first of
21 all, I think it's a clear agreement I don't think
22 they're entitled to introduce evidence that this was part
23 of a larger agreement other than what's contemplated in
24 here I think it's also clear that this says -- it
25 doesn't say contingent upon, it just says it invalidates

0070

APP_0075

1 So if they can prove an option, they're fine If they
2 can't, it doesn't invalidate this Further, Your Honor, I
3 don't think they have an option based upon Delaware law

4 Your Honor, I have also incorporated this as well as
5 a motion in limine for the Court to grant the motion for
6 summary judgment I did also note that it be treated as a
7 motion in limine Again, they want to introduce evidence
8 that there were all these discussions in Atlanta and all
9 this stuff carrying on and they want to say, let's
10 introduce all this confusion and let's see which way this
11 agreement -- which side of the facts this agreement fits
12 into Once again, Your Honor, I don't think that's
13 correct I think I'm entitled to a motion excluding
14 anything except consideration of this contract and what it
15 means

16 Your Honor, I also have another -- as part of the
17 motion in limine, one of the things that they have asked
18 to introduce -- one of the things they're seeking to
19 introduce is evidence that later on there was a contract
20 Well, that as part of the contract, Bob Castellani and
21 P J Richardson had this agreement that Bob Castellani is
22 going to accept 7 1/2 percent of the proceeds of Reeves in
23 exchange for 7 1/2 percent of the stock of NARP Your
24 Honor, I have asked to exclude any evidence that following
25 this agreement, there was any sort of contractual right of

0071

APP_0076

1 Bob Castellani to receive any proceeds from the sale of
2 Reeves

3 And the reason is this, this agreement completely
4 wipes out Bob Castellani. He has no further rights. But
5 what they want to introduce is Mr. Richardson's
6 self-serving statements that say this is Bob's share.
7 This is what I'm going to give to Bob. Well, your Honor,
8 with this agreement in place, Bob Castellani can go into
9 any court anywhere and act like he has share from the sale
10 of Reeves. This is an agreement that the parties had and
11 they didn't challenge the validity of it -- they didn't
12 challenge the validity of it until we were well into this
13 lawsuit. When they first asked in 2007 and demanded that
14 Mr. Richardson be able to receive a 7 1/2 percent share,
15 it's because of this contract. So the idea of them being
16 able to introduce evidence where Mr. Castellani -- I'm
17 sorry, Mr. Richardson, and his advisers wrote notes and
18 said this is the Castellani share, and try to say that
19 proves the contract, I don't think that's fair for them to
20 do this because the legal fact is Bob Castellani could not
21 have enforced a right to the sale of Reeves whatsoever
22 once this contract was signed.

23 Your Honor, I have one more part of this motion in
24 limine. Under the 2000 outline, as amended -- and
25 Mr. Davis called me on this in his response. I think,

0072

APP_0077

1 technically, I was correct, but I'll explain why This is
2 an agreement to exchange stock That's what it was
3 Reeves will issue to Bob Castellani stock and NARP will
4 issue to Mr Richardson stock That's what it was It
5 was an agreement to swap stock The parties agreed
6 later -- this is not parole evidence because it's a
7 subsequent modification contract The parties agreed to
8 modify the amount of stock they were going to issue from
9 25 percent down to 7 1/2 percent So that's fine It was
10 an agreement to exchange stock

11 There are a couple of things the Defendants have been
12 doing in this case that I don't think are right Number
13 one, Mr Richardson has been testifying and I expect him
14 to testify that we had an agreement that whenever I sold
15 my company, Bob would take 7 1/2 percent of the proceeds
16 of the sale and I would get 7 1/2 percent of the stock
17 Well, this is the agreement between the parties as amended
18 to 7 1/2 percent That was not the agreement And I
19 think it's a violation of parole evidence rule to allow
20 him to say that this agreement was anything other than an
21 agreement to exchange stock

22 And therefore, Your Honor, I'm asking that
23 Mr Richardson and his counsel be precluded from
24 introducing any sort of evidence that that's what this
25 agreement was, that it was anything other than an

0073

APP_0078

1 agreement to exchange stock If you can't exchange stock
2 in that operating company, Reeves, then he can no longer
3 perform the 2000 agreement

4 THE COURT All right

5 Counsel

6 MR ELLIS Thank you

7 MR STILLWELL Your Honor, I don't know, I was over
8 there conferring with Mr Davis, and I said Mr Ellis had
9 a little Freudian slip there because I think he just said
10 we refiled this motion after the summary judgment hearing
11 and that's basically what we're doing This is the same
12 arguments that we heard before Judge Miller for about two
13 hours But they're better now, I'll grant you that,
14 because they should be because they're going to be closing
15 in about four days But these are the exact same
16 arguments that we went through before

17 By the end of the trial, Mr Ellis is going have to
18 be wearing this agreement on himself like a sandwich board
19 because as far as he's concerned, the whole trial ain't
20 got nothing to do with anything but this agreement right
21 here And when he started, he said that the suit was
22 filed about this agreement Well, it wasn't when they
23 sued us for the deck action, we're not talking about this
24 agreement we're talking about the option agreement

25 And this is what Mr Ellis would have you do with

0074

APP_0079

1 that agreement He says it's clearly unambiguous I'm
2 not going to fall into the trap of saying it's unambiguous
3 and then he's going to try to construe it against the
4 drafter because I've got some law on that we'll look at
5 later This is what he's going to want you and the jury
6 to do, just pretend like those don't matter Just pretend
7 like they're not in there There's no reason they're in
8 there whatsoever, just ignore that This is a do not
9 enter zone

10 Your Honor, I don't want to spend a whole bunch of
11 time on my closing arguments, which I've given a lot of
12 thought to, but they say in this agreement it's got a
13 funny date in it And the dating itself is all over the
14 map I mean, it's dated the 5th and the 8th by one
15 There's a ratification by another that predates both of
16 them And then there's also an e-mail on the 13th that
17 shows it hasn't even been signed then So all the dates
18 in there are all messed up So there's a question of is
19 it not set forth more than one interpretation of what
20 these two paragraphs mean?

21 I mean, look in the face of the document itself Mr
22 Ellis mentioned in this case the Craftman case I don't
23 know which of these cases are actually in the brief and
24 which are even new, but I've got somebody that can handle
25 all those if they're new ones, Your Honor But the ones

0075

APP_0080

1 that are in there, Craftman was in there, it says -- it
2 talks about that guarantee agreement case And they talk
3 about oh, it can't be part of an overall scheme The
4 document in that case does not have mention of a 2000
5 agreement and of an option agreement There's other
6 things in this document right there that tell you it's got
7 other directions pointing on it

8 That other argument he's got about they shouldn't be
9 able to talk about what Bob Castellani was owed and the
10 proceeds Your Honor, that's just the third part of our
11 three-legged stool They hate that There's no doubt
12 that's terrible evidence for them because it shows
13 directly that there was something more than this We're
14 going to do this and we're going to do something else

15 THE COURT Counsel, I appreciate it

16 What I'm going to do, gentlemen, I think your
17 arguments probably will be incorporated into your closing
18 arguments to the jury, but they just point out the fact
19 that there's facts in dispute And further, the facts
20 have to be delved into to have the correct interpretation
21 of the law So both of those principles of motion for
22 summary judgment is denied

23 Further, as far as the motion in limine, I'm not
24 going to prohibit -- I'm not going to grant the motion for
25 limine at this point in time If you have objections to

0076

APP_0081

1 certain testimony during the course of the trial, I'll
2 hear you at that point in time. But as to a prohibition
3 beforehand, I will not grant it.

4 All right, Mr. Dobson. Let's hear about Mr. Dobson.

5 MR. DAVIS: Your Honor, we had cross motions. I just
6 assumed I'd hit the ground first because I filed mine
7 first.

8 THE COURT: That's fine. Whoever filed first. Let's
9 go in that order.

10 MR. DAVIS: Your Honor, there are underlying facts
11 relating to an individual in this case and his name is Bob
12 Dobson, III. And Bobby Dobson was a lawyer and he was,
13 actually, a partner of Mr. Stodghill, who was a material
14 witness in this case. He's one of the fabulous four
15 witnesses out of the Atlanta meeting, which is going to be
16 very important. In fact, Bobby Dobson was Mr. Stodghill's
17 mentor. This is all undisputed and we've talked about it.
18 And they were friends, close friends. And in relation to
19 this case, somewhere along the line a deal structure came
20 up that was proposed. And I asked during Mr. Stodghill's
21 deposition, is that the sole proposal? Yes, that was the
22 sole proposal. Yes, that was the sole proposal. And that
23 was sort of why I was kind of surprised when Mr. Ellis was
24 talking this morning that or, well, we're going to go down
25 this termination agreement, this is it and this is it, but

0077

APP_0082

1 jury Once a jury resolution comes about in this
2 particular case, somebody's going to be happy, somebody's
3 going to be sad and this case isn't going to be over with
4 if all have n't spent all this time on this case already,
5 put all this time, money and effort in this case to have
6 it end in this jury trial It's going to get appealed
7 Go to Court of Appeals, Supreme Court, couple years from
8 now, y'all might be back here again

9 Now, if you want to do that, you want to spend that
10 time, money and effort, that's what we're here about
11 We're going to do that But if you want to determine your
12 own fates, have some say into how this case is going to be
13 decided, I would suggest that you open up your minds and
14 look at this particular case from the other side and see
15 if you can't come to a resolution in this case Y'all are
16 going to be much happier when it's over with if you do
17 that Y'all do with it what you want to

18 Thank you, very much See you at 2 00

19 (WHEREUPON, a lunch break was taken)

20 THE COURT Mr Stillwell, are we ready to proceed?

21 MR STILLWELL We are, Your Honor

22 THE COURT The foreperson is Charles Varner And
23 the jury did send us a note about wanting to know if they
24 could take notes during the course of the trial Before I
25 tell them otherwise, I understand that the Plaintiff

0078

APP_0083

1 THE CLERK Thank you Please be seated

2 THE COURT Is there any juror who did not
3 affirmatively take the oath as given by the Clerk of
4 Court? If so, please stand

5 (There was no response)

6 THE COURT No juror having stood, I find the jury
7 properly sworn in this particular matter

8 All right, ladies and gentlemen, you have been seated
9 as the jury in this particular case And, ultimately, it
10 will be your responsibility to collectively examine the
11 facts and evidence in this case and to render a unanimous
12 verdict in this particular case While I remember, you
13 had sent in the note about taking notes The standard
14 procedure and one that we have used in the court system
15 for over 200 years is that jurors do not take notes The
16 basic rationale for that is there is a striking tendency
17 to pay attention to something that you're taking the notes
18 or and completely miss what the witness is saying in the
19 meantime So we rely completely on your collective wisdom
20 and your collective memory as to what the facts are in a
21 particular case rather than one person's note that John
22 Doe might have said A, B or C So they will -- we will
23 not have you taking notes during the course of the trial
24 How the trial will operate is when I get done with
25 these brief opening statements, we'll have the opening

0079

APP_0084

1 arguments of the attorneys, the opening statements Now,
2 these statements are not evidence They cannot be
3 considered by you as evidence in the case They are each
4 side's initial presentation to you of what they believe
5 the evidence will show to you during the course of the
6 trial When we get done with those opening statements, we
7 will go into the evidentiary portion of the case That is
8 witnesses called before you under oath to testify about
9 what they may know about this particular matter, the
10 introduction of certain documents or other type of
11 materials that the Court may find to be proper to be
12 introduced in the trial of this case

13 When we are done with that evidentiary portion of the
14 trial, we will then have the closing arguments of the
15 attorneys Those closing arguments, again, are not
16 evidence Cannot be considered by you as evidence in the
17 case They are each side's summation to you Again, what
18 they believe the evidence has shown to you during the
19 course of the trial and, ultimately, what they're asking
20 you to do as a result of your collective unanimous verdict
21 in this particular matter I will then give you the law
22 that you will apply to the facts as you so find them to be
23 in this particular case And then the case will be
24 submitted to you for your deliberations and your unanimous
25 decision in this matter

0080

APP_0085

1 The reason I went over this brief outline of the
2 trial is to emphasize the fact that it will be presented
3 to you in stages. There's a tendency that when you hear
4 something, you may start thinking in a certain fashion.
5 There's nothing wrong with that, but you have to
6 understand that to reach a conclusion in the initial stage
7 would not be proper. You have to hear and listen to all
8 of the evidence in the case and to know the law that
9 you're going to apply to the facts as you so find them to
10 be before you come to any conclusion in this matter. I
11 will ask you not to discuss this case until I send it to
12 you at the end for your deliberations in this matter.
13 Again, because someone may state a position and they may
14 hear something later on that might change their opinion,
15 but since they've already put forth a position, they might
16 find it hard to change that position. So talk about
17 anything you want to, but please don't talk about and
18 discuss the case until I give it to you at the end for
19 your deliberations in this particular matter.

20 Your job in this case is going to be the judges of
21 the facts. I will not indicate to you, I will not
22 intimate to you in any fashion what I believe the facts of
23 this will case are because that's not my job. That is
24 your job. That is your responsibility. So listen to the
25 evidence, find that evidence which convinces you of its

0081

APP_0086

1 truth and, thereafter, to render and true and just verdict
2 in this particular matter. You will be called upon to
3 judge the credibility, that is the believability of
4 witnesses that testify before you. You might think now do
5 I do that? You do it every single day of your life. When
6 somebody tells you something, automatically judging
7 whether or not you believe them. How do you do that? You
8 use your good common sense. That's what we're going to
9 ask you to do during the course of this trial and in your
10 deliberations. You use your good common sense and find
11 the facts and evidence which convince you of their truth
12 and then to decide whether or not the particular parties
13 have met their burden of proof. There are claims on each
14 side of the case. And when that party is putting forth a
15 position where they are claiming a certain position in the
16 law, that is that the other party damaged them in some
17 way, they will have to carry that burden of proof by what
18 we call the greater weight or the preponderance of the
19 evidence. And if you just want to imagine a set of scales
20 when we start the case, obviously, the set of scales are
21 even. By weight of the evidence, looking at the evidence,
22 the scales may tip ever so slightly in favor of one party
23 or the other. If you tip them in your favor, that's
24 called the greater weight or the preponderance of the
25 evidence.

0082

APP_0087

[illegible]

1 You have an awesome duty and responsibility in this
2 case. These parties have not been able to resolve the
3 matter among themselves. So they are going to present
4 their case to you for your judgment in this matter and ask
5 you to weigh the different positions. And thereafter,
6 render a verdict in this matter. I would give your
7 attention to the counsels and their opening arguments.

8 You may do so

9 MR ELLIS Thank you, Your Honor, may it please the
10 Court

11 THE COJRT Yes, sir

12 OPENING STATEMENT

13 MR ELLIS Cood afternoon, ladies and gentlemen My
14 name is Bernie Ellis, I'm a lawyer here in Greenville
15 I'm with the McNair Law Firm here in town I represent
16 the Plaintiff in this case, North American Rescue
17 Products With me, the gentleman here in the gold tie
18 along with another attorney at our office, his name is
19 Furter Freeman, he's going to be helping me out in our
20 presentation of the case Seated next to him is Bob
21 Castellani Bob Castellani is the president and founder
22 of North American Rescue Products Also, introduce you to
23 the gentleman there in the back His name is Curt
24 Steadman Curt is going to be one of our witnesses today
25 as well Curt is a lawyer here in town and he represents

1 North American Rescue Products in a lot of its activities
2 And he was actually involved in the facts that gave rise
3 to this cause of action. So you'll be hearing from him as
4 well.

5 Let me tell you a little bit about what this case is
6 about from our perspective. This is a contract dispute
7 we have a belief that the parties had a contract at one
8 time. But then they terminated the contract and that no
9 new contract was formed. When I say the parties, I mean
10 North American Rescue and Mr. P. J. Richardson, who is the
11 Defendant. We're the Plaintiff, North American Rescue.
12 The Defendant is Mr. P. J. Richardson.

13 What we think this case is about is about someone who
14 wanted to have his cake and eat it, too. Mr. Richardson
15 and his company, called Reeves Manufacturing, entered into
16 a contract with North American Rescue and Bob Castellani
17 to do certain things. When Mr. Richardson later wanted to
18 get out of the contract in order to pursue a new business
19 opportunity, we let him do that and we were glad to let
20 him do that. We think what the evidence will show you at
21 the end of this is that years later, after Mr. Richardson
22 had received the benefits of having gotten out of his
23 contract with us, wants to come back and be put back in
24 the same place as if he still had that contract. He wants
25 to have his cake and eat it, too.

0084

APP_0089

1 Now, let me put a little bit more -- give you a
2 little bit more context of what is going on Bob
3 Castellani founded North American Rescue Products in the
4 early 90's It's now called North American Rescue,
5 eventually changed its name from North American Rescue
6 Products to North American Rescue North American Rescue
7 is in the business of protecting our soldiers on the
8 battlefield Bob, as you'll hear, is a former military
9 pararescue He has a lot of experience and a lot of
10 knowledge about going in the battlefield and saving
11 soldiers So when he got out, he was able to develop a
12 business because he knows what helps to save soldiers
13 lives if they were wounded So he started a business
14 called North American Rescue Great business Very
15 successful business The business is located here in
16 Greenville and employs a number of people and does a lot
17 of good in the community

18 Mr Richardson, P J Richardson, the Defendant, also
19 had a great business He had a business called Reeves
20 Manufacturing And Reeves, as I understand it -- you'll
21 hear testimony on this But Reeves, as I understand it,
22 is a little bit more on the civilian end Also providing
23 safety equipment also doing very important work But it
24 was more geared toward fire departments and emergency
25 medical services and things like that

0085

APP_0090

1 The parties, Mr Castellani and Mr Richardson,
2 became really good friends They met each other and they
3 became good friends There was a lot of this energy about
4 their working together, so they worked together a lot
5 P J 's wife, Billie, actually, became an employee of North
6 American Rescue at one point And they helped each other
7 And they worked together and they did business together

8 In 2000, you'll hear that the parties entered into
9 this agreement And don't worry, if you can't follow
10 along, you'll be seeing an awful lot of it in this case
11 Actually, let me show it to you from this angle We're
12 going to call this the 2000 outline, the 2000 agreement
13 This is an agreement that the parties entered into in the
14 year 2000 And what you'll see when you look at it a
15 little bit more closely, you'll see that it's a contract
16 between North American Rescue Products, Reeves
17 Manufacturing, Bob Castellani and P J Richardson

18 And in this contract, the parties agreed to do
19 certain things They were going to have cross-selling
20 activities They agreed to pay commissions to each other
21 They agreed to have independent management They agreed
22 you run your company, I'll run my company There was a
23 provision about what happened if they terminated
24 commission But the most important part of this contract
25 for purposes of this case was this agreement And, again,

0086

APP_0091

1 don't worry if you can't follow it now, you'll be seeing
2 it an awful lot. It was an agreement between the parties
3 to exchange stock. Reeves, Mr. Richardson's company,
4 under this was supposed to issue 25 percent of his stock
5 to Mr. Castellani and Mr. Castellani's company, North
6 American Rescue, was supposed to issue 25 percent of its
7 stock to Mr. Richardson. That's what the agreement called
8 for.

9 You'll hear how later on that these parties actually
10 changed that percentage, so instead of 25 percent, they
11 agreed to reduce the percentage in the 2000 agreement to 7
12 1/2 percent. So they had this agreement that they were
13 going to exchange 7 1/2 percent of stock. They actually
14 never really exchanged stock, however. They had the
15 agreement in place for a while, but they didn't exchange
16 stock. It turned out about the time they were going to do
17 that, they had developed a very good problem. And that
18 was the companies had actually become pretty valuable. So
19 there were tax ramifications actually for giving stock to
20 each other. In order to give 7 1/2 percent of the stock
21 to Bob from Reeves and for NARP to give 7 1/2 percent to
22 P J, it was going to cause some tax problems.

23 So one of the things that they discussed doing was
24 instead of doing -- actually, exchanging stock with each
25 other, they suggested doing options. So the lawyers for

0087

APP_0092

1 North American Rescue and for Mr Richardson's company,
2 Reeves, actually, exchanged drafts to options that they
3 might want to consider. But as it turns out, the parties
4 couldn't agree on the terms of those options either. So
5 the parties really were trying to decide, you know, what
6 to do. How do we deal with this contract so we can
7 formalize relationships with each other?

8 The parties had a meeting in Atlanta you'll hear
9 about. Bob and his lawyer, Curt Stodghill, and P J
10 Richardson and his lawyer, a gentleman named Rod Manring,
11 had a meeting in Atlanta to try to discuss how do we
12 resolve these problems. What you'll hear from North
13 American Rescue and from Mr Castellari and from Mr
14 Stodghill, it was their understanding that the parties
15 agreed at that meeting that they would terminate all of
16 the interest that they had to exchange stock, any interest
17 they had in each other's companies at that time and would
18 try to work together on formulating a new agreement at a
19 later time whereby they could exchange some sort of
20 interest in each other's companies. But it was our clear
21 understanding from NARP's perspective that the parties had
22 agreed for the present time to terminate the relationship.

23 Now, what you'll hear testimony on from our side is
24 that we didn't find that particularly surprising because
25 Reeves and NARP were worth about the same amount at this

0088

APP_0093

1 time They were roughly equal in value So for Reeves
2 not to have to give 7 1/2 percent of its stock to Bob and
3 for NARP not to have give 7 1/2 percent of its stock to
4 P J was, basically, economically a wash So there wasn't
5 any particular reason that would have been surprising from
6 our perspective that would happen

7 But another really good problem happened along the
8 way from Mr Richardson's perspective And that was
9 during this same period of time, he got an opportunity to
10 sell his company for a lot of money And we were very
11 happy for him NARP was perfectly happy for him But
12 from his perspective, in order for him to facilitate the
13 sale of his company, he needed to end this agreement He
14 needed to make sure that this agreement was terminated so
15 that he could go sell his company to a third party
16 That's when we get to this agreement

17 Mr Richardson -- Mr Richardson's lawyer drafted
18 this agreement Mr Richardson himself sent it to Bob
19 Castellani and asked him to sign it It's called An
20 Agreement of Termination, Settlement and Release And
21 what you'll hear when you listen to the arguments is
22 that -- I'm sorry, when you listen to the evidence, you'll
23 hear the testimony that under the terms of the contract,
24 it terminated the 2000 outline Our understanding was it
25 ended this because that's what it said Secondly, we

0089

APP_0094

1 understood that it settled any existing claims So not
2 only did it terminate this, but can't seek a breach of
3 contract under the old agreement or anything like that
4 And thirdly, it released -- the parties released each
5 other from everything

6 Now, Bob Castellani was asked to sign that agreement
7 and he did sign the agreement because P J asked him to,
8 because P J told him -- P J told Bob that he needed for
9 him to sign this agreement in order to facilitate the sale
10 of his company to a third party I need to get out -- I
11 need for us to sign this agreement to terminate the old
12 relationship so that I can sell my company Bob was
13 willing to do that

14 But Bob later on noticed that there was something in
15 this agreement he had not noticed when he signed it And
16 that is there is a specific sentence in here that says, It
17 was specifically agreed and understood by the parties that
18 the foregoing release is not intended to and shall not
19 release any of the parties from that certain separate
20 option agreement dated 15 December, 2004 Pursuant to
21 which NAPP, North American Rescue, and RAC, Bob Castellani
22 had granted P J Richardson an option to purchase 7 1/2
23 percent of the capital stock of NARP This says we're
24 releasing everything, but this agreement, and they
25 understand, that this release will not release them

0090

APP_0095

1 separate option agreement

2 When you look at this more carefully, you will also
3 notice that there's nothing in here that says Bob isn't
4 releasing everything This contract only says that the
5 only clause out here is in favor of P J and yet, Bob's
6 rights under the contract are completely wiped out

7 Now, Bob was angry about that at first when he
8 realized it The reason he was angry about it -- well,
9 several reasons Number one, you'll hear he and Curt did
10 not think that that was specifically what the parties had
11 agreed to at Atlanta when they talked Secondly, P J
12 Richardson was actually a member of the Board of Directors
13 of North America Rescue at the time He had been put on
14 the Board of Directors of North America Rescue and he had
15 actually been paid a fee of \$50,000 to serve on the Board
16 And what you'll hear from our argument is that as a member
17 of Board of Directors holds a very, very special place
18 And that he has a duty to put the company first And he
19 has a duty to make sure the company's best interest is
20 protected over his own

21 So our side was not very happy that this had a
22 provision in it that carved out a reference to an option
23 to Mr Richardson, but didn't say anything about Bob But
24 over time, it didn't really bother us for this reason
25 You'll notice that this agreement is dated 8th of

0091

APP_0096

1 November, signed by Bob on the 8th of November You'll
2 notice that the effective date of the agreement is 5th of
3 November, 2004 And it says that the parties -- it
4 doesn't release the parties from the option agreement
5 dated 15 December, 2004 So the date in here that reports
6 the option agreement is, actually, about 40 days later
7 than the date of the agreement And we'll present
8 testimony, our evidence to you that the reason that's true
9 is, that the parties had not entered into an option
10 agreement at that time They knew that no option
11 agreement had yet been entered into And yet,
12 Mr Richardson needed the termination provision of this
13 contract to help facilitate the sell of his company to
14 DHS

15 Now, you remember I told you what our evidence in
16 this case is going to be is that we understood that the
17 parties had terminated everything but were going to work
18 on a new agreement in the future What you'll hear from
19 our witnesses is that's what we, in turn, thought the
20 effectiveness of this contract was We have terminated
21 our rights and then we would have an agreement to agree in
22 the future about some way -- the agreement to agree in the
23 future was going to be about some way to get 7 1/2 percent
24 of the stock, come up with an agreement, come up with some
25 sort of deal by which Mr Richardson could acquire stock

0092

APP_0097

1 in the company of North American Rescue, 7 1/2 percent of
2 the stock of North America Rescue

3 What you'll hear is that over the next several
4 months, North America Rescue Products put forward several
5 proposals to try to make this happen. We actually sent
6 proposals to Mr. Richardson that he could have exercised
7 that would have given him the opportunity to purchase 7
8 1/2 percent of the stock of North America Rescue. Bob
9 wanted this to be done through Dobson Ministries. Bob
10 wanted, that if he were going to receive any money from
11 the proceeds of Reeves, he didn't want it to go to
12 himself, he wanted it to go to Dobson Ministries. He was
13 a big supporter of Dobson Ministries. But he wanted the
14 money to go to Dobson Ministries.

15 What you'll hear is that North America Rescue
16 proposed an agreement, it was just a proposal, but we sent
17 it to him and said you can buy 7 1/2 percent of the stock
18 through Dobson Ministries. Well, Mr. Richardson didn't
19 want to do that. He didn't want to do that. What you'll
20 hear is Mr. Richardson never sent back a proposal of his
21 own. He never said to us no, I don't want to do that, but
22 here's what I'd like to do. I'd like to do it another
23 way. Nothing like that happened.

24 Over two years went by. I say over two years,
25 approximately two years, right at two years went by. And

0093

APP_0098

1 during that period of time, any sort of trying to work out
2 a deal, any sort of trying to work out an agreement with
3 Mr Richardson acquiring stock stopped happening
4 Mr Richardson and his advisers knew that North American
5 Rescue Products thought there wasn't a contract He and
6 his advisers could tell from the agreement signing that we
7 believed any contractual obligations between the parties
8 had ended But the testimony that you'll hear is that
9 Mr Richardson or his advisers didn't tell us that They
10 didn't tell us that they had a different belief than we
11 did Because Mr Castellani was actually helping
12 Mr Richardson in his involvement So they didn't say
13 anything because they wanted Bob's help in another matter,
14 so they let Mr Castellani and NARP believe that any prior
15 agreement had been ended until some period of time went
16 by

17 And that period of time ended on April 17th, 2007
18 Bob had told P J , I believe it was in May of 2005, said
19 we've been trying to get this done We're going to have
20 to take everything off the table There are other things
21 that are going on So from March 2005 until April 2007,
22 there were other conversations In fact, you'll hear
23 testimony that Mr Stodghill, Curt Stodghill, wrote to
24 P J 's lawyers and said, What are y'all doing? The
25 responses that we got were never, what are you talking

0094

APP_0099

1 about? We have a contract what are you talking about,
2 we have a right right now to buy in That's not what they
3 said They just said something to the effect of don't
4 assume We'll get toward -- we'll come back with a
5 proposal at a later time

6 On April 17th, 2007, North American Rescue received a
7 letter from P J 's lawyer And in that letter, he wrote
8 and said Mr Richardson is now prepared to exercise his
9 option to buy 7 1/2 percent of the stock of North American
10 Rescue Products setting forth one penny for share I
11 didn't say that clearly, let me say it again The letter
12 said Mr Richardson is now prepared to exercise an option
13 to purchase 7 1/2 percent of stock of North American
14 Rescue Products for one penny a share

15 Now, there's one little detail I left out of this
16 North American Rescue Products stock had gone through the
17 roof during this period of time It had gone up, up, up
18 in value And when we're making proposals for
19 Mr Richardson to buy this, we had told them that if
20 you're going to buy this, it needs to be at a fair market
21 value Early on, that wasn't a problem because the fair
22 market value of 7 1/2 percent of NARP was at one point,
23 actually, even less than the value of the 7 1/2 percent
24 from the sale of Peeves So the values were actually sort
25 of equal As time went on, we told Mr Richardson we want

0095

APP_0100

1 to do this for you, but we're going to do fair market and,
2 please, know that the stock is going up, up, up in value

3 So the evidence that you'll hear is that
4 Mr Richardson waited he waited and waited, he didn't do
5 anything 2007 comes, suddenly he demands to buy stock
6 for one penny per share North American Rescue Products
7 was flabbergasted They were actually in stock Why do
8 you think you have the option to buy the stock at one
9 penny a share? What we found out in discovery in this
10 case, we had not even seen it until after this lawsuit
11 started, was that Mr Richardson back in 2004, had
12 actually taken a draft, some draft option that had been
13 sent, actually signed it and kept it He didn't tell
14 anybody He didn't tell Bob He didn't tell Mr
15 Stodghill He didn't tell anybody from North American
16 Rescue Products And he just kept it hoping to claim
17 later that he had an option and he sold his soul As you
18 might understand, North American Rescue Products was very,
19 very unhappy about that particular circumstance and that
20 is what resulted in this lawsuit

21 We brought this lawsuit because we needed to
22 establish something We believed that the parties had an
23 agreement to terminate their relationship we will tell
24 you and present evidence to you that yes, we had an
25 agreement to agree in the future We actually sent

0096

APP_0101

1 proposals We actually wanted to do things to try to get
2 him 7 1/2 percent of the stock of NARP But he would not
3 accept our proposal, which is fine That is absolutely
4 his freedom to do that But a contract has to be a
5 meeting of the minds There has to be an agreement to do
6 something new And we believe that Mr Richardson
7 terminated his rights when he asked us to sign this
8 agreement And what he wanted to do was this, he wanted
9 to terminate the old agreement between the parties and get
10 the benefits of terminating the agreement And now once
11 he's gotten the benefits of having terminated that
12 agreement and he doesn't need that anymore, he wants the
13 benefits of the old agreement He wants to have his cake
14 and eat it, too

15 Of course, what we think is also happening here is
16 this We will show you that Mr Richardson in his
17 fiduciary to North American Rescue Products, at the time
18 he entered into this agreement to terminate the settlement
19 and release, he's a member of the Board He had a duty to
20 tell North American Rescue about anything that affected
21 him He had the duty to tell them if there was anything
22 that could negatively impact on them And yet as a member
23 of the Board of Directors, there's two things he didn't
24 do One of the things is he had signed this draft option
25 agreement that Bob had not signed, stuck it in his back

0097

APP_0102

1 pocket, didn't tell North American Rescue, didn't tell
2 North American Rescue's lawyer. We think that's a breach
3 of his fiduciary duty.

4 Another thing is that his adviser never disclosed to
5 Bob Castellani and Curt Stodgnill, the lawyer for NARP,
6 they never told him during this period of time we think
7 there's an agreement right now. We think we have a right
8 to buy it. We were telling them -- the message we were
9 sending them and telling them, we clearly didn't think
10 there was such a contract. We think that Mr. Richardson
11 had a duty to tell us that because his relationship with
12 NARP arose out of his having been on the Board of
13 Directors.

14 So we're going to ask you to do two things. North
15 American Rescue is going to ask you to find that P. J.
16 Richardson and North American Rescue Products terminated
17 any contract between them that gave Mr. Richardson a right
18 to buy 7 1/2 percent. We're also going to ask you to make
19 Mr. Richardson pay that \$50,000 back that he got in
20 director's fees. Because while he was a member of the
21 Board of Directors, he did something that was unfair to
22 the corporation. Thank you, very much.

23 THE COURT: Course.

24 MR. STILLWELL: Thank you, Your Honor. Your Honor,
25 I've got to have some help trying to get things together.

Opening Statement by Mr Stillwell

90

1 to try to make this move along

2 THE COURT All right, sir

3 OPENING STATEMENT

4 MR STILLWELL I don't want y'all to get nervous
5 about this It ain't that long, believe me You've got a
6 good friend at home in my wife when she looked at what I
7 was going to show y'all last night, she said too much, cut
8 it in half, so that's what I'm doing So it's a lot of
9 cards, but it ain't going to be that much content thanks
10 to her

11 All right Talking about my conversation with my
12 wife My wife said what is this case you've been working
13 on all the time? You know, tell me what it is She only
14 wants to hear a little bit of it and that's all I'm going
15 to give you right now This is going to be like a slip
16 cover of a book you know, we're going to read the inside
17 jacket and read the back and we might peek at the pictures
18 a little bit, but this isn't going to be your argument
19 part, okay You're going to hear that through these
20 witnesses As much as I'd like to testify, I don't get to
21 testify The witnesses have got to tell you the story
22 The documents got to tell you the story Then at the end,
23 we get the argument Mr Ellis and I get to tell you how
24 it all sums up

25 This is what this case is about It is about a

0099

APP_0104

1 contract It's about the document It's about some
2 companies Fundamentally, this is a case about people
3 And this is a case about a relationship between the
4 Richardson's over there, P J and Billie, and Bob
5 Castellani And it's a question about a relationship
6 built in trust, built in faith that worked for years and
7 years And what went wrong? What happened between then
8 and now? And that's why there's a little more context to
9 this than just right in here looking at these termination
10 orders all day There's a little bit more about what were
11 the parties like down here and now did they end up here?
12 And that's what I'd like to turn to and talk to you a
13 little bit about

14 First, I've got to the introductions, I guess you
15 know, I'm Rivers Stillwell I represent P J and Billie
16 Over there are P J and Billie behind the board And
17 I've got Lane with me, he's a lawyer helping me And then
18 there's one of P J and Billie's sons right there
19 Fran's helping me, she works in my office And Mandy's
20 working the projector back there She's going to flash a
21 few documents up here, like Mr Ellis said Just a couple
22 of them And all we're going to do is just kind of look
23 at them so you can get the shape of them We're not going
24 to read them, so don't get frustrated if you can't read
25 them You will have more than enough opportunity to read

0100

APP_0105

1 these As a matter of fact, you might be sick of them by
2 the end of the week It's going to be pretty hard work,
3 but we're going to get started right here today

4 The only way I can organize this is just do it
5 chronologically There's too many documents There's too
6 many he said, she said in it And in the end, y'all have
7 got to sort all that out, okay I'm going to put a couple
8 cards up and I'm going to put some documents up We're
9 going to look at them again and again and again Y'all
10 are going to sort them out That one matters That one
11 don't matter I don't understand that part I'm just
12 going to have put that aside and see if I can make sense
13 of the rest of it But this is pretty much the nuts and
14 bolts of it

15 The first thing we have, Mr Ellis showed it to you,
16 was the 2000 agreement And you know what, I lied I
17 started right off and I lied to you I've got to creat a
18 little bit and go off the board Right off the board
19 right here is when Mr Castellani and P J meet Mr
20 Ellis did a pretty good job telling you about their
21 companies I think that will suffice for now But P J
22 will tell you like in the middle, after growing his
23 company, being at trade shows and stuff, one time he
24 walked through the lobby of the hotel and sees this guy
25 out there reading the Bible Bob Castellani And P J

0101

APP_0106

1 goes hey, that's a good book you're reading And that's
2 where it begins 1998 or 1999, these two guys meet
3 They're in similar industries You've got North American
4 Securities, you've got the military They're kind of in
5 parallel industries there and they strike up a
6 relationship right there based on their faith and it
7 grows And it becomes a very close relationship

8 Through those first couple of years, it gets so close
9 that eventually Bob says why don't we just merge the
10 companies Well, that's pretty steep, you know,
11 considering Reeves is bigger than NARP at that point So
12 they agree in this 2000 agreement, basically, let's go
13 25/25 That's what that is, it's not the commissions,
14 cross selling, blah, blah, blah These guys get in here
15 down at the bottom about issuing stock and say let's own a
16 quarter of each other's company There's no question they
17 didn't issue stock That's not going to be in dispute,
18 you don't have to worry about that part There's no
19 question But you can listen to the testimony and hear
20 how they commonly said we own a piece of each of other's
21 company I'm committed to him, he's committed to me
22 Now, there's a third player in there, that's Billie
23 Billie's in there It's a mom and pop business right over
24 there That's the Reeves business People knew --
25 P J 's name is Richardson, they thought he was Mr

0102

APP_0107

1 Reeves, that's his company That's Mrs Reeves (s_c)
2 right over there beside him She ended up working for
3 P J and working for Bob She's the back-end of both
4 businesses, okay, so you've got three of them When
5 Billie gave me this story, she says this is just like this
6 play, I never seen it, called, the Dirty Boys She told
7 me about it, she said the Dirty Boys is about Frankie
8 valley and the Four Seasons, which predates me a little,
9 but when you get to my age, it makes you feel good when
10 something actually predates you And she said you've got
11 three guys who got together and they make a commitment, if
12 one of us makes it, we all make it We're in this
13 together If any of us makes it, we're going to share
14 with everybody else

15 That's what we're going to try to show you this case
16 is This is three people, all promising I got a stake in
17 you, you got a stake in me If I make it, you make it
18 And the question is going to be what happened between then
19 and now? How did we end up here? How did we end up with
20 these two guys who were such close friends, who went to
21 trade shows together selling their goods, reading the
22 Bible together sitting there in bed side by side How did
23 they end up one on that side with all these lawyers and
24 boxes behind them and one on this side with all these
25 lawyers around him? How do we get here? That's what the

0103

APP_0108

1 story of this case is going to be about

2 Pretty big event happened right here at 9/11 You
3 can imagine that was a big deal for these companies
4 9/11, the Homeland Security business takes off The war
5 fighting stuff takes off That's a big deal You see
6 there's not a lot of activity here Basically, I've got a
7 little tag where I'm going to put some of these tags
8 There's not a lot of activity in here That, basically,
9 when it gets too busy to do anything They're too busy to
10 issue stock You think -- P J stated it pretty well, he
11 said, if we cross the T's, great, dot an I, it just wasn't
12 going to happen Why? Because they're growing like gang
13 busters through here And both companies are growing
14 through the roof Okay

15 But, eventually, it does come to a time where P J
16 and Billie start thinking things are going to be good
17 And you don't think things are going to be good tomorrow
18 So they think, you know what, based on our age, maybe it's
19 time to start thinking about getting out So they start
20 looking at the agreement Hey, you know, we never issued
21 each other stock What are we going to do with this? So
22 they have a meeting well, I think I left one out They
23 start working on some ideas And one of them is they sit
24 down in Curt's office That's Curt Stodgill right back
25 there, okay He is the lawyer for North American Rescue

0104

APP_0109

1 at that time

2 Now, back in the day, P J and Bob were so close
3 they even had the same lawyer working for them on
4 different things, but now, Bob's got his own lawyer So
5 they have a meeting here And they said what should we
6 do? And what happens, they don't get any resolution of
7 any kind And this is kind of common You'll have the
8 agreement, disagreement Agreement, disagreement You
9 know where that trail ends, so we've pretty much got a
10 disagreement for you right here

11 So after that meeting in April of 2004, right down
12 here in Greenville, they decide, I tell you what, let's
13 the three of us, P J, Billie and Bob go down to Bob's
14 beach house and let's have a board meeting These guys
15 are informal They're going to have a board meeting, just
16 the three of them And they go down there and they go, we
17 can work this out between us Okay And they agree this
18 works for all of us Let's take it down to 7 1/2, 7 1/2,
19 okay Our 25 percent stake is 7 1/2 stake Everybody is
20 going to be in agreement about that That's not a
21 problem But, you know, they still haven't issued each
22 other stock And so they've got to figure out, how are we
23 going to do this? How is this going to work, really,
24 because by this time, we're big We can't just do things
25 The lawyers have got to put stuff together

0105

APP_0110

1 So they decide let's meet at the Atlanta Airport and
2 get this done Bob, his lawyer, P J, his lawyer Okay,
3 Two lawyers, two clients They go down there and they
4 meet And you're going to hear about that meeting a lot
5 You're going to hear a lot of discussion about what they
6 did talk about, what they didn't talk about, what the
7 agreement was, what wasn't an agreement It's going to be
8 all over the map, I'm just going to go ahead and confess
9 to you, okay You put the lawyers in the room with them
10 and it's going to be all over the map Okay

11 So the question's going to be what happens after
12 that? Because they still did not get it done right there
13 And you're going to see me interject some personal
14 dynamics in the case that are going to be important, okay
15 And I said what happened between then and then? One of
16 the questions you're going to have to ask yourself is who
17 happened in between then and then What soured the
18 relationship between these guys and between Bob and
19 Billie And you're going to have to look at that Atlanta
20 airport meeting to get the first indication of that

21 Now, there is -- these boards that Mr Ellis showed
22 you, he talked about when they were signed and when they
23 weren't signed

24 Mandy, can you put up the November agreement?

25 This is a picture of the first page of it, the

0106

APP_0111

1 agreement of termination And you're going to see that
2 until you can't see it anymore, okay There's going to be
3 an e-mail on November 13th -- and the dates are all over
4 this thing It's got November 5 on it It's got November
5 8 on it It's got November 15 on it But there's this
6 November e-mail P J writes Bob and says, hey, remember
7 we had the phone conversation this morning about an option
8 agreement, well, who's going to finish that? which lawyer
9 is going to finish it? And then send me the signed
10 termination agreement

11 Now, the question about -- and what does Bob do? He
12 signs it He gets that e-mail -- they had a phone call
13 He gets the e-mail, talks about options, talks about a
14 termination agreement He signs it and he sends it back
15 Okay I want to talk a second about what's going on with
16 that

17 Mr Ellis, I think as far as he's concerned right
18 there, you can just stop reading the agreement
19 termination You don't have to read the rest of it Just
20 termination, that's all he's concerned with, but there's a
21 lot of other stuff there And that's what we're going to
22 examine What is that other stuff? Where's my red pen?
23 I've got so many pens in my pocket, I can't keep them
24 straight

25 Now, Rod Manning, the lawyer for P J, who's down in

0107

APP_0112

1 the Atlanta airport, is going to say you know what, what
2 we wanted to do, what we thought we were going to do when
3 we got back from Atlanta is we were going to work on what
4 he called a three-legged stool Okay It wasn't just to
5 be terminated, because that's what Mr Ellis is going to
6 argue is it was terminated, but it's going to be three
7 pieces to it It's going to be a termination, yes, but
8 then we were going to do something Reeves was going to
9 sell and we were going to pay some money to Bob and
10 P J 's interest is 7 1/2, right? Because it's 7 1/2, 7
11 1/2, like for like His 7 1/2 is going to come down here
12 It's not a termination so much as a transformation Okay
13 Because this one's going to sell, Reeves is going to sell
14 and NARP is still going to be here You don't have to
15 understand this right now This three-legged stool is
16 just a concept I'm throwing out there Okay But I'm
17 going to show you this board right here, the second page
18 of that termination agreement This is the second page,
19 okay And it's got these paragraphs three and four right
20 here And this piece right here and this piece right here
21 is where we're going to be in dispute You see that?
22 That part right there, Mr Ellis would have you say well
23 it says 15 December, no option agreement, it just doesn't
24 matter, just ignore it Okay
25 I don't want to put words in Mr Ellis' mouth because

1 he's going to talk plenty during this trial, but basically
2 he's going to say just ignore that stuff Everybody knows
3 that doesn't exist Okay he's going to say have you --
4 ask you is that the same as this? That's what I'm going
5 to ask you Is this the same agreement? If you just
6 black that stuff out of there, the same thing? That's the
7 essential question you're going to be asking yourself Or
8 is there something else going on? Is there something else
9 going on, is there a bigger piece of this deal?

10 Let me get back to my cards here You know, one part
11 Mr Ellis said is like, hey, there's nothing in this
12 agreement that takes care of Bob Nothing that takes care
13 of Bob You know what, that's not a problem for people
14 who trust each other It only becomes a problem with
15 people who do not trust each other, who do not have a
16 relationship with each other Because we're going to put
17 in evidence showing people counting up how much that money
18 is down here Hey, how much is my cut of Reeves? How
19 much is my seven percent? And so we think full well why
20 would Bob worry about it when we're counting it up and he
21 knows it's coming? And Rod Manning is going to say the
22 way this deal's going to work is we're supposed to be
23 doing all this at the same time We're supposed to be
24 doing a termination We're supposed to be doing an option
25 and we're supposed to be passing the check across the

0109

APP_0114

1 table at the same table It all happened at the same
2 time That's what he thinks

3 Now, apparently, this is done out of order Okay
4 It's a question of what is the purpose of this document?
5 Not going to let Mr Ellis go ahead and say the purpose of
6 the document is so they sell DHS So that's going to be
7 an issue you're going to have to look at Is that all it
8 was for? Mr Ellis talked about documents sitting in the
9 file, nobody ever knew they were But it's pretty
10 important in there, ratification, Mr Stodghill calls it
11 It's a corporate document

12 And do you have that?

13 Not that exciting to look at, really The
14 ratification And, basically, this says we authorize
15 Mr Castellano to enter this termination agreement, which
16 we don't like because it's got these things in it, and we
17 authorize him to take such further action as he needs to
18 effectuate these releases Here's this ratification
19 This termination agreement they say they don't like Did
20 P J know that was in there? He never saw that P J
21 Richardson's signature, blank So people who are going to
22 sling mud about stuff sitting in files, there's plenty of
23 that to go around

24 Now, this, basically, it starts in harmony down here
25 and the discord builds I mean, I'm just going to go

0110

APP_0115

1 ahead and confess right here, because I'm about to get
2 them out of order, everything else after this is almost
3 impossible to understand, okay. So your question is going
4 to be what were they trying to do here, okay? And if they
5 did not do anything past this point, even if that
6 termination agreement is not effective -- because you're
7 going to hear P J say I wouldn't have signed it without
8 talking to Rod Manning. I'm not walking away from NARP.
9 I've been watching NARP grow from a baby. I've got faith
10 in Bob. I've got faith in NARP. I know that's a good
11 investment.

12 As a matter of fact, the way NARP grew since then,
13 that's the best investment in the world. Let me take a
14 few minutes and tell you, I'm never going to say anything
15 bad about NARP. It's a great company. I love that stuff.
16 I mean, I used to be in the Marines, talk about saving
17 people on the battlefield, I'm all about that. So it's
18 not going to be any of that in this case, okay.

19 Let's get over to this other board here and I just
20 want to run through a little bit about what happened in
21 2005. What I was saying is if that termination agreement
22 is not effective, where do we go? Where do we go back to?
23 That's a part of our case, okay? Part of our case says we
24 think we've got an option agreement. But if we don't, if
25 we don't, they would have you assume that it's a

0111

APP_0116

1 termination It's either/or It ain't either/or, okay
 2 We have to look when is the last time these guys were in
 3 agreement? And you'll see it's the day before they walk
 4 in the Atlanta airport So where are they? Well, I offer
 5 up 7 1/2 and 7 1/2, like for like If they don't get this
 6 done, if nobody can agree down in there, then the question
 7 is then where are they? That's the question you're going
 8 to have to answer At the end of the case, we're going to
 9 ask you to find for P J Richardson We're going to ask
 10 you not to give the \$50,000 We're going to ask you to
 11 either give us an option for a penny a share and 7 1/2
 12 percent of the company, give us the 7 1/2 percent of NARP
 13 that we always had or give us the value of it Okay And
 14 we'll talk about the value I don't even know when that's
 15 going to come out exactly It's pretty confusing when you
 16 go into all these numbers

17 And by the way, all these tax ramifications, if you
 18 don't understand those, you're not the only one Okay
 19 Because this case has got a heck of a lot of the tax tail
 20 wagging the dog at in Okay Because when you get the
 21 tax lawyer in the Atlanta airport with you, the whole
 22 world becomes focused through the tax liens So bear with
 23 us on that There's going to be a lot of tax talk And
 24 you ain't the first people that didn't understand it,
 25 okay

0112

APP_0117

1 All right Here's an important event, right here in
2 January, Reeves sales Okay American dream, they sell
3 the company They get a lot of money for it They get
4 eight million dollars for it That's a lot of money to
5 everybody in the courtroom, except for Bob Castellani I
6 mean, the value of NARP, you're going to see up there,
7 okay You're going to see P J 's advisers are talking
8 about running some numbers on the sale of Reeves Here's
9 what your 7 1/2 percent is worth This is where the trust
10 part comes in The question you have to ask yourself is
11 why are they messing with these numbers, running these
12 numbers unless P J is going to be paying this to
13 somebody, to Reeves -- I mean, to NARP, Bob Castellani, at
14 a closing? Why are they ever counting them up?

15 Mr Ellis talked about an email from Bob where he
16 said, and he paraphrased it and said took it off the
17 table He said no offers that were on here Pretty
18 important e-mail from Bob I want you to look at it and I
19 want you to ask the question of who actually wrote that
20 e-mail Refer to the words in it and ask yourself who
21 wrote that?

22 In this e-mail, I can't remember what date it is, but
23 Bob says -- he talks about my share of Reeves Okay
24 Then another important thing he says, nothing has changed
25 in my mind about getting this deal done for you and

0113

APP_0118

1 Billie Okay Nothing has changed Well, things have
2 changed we've got a little bit more to get there Okay
3 This is probably going to make me really hungry, I'm glad
4 y'all already ate lunch because all these times they meet,
5 they always meet at restaurants This is an important
6 meeting They meet at Stax in June Stax Omega Which
7 I'm going to go ahead and say here in open court, it's the
8 best restaurant in Greenville It's got everything you
9 ever want, breakfast 24 hours

10 And at that meeting, they have a discussion as
11 friends and they talk about you know what, P J now has a
12 dispute with these guys at DHS And they agree, they
13 agree now, we're going to table all this stuff, this is
14 costing them a king's ransom in lawyer's fees to get done
15 and still can't get done, we're going to table it, okay
16 They're just going to leave it sitting there This table
17 stuff involves Mr Stoghill because he knows about that
18 Bob's telling her, let's table it Let's leave it

19 Then what you're going to see is you're going to
20 see -- by this time, P J's got new lawyers in there
21 Because his lawyer, Pod Marnig, is down in Florida He's
22 got lawyers in Maryland helping him Okay These are the
23 ones who's helping him sell the business to DHS He's
24 using them now to help him with Bob The guy's name is
25 Eric And you're going to see his deposition His

0114

APP_0119

1 deposition is going to be kind of hard because we're going
2 to sit there and read them and they're going to be hard to
3 follow. But, trust me, when you read these things,
4 afterwards in the closing, you're going to hear Mr. Ellis
5 tell you and I tell you what's important about that, okay,
6 so just listen as carefully as you can. Don't feel bad if
7 it's hard to digest, they are hard to digest, believe me.

8 You're going to see Curt Stodghill sending -- well,
9 wait a minute, he calls Mr. Orlinsky says hey, how about
10 doing this NARP deal. While it's tabled, right? Then he
11 sends an e-mail to Mr. Orlinsky, Eric, up in Maryland.
12 Still tabled, right? Everybody knows it. He even knows
13 it. Then in December, he sends a letter to Eric, okay.
14 And it's tabled. So it's a call, e-mail, letter. You
15 know how it's just like a drip of water after a while.
16 Then finally, this last one, he goes maybe -- you remember
17 what I suggested that you just merely retain the proceeds
18 of Reeves, the Castellani share? I assume that's what you
19 want to do since I suggested it and I haven't heard back
20 from you. Well, finally, Eric writes him a letter back.
21 He says, I assume that's what we're doing. We'll get back
22 to you. Okay.

23 Now, there is some time because that dispute goes on.
24 And, finally, you get a letter from Eric saying now we'd
25 like to do this. We'd like to get our 7 1/2 percent. And

1 he sends it to Curt what does Curt write back? he
2 writes back a letter that you'll see

3 Mandy, can you put up the letter?

4 He writes back a letter --

5 Can you flip the pages for us? Flip the next page

6 he's got a few things to say about it That's the
7 world according to Curt, the three-page letter, this is
8 everything that happened And I know because I was there
9 And what's attached to it? A nice little time bomb is
10 attached to it, this lawsuit Welcome to our party
11 We'll see you in South Carolina

12 How did we get from underneath here to here? How did
13 we get from reading the Bible together to this lawsuit?
14 That's what the question is going to be for y'all, okay
15 It's going to go -- this timeline is going to run like
16 this and it's going to run like this and it ends up right
17 there The question of how we get there, you're going to
18 ask yourself that question The question of what to do
19 about it, we're going to you because you're the only one
20 that can make it better now I don't know if you can make
21 the trust better, it might never come back, the trust
22 might never come back

23 we've got one other meeting And once there was a
24 glimmer of hope we've got one other meeting in Trio
25 I'm off the board again I'm creating on you We've got

0116

APP_0121

1 a meeting in Trio right down here on Main Street You're
 2 going to hear, P J , Billie and Bob Frankie Vailey and
 3 the boys once more They're sitting in Trio and they have
 4 some discussion Part of those discussions are about
 5 telling them things have changed Things have changed
 6 Not nothing has changed, but things have changed Ladies
 7 and gentlemen, they certainly have Okay We're here to
 8 try to do something about it today

9 Now, this is going to be fairly long It's going to
 10 be hard work And I know and Mr Ellis knows the world
 11 don't stop while we're in here Today is my oldest son's
 12 14th birthday It's my four-year-old son's first day at
 13 school It's going to be tough working here And I don't
 14 know who set this trial in the first week of football
 15 season, but, believe me, I know this is hard But we're
 16 going to work hard to get this evidence to you in a way
 17 that you can digest it And I know it's going to be hard
 18 work from y'all, but we trust you to be diligent about it
 19 and in the end do what's right That's all I have

20 Thank you, Your Honor

21 THE COURT All right

22 Ladies and gentlemen, we're going to take a short
 23 break for about five minutes Y'all go back to your jury
 24 room and we'll come back and start with the first witness

25 Everybody else remain seated, please

1 (WHEREUPON, the jury left open court at
2 approximately 3 00 p m)
3 (WHEREUPON, a short break was taken)
4 THE COURT Defense?
5 MR STILLWELL The Defense is good
6 THE COURT Ask the jury to come in
7 (WHEREUPON, the jury came into open court at
8 approximately 3 05 p m)
9 THE COURT Mr Ellis
10 MR ELLIS Your Honor, the Plaintiff calls Mr
11 Robert Castellani
12 THE COURT Please come around and be sworn, sir
13 THE CLERK Place your left hand on the Bible and
14 raise your right hand
15 ROBERT CASTELLANI, after being duly sworn,
16 testified as follows
17 THE CLERK State your name, please
18 THE WITNESS Robert Castellani
19 THE CLERK Thank you, be seated
20 DIRECT EXAMINATION
21 BY MR ELLIS
22 Q All right You are Bob Castellani is that right?
23 A I am
24 Q Mr Castellani, where are you from?
25 A Greenville, South Carolina

1 Q How long have you lived here?
2 A About eight years, eight, nine years
3 Q Where did you move here from?
4 A Columbia, Maryland
5 Q Are you married?
6 A I'm married
7 Q What's your wife's name?
8 A Lisa
9 Q Do you have children?
10 A Yes, I do Cole and Rachel
11 Q And how old are Cole and Rachel?
12 A Cole is four and Rachel is three -- I mean, Cole is
13 four and Rachel is seven
14 Q Where do you go to church?
15 A Brookwood
16 Q Are you involved in your church?
17 A I am
18 Q What's your educational background?
19 A I have a high school diploma
20 Q Tell us about your employment history
21 A I was in the military for ten years
22 Q What did you do in the military?
23 A I was in Air Force Pararescue
24 Q Could you tell the jury what an Air Force Pararescue
25 man is?

0119

APP_0124

1 A It is one of the two special operation components of
2 the Air Force Our mission was to rescue downed pilots
3 and recover essential equipment

4 Q And how long were you in the military?

5 A About 10 years

6 Q When did you get out?

7 A I got out in April 14th, 1964

8 Q 1964?

9 A That's when I was born, 1994

10 Q Okay

11 A I'm a little bit nervous

12 Q I understand By the way, how old are you?

13 A I'm 44

14 Q Okay Was your discharge from the military
15 honorable?

16 A It was

17 Q What happened to cause you to have to get out of the
18 military?

19 A I was doing military pre-fall and I broke my neck

20 Q What's military pre-fall?

21 A I jumped out at 25,000 feet and I crushed the disks
22 in my neck

23 Q Did you have any decorations or accommodations while
24 you were in the military?

25 A I did

- Q What were they?

2 A Without giving you the details of each one, I was
3 decorated for a gallantry unit four times then unit
4 citations, good behavior and longevity and others

5 Q Any decorations for heroism?

6 A Four, yes

7 Q What are those?

8 A I have an Airman's medal, it's just above the Bronze
9 Star Medal I have two Airman's medals, then I have a
10 joint service accommodation medal as well

11 Q Could you pull that microphone a little bit closer to
12 you there? Okay Thank you Now, what did you do when
13 you got out of the military?

14 A I had decided that I was going to go to college and
15 become a physician's assistant

16 Q How did college work out?

17 A Didn't work out real well

18 Q Okay

19 A Difficult

20 Q Then what did you do?

21 A I worked as a paramedic on an ambulance and the fire
22 department in Baltimore, Maryland

23 Q Then what?

24 A That didn't work out, so I started my own company

25 Q And was that company North American Rescue Products?

1 A It is

2 Q Do you recall about the year that you started North
3 American Rescue Products?

4 A 1995

5 Q Okay Tell us what North American Rescue Products
6 does

7 A We design equipment that produces preventable combat
8 death We use a science of how guys are injured and
9 killed The body armor, weapon systems, evacuation times
10 What we do is we try to define medical equipment and
11 rescue equipment and take that number, let's say
12 62 percent of them died we try to reduce that at least
13 60 percent so it's 100 percent effective So they live
14 100 percent of the time It's data driven --

15 Q Do you work with the military in developing these
16 products?

17 A We do

18 Q Do you have a pretty close relationship then with the
19 various branches of the military?

20 A Yes, I do

21 Q Okay Now, exactly what is your relationship with
22 North American Rescue Products?

23 A I'm the chief executive officer

24 Q Now, recently, it's changed its name, right?

25 A North American Rescue, we started doing a whole lot

1 more training, having soldiers come in and train on the
2 equipment, so we changed the name

3 Q So now instead of North American Rescue Products,
4 it's called North American Rescue, is that right?

5 A Correct

6 Q What is the North American Rescue Products
7 foundation?

8 A The foundation is set up to be able to effectively
9 transfer our profits to charities that support the
10 rehabilitation of soldiers when they're wounded, their
11 families. It's kind of one of the cracks. The Department
12 of Defense does really well in treating the soldiers, but
13 it doesn't help the family members as well as it probably
14 should. So we make a good bit of money off of it so we do
15 soldieries then we do kind of Christian based causes
16 Like have a big autism program, mission work overseas

17 Q Is there something call the Hopeful Foundation as
18 well, what is that?

19 A That's another foundation that we have. It's a
20 vehicle to take money and again, I guess it's going to be
21 weird taxes right. It's a way to take dollars, pretax
22 dollars that I would pay income tax on, transfer all that
23 money into the charity. So instead of giving the church a
24 dollar, I can give it this way they and they get the whole
25 dollar

1 Q Just in the past year or so, do you know how much
2 North American Rescue has given away to charitable causes?

3 A In the last three years, probably over six million

4 Q How many employees does North American Rescue have?

5 A We have 27 to 28 direct employees, but we employee --
6 South Carolina Voc Rehab has a job training program and we
7 employee anywhere from 40 to 60 on the floor on a given
8 day

9 Q I'm going show you a document, we'll mark this as
10 Exhibit one, I mean I've offered it as Exhibit 1, do you
11 recognize that document?

12 A I do

13 Q It's actually a set of documents marked as Exhibit 1,
14 can you tell us what those are?

15 A Incorporation documents

16 Q Okay I'm going to see if I can show them to the
17 jury as well Okay These incorporation documents? You
18 might need to move that picture Thank you Do you know
19 what state then North American Rescue Products was
20 incorporated in?

21 A Delaware

22 Q Okay So it's a Delaware corporation that's
23 authorized to do business in South Carolina?

24 A Yes, sir

25 Q Okay

1 MR ELLIS Your Honor, I'd like the offer that into
2 evidence as Plaintiff's Exhibit 1

3 THE COURT Any objection?

4 MR STILLWELL No, sir, Your Honor

5 THE COURT Plaintiff's 1 is in evidence without
6 objection

7 (WHEREUPON, Plaintiff's Exhibit No 1 was marked
8 for identification and received into evidence)

9 BY MR ELLIS

10 Q How did you meet P J Richardson?

11 A It was at a trade show And he and I differ a little
12 bit, but I think I met his son, Michael, and then I think
13 it was soon after that we bumped into each other at a
14 restaurant

15 Q What year do you recall this was?

16 A I'm not sure

17 Q Okay Now, at that time, did you have North American
18 Rescue Products?

19 A I did

20 Q Okay What was the name of P J 's company?

21 A Peeves Manufacturing

22 Q What, at that time, did you understand what Reeves
23 did?

24 A It made emergency medical equipment, a little similar
25 to ours They got very heavy in the tent and showers

1 Q Okay what was your relationship with P J when you
2 all started out?

3 A It was a friendly vendor relationship we hit it
4 off

5 Q Okay Did y'all become personal friends as well?

6 A We did

7 Q Okay Now, did North American Rescue Products
8 actually pay Reeves for administrative services?

9 A They did

10 Q Can you give me some kind of a ballpark as to how
11 much North American paid Reeves?

12 A Half a million dollars

13 Q Do you know what time period it was?

14 A I think over a two or three year period we had a
15 very lengthy agreement, then it started migrating into
16 they were doing a lot services

17 Q Okay what types of services did Reeves do for you?

18 A They did customer service, taking orders They did
19 my accounting They did some shipping for me There was
20 some sewing, but I was paying them to do the sewing I
21 was buying the product directly, they did that They did
22 some mailing and marketing, but I did that, too

23 Q You're saying sewing, tell the jury what kind of
24 products you're talking about here?

25 A They made litter beds for me for a while

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APP_0131

1 Q Let me go back, litter beds, is that to carry
2 soldiers off a battlefield, is that what that is?

3 A It's a way to move people, a litter stretcher to
4 carry people

5 Q Okay And did Mrs Richardson, actually, become an
6 employee of North American, actually, at some point?

7 A She did

8 Q Okay What was your relationship with Billie?

9 A It was very warm

10 Q Your relationship with P J personally in the mid to
11 late 90's, what was that?

12 A When I say warm, it was a very good relationship It
13 was a friendship We shared a lot of stuff together

14 Q Okay Let me show you a document that we've marked
15 as North American Rescue Exhibit 2 and ask you if you
16 recognize that document?

17 A I do

18 Q What is that document?

19 A This is our first contract together

20 Q Okay

21 MR ELLIS Your Honor, I'd like to offer that into
22 evidence as North American Rescue's Exhibit 2

23 THE COURT Any objection?

24 MR STILLWELL I don't have any objection to that,

25 Your Honor And I think we have a copy of ours, too we

1 can talk later about how to deal with it

2 THE COURT All right, thank you

3 THE COURT REPORTER Judge, I need to mark that

4 THE COURT I'm sorry, I thought you already had

5 THE COURT REPORTER No, sir

6 THE COURT Gentleman, make sure the Court Reporter
7 sees those, if you would

8 MR ELLIS I'm sorry

9 (WHEREUPON, Plaintiff's Exhibit No 2 was marked
10 for identification and received into evidence)

11 BY MR ELLIS

12 Q Bob, let's take a look at this agreement Do you
13 recognize this agreement -- tell us what that agreement
14 is

15 A This was the first time we kind of memorialized or
16 officially memorialized the working relationship

17 Q Okay How did this agreement come about?

18 A We had both had some limited status in our companies
19 and we had worked together for a while and trusted each
20 other It was kind of like an insurance policy We both
21 had pretty good companies We had a lot of hurdles in
22 front of us The odds of both of us making it were
23 probably not great, but the odds of one of us surviving
24 was probably pretty good And speaking for myself, I
25 viewed it as a way to kind of change (sic) my bed

1 Q Well, let me see if I can zoom in a little bit here
2 Bear with me Looking at Exhibit 2, North American Rescue
3 Exhibit 2, who are the parties to this agreement?

4 A My company and myself and P J and his company

5 Q Okay So you had North American Rescue Products,
6 Reeves Manufacturing, Bob Castellani and P J Richardsor
7 Is there a definition that you see in there of what RMI,
8 Reeves Manufacturing, business is?

9 A Yes, it's the first sentence

10 Q Okay And do you also see that the agreement
11 identifies what NARP's business is?

12 A Correct

13 Q Okay And just going on down, what else did this
14 contract address?

15 A Well, it's cross-selling products, fairly common
16 thing Depends now you look at the companies, but we were
17 in about the same market space with different focuses in
18 areas Reeves Manufacturing, historically, works in the
19 medical EMS that worked with ambulance services There
20 was an opportunity that presented itself decon weapons of
21 mass destruction So they really started focusing on that
22 new market Where I was -- my litters were the only ever
23 tested on live warfare so it kind of bled into that
24 market But I really was more looking forward on how
25 soldiers were being wounded and how to get people off the

1 battlefield efficiently

2 Q I noticed that in the next to the last sentence, it
3 says the cross selling has become an important part of
4 each company's business. Did y'all actually engage in
5 that activity as a stock in the contract?

6 A I can tell you what we did. We would go to trade
7 shows and he would put my litters up. And I would go to
8 trade shows and I would promote the decon business. The
9 real link there was the litter. Without the litter, I
10 really didn't have a lot to do with that new market. So
11 as he would sell decon systems, he would try to promote
12 the litter. And I was selling litters for decons, I would
13 try to promote his systems.

14 Q What about commissions, the next line down is
15 commissions, how did that work out?

16 A They sold my product directly, so the whole
17 commission thing wasn't -- I don't remember getting
18 commissions from them, but nor did I really expect to.
19 And I really didn't pay them that many commissions
20 because, again, if someone bought the litter, they bought
21 them from Peeves, not myself. Every now and then, someone
22 would come direct to me, but that normally got caught in
23 the Peeves office somewhere.

24 Q Did y'all ever formally terminate the commission
25 provision?

1 A In the termination agreement

2 Q Okay In the next line, it says envelope of
3 management Did you all respect that provision?

4 A We did

5 Q And looking at the agreement, what did you understand
6 that to mean?

7 A We just didn't meddle in each other's business

8 P J had -- the business, of course, setting up, he had a
9 lot of employees I really didn't have employees They
10 had manufacturing, which is a whole separate type of
11 industry than selling as you viewed it So he had to run
12 his company his way It was a family-owned business, his
13 wife and his two sons were involved So that inherently
14 caused problems If I was involved and say I don't like
15 what you're doing and I would say I don't like what your
16 wife's doing But that, and I had a virtual company, kind
17 of I was running it differently I looked at it as a
18 modern company I was outsource manufacture, outsource
19 distribution I really focused on designing the products
20 themselves, finding a place to get it manufactured But
21 really it was about marketing and distributing So that's
22 what I meant by that

23 Q It is fair to say then you ran your company and he
24 ran his company?

25 A Yes

0131

APP_0136

1 Q I believe we've already touched on the termination of
2 commissions Now, number seven, restricted stock, it says
3 Reeves shall issue RMC, row RMC is you, right?

4 A Correct

5 Q And NARP shall issue PJR, and that's P J
6 Richardsor, right?

7 A That's true

8 Q Capital stock to 25 percent fully diluted of the
9 issued stock of all classes Did y'all ever actually
10 exchange stock?

11 A We did not

12 Q Did you ever show P J as a stockholder on the books
13 of North American Rescue Products?

14 A Did not

15 Q To your knowledge, did Reeves Manufacturing ever show
16 you as a shareholder on the book of Reeves?

17 A No

18 Q This agreement, I believe, was executed originally in
19 2000, is that right?

20 A Yes

21 Q Okay Let's just take a look at the next page So
22 y'all signed this that agreement at the end of 2000?

23 A We did

24 Q Okay Did you and P J ever have any conversations
25 about actually carrying out the stock provisions of this

1 agreement?

2 A You mean just swapping stock?

3 Q Yes

4 A We never had a conversation about swapping stock in
5 this agreement

6 Q Tell me what happened after this was executed in 2000
7 and take me forward to the year 2004

8 A Well, we signed it and it sat in a drawer We ran
9 our companies separately Things were going well
10 Obviously, there were little issues that would come up
11 every now and then, but I think we had -- we were each
12 looking for the greater good of each other It did
13 exactly what it was supposed to do We were linked
14 together What was good for the goose was good for the
15 gander, which is kind of a silly saying, but it worked
16 So if I disagreed with a decision P J made and I thought
17 it was a bad decision, that's okay, because he was driving
18 the truck off the cliff and I went with him, but he went
19 first If he disagreed with something I did, I was going
20 to go off the cliff first and he would follow That was
21 the beauty of this agreement We had no real separation
22 between us Of course, the problem was there was not a
23 lot of meat on the agreement, but it worked
24 Q Did you all talk at some point about changing the
25 relationship then in this contract?

0133

APP_0138

1 A There were two discussions about changing the
2 contract The first was something called a Reeves group,
3 which came about And then we had the modified 2004
4 contract that we either signed or agreed to

5 Q Do you recall ever asking P J to merge your company
6 into his or his company into yours?

7 A I do not remember that

8 Q Okay You and P J, you all are actually working
9 with the same lawyer at this time, weren't you? I'm
10 sorry, let me give you a little bit more context Late
11 2003, early 2004, were y'all actually -- late 2003, were
12 you all working with the same lawyer?

13 A I heard that said I don't -- I can tell you that
14 Curt drafted that document in 2001 and we both signed it
15 I do not know if he had a lawyer or not, but I do not know
16 who he was using at the time Late 2004, I had worked
17 with Curt on this and then turned around and started
18 working with them in 2004 I didn't have an attorney

19 Q Okay In late in 2003, were you actually working
20 with a Rod Manning out of Florida?

21 A I'm sorry, yes

22 Q Was P J also using Rod Manning?

23 A Rod was not my attorney That was his attorney He
24 drafted the documents and as we were doing the preliminary
25 work, I had to find an attorney Pod made that perfectly

0134

APP_0139

1 clear

2 Q Okay Let me show you this document and see if you
3 recognize that?

4 A I do

5 Q What is that document?

6 A It's a letter to Rod Manning from myself

7 Q Okay

8 MR ELLIS Your Honor, I'd like to offer that into
9 evidence as North American Rescue Exhibit 3

10 THE COURT Any objection?

11 MR STILLWELL I'm sorry, Your Honor I'm sure I
12 don't That's fine

13 THE COURT All right Plaintiff's Exhibit No 3 in
14 evidence at this time without objection

15 (WHEREUPON, Plaintiff's Exhibit No 3 was marked
16 for identification and received into evidence)

17 BY MR ELLIS

18 Q What is this Exhibit, Bob?

19 A This is a letter to Rod Manning just kind of
20 outlining -- at the time, we were starting to see the
21 agreement pulled apart, something called the Reeves Group,
22 something that kind of upset me It was a different way
23 to restructure and I felt that P J was pulling assets
24 out of Reeves Manufacturing to what he called Reeves Group
25 where we could do some other investing and buy companies

1 or merge with companies or something And what we're
2 getting to is we need to relook at the agreement, so I
3 sent a note saying here's what's important to me

4 Q Let me ask you before we go any further with this,
5 tell me who Curt Stodghill is

6 A Curt Stodghill is my -- I'm probably going to use
7 this wrong He's my general counsel If I have contracts
8 to review, if I have estate planning, if I have
9 nondisclosure agreements people send me, he reviews them
10 for me General, kind of general business law

11 Q Okay Now, looking back at this e-mail that you
12 wrote on January 23rd, 2004, when you say Curt -- I spoke
13 to Curt and I think he has a pretty good understanding of
14 what we are trying to accomplish However, I'll try to
15 write the main points down We each -- our 25 percent of
16 the other guy's company That's our, I think that's
17 supposed to be own Is that right?

18 A That's correct

19 Q Okay What did you mean there?

20 A I speak minimum -- I'm a military guy, I speak in
21 very direct terms So after each sentence, I don't write,
22 you know, I would like us each to own, I would like -- we
23 own 25 percent We operate companies separately We have
24 right of first refusal Then the last one is in reference
25 to the Reeves Group, which is this arrangement we had I

1 wanted to make sure that I re-iterated that we had the --
2 the come-along rights or the -- whatever he did, what's
3 good for the goose is good for the gander So that's what
4 I meant It was basically this new agreement that we were
5 trying to work out Those are the four points that I
6 thought were most important

7 Q Now, at that time, January 23rd, 2004, did you think
8 that you actually owned 25 percent of Reeves?

9 A No

10 Q Did you think that Reeves, actually, owned 25 -- I'm
11 sorry, did you think that P J actually owned 25 percent
12 of North American Rescue Products?

13 A He did not own 25 percent

14 Q Okay What did you understand this Exhibit 2 to be
15 then as far as the stock rights went?

16 A Can you ask that again?

17 Q What did you understand the relationship to be then
18 based on Exhibit 2?

19 A This was memorializing Again, we didn't have all
20 the structure at this time We were just memorializing
21 These were things that we were trying to accomplish,
22 although we could have accomplished them

23 Q Okay Now, did you actually exchange stock at that
24 point?

25 A We did not

1 Q why not?

2 A You mean 2004?

3 Q 2003 Again, I'm sorry, I'll put this back up
4 January 23rd, 2004 When you all were talking in early
5 2004, did you actually exchange stock with P J then?

6 A We did not At this time, we -- again, we were kind
7 of in between what we were thinking The Reeves group was
8 a concept of how to -- let me back up Rightfully so,
9 P J was looking at an exit strategy for the company We
10 knew that the decon business had kind of made its big run
11 Everybody jumped in the business P J was one of the
12 first ones We were trying to come up with this really
13 great concept which had air purbers, had a modac that made
14 phones and stuff I got real uncomfortable with this
15 deal And I assured at this time he was thinking about
16 stopping the company So there would have definitely not
17 been an exchange of stock because the structure had
18 started to change

19 Q At some point, did you and P J agree to modify the
20 stock provisions of this agreement?

21 A We did

22 Q How -- tell us how that came about

23 A It had become clear that he was looking to sell his
24 company He'd come to me and wanted to know if I wanted
25 to sell the company and I did not want to sell the

0138

APP_0143

1 company It's my understanding that if he had sold me 25
2 or traded stock with me or sold me 25 percent of his
3 company, he wouldn't have realized enough money out of the
4 sale of the company to retire He's still gambling on my
5 company So -- and I didn't want to give up 25 percent of
6 my company now because I was going to be by myself 7 1/2
7 percent had to have come from some merger between ten and
8 five or something like that, split the difference But we
9 both felt comfortable with that And, rightfully, P J
10 and Billie were very helpful for me we, at this time,
11 had this great relationship But vice versa, they wanted
12 to gamble But I think it became that, Do we gamble with
13 our retirement or do we gamble on NAPP?

14 Q Now, at this point, are we in mid 2004?

15 A When the modification agreement was?

16 Q Yes

17 A Yeah, correct

18 Q Now, again, about the modification agreement, where
19 did that happen?

20 A Well, it was agreed to

21 Q No, tell me where you were when you met with P J to
22 talk about changing the agreement from 25 percent to 7 1/2
23 percent?

24 A There wasn't one We had phone calls We got
25 together at Curt's office and then we went down to

1 Charleston So there was kind of a -- so pick your place
2 when we talked about it
3 Q So did you actually meet with him then in Charleston?
4 A We did
5 Q And tell me what happened in Charleston, who was
6 there?
7 A Me, Billie and P J
8 Q And that was at your beach house?
9 A Yes
10 Q Okay And was that the place where you all finally
11 agreed to reduce the stock percentage from 25 percent to 7
12 1/2 percent?
13 A It is
14 Q Did you exchange stock at that point?
15 A We did not
16 Q Okay Did you ever agree with P J or did he even
17 discuss with you about whether you would accept anything
18 other than stock in Peeves in exchange for NARP stock?
19 A In Charleston?
20 Q At any time
21 A That was after -- that was at maybe the Dobson thing
22 or something like that, but at this point, it had always
23 been stock for stock
24 Q Okay
25 A So I want to say we signed the termination agreement,

0140

APP_0145

1 then we started talking about how to make some things
2 work But he had never offered as we were going through
3 these contracts anything but stock for stock

4 Q Did he discuss with you during this period of time
5 whether you would accept any other consideration besides
6 stock in Reeves?

7 A No

8 Q Did you ever offer at that time to accept any other
9 consideration besides stock in Reeves -- I'm sorry, stock
10 in Reeves Manufacturing?

11 A No

12 Q Okay Did you make an agreement that sometime P J
13 could just pay you directly in cash for NARP stock?

14 A No

15 Q After the meeting in July where you all reduced the
16 percentage from 25 percent to 7 1/2 percent, what happened
17 ther with the companies?

18 A July of? what was --

19 Q July of '04?

20 A I've got so many dates in my head

21 Q Sure, I understand What was P J talking about
22 doing with his company at this point?

23 A He was looking at selling his company

24 Q Did he have any actual potential buyers at some
25 point?

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APP_0146

1 A I know of two buyers, but I wasn't brought into the
2 loop One was the TBI Corporation, which I vaguely
3 remember they wanted -- they were going to give a little
4 bit more, but there was a lot of stock involved in the
5 transaction The other was the EHS, which was more cash,
6 more of a traditional buy out That's all I know about

7 Q At some point, did P J Richardson actually become a
8 member of the Board of Directors?

9 A He did

10 Q Let me show you a document and ask if you recognize
11 North American Rescue Products Exhibit 4?

12 A I do

13 Q Okay Let me show it to the jury What is it
14 Exhibit 4?

15 A Shareholder Minutes

16 Q Okay

17 A I might have it as that but it's shareholder
18 agreements and stuff

19 Q Okay Would you look and see what the top paragraph
20 says? Where it says resolved?

21 A Okay You want me to read it?

22 Q Just tell us what it says

23 A It basically places P J on my Board of Directors
24 for a fee of \$50,000

25 Q So P J was actually elected as a member of the

1 Board of Directors of North American Rescue Products at
2 that time, right?

3 A Correct

4 Q Can you see what the date is at the bottom there?

5 A September 24th, 2004

6 Q Thank you

7 MR ELLIS Your Honor, I'd like to offer that into
8 evidence as North American Rescue 4

9 THE COURT Any objection?

10 MR STILLWELL No objection, Your Honor

11 THE COURT It's in evidence without objection

12 (WHEREUPON, Plaintiff's Exhibit No 4 was marked
13 for identification and received into evidence)

14 MR STILLWELL When we get to some point, I think we
15 can probably stipulate to them

16 THE COURT All right

17 BY MR ELLIS

18 Q We talked about he was paid \$50,000 to serve as a
19 member of the Board of Directors Was he actually paid
20 that amount?

21 A He was paid that amount

22 Q Okay Let me show you Exhibit 5, North American
23 Rescue Exhibit 5 And do you recognize that document?

24 A I do

25 Q Okay And just describe what it is, please

1 A It's a 1099 It's a tax form required by the IRS
2 when you pay someone So it was a sum of \$50,000 And
3 that's how the corporation has to report it

4 MR ELLIS Your Honor, I'd like to offer that in
5 evidence as North American Rescue Exhibit No 5

6 THE COURT Any objection?

7 MR STILLWELL No objection, Your Honor

8 THE COURT In evidence without objection

9 (WHEREUPON, Plaintiff's Exhibit No 5 was marked
10 for identification and received into evidence)

11 BY MR ELLIS

12 Q Why was P J put on the Board of Director of NARP?

13 A It was his request as we -- again, as I stated, the
14 agreement started to change for P J basically to -- he
15 was looking at this as more of an investment of his money
16 He wanted to watch his money now Where before it wasn't
17 an issue because Billie was doing the books, his CFO was
18 doing the financial stuff He required to now be placed
19 on the Board which gets into the whole management of my
20 company But again, we had a good relationship It
21 didn't seem like it was an unreasonable request

22 Q Now, when you say the agreement was changing, I'm
23 going back to North American Exhibit 2, the 2000 outline,
24 at this point had you all formerly ended this agreement,
25 and I'm talking about in September 2004?

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APP_0149

1 A No, we hadn't

2 Q Okay What was your understanding of why -- after
3 July 2004, what was your understanding of why the parties
4 didn't just exchange stock as it had been discussed in the
5 outline?

6 A Prior to the Reeves sale rapping, is that -- we
7 hadn't really exchanged stocks I don't know how much
8 time and energy we put into exchanging stock At this
9 time we didn't exchange stock because P J was making a
10 transaction

11 Q By transaction, what do you mean?

12 A With DHS

13 Q Okay

14 A They didn't necessarily want me to be a shareholder,
15 it just complicated the issue And as a seven percent
16 shareholder, that's a significant amount of ownership in a
17 company So I would have had the right to ask DHS
18 questions and that would have kind of violated that whole
19 let the other guy manage his company

20 Q Did P J actually tell you that he or someone else
21 had told DHS anything concerning ownership in his company?

22 A Yes, I was told that he had told DHS that he was the
23 only stockholder

24 Q Okay So what was your understanding of how that
25 effected his ability to issue shares in Reeves after he

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APP_0150

1 had told that to D-S?

2 A Well, it was true, he was the only stockholder but we
3 had the agreement So he couldn't -- I mean, once he sold
4 Reeves, obviously, he couldn't have given me the 7 1/2
5 percent of the company after it was sold

6 Q Did you understand anything about any of the tax
7 ramifications also in exchanging stock?

8 A I did

9 Q Tell the jury what was going on as far as the tax
10 ramifications

11 A It's not real complicated It's ordinary income,
12 which is taxed ordinary income rates Then you have
13 capital gains, which is taxed at a different rate When
14 you sell -- so, basically, if we swap stock, it would have
15 been capital gains Currently, that's 15 percent, if you
16 sell stock If it's ordinary income, it's whatever your
17 tax bracket is So by switching stock, there's no tax
18 ramification But for me to have given him stock and him
19 just given me cash -- and again, that's why he donated to
20 charity, why waste the money, just go ahead and give it to
21 a good cause

22 Q Did you have any discussions about doing something
23 else then besides exchanging stock so you could exchange
24 some interest in each other's companies?

25 A We did As we were moving forward, again, it's

0146

APP_0151

1 probably a bad analogy but I'll say it anyway because it
2 helps clarify it for me I can treat you like my brother,
3 but that doesn't make you my brother We didn't have
4 stock but we treated each other that way It started to
5 change as the change in Reeves was moving forward What I
6 was still trying to do -- again, at this point, we had a
7 good relationship I wanted to still honor that agreement
8 the best I could So at this point -- or in November or
9 near the end of the termination, we were trying to work
10 something out to make that happen It's never -- there
11 was never -- there was never a contract or proposals out
12 there

13 Q Did y'all have any discussions about possibly doing
14 anything with stock options instead of stock?

15 A There were a lot of options mentioned and stock
16 options was definitely one of them

17 Q Do you know whether or not the lawyers actually
18 floated draft options back and forth between each other?

19 A I found out after the lawsuit they were -- after the
20 lawsuit started that there were options flying back and
21 forth

22 Q Did you actually see any of the draft options that
23 had been sent back and forth between your lawyer and

24 P J's lawyer?

25 A The first time I saw a draft option was after the

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1 lawsuit had started

2 Q Okay At some point, did you and Curt Stodgrill have
3 a meeting with P J and his lawyer to discuss about how
4 to work all this out?

5 A Yeah, it was pretty common Normally, what happened
6 is we would set some form of the agreement, then you'd
7 turn it over to the attorneys The attorneys would try to
8 work out what they can work out Normally, there was one
9 or two sticking points Then once they come to the
10 sticking points, then you meet with all the attorneys and
11 you say no, what I really need to do is this I want to
12 do this You kind of just fine tune it instead of sitting
13 around for the whole discussion So we did that in
14 Atlanta

15 Q So what happened in Atlanta?

16 A Well, we had -- we had, again, sticking problems In
17 the Atlanta meeting, you had a lot of stuff happening
18 You had P J getting close to selling his company, so he
19 needed documents called due diligence documents,
20 shareholders, are you selling what you're selling, do you
21 own what you own, those type of things So they needed to
22 get this document executed to, basically, say that we
23 didn't have -- they didn't have shareholders

24 Q Now, this meeting was -- do you recall exactly when
25 it was?

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APP_0153

1 A Jo

2 Q Do you know if it was in October of 2004?

3 A It was before the November termination, so sometime
4 mid-October to early November

5 Q Do you recall any of the discussions about the
6 disagreements that you and P J were having about how to
7 resolve this? Do you recall anything about an
8 anti-dilution issue coming up?

9 A Yeah, that was again -- the anti-dilution issue -- I
10 have to go back. The first contract, which was good for
11 the goose is good for the gander, my company's an
12 employee-owned company, they own 10 percent of it. I
13 issue shares to people in the company. So what I needed
14 to be able to do is, again, driving off the cliff thing.
15 If I found somebody who was such a good employee that I
16 wanted to retain them and I gave them stock, how the stock
17 would work is it would come out of my pocket and as a
18 percentage of ownership, it would come out of theirs. It
19 was good for me, it was good for them. If they sold the
20 stock back, I would get my percentage and so would the
21 shareholders. P J wanted to say no, if you give stock
22 to your employees, that's your business, that doesn't
23 effect my shares. And again, if you go back to the intent
24 that I was trying to follow, that's not what the intent
25 said. The intent said was that they didn't know the

1 management of my company Part of the management of my
2 company is that the reason we've grown so fast is I've got
3 some awesome people And I want to hold those awesome
4 people in place with benefits And one of the benefits
5 you can get is you can get stock in the company So the
6 anti-dilution clause had specific heartburn A, it didn't
7 keep us all rowing in the same direction and it started
8 meddling again, more in the management, which started
9 again altering the intent of that original agreement

10 Q Okay So in Atlanta, you all met -- in the fall of
11 2004, you all met to try to work out all these differences
12 that you were having?

13 A Yeah, I actually thought that issue had been
14 resolved

15 Q Okay

16 A And that's again -- that either came up then I know
17 it had been an issue early on with other issues

18 Q But did you all actually have proposals back and
19 forth on the table when you met together in Atlanta?

20 A We had been talking about -- we were talking about
21 it, I believe, at the time the Dobson agreement

22 Q Okay How did you understand the parties left the
23 Atlanta meeting?

24 A Just like we've had, we want to work together, but
25 it's all the details that had to be worked out It hadn't

1 gotter worked out There was still -- even today sitting
2 in this courtroom, it's not worked out There were all
3 sorts of little nuances that had to be worked out that
4 were pretty significant then And anti-dilution was one
5 of them At one point, he wanted me to put a forfeiture
6 on the stock So if he bought it at \$100, my company,
7 failed, I would have to pay him a hundred dollars for the
8 stock Again, there were all these little things he was
9 putting in this agreement And again, I don't know which
10 one at which time, you got e-mails that would give dates
11 and stuff

12 But the Atlanta meeting, we walked out of there
13 saying listen, this thing's a mess, you're selling your
14 company Let's clear it with termination -- that I am not
15 an owner in this company It allows us to start over and
16 there's no pressure anymore The pressure was coming from
17 the sale of Reeves At the time, I was just going
18 business stuff I had no pressure on me

19 Q Just then to be sure it's clear, what was your
20 understanding of the status of this Exhibit 2 when the
21 four of you left the meeting in Atlanta?

22 A That it was being terminated

23 Q Okay What were things going to be as far as the
24 future goes?

25 A The future was terminate it Then we were going to

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1 get in the Dobson Ministries thing, which was a proposal
2 to take some of the -- it was to take the money I was
3 supposed to get if Reeves sold and it was going to be
4 donated to charity. It's got to work away all this. The
5 tax implications were, basically, me owning the stock. At
6 that point, it didn't matter if I owned the stock. It was
7 all going to charity anyway. So it was a way to effect
8 that thing and, again, try to mirror what we were doing in
9 2000.

10 Q When you left Atlanta, did you understand whether or
11 not the parties had made a new agreement?

12 A We had not made a new agreement.

13 Q Okay. Did it surprise you that -- it is your
14 understanding that you all had terminated the 2000
15 agreement, did it surprise you that P. J. was willing to
16 terminate this?

17 A By terminating this agreement he basically retained 7
18 1/2 percent of his company, which allowed him to sell his
19 company for nine million dollars. So it's not -- no, I
20 mean, I understood -- I mean, he was going to have to take
21 a gamble on me. Again, what might be important for
22 everybody to understand, at the time, most of my
23 infrastructure was sitting up in Maryland. I was working
24 out of the bonus room in my house. So here's this young
25 guy who's got, you know, a high school diploma, a military

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APP_0157

1 guy, rightfully, I had done very well for myself. Now,
2 we're going to start managing people, doing payroll,
3 hiring CFO's. There was a risk and he was looking at
4 retirement, so in context, it was a fair thought on his
5 part to basically pad his bed.

6 Q Now, after you all left that meeting in Atlanta then,
7 what do you recall the next step that happened?

8 A Well, I got -- I had faxed over an e-mail going over
9 the termination agreement.

10 Q Okay.

11 MR ELLIS Ask you to mark this for me.

12 (WHEREUPON, Plaintiff's Exhibit No. 6 was marked
13 for identification only.)

14 BY MR ELLIS

15 Q Okay. Do you recognize this document?

16 A I do.

17 Q What is it?

18 A The Termination, Settlement and Release Agreement.

19 MR ELLIS Your Honor, I'd like to offer that into
20 evidence as North American Exhibit 6.

21 THE COURT Any objection?

22 MR STILLWELL No, sir, Your Honor. I was just
23 wondering, I just saw number two up there.

24 MR ELLIS Yes.

25 MR STILLWELL No problem, Your Honor.

0153

APP_0158

1 THE COURT Plaintiff's 6 in evidence without
2 objection

3 (WHEREUPON, Plaintiff's Exhibit No 6 was
4 admitted into evidence)

5 BY MR ELLIS

6 Q Okay This is the agreement of termination and
7 settlement that you heard us talk about before How did
8 you get this document?

9 A It was either faxed to me or e-mailed to me

10 Q By who?

11 A P J Richardson

12 Q Did you have any part in drafting this document?

13 A I did not

14 Q Did your lawyer have any part in drafting this
15 document?

16 A I don't believe he had

17 Q Did P J tell you why he sent this document to you?

18 A Yes I got this document, I think it was relatively
19 late in the day, and he said he needed it for due
20 diligence

21 Q What due diligence?

22 A For the DHS deal You have to get one in order to
23 sell the company

24 Q What did you do when you got the document?

25 A I signed it

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APP_0159

1 Q Why did you sign it?

2 A Because he had told me it was what we agreed to in
3 Atlanta

4 Q Okay What did you understand the effect of that
5 agreement to be?

6 A To terminate the 2000 -- well, the modified 2000
7 agreement

8 Q Okay Let's go through it and see what it talks
9 about in terms of sale Down here, it says it terminated
10 the 2000 outline, right?

11 A Correct

12 Q In the second part of this, it says there's a
13 settlement All claims and any claims of any major debts
14 are settled, right?

15 A Correct

16 Q Paragraph three says that NARP and Bob Castellani
17 hereby remise, release and forever discharge Reeves and
18 P J for any and all matter of claims and so forth
19 related to the 2000 outline from the beginning of time to
20 the date of this settlement agreement?

21 A Correct

22 Q Did you notice anything when you first signed this
23 about the next sentence?

24 A No, I did not I got the paper, I flipped to the
25 back of it and I signed

1 Q Bob, why did you sign this document without fully
2 going over it and making sure that it was fair to North
3 American Rescue Products as well as to you?

4 A It was the -- you know, we talked about it, it was
5 the trust that we had for all these years. What he told
6 me it was. Again, if you want to get technical, he was
7 the fiduciary of my company, so why wouldn't I trust to
8 sign what he told me.

9 Q What did you understand at this time the role of the
10 board member to be?

11 A Board member is a great position, but they're
12 supposed to put their self-interest aside. That's why you
13 pay them to objectively look at what you're doing, give
14 opinions on, I think that's right, I think that's wrong, I
15 think you're heading in the right direction, I think
16 you're heading in the wrong direction. I sign it or I
17 wouldn't sign it.

18 Q Did you think -- what did you understand that that
19 agreement had effect on your rights with respect to Reeves
20 Manufacturing from that point forward?

21 A They were terminated.

22 Q Okay. Did you believe after you signed this that you
23 had any further rights in Reeves?

24 A No.

25 Q After you signed this, did you undertake any efforts

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1 to claim that you had any rights in Reeves?

2 A No

3 Q What not?

4 A I didn't have any rights in Reeves. It was
5 terminated.

6 Q Let me direct your attention to paragraph six where
7 it says entire agreement. Do you see that?

8 A I do.

9 Q This sets forth the entire agreement and
10 understanding of the parties relating to the subject
11 matter contained herein and merges all prior discussions
12 and agreements, both oral and written, between parties.
13 Did you understand at the time you signed this that there
14 actually were other agreements besides this agreement that
15 terminated the 2000 outline?

16 A I knew the 2000 outline, the modification of the 2000
17 outline was that 7.5 percent.

18 Q Did you understand, though, that there was some other
19 part of this particular agreement other than this
20 agreement?

21 A No.

22 Q Okay. Mr. Castellani, was there an option agreement
23 dated December 15, 2004?

24 A There was no other option agreement.

25 Q Do you recall whether that blank was filled in at the

1 time you signed this?

2 A I do not

3 Q But do you know whose handwriting that is, this 15
4 December, 2004?

5 A I think it's P J 's

6 Q Do you recall why he would have written that in
7 there?

8 A No I think it's P J 's It's not mine and it's
9 not Curt's

10 Q Okay What was your reaction when you realized that
11 there was a reference in there to a certain separate
12 option agreement dated 15 December, 2004 in favor of P J
13 but there was nothing in this agreement with reference to
14 you?

15 A It was a turning point in our relationship

16 Q Okay

17 A I mean, I was furious

18 Q Well, why were you furious?

19 A What he did was in a single document, he had his
20 attorney slip in the option agreement, which hadn't
21 existed, but he slipped in that thing from reference to a
22 offer -- a big reference to an option agreement dated
23 somewhere and he didn't put anything there for me

24 Again, during opening comments, it was real
25 interesting, what went wrong, trust well, where was the

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APP_0163

1 trust? Why did he put something in there for him and not
2 for me? why -- I mean, that became the big issue You
3 see a lot of letters on that, what we're trying to find
4 out, who slipped that in there That's why it makes no
5 sense in this document that somebody just popped it in
6 there It was just a little dirty trick

7 Q Now, what did you think the effect of this agreement
8 was once you came to understand it?

9 A Well, a termination agreement would have been in
10 reference to an option There was no option So it was
11 important for me to move forward to find out who put that
12 little wicky or whatever you want to do into the document

13 Q Well, did you think that had caused you to enter into
14 an option agreement?

15 A No, there is no option

16 Q I'm sorry?

17 A No

18 Q Okay Bob, I would like to show you a document that
19 we'll mark as Exhibit 7?

20 A Okay

21 Q I believe it's already been marked as Exhibit 7
22 Well, actually, I'm sorry, I take it back It is not Do
23 you know what that document is?

24 A Board meetings

25 Q Okay

1 MR ELLIS Your Honor, I'd like to offer that into
2 evidence as North American Exhibit 7

3 MR STILLWELL It's on my list, too, Your Honor
4 THE COURT All right No objection to Plaintiff's
5 7, it's in evidence without objection

6 (WIPPEUPON, Plaintiff's Exhibit No 7 was marked
7 for certification and received into evidence)

8 BY MR ELLIS

9 Q Bob, now, in Exhibit 7, this appears to say that the
10 Agreement of Termination, Settlement and Release that
11 resulted the corporation entered into an execute that
12 Agreement of Termination, Settlement and Release Why was
13 that document entered into?

14 A It's technical, but being the CEO of the company, the
15 Board has to give me authority

16 Q Well, now, at that time, did you believe -- let me
17 ask you again that what did you think the effect then of
18 Exhibit 6 was, the Agreement of Termination, Settlement
19 and Release was at that point?

20 A I thought it was an inefficient dirty track I mean,
21 there was no agreement Go ahead and terminate the
22 agreement and move on So it was just memorializing the
23 termination

24 Q Were you still willing to have discussions of P J
25 going forward about his being able to get a percentage of

1 the stock of NARP at this time?

2 A Yeah, I was But what's important about this is I
3 signed the agreement I faxed it back that night Sent
4 it to my attorney, who was upset that I signed it because
5 it was that little line in there I called P J, he told
6 me that his attorney had put it in there, that he hadn't
7 So at this point, I believed that his attorney had put it
8 in there Again, attorneys do that from time to time,
9 there's always looking out for the best interest of their
10 client So I thought at that point when we did this that
11 P J hadn't done it yet So, of course, I'm not going to
12 hold him accountable for what his attorney did

13 Q Okay

14 A That was voiced to him and Billie both

15 Q I believe you mentioned earlier that you all were
16 having possible discussions during this period of time
17 about that if P J was going to be able to get a
18 percentage of NARP stock going forward, it would involve
19 some sort of a contribution to a charity or charitable
20 trust is that right?

21 A We did

22 Q Okay Let me ask you to look at Exhibit 8 and ask
23 you if you recognize that

24 A I do

25 Q What is it?

1 A It's just wiring instructions that I sent up to
2 Billie

3 Q Okay

4 MR ELLIS Your Honor, I'd like to offer that into
5 evidence as Exhibit 8

6 THE COURT Any objection?

7 MR STILLWELL It's on our list, too, Your Honor

8 THE COURT In evidence

9 (WHEREUPON, Plaintiff's Exhibit No 8 was marked
10 for identification and received into evidence)

11 BY MR ELLIS

12 Q This is an e-mail to Billie Richardson?

13 A Correct

14 Q And, again, that's P J 's wife, right?

15 A It is

16 Q So at this point, you were still discussing then the
17 possibility of P J being able to get 7 1/2 percent of
18 the stock of NARP?

19 A Yeah, the wiring instructions, at got this far, I was
20 expecting that deal to go through

21 Q But did you understand at that point that you,
22 actually, had -- that you and P J and NARP and Reeves
23 actually had a contractual obligation among each other?

24 A No, because at the time -- again, the complicated
25 part is there is stuff going on There is stuff going on

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APP_0167

1 with the sale of company requirements I don't know if a
2 non-compete issue had come in at this time At some
3 point, we lost Rod Manning, who was the attorney that we
4 had originally worked with down in Atlanta, and we picked
5 up some new attorneys So what I can't tell was -- what I
6 can tell here is this isn't like it's just a hold on it
7 There's stuff going on All sorts of ramifications of the
8 sale of his company and the professionals that are working
9 their way in now This document shows me that at this
10 point in time that we are moving toward to closing on this
11 deal or wiring instructions

12 Q Okay Bob, let me show you this document and ask you
13 if you recognize that? Do you recognize that document?

14 A I do

15 Q Okay What is it?

16 A It's a letter from P J to myself confirming some
17 conversations that he had with his attorney

18 MR ELLIS I'd like to offer that into evidence as
19 North American's Exhibit 9

20 THE COURT Any objection?

21 MR STILLWELL We think that one's in our book, too,
22 Your Honor

23 THE COURT All right, sir In evidence without
24 objection

25

1 A Yes

2 Q Okay

3 A I can tell you that when I got it, I signed it and
4 faxed it So

5 Q Okay After you signed the termination agreement and
6 sent it back to him, what did P J do with his company?

7 A He sold it

8 Q Do you know how much he sold it for?

9 A I thought prior to the lawsuit 10 million dollars,
10 but, I guess, it's 9 1, something like that

11 Q Did he send you any of the money from the sale of
12 Reeves?

13 A Did not

14 Q Did he tender any of the money from the sale of
15 Reeves to you?

16 A Did not

17 Q Just be sure I'm being clear, did he say I will be
18 glad to send you this money next week?

19 A No

20 Q Did you receive any -- did you understand that P J
21 believed that he had some obligation to send you any of
22 the money from the sale of Reeves?

23 A The only time we ever talked about it was in the
24 context of a bigger deal But he never said you get and
25 I'm sending you the money You'll get, you know, whatever

1 the amount of money was, I don't know Different numbers
2 floating around here

3 Q Had you ever agreed with P J at this point -- did
4 you ever agree with P J that you would just accept cash
5 directly in exchange for the sale of NARP stock?

6 A No

7 MR STILLWELL Your Honor, I have to object to these
8 questions as leading

9 THE COURT I appreciate that I'm going to allow
10 the question

11 BY MR ELLIS

12 Q Okay

13 A No

14 Q If you had not terminated your rights of Reeves, if
15 you hadn't signed the termination agreement, would you
16 have done anything differently with respect to the sale of
17 Reeves to DHS than you did?

18 A Yeah, I would have -- it would have -- if you're
19 asking me if I hadn't signed the termination and I still
20 own 75 percent or had the right to swap?

21 Q Right

22 A Yes, I would have done stuff differently

23 Q What would you have done?

24 A I would have done due diligence I would have found
25 out how it was being sold When you sell a company,

1 there's a lot of parts to it You can be paid for the
2 stock of it and the assets for it They can work out real
3 nice employee contracts, earns cuts, meaning that you and
4 certain members get a certain amount of money So if I
5 was just a shareholder, it could have been well, the
6 stock's really not worth anything, we're just going to buy
7 your assets So yes, I would want to know, what was good
8 for the goose, did he get some sort of sweetheart buy-out
9 plan under the golden parachute type of thing and I would
10 have got kind of like stuck in the back So there's a
11 lots of ways It's a little complicated when you sell a
12 company, but I would want to know the details of that So
13 it's just not you have a company, somebody pays you "X"
14 dollars for it, it's not that simple So yeah, I need to
15 get in just like he did with due diligence to find out
16 what was going on

17 Q But you didn't do that, did you?

18 A No

19 Q Why not?

20 A Terminated our rights to the company

21 Q Was that okay with you?

22 A Yes

23 Q Okay Bob, why was it okay with you, though, to
24 terminate your right in Reeves? Had you gotten anything
25 in exchange?

1 A Well, I gained 7 1/2 percent of my company back But
2 again, if you go back, the original intent of that
3 agreement was not to meddle with each other P J and
4 Billie had been very good to me and had been very helpful
5 to me I had been helpful to them They had been very
6 helpful to me They were looking at retiring So if
7 that's what they wanted to do, that's what I wanted for
8 them

9 And, of course, the other side of that is I gained 7
10 1/2 percent of my company back Because, again, I mean, I
11 was fairly competent that I was going to do well in life
12 So I wanted to keep doing what I do for a living

13 Q After he sold Reeves -- after he sold the assets of
14 Reeves to DHS for 91 million dollars, did P J ever
15 propose an option as described in Exhibit 6, did he ever
16 say okay, here's the option I want to do?

17 A No, he never proposed an option Again, this is how
18 much -- I didn't know at the time he sold his assets he
19 didn't sell the stock So, I mean, again, there -- again,
20 that's an example again of complicatedness of that
21 That's what he wanted to do But no, he never proposed a
22 deal

23 Q He didn't send you an option dated December 15th,
24 2004?

25 A No

1 and -- P J Richardson has sold all the assets of his
2 company to DHS I believe I asked you earlier if he had
3 sent you any of the proceeds from the sale and your answer
4 was?

5 A No

6 Q Was North American Rescue Products at that point
7 making any proposals about how P J might still come to
8 acquire 7 1/2 percent of the stock of NARP?

9 A What was the date?

10 Q I'm talking about after the sale to DHS?

11 A Yes We're still trying to do the -- kind of honor
12 that original agreement the best we could

13 Q And again, was it your understanding at that point
14 that you and P J , actually -- you and P J and North
15 American Rescue Products, actually, had a contract at that
16 time?

17 A No, it was the proposal It was all sorts of little
18 nuances going on with it But no, we didn't have an
19 agreement

20 Q Can you describe what it was that you proposed for
21 P J to be able to do?

22 A Explain the Dobson deal?

23 Q Sure As best you can

24 A As best I can Again, since I wasn't going to
25 realize capital gain, I was going to realize ordinary

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APP_0173

1 income, I was trying to honor the original agreement
2 Without tooting my own horn, I give lots of money away I
3 gave money away when I didn't have any money. An
4 opportunity at the time and the church was doing big
5 volunteering projects to put water wells and medical
6 places in line. So I said no harm, no foul, take the
7 money, give it to Dobson Ministries and then Dobson
8 Ministries would donate the money to the church. So it's
9 not real complicated. If I had taken the money, it would
10 have been taxed at my ordinary income. There was no --
11 there was no -- but that's kind of what the deal was. It
12 was going to be donated.

13 Q So now would P. J. have gotten the stock then?

14 A So what happens is the corporation donates stock to a
15 charity. It's exempt from taxes. So it sits in the
16 charity. Then -- I believe it sits in the charity, then
17 the person who had the money would donate the money to a
18 charity and then the stock would get transferred to the
19 person and they would have the tax -- they would have the
20 tax problem. If I understand correctly.

21 Q Now, when this proposal was offered to P. J., was
22 there any issue with respect to the price he would have to
23 pay to get the stock?

24 A Yes. Again, if the stocks are equal price, there's
25 no tax hit. There's no tax value. If I were to give you

1 500 shares of my stock, there's a value to that and the
2 IRS is going to want their money out of it So what we
3 were trying to do is slide these things to each other
4 without the tax event Again, honoring the original
5 agreement of having 25 percent ownership in it So --

6 Q well, now, at that point, though, you were offering 7
7 1/2 percent, though, weren't you?

8 A Yes, 7 1/2 percent

9 Q Was there any issue with respect, though, to the fair
10 market value of the stock?

11 A There was, that was the problem My company price at
12 that time was starting to go up Every year we have
13 somebody come in and they do an evaluation of the stock
14 because we need to make sure if we need to bring new
15 shareholders on We do all the math the same way so
16 people can't say we're doing something bad That time was
17 coming so we had to do an evaluation Now the pressure
18 was on us Because we were going to have this thing
19 happen whether we liked it or not we were going to have
20 the evaluation I didn't have the evaluation Then it
21 starts to throw problems into the other shareholders, the
22 people that we're bringing in, so the evaluation had to
23 happen

24 Q When NARP first offered 7 1/2 percent of its stock to
25 P J Richardson for the Dobson Ministries, do you know

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APP_0175

1 what the relative values were as far as 7 1/2 percent of
2 the stock of NARP versus 7 1/2 percent --

3 A They were relatively --

4 Q Let me finish my question Do you know what the
5 values were, 7 1/2 percent of the stock of NARP as opposed
6 to 7 1/2 percent of what P J had received from the sale
7 of Reeves?

8 A Well, it was -- I don't know the technical term,
9 simple math, what's nine percent of 7 1/2 percent, but
10 there's all sorts of different --

11 Q No, I'm asking you were the values roughly equal,
12 were they not equal?

13 A Year, they were equal, roughly equal

14 Q Okay So did P J want to do the -- want to buy the
15 stock through Dobson?

16 A It is my understanding he did

17 Q It is your understanding that he did?

18 A By all the documents I found out later that he
19 didn't want to do it But, again, I don't know what date
20 we're talking about If we're talking about -- where's
21 the last document? On the transfer, he didn't do it he,
22 eventually, didn't want to do it But maybe I'm stuck and
23 I don't know what month

24 Q Did P J tell you why he didn't want to buy the
25 stock through Dobson?

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APP_0176

1 A There were lots of little things, but I think it came
2 down to, in the end, a non-compete. He had to sign when
3 you sell a company. Why would somebody sell my company
4 today and then pay me for it? The person who bought it
5 wouldn't want to say, Lister, Bob, you're not going to go
6 on in this business for the next three to five years. And
7 if you do, then --

8 Q Well, tell me about that with the non-compete. Did
9 you actually have discussions with P. J. about his having
10 signed the non-compete?

11 A No. We talked about having to sign the non-compete.

12 Q Okay.

13 A That was why there was others. Again, I don't know
14 all the little issues, but there was lots of little
15 issues, always a little something.

16 Q Did P. J. actually during this period of time say to
17 you, Bob, what are you talking about, we already have a
18 contract. I have a right to have your stock and why are
19 we talking about any new deals?

20 A No, he didn't. We signed a termination agreement.
21 It is how you acquired stock at that point. We terminated
22 it. It was proposals, again, multiple proposals, a lot of
23 variations of proposals. Dobson was the last one.

24 Q Did he ever during this period of time say I don't
25 want to do the Dobson deal, but let me do it this other

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APP_0177

1 way I've got another way I can acquire 7 1/2 percent?

2 A No It was always we would -- we were the ones
3 working to try to make the deal work Never gave -- the
4 only -- the only deal he ever forwarded me was the demand
5 letter for 7 1/2 percent of the company for a penny But
6 he never -- his attorneys never generated any proposals,
7 they never said well, why don't we try to do it this way
8 It was we kept trying to make the deal work And -- so
9 no, we didn't

10 Q Did P J at this time express to you any discomfort
11 about acquiring the NARP stock?

12 A Yes

13 Q What did he say?

14 A He discussed things like putting floor on the stock
15 price So if he had \$100 a share, that the stock could
16 never drop below it And I thought that was ridiculous
17 I'm like wait a minute, you know And his point was
18 listen, this is real money now I don't think he ever
19 really used that term real money now But it was clear
20 you want me to put a floor on the stock so if my company's
21 doing great today and then it drops, you never lose value
22 That's -- that's plenty of doubt There was doubt about
23 hiring people There was doubt about -- yeah, there
24 was -- I mean, the emails and all the documents you guys
25 are going to see, there's handwritten notes about doubt,

1 so -- I'm not going to get into all of them, but there was
2 plenty of doubt

3 Q What did that make you understand, then, about P J 's
4 understanding of the relationship at that time?

5 A Well, it was coming in as -- I mean, it was my
6 opinion, he was coming in as an investor Yeah, he -- if
7 you really think about the context, I had never hired one
8 person -- maybe I had hired one person that time, Rob
9 Miller I didn't take orders I didn't have an office
10 I was working out of the bonus room of my house In
11 fairness, you could have some real doubts and say well,
12 this guy's a really good salesman, can he now take the
13 role of being chief executive officer or a guy that can
14 take his own orders and hire people There is a --
15 remember the time now, there was some definite challenges,
16 but I think they were fair

17 MR ELLIS Your Honor, may we approach?

18 THE COURT Absolutely

19 BY MR ELLIS

20 Q Do you recognize Exhibit 11?

21 A I do

22 Q What is Exhibit 11?

23 A It's a due diligence checklist

24 Q Where did you get that?

25 A I'm not sure if I got it from P J or if I got it

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APP_0179

1 non-compete that Billie own the stock and his name wasn't
2 on it, that it would get around the non-compete

3 Q Again, let me go back You're generally in business,
4 can you tell the jury, what's a non-compete agreement?

5 A Non-compete -- again, I told them, it depends on what
6 you do for a living The more important you are to a
7 corporation, the more solid the non-compete is, the longer
8 the non-compete and the bigger the non-compete is And
9 again, it's whether to pay you a lot of money, I'm not
10 going to have you go compete with me So if you're the
11 CEO of a company, especially if you create it from
12 scratch, the last thing they want to do is pay you and
13 then take all those relationships you have and reformulate
14 another company And then you go all the way to a lower
15 level -- not lower level -- yeah, lower level sales that
16 maybe you taught some techniques, some special techniques
17 in the market space that you don't want to get out

18 Q Had P J expressed to you at that time whether or
19 not this non-compete had any affect on his ability to
20 acquire NARP stock?

21 A Well, yes, that was transmitted, but I don't know --
22 as we look at these dates on when this due diligence was
23 sent back But yes, he definitely had concerns about
24 that

25 Q Okay Let me show you what we've previously marked

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APP_0180

1 A Well, technically, the handshake preceded it

2 Q Okay

3 A It was a handshake agreement and now it's just kind
4 of what the handshake agreement was once we got people who
5 could write legal documents

6 Q Okay You go on to say, My concerns we had a great
7 deal on the table which addressed every aspect of the
8 original agreement allowing me to donate all the funds to
9 support missionary work, a nontraditional tax break It's
10 my opinion it was a perfect agreement, but never really
11 got off the ground Here's my suggestion, since it's
12 clear NARP stock price is going to rise, which will
13 nullify our original proposal, and I've liquidated stock
14 that's become cumbersome, but are some of the most
15 critical pledges I've made with my share of the sale of
16 Reeves, we can slow down Let me ask you first of all,
17 why does it say my share of the sale of Reeves?

18 A My theoretical share I thought things were moving
19 forward and I had made some promises to the church that I
20 was going to support some stuff

21 Q Did you think at that time that you, actually, were
22 going to get a deal worked out with P J ?

23 A At that time, I did

24 Q Okay Why is my share in quotes?

25 A Theoretically, my share, I didn't own anything It

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APP_0181

1 was -- my share was the, I don't know, my handshake It
2 wasn't really -- it -- this shaking hands -- I didn't go
3 to college, I don't know the right word I don't know
4 what it is, but it just kind of my -- kind of thought we
5 were going to do it and I learned I shouldn't open my
6 mouth and promise things to the church if I don't have it
7 Good lesson

8 Q It says NARP stock prices is going to rise which will
9 nullify our original proposal What does it mean, NARP
10 stock will rise and nullify the original proposal?

11 A The original proposal is of equal value Again, I
12 had to have this evaluation done It was going to show
13 that my stock price went up significantly Then we
14 wouldn't be able to do this transaction through Dobson
15 Ministries because now it would risk the -- well, it
16 complicated it, but they just couldn't do it They
17 couldn't touch it at that point

18 Q Now, you say it will nullify the original proposal
19 I mean, at this point, did you understand that there was a
20 proposal on the table -- after this point, did you
21 understand whether there was a proposal on the table that
22 P J could react to, could accept?

23 A As I read it, I'm sure we weren't far enough along to
24 make that happen So I'm assuming at this time the Dobson
25 agreement was there This letter is, basically, to say

1 remember, I was trying to move my company down It's not
2 like I had time to sit around I wasn't going oh, my God,
3 I'm going to hire CFO's and COO's and accounts payable
4 people I'd never done that before So this was getting
5 way too distracting and was completely missing the bar,
6 so

7 Q On top of that you recognize that is P J 's response
8 to you?

9 A Yes

10 Q And he said thanks for your response, I share the
11 same concerns about costs and timing as you do I think a
12 quick 15 to 20 minute conference call would resolve a lot
13 of outstanding issues and so forth Did you receive a
14 response from P J to your e-mail that said wait a
15 minute, Bob, what are you talking about? We have a
16 contract You can't pull anything off the table We have
17 a contract

18 A No Again, this was fine now I mean, we had so
19 many quick 15 to 20 minute phone conferences, this was
20 another one of those things There was some significant
21 structural issues that kept coming up, you know But, no

22 Q At any time prior to April 17th, 2007, which we'll
23 get to shortly -- any time prior to April 17th, 2007 --
24 from May 12th, 2005 to April of 2007, 23-month span, did
25 P J ever express to you his belief that you all had a

1 existing contract that allowed him to buy 7 1/2 percent of
2 the stock of NARP in exchange for what -- 7 1/2 percent of
3 what he had received from Reeves?

4 A No All our talks were, again -- well, the only time
5 I really knew when I got that letter, the demand letter
6 But no, we talked and -- but, no

7 Q Now, you all did have some more contact after?

8 A We did

9 Q Let me show you a document Do you recognize Exhibit
10 10?

11 A I do

12 Q What is Exhibit 10?

13 A It's a -- basically, takes the agree reference to an
14 option agreement that was in the November termination
15 agreement and kind of guts it

16 MR ELLIS Your Honor, I'd like to offer that into
17 evidence as North American Exhibit 10

18 THE COURT Any objection?

19 MR STILLWELL No objection, Your Honor

20 THE COURT In evidence without objection

21 (WHEREUPON, Plaintiff's Exhibit No 10 was
22 marked for identification and received into
23 evidence)

24 BY MR ELLIS

25 Q Now, what is the -- what's the story behind Exhibit

1 "OC here? This is dated June 17th, 2005 This is after
2 the last e-mail where you told P J we'll talk in the
3 future What's going on here?

4 A We had had a meeting set up at Stax to discuss what
5 was going on I believe Billie and P J were traveling
6 down here I think their son, Michael, had moved down at
7 that time, I believe They could have come down to see
8 him But we had a meeting at Stax and Curt and I had a
9 discussion because it really bothered me Again, this
10 whole trust issue of how that line got inserted in that
11 contract P J told me that Curt had done it or Rod had
12 done it I confronted Billie, asked Billie -- Billie told
13 me that P J would never have done it So to solve that
14 issue -- that's why it's so clean It's -- you don't need
15 an attorney to read this document So what I wanted to do
16 was once and for all find out if P J had slipped that
17 thing in because he said Rod did it So I had Curt
18 prepare me the absolute shortest contact little thing that
19 said, hey, I'm just taking this thing out You're right,
20 Rod put it in there So that's all this is, that's why
21 it's so short There's no letterhead It's -- anybody
22 can read this

23 Q Let me make sure everyone's clear what we're talking
24 about November 5th you signed an Agreement Termination,
25 Settlement and Release, paragraph 34 refers to an option,

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APP_0185

1 refers to 7 1/2 percent of NARP capital stock. An option
2 agreement dated December 15th, 2004. So what we're
3 talking about, what we previously marked as Exhibit 6 and
4 referencing paragraph 34 there -- sorry, I got the pages
5 out of order. The reference in that document, which I
6 have now misplaced, that referred to the option dated
7 December 15th, 2004, right?

8 A This is referring to -- it got a little confusing for
9 me, I'm sorry. This is referring to the, what I call the
10 dirty trick or thing that got slipped into that document
11 on me.

12 Q All right. Okay. So you presented him with this
13 document that you asked him to sign. Is that right?

14 A Yep. It is just to see -- again, there was lots of
15 stuff going back and forth, who was telling us what truth
16 about all these e-mails and could we work something out.
17 And again, in the back of my head, it was always did he
18 slip this thing in on me and if he did, then maybe my
19 relationship with him wasn't quite as strong as I thought.
20 All this thing is is just to say, okay, if you didn't put
21 it in the agreement, then take it out.

22 Q Well, were you concerned, though, that there was
23 actually an option?

24 A No, there's no option. There's no December -- no one
25 ever showed an option agreement. So no, there is no --

1 there was never an option agreement There's no December
2 December 15th There's no October 3rd option agreement
3 There is no option agreement

4 Q Did P J agree to sign that document?

5 A No

6 Q What did you -- what did you take from the fact that
7 he did not agree to sign that document?

8 A I took a very strong -- I think he was going to have
9 someone review it I think he said well, let me have my
10 attorney review it But I took from his body language
11 that he wasn't going to sign the document It's only,
12 what, five lines We had already terminated

13 Q We talked before about the fact that you signed that
14 document with that language in there -- I'm sorry, talked
15 before about the fact that you went ahead and signed that
16 document with that language in there without reading it
17 Again, why had you ever signed it?

18 A Again, we had a great relationship I mean, I can
19 come up with all sorts of words we trusted each other
20 we shared each other's families Our successes We
21 bounced ideas off each other Billie was very important
22 to my company and I probably couldn't have done most of it
23 without her I had a great relationship with these
24 people You know

25 And he told me to sign, it's what he said we were

1 going to do We were going to terminate in Atlanta He
2 said he needed it I knew he needed it for closing I
3 know what due diligence is and the paperwork you have to
4 get ready for it So I signed it Should I have read it?
5 Absolutely But, you know, they want to know when did all
6 this trust go away and make it sound like it just kind
7 of -- something got ahold of my mind and put a hex on me,
8 the attorneys have put a hex on me No, there's some real
9 facts here That is a major deal when somebody slips
10 something on freaking -- promise me not to say that, I
11 apologize Slips something in the agreement So all this
12 was a way to verify it in a very simple

13 Q And again, going back to this Exhibit 6 when
14 Mr Richardson had asked you to sign this, what was his
15 relationship with North American Rescue Products?

16 A He was a fiduciary on my Board of Directors

17 Q All right Now, so we've gone from May 12th, 2005
18 was the date that -- May 12th, 2005 was the date that you
19 said he gave -- we're going to have to slow down I'm
20 thinking stock price is on the rise which will nullify our
21 original proposal in 2005 When was -- did you ever
22 receive a demand from anyone acting on behalf of
23 Mr Richardson that he is entitled to get 7 1/2 percent of
24 the stock of NARP?

25 A The person -- I think I got the letter sent to Curt

1 and myself from that law firm

2 Q Do you recognize what's been marked as North American
3 Rescue Exhibit 13?

4 A I do

5 Q What is it?

6 A It's a demand letter

7 MR ELLIS Your Honor, I'd like to offer that into
8 evidence as Exhibit 13

9 THE COURT Any objection?

10 MR STILLWELL No objection

11 THE COURT In evidence without objection

12 (WHEREUPON, Plaintiff's Exhibit No 13 was
13 marked for identification and received into
14 evidence)

15 BY MR ELLIS

16 Q Okay Again, the date of this letter is April 17th,
17 2007 And it's to Curt Stodgnill And up at the top, it
18 says it's from Eric Orlinsky, do you know who Eric
19 Orlinsky was?

20 A It was one of P J 's attorneys

21 Q Again, the last communication -- your communication
22 to P J had been May of 2005 You get this letter
23 April 17th, 2007 Let's take a look at this letter and
24 see what it is he demands in the last paragraph, then
25 we'll go back and talk about a little bit more of it

1 Accordingly, Mr Richardson now desires to exercise his
2 option to purchase 7 1/2 percent of the common stock of
3 NARP. Under the terms of the October 2004 option
4 agreement between Mr Richardson and NARP, Mr Richardson
5 is entitled to purchase those shares at a price of one
6 cent per share. Did you know what he was talking about
7 when you got this letter?

8 A No. I didn't know -- that's the first time I ever
9 heard about October 4th -- well, couple of things. One is
10 I couldn't believe it surfaced again. Because at the Stax
11 meeting when we said we were going to put things on hold
12 again, an example, again, I can treat you like my brother,
13 but you're not my brother. All I was doing was trying to
14 honor this thing. At the time, I still didn't quite know
15 what the truth of that thing that got slipped into the
16 agreement was. So I did have conversations -- we had
17 conversations about the kids. We had conversations about
18 his son's business. So we did have conversations, but not
19 about this -- this.

20 Q Take me back to the Stax meeting, when was the Stax
21 meeting, do you recall?

22 A Hopefully, it's on the e-mail. I sure you guys have
23 all the dates. I don't have the date of that.

24 Q Let's just say prior to April 17th, 2007, you had
25 talked to Mr Richardson a number of times, right?

1 A Yes

2 Q During that period of time, had he ever told you he
3 thought he had a right to buy 7 1/2 percent of the stock
4 of NARP for a penny a share?

5 A No

6 Q Had he told he thought he had the right to buy the
7 stock of NARP at any price?

8 A No

9 Q And again, had you seen anything -- had you seen any
10 reference to an October 4th, 2004, option agreement?

11 A First time I ever saw that was when we were going
12 over the legal paperwork

13 Q Now, let me go back to the second paragraph, as you
14 may be aware, one of the reasons we have been reluctant to
15 proceed in addressing our interest in NARP is due to
16 non-compete restrictions that Mr Richardson had entered
17 into with DHS and EMS I believe you testified earlier
18 that you were aware that P J had signed a non-compete
19 with DHS when he sold his assets, is that right? Were you
20 aware of it?

21 A I knew it was an issue, I never knew he actually
22 technically signed it what I knew at the time, somewhere
23 in this stuff, P J was also released from Reeves and got
24 into a subsequent lawsuit That was going -- the
25 non-compete was going -- and that's where Billie bounced

1 feel when you received a letter from Mr Orlinsky on April
2 17th demanding that he had a right to purchase for a penny
3 a share?

4 A Out of my tree would probably be sufficient

5 Q Out of your tree would probably be sufficient?

6 A I was very angry

7 Q That means you're angry?

8 A Yeah, trying to

9 Q What did you think when you actually saw that draft
10 that P J had signed?

11 A I mean, again, it was unbelievable that -- that -- I
12 don't know Again, this is a draft agreement nobody but
13 P J had seen at this point Anybody we talked to hadn't
14 seen this thing yet It shows up -- apparently, Orlinsky
15 had saw it Assuming I had signed the other back end of
16 this thing or something I was a madman

17 Q Again, this whole time, had he never tried to send
18 you 7 1/2 percent of the sales proceeds of Reeves?

19 A No

20 Q Had it surprised you he hadn't tried to send you 7
21 1/2 percent of Reeves?

22 A No

23 Q Why not?

24 A He didn't owe me 7 1/2 percent of Reeves

25 Q I'm sorry, I didn't hear you Speak into the

1 microphone?

2 A I never owned 7 1/2 percent of Reeves It terminated
3 and we were going to work on proposals to try to get the
4 general intention, the general agreement done

5 Q What are you going to ask this Court to do as far as
6 P J not having disclosed to NARP that he had signed this
7 draft until 2007?

8 A I'm asking for the \$50,000 I gave him to be an
9 adviser and be on the Board of Directors and to put our
10 corporate or shareholders' concerns above his own

11 Q Now, let me go back just real quickly, I'm almost
12 done, let me go back with you to Exhibit 2 To Exhibit 2
13 Now, that is an agreement between Reeves, NARP, you and P
14 J, right?

15 A Correct

16 Q Okay And is Reeves' business defined in that?

17 A It is

18 Q Does P J, to your knowledge, still have any
19 ownership in a business that's in the business of
20 designing, manufacturing and selling certain emergency,
21 medical and rescue products?

22 A To my knowledge, he has no business with those
23 things

24 Q Okay In exchange for 7 1/2 percent of the stock of
25 NARP, other than proposals to the Dobson Ministries, had

1 you agreed to accept anything -- what had you agreed to
2 accept beside stock in Reeves?

3 A Other than that Dobson proposal, through this whole
4 thing, it was stock for stock

5 Q Was it ever okay with you just to get cash,
6 personally get cash for VARP stock?

7 A No, we don't -- there's no reason for the company to
8 have cash investors. Only people that get stock other
9 than when I first started the company. The only reason to
10 have shareholders is they're in the company working. So
11 there wouldn't have been any reason for me just to take
12 cash. I didn't need the cash. I was giving the cash
13 away. The key to ownership is to have people working side
14 by side, you know, you manage -- at least, let me explain
15 to them why they're mad before they walk out the door.
16 The ownership -- if you're happy and you're celebrating,
17 they're happy. So there's no reason to pay cash.

18 Q So in your view, could P. J. still perform the 2000
19 agreement?

20 A He could not.

21 Q Why not?

22 A He doesn't own Reeves Manufacturing nor is he in a
23 position of influence to help the company. He was when he
24 was the CEO of Reeves Manufacturing. He has -- all the
25 customer lists are gone, the warehousing, manufacturing,

1 sign he sent it to me because he needed the document
2 There was no document I signed it I didn't think it
3 was in here It's my fault for signing it I'm a big
4 boy I should have had somebody review it

5 Q Had you ever agreed, though, to any proposal for him
6 to be able to acquire VARP stock after this termination
7 agreement other than his paying fair market value for it?

8 A No

9 Q Okay But did you, in fact, after the 2000 agreement
10 make a proposal to the Doosor Ministries to him?

11 A Yes, that was fair market value

12 Q Okay Fair market value?

13 A It has to be fair market value

14 MR ELLIS Thank you, Your Honor Nothing further
15 at this time

16 THE COURT All right

17 Ladies and gentlemen, we're going to -- well, y'all
18 are going to go home for the evening I'm going to have
19 you come back tomorrow morning at 9 00 in your jury room
20 Please do not discuss this case I told you not to
21 discuss the case among yourselves Go home and see your
22 husband, wife, boyfriend, girlfriend, whomever, you cannot
23 talk about this case They unintentionally will give you
24 their opinion about this case They don't have one
25 Y'all shouldn't have one at this point in time Don't

1 talk about the case Don't allow anybody to talk to you
2 about it If from some reason someone would try to do
3 that and you can find out who that person is in relative
4 safety, you report that person to the Court and we'll take
5 care of it I'll see you back tomorrow morning at 9 00
6 a m Thank you, very much

7 Everyone else remain seated

8 (WHEREUPON, the jury left open court at
9 approximately 5 10 p m)

10 THE COURT All right All right, gentlemen, take a
11 short break for five minutes and we'll reconvene Thank
12 you, very much

13 (WHEREUPON, a short break was taken)

14 THE COURT I don't ever like to split up direct and
15 cross-examination, but I felt the jury needed a break
16 And, obviously, you recognize, they don't have to be here,
17 we do I don't know if you've ever had the pleasure of
18 trying cases with Judge Ralph King I did on many a day
19 and was there in the courtroom till 9 00, 10 00, 11 00,
20 midnight I swore I never would do that I'm not going
21 to be here next week If this case doesn't finish on
22 Friday and if we continue on into the future until next
23 time I have court here in Greenville, that's some time
24 from now

25 Let me ask another question, is there any dispute

1 from the Plaintiff or Defendant that they entered into
2 that agreement, Plaintiff's Exhibit No 2, that there was
3 a contract and there was an agreement? Is there any
4 problem about that at all from the Plaintiff's side?

5 MR ELLIS No, the 2000 outline, no, sir

6 THE COURT From the Defense?

7 MR STILLWELL Not here, Your Honor

8 THE COURT All right I understand y'all have been
9 living with this thing for a long time I told you it was
10 my intention to have the jury answer a threshold question
11 as part of some kind of verdict form Whether or not the
12 parties entered into the -- that contract, the November
13 2004 termination agreement that we've been talking about
14 A simple yes or no If they say no, then y'all are back
15 with the 2000 agreement You sat there and argued about
16 that with the Plaintiff How can that be?

17 MR ELLIS Because I believe they have to prove
18 their decision

19 THE COURT No, sir, you have to prove a meeting of
20 the minds You have to prove the parties entered into a
21 contract You have to prove -- you're going to prove your
22 case that the parties intended and did enter into that
23 contract And the jury is going to answer that question
24 yes or no If for some reason, they answer no, it's going
25 to be the Court's ruling that you go back to the 2000

1 agreement That means this case ends' right then Don't
2 get any other answers from the jury And that is because
3 in the 2000 agreement, you agreed to arbitrate all
4 disputes So your case ends right then with an answer of
5 no by the jury Y'all need to think about it See you
6 back tomorrow morning at 9 00 a m Thank you, very much

7 (WHEREUPON, the proceedings were concluded for
8 the day to be reconvened on August 26, 2008)
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0193

APP_0198

Tuesday, August 26, 2008

THE COURT Plaintiff ready?

MR ELLIS Yes, Your Honor

THE COURT Defense?

MR STILLWELL I'd like to do one bit of
housekeeping about these documents

THE COURT Yes, sir Is there any Plaintiff's
documents that you are aware of that you object to at this
point in time?

MR STILLWELL Yes, Your Honor, there is -- Exhibit
24 is the only one we object to

THE COURT All right So the other exhibits -- does
the Plaintiff move to enter those at this point in time?

MR ELLIS Yes, sir

THE COURT Any objection except for No 24?

MR STILLWELL No, sir, Your Honor

THE COURT All right They're in evidence without
objection

(WHEREUPON, Plaintiff's Exhibit Nos 14 through
23 were marked for identification and received
into evidence)

(WHEREUPON, Plaintiff's Exhibit No 24 was
marked for identification only)

(WHEREUPON, Plaintiff's Exhibit Nos 25 through
35 were marked for identification and received

1 into evidence)

2 THE COURT On the Defense side, what exhibits has
3 the Defense presented to you that you object to from
4 Plaintiff's counsel?

5 MR ELLIS This has just been presented to me I
6 would like to have a couple of minutes to look at them

7 THE COURT I know, but do you know what they have
8 sent to you in the past? I'm sure you have looked at what
9 they've sent to you in the past

10 MR ELLIS I certainly have, Your Honor My primary
11 objections are to these document, there's an email from a
12 gentleman named Jon Trump regarding the --

13 MR STILLWELL I mean, I might not even get into
14 that --

15 (WHEREUPON, the lawyers have an off-the-record
16 discussion)

17 THE COURT Let him find the ones that he objects to
18 first

19 MR STILLWELL Okay, I think Madam Court Reporter
20 has already marked --

21 THE COURT All right, state -- what I want you to do
22 is state what they are

23 MR STILLWELL Okay, Your Honor, I think we got it
24 and I'm going to call out the ones that he agrees to 51,
25 3, 4, 10, 11, 13, 55, 19, 14, 22, 25, 23, 22, 24, 39, 1,

1 31, 38, 34, 40, 41, 42, 46, and 35 I realize, Your
2 Honor, that's a heck of a lot of exhibits

3 THE COURT All right, as I understand it then, the
4 Plaintiff has no objection to any of those The only one
5 you had an objection was No 10, is that correct, Mr
6 Ellis?

7 MR ELLIS That's correct

8 THE COURT All right, they are in evidence without
9 objection Why don't we look at No 10 Tell me what it is
10 that you object to regarding Exhibit 10

11 (WHEREUPON, Defendant's Exhibit Nos 1, 3, 4,
12 10, 11, 13, 14, 19, 22, 23, 24, 25, 31, 34, 35,
13 38, 39, 40, 41, 42, 46, 51 and 55 were admitted
14 into evidence

15 MP ELLIS Your Honor, that is -- I think it's
16 prejudicial I think it shows something that is not the
17 case Which is there's handwriting on next to the last
18 page where Bob wrote down 7 1/2 percent P J

19 THE COURT Okay

20 MP ELLIS And it's trying to be introduced to show
21 that P J, I think was an actual owner of North American
22 Rescue Products And I object to that I think it's
23 misleading and prejudicial

24 THE COURT Well, I'm going to allow it in and your
25 client can explain whatever it is that he did

1 MR ELLIS And, Your Honor, let me make one more
2 note I didn't understand when I was going through those
3 I think it's Exhibit 1 and I apologize, it's Exhibit 39 --
4 I'm back to Exhibit 1, it's the Reeves Manufacturing
5 Castellani Computation

6 THE COURT All right, hold on a second Are you
7 talking about 39 or are you talking about 1?

8 MR ELLIS 1

9 THE COURT All right, go ahead

10 MR ELLIS Your Honor, that is an exhibit -- I don't
11 mind it being introduced, being shown, that that is a
12 calculation that P J Richardson made I do mind that
13 it's being introduced for the purpose of showing that
14 there was some subsequent agreement I just note that for
15 the record

16 THE COURT Okay, I appreciate that Once again,
17 your client can explain whatever it is that he pleases
18 about that particular document

19 Mr Castellani, you may come and retake the stand
20 All right, ask the jury to come in

21 (WHEREUPON, the jury came into open court)

22 THE COURT Before we get started, Ladies and
23 gentlemen, I apologize for the delay There were matters
24 the Court had to take up outside your presence It will
25 not happen again Thank you, very much

1 You may begin cross-examination

2 MR ELLIS Thank you, Your Honor

3 CROSS-EXAMINATION

4 BY MR STILLWELL

5 Q Mr Castellani, just before we start, a little
6 roadmap, you've got the book here that's got all the
7 exhibits or it will come up on the screen and you can read
8 that, whichever one is the most convenient for you

9 A Thank you

10 Q Now, I wanted to start where you started with Mr
11 Ellis where you mentioned that you were a pararescue man
12 in the Air Force

13 A I was

14 Q These are actually called pj's, aren't they?

15 A They are

16 Q Okay And when you were a pj, did you have a little
17 book like this, on rainy days like this, a little white
18 manual like that?

19 A We did

20 Q A little checklist And inside it, did you have like
21 this, like a little call for fire card like this that
22 tells you how to call for fire in case you freak out and
23 forget out to do it?

24 A I did

25 Q Okay And when you call for fire, and when I say

1 call for fire, you understand I'm talking about like
2 calling in artillery?

3 A Yes

4 Q Call in air?

5 A Yes

6 Q Naval guns, orders, whole nine yards, right?

7 A Right

8 Q When you do that, you need to be as accurate as you
9 can, don't you?

10 A Correct

11 Q And you need to be as clear as you can when you call
12 them in, right?

13 A Correct

14 Q And you have to be direct, too, right?

15 A Yes

16 Q And you're a direct speaker, aren't you?

17 A Most of the time I am

18 Q You say what you mean and you mean what you say,
19 right?

20 A As best I can

21 Q Now, could you direct your attention to Exhibit 4
22 there?

23 Could you give me that name We looked at this when
24 Mr Ellis was up here and this is a January 23rd e-mail
25 from --

- A I'm sorry, am I on the right one?

2 Q Yeah This is from you, right, NA Rescue, that's
3 you, right, at the top?

4 A Yes

5 Q And it says right there on that first line, we each
6 -- and I'm going to read it and you correct me, we each
7 own 25 percent of the other guy's company, right?

8 A That's what it says

9 Q Does that mean what it says?

10 A It means we were trying to work out a new
11 arrangement If you're asking me correctly what that
12 means (inaudible)

13 Q So you're saying that it says we each own 25 percent
14 of the other guy's company and you're saying that it does
15 not mean that Is that your sworn testimony today?

16 A That's my testimony

17 Q And if we could pull up -- you remember when I took
18 your deposition about five weeks ago?

19 A Yes

20 Q I'm going to hand you that And if you could turn
21 with me to page 31 of that

22 A (The witness complies)

23 Q Are you with me?

24 A Yes

25 Q And I ask you right there, I said -- I'm going to

0200

APP_0205

1 start right there on number 14, line 14 I said, After
2 y'all signed this agreement, I'm talking about the 2000
3 agreement, did you consider that you owned 25 percent of
4 Reeves? And your answer there was, Yeah, year, wasn't it?

5 A It was

6 Q And so is that different than your testimony
7 yesterday, then, you're saying now you didn't own 25
8 percent of each other's company?

9 A No This document -- through this document, you're
10 going to see ownership, agreement, option, they all
11 blurred together So as I said, I treated him as an
12 owner There was no stock So when you asked these
13 questions, and we go through this, and I know we will,
14 you'll see where I basically kept saying well, I treated
15 him like an owner, but he wasn't an owner So that answer
16 is correct Which way are you talking about, again, he
17 was my brother, he was my family I treated him like
18 that I considered them owners I considered them
19 owners I split the money apart I didn't put them on
20 tax returns I didn't do so many other things that make
21 them a real owner So again, if you want to hold me to
22 the standard that I held them out as a buyer or owner,
23 that's all I can tell you about that

24 Q I'm going to hand you what's marked as Exhibit No 62
25 and ask you if you've seen that before

0201

APP_0206

1 A I think so, I'm not sure

2 Q Okay, you recognize the caption on it, these are
3 Plaintiff's answers to interrogatories in this case,
4 right?

5 A Okay, yeah

6 Q And you recognize that caption there, JAPP vs P J
7 Richardson And that's Mr Ellis' signature on the back
8 there, right, in November of '07?

9 A That is correct

10 Q Now, let's turn to page six Start with number
11 seven This is the question we asked, Enumerate all
12 agreements between the parties that relate to ownership
13 interest Do you see that?

14 A I do

15 Q And the answer there, the first line says, Castellani
16 and Richardson signed the January 1, 2000 outline of
17 business relationship So we asked you what ownership
18 interest there was and you said the 2000 agreement, right?

19 A You asked to identify all agreements that were
20 relating to ownership

21 Q Okay But the first answer that you gave out was the
22 2000 agreement, right?

23 A That's related to ownership We had a right to swap
24 stock

25 Q Okay It's related to ownership Let's look down

0202

APP_0207

1 later there, if you see at the sentence where it starts
2 with therefore, it's the one, two, three, four, fifth
3 sentence in there Right where it says therefore right
4 there

5 A Therefore at the meeting --

6 Q Therefore at a meeting in Atlanta, which we're going
7 to talk about, Castellani and Richardson, with counsel
8 present, agreed that neither Castellani had any further
9 ownership interest in each other's company Don't you
10 think fairly that implies that you had a previous
11 ownership interest in each other's company?

12 A No I mean, you can look at those words loosely, but
13 if you go back to the top, it says all related That was
14 related We modified the 2000 Agreement, it does not say
15 who has ownership

16 Q Okay

17 A The question was tell me anything, advise me of
18 anything that's related to ownership So that could be
19 one of the documents

20 Q Let's keep reading on that same sentence Richardson
21 had any further ownership in each other's company and
22 would not have any such ownership until a further
23 agreement could be reached --

24 A Could you say it one more time?

25 Q Right there, Richardson had any further ownership in

1 each other's company and would not have any such ownership
2 unless a further agreement could be reached Do you see
3 that part?

4 A I do

5 Q Now, you've never read these before?

6 A No What happened -- well, this is my -- Bernie
7 asked me questions and I answered those questions I'm
8 responsible for them, but I don't know what that means
9 All I know is all documents related to ownership

10 Q Well, see how many lawyers you told previously that
11 you owned an interest in each other's company First,
12 that Exhibit 4 we looked at was you writing Rod Manning
13 that you each owned a 25 percent interest in each other's
14 company, correct?

15 MR ELLIS Your Honor, I'm going to object to the
16 line of questioning on the grounds of relevance I mean,
17 I think the issue before the Court that we talked about is
18 it's something for the jury to decide I don't understand
19 how this line of questioning is relevant

20 THE COURT I appreciate that First, it is
21 cross-examination and I do not see him going beyond the
22 bounds that's proper At this point in time, I'm going to
23 allow it I'm not telling you not to seek further
24 objections

25 BY MR STILLWELL

1 Q All right This e-mail No 4 is to Rod Vanning, so
2 you're telling him you each own 25 percent of each other's
3 company, right?

4 A As I said before, you can look throughout this whole
5 document and you will -- that's how I treated him This
6 e-mail sort of binds all these things together, which is
7 what you're supposed to do This e-mail -- there is no
8 ownership You can't create ownership

9 Q Let's see if we can make it simple Did you write
10 Rod Manning, a lawyer, and Curt Stodgall, a lawyer, and
11 say number one, we each own 25 percent of the other guy's
12 company? You wrote two lawyers there, didn't you?

13 A I did write two lawyers

14 Q And then the other lawyer, which you told Mr Ellis
15 at some time about those interrogatory responses and you
16 told him you owned 25 percent of each other's company?

17 A It's the same context that I'm tell you--

18 MR ELLIS Your Honor, objection

19 THE COURT I think the witness can answer the
20 question as he deems proper

21 BY MR STILLWELL

22 Q And then when I took your deposition, me, as a
23 lawyer, you told me you owned 25 percent in each other's
24 company, too, didn't you?

25 A Again, as I've explained it, that we treated each

1 other like 25 percent This document, again, if you'll
2 read through it you'll see where we're saying we had
3 ownership, we didn't have ownership, we've got agreements
4 It depends on the context of what you're talking about

5 Q Just so we're clear, though, you told me that you
6 owned 25 percent of each other's company in June, correct?

7 A In the context of treating each other like owners I
8 did not tell you, and you'll see throughout this
9 deposition where I -- where we bounced back and forth
10 because the words we were using in its context

11 Q But you're telling the jury today y'all never owned
12 25 percent stake in each other's business?

13 A That's what I'm telling them

14 Q I want to move on now and talk about another issue,
15 about these taxes

16 A Okay

17 Q The taxes Now, you mentioned something about a 41
18 percent personal income tax rate?

19 A I don't know if I mentioned that exactly

20 Q What did you say, you said 41 percent number, you
21 said ordinary income is taxed at 41 percent, right?

22 A No, I never said that

23 Q You didn't say that on your direct examination?

24 A No, I said I intentionally didn't give the tax rate
25 because I don't know the tax rate But, I mean, clearly

0206

APP_0211

1 because I don't understand it Ordinary income I gave no
2 number and I think it's 42 on tax

3 Q Okay

4 A And I gave capital gains I gave 15 percent

5 Q Okay And that part you know about the 42 percent,
6 the 15 percent, that's just a rule of thumb?

7 A That is a rule of thumb

8 Q And did you learn that from Curt?

9 A It's a pretty common knowledge just dealing with
10 money

11 Q But your tax lawyer is Curt, right?

12 A That's correct

13 Q Now, let me just go -- let me just run through some
14 numbers with you, okay?

15 A Okay

16 Q And do you need a calculator, you may need a
17 calculator

18 A I can use a calculator You got a pad?

19 Q First thing I want you to do is let's just go 42
20 minus 15 Let's just figure out the difference in those
21 income tax rates

22 A Okay

23 Q Okay There's a 27 percent difference, right?

24 A Correct

25 Q Let's just pick a number and apply it against that

0207

APP_0212

1 And let's just pick a number of \$415,000, okay?

2 A Okay

3 Q And then let's multiple those two numbers together

4 A Okay

5 Q Then divide by 100

6 A Okay

7 Q What did you get?

8 A I got \$112 and five cents

9 Q Let's do that again, okay Do point 27

10 A 415

11 Q 415,000, you've got to add those three zeros on
12 there Point 27 times 415,000

13 A You wanted 415,000 times point 27

14 Q 415,000 times point 27, right

15 A Okay

16 Q What did you get?

17 A 112,000

18 Q Now, I understand that you do not agree that 7 1/2
19 percent of the proceeds from the sale of Reeves was
20 415,000, do you?

21 A I don't know what the proceeds are They don't make
22 sense

23 Q You don't have any idea what they are?

24 A It's 7 1/2 percent -- I think he sold it for 9 -
25 million I do know that there's other tax ramifications

1 So if you're asking me to sit up here today for the first
2 time and calculate what my portion of Reeves is we can do
3 it if this is--

4 Q No, I'm not when you were working on the Dobson
5 deal, was that to pay less taxes?

6 A I was giving money away

7 Q Now, were you trying to pay less taxes when you did
8 the Dobson deal?

9 A There were two things we were trying to do
10 Primarily, get the deal done because we had the inflated
11 evaluation coming So there are multiple reasons to do
12 that deal If you're going to ask me about the Dobson
13 deal I'll try to give an answer, but I just want everybody
14 to know the relatively complicated tax structure And
15 that's why Curt is the attorney and tax specialist But
16 I'll try to answer that

17 Q Okay Isn't it true that you told P J that he
18 would also get a tax deduction for the Dobson deal?

19 A I did

20 Q And so he would get a deduction on the other side of
21 putting that money into Dobson, is that how that would
22 work?

23 A I remember when we were working the deal out, that it
24 was some benefits because that price was about to pop up
25 So P J was kind of donating the money to charity So he

1 donated a hundred dollars to charity and he gets a hundred
2 dollars donation. If he had bought the stock directly, he
3 wouldn't have gotten the deduction. Just like if you guys
4 buy stock, if it's a hundred dollars, you buy a hundred
5 dollars and donate it to charity, you get it.

6 Q But you told P J he'd get a tax break out of the
7 Dobson deal, too, right?

8 A I did.

9 Q So you get a tax break out of one side and he'd get a
10 tax break out of the other side?

11 A That's correct.

12 Q And then Curt also told -- you understand, don't you,
13 that Curt told Eric Orlinsky up in Maryland that P J
14 would get a tax break, too?

15 A I don't know.

16 Q That's not your understanding?

17 A I said I didn't know if he said that.

18 Q Let's go over here and talk about some evaluations of
19 the company.

20 A Okay.

21 Q I want to look at Exhibit 35. You can keep the
22 calculator.

23 A Go ahead.

24 Q If we could go to the second page of this document.

25 A Okay.

1 Q You recognize here that this is sent from Curt
2 Stodghill to Ed Kidner?

3 A Okay

4 Q And this is around the time of April 21st, 2005, you
5 see the date there?

6 A Yes

7 Q And was this evaluation something that was used in
8 connection with the Dobson deal?

9 A I've not ever seen the document If you can show me
10 where it says that

11 Q You don't know why Curt was sending this to Ed Kidner
12 in April of 2005?

13 A I don't know if this was part of the Dobson, but this
14 was part of his plan He said he could possibly do it,
15 but there's nothing on here to say here Ed, this is about
16 the Dobson deal

17 Q You see it right there in the subject line it's RE
18 NARP 7 5 percent evaluation That's what we've been
19 talking about, right, 7 5 percent evaluation?

20 A Yes

21 Q Let's turn to page 8 of 10 And I just want to
22 direct your attention to those bottom two paragraphs The
23 first one talks about a discount for lack of control,
24 right, you see that?

25 A I do

1 Q You see down there at the bottom, it says for lack of
2 control, there's a 35 percent discount you see that?

3 A I see 20 percent discount, I don't see the 30

4 Q Lack of control, the one before you're looking down
5 in marketability The last line, you see that?

6 A I do

7 Q You agree that 35 percent lack of control discount is
8 something you would agree that's reasonable?

9 A Yeah

10 Q And then the next paragraph, lack of marketability,
11 that's a 20 percent discount, right?

12 A That is correct

13 Q And if you'll flip over -- and you agree, that's a
14 reasonable figure for lack of marketability?

15 A I assume it is

16 Q Let's flip over to the next page And I'm just going
17 to direct your attention to the bottom two paragraphs

18 A Okay

19 Q Now, right there, that first sentence says, Based on
20 our assessment of the two methods, we concluded the
21 enterprise value to be, and that's six million 635, is
22 that what that looks like?

23 A It's six or eight million

24 Q Okay Six or eight million dollars is what the value
25 of VARP was in April of 2005?

1 A Correct

2 Q And then if we go down to the last paragraph, it says
3 the value for the 7 1/2 percent is \$336,000 Do you see
4 that?

5 A I do

6 Q Do you agree that was the correct evaluation at that
7 time?

8 A Depending on the deal that we were structuring but in
9 this document it says that it's 600 and 7 or 8 thousand
10 dollars

11 Q But you don't have any reason to contest the validity
12 of this document sent from your lawyer to Mr Kidner, do
13 you?

14 A No, I just don't know if it's relationship to the
15 Dobson deal or in relationship to just buying the stock
16 straight

17 Q Okay

18 A Again, it's two different ways you have to view that

19 Q We'll come back to that We have some documents
20 Now, those discounts on page 8 and 10 for lack of control
21 and lack of marketability, those don't apply to you as the
22 guy who owns 90 percent of the stock, do they?

23 A No, they don't

24 Q And so there wouldn't be any discount against the
25 total value of the company on your shares, would they?

1 A No

2 Q And what do you believe the value of NARP is today?

3 A It's probably in the range of 70 to 85 million

4 Q Seventy to 85 million?

5 A Correct

6 Q Let me direct your attention to your deposition

7 testimony

8 A Okay

9 Q And, Mandy, could you put that up for me? I don't

10 have the page in front of me

11 I'm on page 215

12 A Okay

13 Q You see that on line 16 there?

14 A 16, okay

15 Q Now, I said, Let's start at the other end, do you

16 have a feeling for what your company's worth today? And

17 if you flip to the front of your book, that was June 17th,

18 wasn't it?

19 A Correct

20 Q June 17, you said you had a feeling

21 what do you think that is?

22 Somewhere between 150 to 200 million dollars

23 Or June 17, you believed your company was worth

24 between 150 and 200 million dollars?

25 A I did

0214

APP_0219

1 Q And now you're saying it's worth 85 million dollars?

2 I didn't even hear what you said, '8 to 85?

3 A Seventy-five to 85

4 Q You can put that down, Mandy

5 So between 2005 and today, your company has grown
6 from either six or eight million dollars to 85 million
7 dollars, at least?

8 A At the time of that 150 to 200 million, we had a
9 company that actually had a bid on our company to buy it
10 for that. But they didn't ask me has anybody offered to
11 buy, we were looking for a partner at the time. Saturday,
12 they pulled out. And the reason was is because what we do
13 for a living, again, we make military medical equipment.
14 And they just signed the Iraq peace deal or think about to
15 sign it which means they'll pull out by 2012. And the
16 company thought at the time, who was looking to buy into
17 it, they didn't believe investing that much money into the
18 company because they didn't think they would get a big
19 enough return. What they said was they would do the deal
20 somewhere 75 to 80 million dollars. So at the time you
21 asked me that question, I was a hundred percent accurate.
22 I had a deal on the table and I was being honest about it.
23 Being honest today, they pulled out of it. There is no
24 deal. When I talked to my bankers, who do this for a
25 living, they told me that that was about the right range.

0215

APP_0220

1 of wanting to try to find a partner

2 Q And that happened Saturday, right?

3 A That happened Saturday

4 Q Friday, you thought your company was worth 150
5 million dollars?

6 A I did

7 Q Saturday, you thought it was worth 85 million
8 dollars?

9 A That's correct

10 Q And you're telling us on Tuesday, it went from 150 on
11 Friday to 85 on Tuesday?

12 A It was a bad weekend

13 Q Let's go back and start a little bit with the boards
14 I want to talk chronology It's a little bit easier that
15 way Now, you and P J met, I think you said '98, '99?

16 A Could you put the boards back up?

17 Q Yeah, they're right here Can you see them?

18 A I can stand up

19 Q Let's start -- I'm going to start in the beginning so
20 we can just use that board right now y'all met in '98 or
21 '99, we're off the board, right?

22 A Correct

23 Q You had been out of the Air Force like four or five
24 years at that point?

25 A Correct

0216

APP_0221

1 Q And at that point, Reeves was an established company,
2 wasn't it?

3 A I don't know when they incorporated When did they
4 incorporate?

5 Q I don't know when they incorporated Reeves was an
6 operating company, wasn't it?

7 A Well, here's what I understand about Reeves Reeves
8 was bought an old company and started in the 1800's
9 building (inaudible) P J bought it He had investors
10 and he just transferred it And I think that's -- within
11 a short period of time transferred it down to Maryland
12 So you're saying it was an established company, the brand
13 had been established Had you said correctly, Mr and
14 Mrs Reeves So they were a fairly new company They had
15 more overhead than I did, they had investors, I didn't I
16 don't know how you want to say established

17 Q It was an established company, wasn't it?

18 A As I knew it, it was a pretty new company

19 Q Okay Well --

20 A His wasn't too much older than mine

21 Q Well, let me direct your attention to page 20 of your
22 deposition

23 A Okay

24 Q I said -- or page 20 at line 2, I said, How did that
25 compare to the size of Reeves at that time? And you tell

1 me if I'm reading your answer right I mean, Reeves was
2 bigger from a structural standpoint --

3 A Could you give me the line number?

4 Q Yeah, line 2, page 20

5 A Thank you

6 Q I said, How did that compare to the size of Reeves at
7 that time?

8 And you said, I mean, Reeves was bigger from a
9 structural standpoint It was bigger from a personnel
10 standpoint I don't know how it, from a gross sales, but
11 it -- I don't know I don't know how it compared to them
12 as profitability or I don't know the structure of Reeves
13 at the time, I don't know I mean, it was an established
14 company

15 Isn't that what you said to me at your deposition?

16 A That is correct

17 Q Okay And at that time, NARP had no employees other
18 than yourself, did it?

19 A It did not

20 Q And you were working out of your house?

21 A I was

22 Q And I heard you say in your direct testimony that
23 NARP was actually a virtual company then, right?

24 A I used the term virtual company If you mean did I
25 profit, sometimes virtual companies were used to start a

1 company that didn't have products and assets, didn't have
2 patents and stuff, I had all that. What I didn't do, I
3 didn't do all the back-end stuff, shipping and stuff.

4 Q All right. Okay. In 2000, would you describe NARP
5 as a virtual company?

6 A That's how I describe it now.

7 Q And that's how you described it then, too?

8 A Yes.

9 Q And I think you said that that was a -- that was a
10 more modernistic version than what Reeves was doing?

11 A Yes.

12 Q And at that time, you had no building?

13 A Correct.

14 Q But you have a building now, right?

15 A I do.

16 Q You had no employees then?

17 A Correct.

18 Q But you have employees now?

19 A Correct.

20 Q And your first employee at NARP was, actually,
21 Billie, wasn't she? I mean, other than Bob?

22 A I don't know if she was an employee, but she was paid
23 a salary and stuff like that, which is probably -- Bob
24 Miller was my actual first employee that I hired that came
25 on. So Billie, I don't know if Billie got a paycheck at

0219

APP_0224

1 that time or not If she did, that's okay and I wouldn't
2 argue with that

3 Q She worked there before Bob Miller?

4 A She definitely worked with me but again, I don't want
5 to step in some--

6 Q well, instead of talking about her employment status,
7 let's just talk about what she did She ran your books?

8 A Yes

9 Q She did the paperwork?

10 A When I say what she did, her and support people So
11 I don't know -- I mean, she was definitely kind of my
12 go-to person Yes, she was very important

13 Q And those other people were people who worked for
14 Peeves, right?

15 A Correct

16 Q Okay And so through her, they did your receivables,
17 your payables, all your back-end stuff, right?

18 A Receivables, payables, customer inquiries, not all of
19 them, answered my phones and it grew over time

20 Q And you talked to her everyday, right?

21 A Yes, I did

22 Q Multiple times a day?

23 A Yes

24 Q And that's not just when you were in Maryland, but
25 when you were down here in Easley and Creerville, too,

1 right?

2 A Correct, until we transferred

3 Q I mean, even after you transferred, you talked to her
- daily, didn't you?

5 A Well, as soon as we transferred everything down here
6 it wasn't everyday but it was frequent So it dropped
7 off

8 Q If all had a very close relationship, didn't you?

9 A Yes

10 Q Did you frequently close calls with each other by
11 saying you love each other?

12 A Yes

13 Q And on P J , before the Atlanta meeting, you talked
14 to P J multiple times a day, too, didn't you?

15 A I did

16 Q That was also a very close relationship

17 A It was

18 Q And after Atlanta, you still talked to P J
19 regularly, didn't you?

20 A I did

21 Q And, again, that was a very trusting relationship,
22 wasn't it?

23 A After the Atlanta meeting, it had become a whole
24 lot -- actually, Charleston to Atlanta, it became a whole
25 lot more business focused

0221

APP_0226

1 Q Right That was the then part It was trusting back
2 then, wasn't it?

3 A It was trusting, yes

4 Q Okay Now, at one point in time, you ever appointed
5 Billie as your assistant treasurer of your company, right?

6 A That was done under the request of this whole new
7 thing that we're doing

8 Q Exhibit 5-, if you'll look at that And, Bob, just
9 looking at that last paragraph, it says, Further resolved
10 that Billie Richardson be elected as assistant treasurer
11 of the company Do you see that?

12 A I do

13 Q And that's dated June of 2004, right?

14 A Correct

15 Q This actually predated the beach house meeting?

16 A Yes If it did, I agree

17 Q Okay

18 A Just so you know, Billie was qualified to do this I
19 didn't have any board members at the time I didn't have
20 any officers at the time I ran this company by myself
21 So I'm not saying Billie wasn't qualified to be a board
22 member or anything like that, I'm just saying I had no
23 reason to complicate my life by starting to pass board
24 resolution among myself So

25 Q Let's go to the 2000 agreement 2000 agreement,

0222

APP_0227

1 Exhibit 3

2 A Okay

3 Q This is the agreement where y'all decided to do the
4 25 percent stake, right?

5 A This is the agreement where we were going to swap 25
6 percent

7 Q And now, at this point, y'all were growing your
8 companies side by side when this agreement was -- after it
9 was entered into, weren't you?

10 A We were both supporting each other

11 Q And you mentioned that y'all -- you paid some
12 commissions to them, at least?

13 A Not as I understand commissions There was money
14 being sent back and forth The majority of the money went
15 for services for doing bookkeeping, half a million
16 dollars, plus or minus Maybe a little bit more The
17 commissions really didn't play much into this Reeves was
18 actually selling my products So if somebody wanted to
19 buy my product, a lot of it was sitting in the warehouse,
20 they would sell it and then they would pay me whatever
21 that was So there was really no need for commissions
22 If there was commission, it was very rare and it was for
23 something like maybe Baltimore City wanted to buy some
24 product and they came directly to me And their sales
25 people had they thought they could get a better deal from

1 me, what I would do is I would is sell it at the same sale
2 price and cut them a check for less

3 Q Let's talk about something simpler than commissions
4 then After you paid yourself in NARP, did you pay P J
5 a 25 percent share of what was left?

6 A I did

7 Q This document was actually drafted by Curt Stodghill,
8 wasn't it?

9 A Yes

10 Q And you got to Curt from a referral from Bobby
11 Dobson's group?

12 A I did

13 Q Bobby was a preacher that you knew?

14 A Bobby was a CPA

15 Q He's a preacher, too, right?

16 A He's ministry It depends on what domination of
17 Christianity calls it, pastors, ministries

18 Q Now, when you first met him, you thought he was a
19 poor preacher, didn't you?

20 A Oh, yeah

21 Q Until you went to his house, right?

22 A Bobby and I met and I was looking -- I didn't have a
23 church in the area and I wanted to donate money still
24 And I met up with Bobby by -- and my friend has a ministry
25 and I thought the ministry was run by a pastor So I met

1 Bobby and he didn't come across as a lawyer or accountant
2 and so yeah, I thought -- I thought he was a preacher

3 Q So Bobby is a tax lawyer?

4 A He's a tax lawyer and CPA

5 Q And he's your son, Tom's, business adviser, correct?

6 A He's a close friend

7 Q Let's look down there at paragraph seven, paragraph
8 seven of the 2000 agreement The first part there, Bob,
9 you see that? You can use either one That part about
10 issuing 25 percent of stock to each other, y'all never
11 actually did that, did you?

12 A We never did

13 Q Fully diluted right there, so the 2000 agreement was
14 fully diluted right beside the 25 percent, you see that?

15 A Correct

16 Q This last part down there, at the bottom, now,
17 listen, this is a long sentence, so I'm going to read it
18 and I just want you to tell me what it means If a
19 company exercises its right to purchase the stock and it
20 entered into an agreement to sell or consummate a
21 transaction to sell a material portion of its property,
22 other than the ordinary course of business Now, do you
23 see that part?

24 A I do

25 MR ELLIS Your Honor, I'm sorry, may I ask that he

1 read the entire paragraph?

2 THE COURT I'll allow the question as it is framed
3 The witness can certainly either explain or refer to other
4 parts of the agreement if he wishes

5 BY MR STILLWELL

6 Q We can do it like this, Bob, to make it easier on all
7 of us That last sentence, does that sentence talk about
8 if one company sells before the other does, isn't that
9 what that talks about?

10 A I know I need to answer all your questions but you're
11 talking about restricted contact and I understand that
12 And you're right, that is a long sentence I could read
13 through this thing in its entirety and give you whatever I
14 think and give you what I think it in is But this is
15 definitely something that's -- I mean, I could go to my
16 attorney and talk to him about So if you want to
17 characterize it not being evasive, it's just--

18 Q Curt wrote that, right?

19 A He did

20 Q So you'd have to ask Curt what it means?

21 A Well I would ask Curt or Bernie

22 Q I want to go down to this last part, okay?

23 A Okay

24 Q Just the last phrase there

25 A Okay

1 Q Starts down there on the line 4, it says, Then the
2 terminated stockholders shall be paid a portion of any
3 consideration received as if they still owned stock This
4 provision shall be for a period of two years from the date
5 of the stock purchase at \$100 dollar profit Do you see
6 that?

7 A I do

8 Q Does that tell you what happens after one of the
9 companies is already sold?

10 A It did not

11 Q It doesn't tell you that?

12 A I mean, again, because you know you need to read the
13 whole agreement and not pulling out a sentence and asking
14 me to relate it to part of your time line I don't -- I
15 don't know what that means

16 Q That's fair enough You don't know what it means, do
17 you?

18 A I do not know what that means

19 Q Now, isn't it true that at times, y'all actually
20 called this 2000 agreement an option agreement?

21 A It means when we were in deposition, we called this
22 agreement contract, agreement We kind of called it an
23 option agreement We didn't have stock We called it a
24 hardshake agreement There were a lot of different terms,
25 it depended on what we were thinking, what we were doing

1 Q So yes, you sometimes called this an option
2 agreement?

3 A Correct

4 Q And when you signed this agreement, by this time, you
5 were actually down here in Easley, right?

6 A Yes

7 Q I mean, Curt wasn't your lawyer while you were in
8 Maryland, right?

9 A That's right, Curt wrote it

10 Q So the back end of your company when you first moved
11 down here was still back in Frederick, Maryland with
12 Billie, wasn't it?

13 A It was in Frederick, Maryland, yes

14 Q Okay You mentioned when y'all entered into this
15 that it was something that -- was an insurance policy, do
16 you remember that?

17 A I said it was like an insurance policy

18 Q And this is something that you and P J had, you had
19 your bets in each other, is that true? I'm not reading,
20 I'm asking you what you said yesterday?

21 A What I said was that's how I viewed it and I think he
22 viewed it that way

23 Q And it was something that would offset the risk of
24 two young companies, is that it?

25 A If we decided to use it, yes

1 Q And at that time, none of y'all had very much more,
2 did you?

3 A Again, I don't know what Reeves had I never saw the
4 brochure telling me they were a well-established company
5 At the time I can assure you, I was driving limousines at
6 night to pay my bills, so no, I didn't have a lot of
7 morey

8 Q Side jobs, right?

9 A Right

10 Q And this interest y'all had in each other's company,
11 this was so y'all were all rowing in the same direction,
12 isn't that what you said yesterday?

13 A I want to be accurate, we didn't have interest

14 Q Okay I understand that's what you're saying today

15 A I know we keep using that and I want everybody to
16 understand it, we didn't have interest

17 Q Okay

18 A It was an option or agreement or contract that
19 allowed us to trade stock if we wanted to do it

20 Q Y'all were all rowing in the same direction, weren't
21 you?

22 A Absolutely

23 Q Now, when you enter into this 2000 agreement, wasn't
24 it clear that P J was going to build Reeves just to sell
25 it?

1 A I don't know if I knew that at the 2000 agreement,
2 but it was clear right after that But again, it could

3 be yeah, I think that's probably fair splitting hairs

4 Q It's fair When you enter this agreement, you knew

5 P J was going to sell the company, right?

6 A Right

7 Q And you didn't --

8 A He wanted to

9 Q In other words, he wasn't going to die at the chair
10 running the company, right?

11 A I don't know

12 Q Okay Now, did there come a point in time -- we
13 looked at a document yesterday and you were talking about
14 the Reeves group Do you recall the Reeves group concept?

15 A I do

16 Q Can you we look at Exhibit 4 real quickly? And it's
17 the same one we've been looking at, the only thing I want
18 to direct your attention to Bob, down here at the bottom
19 where it says best regards, Bob

20 A Okay

21 Q NAPP, a member of the Reeves Group, right?

22 A I explained during my deposition that it was a
23 marketing concept So we're trying to market some of the
24 companies together the same way we were doing it before
25 So instead of having one company that said Reeves or

1 Reeves and VARP, we had a company called Air Shelter,
2 which was a (inaudible) and a company called modac. So
3 all it was was try to make ourselves seem a little bit
4 better because at the time there were a lot of bigger
5 players. When P. J. went in that market, there weren't a
6 lot of people in this decor business. And we saw people
7 making money, so that's what we tried to do. That's what
8 big companies do. There is big money. So we're trying to
9 do is compete with these individuals. At least,
10 initially.

11 Q Bob, right there on that document, Exhibit 4, same
12 one that was sent to Curt and Rod?

13 A Yes.

14 Q Does it say North American Rescue Products, a member
15 of the Reeves Group?

16 A It does.

17 Q Okay. Let's move on then. Did there come a point in
18 time when you and Billie and Rod and Curt and P. J. all
19 met in Curt's office in Greenville?

20 A Yeah.

21 Q You don't have any memory of what anybody said at
22 that meeting, do you?

23 A No.

24 Q And you do recall the purpose of that meeting,
25 though, was to talk about this 2000 agreement, right?

1 A Yes

2 Q And there was no resolution at that meeting about the
3 2000 agreement, was there?

4 A While I'm hesitating, I heard a lot about this
5 meeting But at the time, I didn't remember the meeting
6 What I've learned subsequently, it was about the 2000
7 agreement, modifying it to some degree

8 Q And what you've learned about it since is from Curt?

9 A Curt, Bernie, documents, handwritten notes from P J

10 Q Let's go to the Charleston beach house, okay?

11 A Okay

12 Q Let's go to the Charleston beach house That meeting
13 was you, Billie and P J , right?

14 A Yes

15 Q No lawyers?

16 A No lawyers

17 Q And that was, in fact, your first NARP board meeting,
18 right?

19 A We called it that, I don't know if it actually -- if
20 we had officers left And real quick, just so you know,
21 that beach house, I've been very blessed, it was on the
22 third story, 1100 square feet condominium that had a
23 beautiful view of part of the canal

24 Q Okay We'll call it your beach condo, can we do
25 that?

1 A Yes

2 Q Okay And at that point, P J was already looking
3 at selling his company, wasn't he?

4 A Yes

5 Q Okay And you weren't interested in selling yours
6 were you?

7 A No

8 Q Were you interested -- you were interested, weren't
9 you, in reducing P J 's ownership share in NARF because
10 you wanted to keep owning NARF?

11 A Well, what was clear is he was backing out of the
12 deal Not backing out, that's the wrong way to phrase it
13 They were looking at retiring and 25 percent was a big
14 slug to leave with me As I had to make this transition
15 more of a traditional type of business So I didn't want
16 to, as I started bringing employees on, have that much
17 stock owned by someone who didn't have day-to-day dealing
18 in my company I just didn't have general investors come
19 and give me money So it was a mutual agreement

20 Q Okay A mutual agreement to reduce the 75 percent,
21 right?

22 A Correct

23 Q And part of your emphasis behind that was because you
24 wanted to keep owning the company, right?

25 A Yes

0233

APP_0238

- 1 Q Okay
- 2 A But just so you know, I would have owned the company
- 3 with 7 1/2 percent too
- 4 Q Right, you just owned less of it
- 5 A I would have owned less of it
- 6 Q So y'all had mutually agreeable goals in the
- 7 Charleston meeting?
- 8 A Correct
- 9 Q And it ended up being you'd reduce the 25 percent
- 10 agreement to 7 1/2, right?
- 11 A From 25 to 7 1/2, right
- 12 Q Okay, 25 to 7 1/2?
- 13 A Correct
- 14 Q Like for like?
- 15 A Correct
- 16 Q And y'all did that deal and then you hugged and
- 17 kissed and sealed the deal?
- 18 A Correct
- 19 Q And that wasn't just a business meeting, it was a
- 20 personal meeting, wasn't it?
- 21 A It was a time to get together and enjoy Charleston
- 22 and stuff
- 23 Q I mean, what I'm saying is it wasn't just money and
- 24 corporations, there were feelings involved, too, weren't
- 25 there?

0234

APP_0239

- 1 A There were feelings involved
- 2 Q Let's talk about options a little bit
- 3 A Okay
- 4 Q We talked about that you sometimes called the 2000
- 5 agreement an option?
- 6 A Yes
- 7 Q Okay Now, let's look here -- look at Exhibit 11
- 8 A Okay
- 9 Q Now, I want you to look at that bottom paragraph
- 10 A Okay
- 11 Q Now, this on the top, this is a letter from Curt to
- 12 Rod Manning, right?
- 13 A Yes
- 14 Q Okay And it says -- I'm looking at that sentence,
- 15 it says, At this point since we are dealing with 7 5
- 16 percent equity, division instead of 25 percent, perhaps,
- 17 options are the least tax and cost means to get this done
- 18 -- well, to get Bob and P J to where they desire to be
- 19 provided they are properly tailored Do you see that?
- 20 A I do
- 21 Q So here, Curt is mentioning options as a way to get
- 22 this done?
- 23 A Apparently, he is
- 24 Q I mean, you're copied on this e-mail, aren't you,
- 25 Bob@narescue, that's you, right?

1 A Yeah, but I don't -- again, you're asking -- I don't
2 know what was going on at the time This is very clear
3 they're talking about taking 7 1/2 percent and turn it
4 into an option I don't know if there was discussion why
5 P J didn't exercise 7 1/2 percent I don't know what
6 the context was This is between Curt and Rod So I can
7 tell you that's what it said, but I don't know the context
8 of this conversation I don't know what had happened I
9 don't know --

10 Q Let's put some context on it The date on it is
11 August of 2004?

12 A Okay

13 Q That's after the beach meeting, right?

14 A Yes

15 Q Okay And at that time, you remember the word
16 options being used a lot, don't you?

17 A I don't know if I would say it's -- I know around the
18 Dobson deal the options word was used a whole lot

19 Q I want to go back to August, though I mean, here's
20 the August thing where Curt's talking about options,
21 right?

22 A I'm not disagreeing You're asking if I remember I
23 remember the option word I'm not trying to be evasive

24 Q All right, let's go to --

25 A That was the predominant subject matter

1 Q It's just a simple question Let's look at page 64
2 of your deposition At page 64, down at the bottom on 22
3 there

4 A Okay

5 Q It says Q and that's me talking I'm going to read
6 this and I'm going to read what you told me Right In
7 the second paragraph there again, Curt mentioned options
8 as the least tax costly means Do you remember during
9 this timeframe discussing the 7 1/2 percent interest being
10 expressed in terms of options? And it's got a little note
11 there and says review document

12 And you said, I remember the word options being used
13 a lot

14 Do you see that?

15 A Yes I remember lots of terms That's the same
16 thing I just said

17 Q Okay, at this point in time, you were still talking
18 to P J daily?

19 A Yes

20 Q And you were talking to Billie all the time, right?

21 A Same pattern as before

22 Q And at this point, Curt's working on -- he's talking
23 about some options here, correct?

24 A Yes

25 Q And as to which way you were going to go in the end,

- that was going to be Curt's decision, wasn't it?

2 A That is not correct

3 Q Well, whatever Curt decided was probably going to be
4 it, wasn't it?

5 A What was going to happen was Curt had to work it out
6 with Rod. Once Curt and Rod worked it out -- because I
7 don't know all the deals. As I said before, the attorneys
8 get together, they fight for their client, they understand
9 their client's position, they give advice to their client.
10 And the clients get together and they talk and said, Well,
11 that's really not what I meant or that's what I meant. So
12 Curt was going to have -- If Curt said Bob, don't sign the
13 document, then I don't sign it. But I don't know the
14 context in what you're talking about. But in the end, if
15 Curt told me not to sign the document, I would probably
16 not sign the document, sir.

17 Q Same question I just asked in your deposition, okay,
18 page 65. Okay. Okay. I ask you the same question.

19 A Number?

20 Q I'll read the answer, this is on number 2. Okay, you
21 tell me if I read correctly.

22 A Well I'd like to read the question. You got to tell
23 me--

24 Q 64. It's the line before where we start.

25 A Okay.

1 Q Do you see that?

2 A Wait a minute

3 Q I said in the second paragraph there --

4 A Just a second Let me find the question, you got all
5 day with me All right All right I got 64, Do you
6 remember

7 Q Okay

8 A Okay, I'm going to look at the same answer on the
9 next page Okay

10 Q Okay Do you remember the word option being used a
11 lot?

12 I remember lots of terms I'm in the -- just so you
13 know I'm not debating the option was where it was or not
14 I'm not -- I can -- I know what was going on here, I
15 wasn't really engaged in it It doesn't take any
16 responsibility away but whatever Curt decided then that
17 was probably going to be it

18 Is that what you said to me?

19 A That's what I just said 10 minutes ago or two minutes
20 ago

21 Q Okay Let's look at Exhibit 16 This is another
22 copy of the same document that I think you said this one
23 has P J 's handwriting up in the corner there, do you see
24 that?

25 A I do

1 Q Do you recognize that as P J 's handwriting?
2 A Yes?
3 Q So you said you had never seen this document before?
4 A I had never seen it
5 Q Let's flip over to number 130
6 A Okay
7 Q Manay, can you highlight the body of that?
8 Okay, so this is from Curt to Rod Manning, P J 's
9 lawyer, right?
10 A Correct
11 Q October 4th, right?
12 A Correct
13 Q That's the same document that P J has written on
14 that you had never seen?
15 A Correct
16 Q Then P J 's copied on that, correct?
17 A Correct
18 Q And you received this document?
19 A I did
20 Q Did you not review the document?
21 A I did not
22 Q You received it from Curt on October 4th, isn't that
23 true?
24 A That's the document -- additionally what's not here,
25 again, I get copied on a lot of emails that I don't read,

1 that's my fault But I don't know if that had a signature
2 on it If this document -- this was probably, draft
3 documents shooting back and forth If you guys have ever
4 been involved in this kind of stuff, they fly back and
5 forth and I'm cc'd on all of them As a matter of fact,
6 this one doesn't have any date or signature on it

7 Q Did you ever review any of the draft option
8 agreements?

9 A Curt sent -- I talked about this -- again, if you're
10 asking me did I read them, no I didn't read each one of
11 them

12 Q Bob, this next one is Exhibit 13?

13 A Number 14?

14 Q No, we're in 13?

15 A Oh, the next page, I'm, sorry

16 Q Right Okay Let's look at article one

17 Mandy can you give us that?

18 I'm going to give you a chance to read it, Bob, in
19 case you haven't read it before I'm just asking you, I'm
20 going to ask you some questions about it

21 A Sure Okay

22 Q Okay Do you see there that it means 7 1/2 percent
23 share common cap stock?

24 A I do

25 Q Do you see there it's a penny per share?

1 A I do

2 Q Let's go down to article two?

3 A Okay

4 Q Twenty-one

5 Mardy

6 Okay, give you a chance to read that

7 A Okay

8 Q Okay And do you see there 2 1 One it means for

9 the ten year term?

10 A I do

11 Q Let's look at 2 2, okay Did you have chance to read

12 that?

13 A Yes

14 Q It says, If the optionee (inaudible) continue to the

15 extent that the stock option would otherwise have been

16 exercised by the optionee, do you see that?

17 A I do

18 Q Okay Today it is the first time you've ever read

19 that draft sent from Curt Stodghill on October 4th?

20 A I mean, I flipped through it but I haven't read it

21 I mean, that's the first time I just read that This --

22 this draft document that -- there's a lot of draft

23 documents laying around This specific one just happened

24 to show up in court So again, I didn't sign it, I was

25 copied it As I said prior to this, this document wasn't

1 been seen by anyone? What I meant by that is I seen a
2 copy with the date on it, not the draft document

3 Q Okay Now, again though, is this the first time
4 you've read that October draft sent from Curt just today?

5 A I don't ever know but it mirrors the October 4th
6 draft

7 Q Can you give us the first page, Mandy?

8 Bob, do you remember the first page? First page's
9 date is on October 4th, isn't it?

10 A Okay

11 Q Let's move on

12 A That doesn't have the date on the document

13 Q Okay

14 A I'm sure you want to be accurate

15 Q At one point in time you made P J a director of your
16 company, did you?

17 A I did

18 Q And you paid him \$50,000.00?

19 A I did

20 Q Okay And today you want that \$50,000.00 back from
21 P J ?

22 A I do

23 Q And the first time you ever asked or mentioned him
24 giving that money back was during this lawsuit, wasn't it?

25 A That is correct

1 Q In fact, it wasn't when you first filed the lawsuit
2 in May '07 but it was 2008, wasn't it?

3 A I don't know exactly when things got put in but I'm
4 sure you got the documents

5 Q Okay Let's look at one -- let's look at Exhibit 55
6 Now just to put some context on this, I heard you say
7 yesterday that you confronted Billie about the termination
8 release agreement in November of 2004?

9 A I think confronting her is a little strong but I
10 talked to her about it

11 Q But you talked to her?

12 A I did It was probably tough but whatever I
13 confronted her

14 Q Let's look at this caption from this complaint
15 That's what we're here about today, North American Rescue
16 Products vs P J Richardson?

17 A It is

18 Q Okay, let's turn to page 2

19 A (The witness complies)

20 Q And there's the second claim there, do you see that?

21 A Yes

22 Q Breach of fiduciary duty, do you see that?

23 A Correct

24 Q Okay Let's turn to the next -- let's turn to the
25 fourth page Okay That's Mr Ellis' signature, right?

1 A Correct

2 Q And that date on there is June 27, 2007, correct?

3 A Correct

4 Q Approximately two months (sic) before today? That's
5 the first time you asked P J for \$50, 0000 back, isn't
6 it?

7 A As we were doing the due diligence stuff, that
8 October 4th document is another good example So I don't
9 know -- reviewing the documents they found that or if they
10 were trying to figure out what law applied to it So I
11 guess you could ask Bernie but that document changed the
12 facts

13 Q We've got plenty of lawyers to get on the stand I
14 just want to ask you, June 27th, 2007, gave the \$50,000 00
15 back

16 A It's in the complaint, I guess is the first time

17 Q Okay Let's move over and talk about the termination
18 agreement a little bit

19 A Okay

20 Q Even before that termination agreement you weren't
21 interested in talking to DHS, were you ?

22 A I was not interested in talking to DHS if I
23 understood how we were going to handle this thing Again,
24 context is important We had a meeting We talked It
25 wasn't going to micromanage their business, it wasn't

1 going to get involved I also said that I did not want to
2 sell my company And we were working on some
3 arrangements So I the not know the date that the DHS
4 thing started So no, at the time I didn't want to seem
5 as though we were going to work a deal out If I knew
6 that deal wasn't going to get worked out then I would want
7 to talk to him I like to keep it as much in the context

8 Q I'm sorry, before you signed the termination
9 agreement you weren't interested in talking to DHS, were
10 you

11 A No

12 Q And you weren't a shareholder at that time of Reeves,
13 were you?

14 A I was not an owner in Reeves ever

15 Q And you weren't a shareholder, were you

16 A I was not

17 Q And you're saying that you weren't an owner either,
18 right?

19 A Correct

20 Q You had a equitable interest in Reeves?

21 A We treated each other like brothers, like owners He
22 was working toward forward to a deal I did not have the
23 right to be involved in that deal Again, the right thing
24 to do is to offer to me and he did So getting a little
25 confused in your words One minute you're telling me we

1 had the ownership, now you're saying I don't have
2 ownership

3 Q Talk about ownership, can you open your deposition to
4 page 125

5 A (The witness complies) Okay

6 Q I'm going to start at line three, do you see it?

7 A I do

8 Q The question again is me Before Atlanta you still
9 thought you had a in it, shareholder interest perhaps, but
10 a ownership interest do why see that?

11 A I do

12 Q Yeah, I've had a interest again, but when you look at
13 the agreement it's -- it was equitable So I asked you
14 about an ownership You said it was equitable and fair

15 A I -- it was the fair and equitable as equitable and
16 fair and it was fair

17 Q So fair and equitable if you're --

18 A I think it's different

19 Q You did talk to DHS for a little bit, didn't you?

20 A Context I did not talk to DHS at any point about
21 ownership P J introduced me as a separate company
22 They didn't talk to me about the relationship between us
23 It was strictly, well, here's his company, this is what they
24 do So again, if you're trying to make a point that P J
25 said, hey, by the way, here's my partner, we've had a

1 great relationship, we can have stock options with each
2 other -- No, it was here's the company I work for, he has
3 he has back-end support here That's the type of
4 conversation it was So it was never, ever brought into
5 the loan on the purchase

6 Q Okay It was a complicated answer to a simple
7 question Did you talk to DHS?

8 A I did talk to DHS

9 Q Okay I want to talk about -- I want to change pages
10 now

11 A Okay

12 Q You can leave that, we'll come back to it We might
13 I want to get us to Atlanta Okay Now it is your
14 recollection that the first time anybody talked about
15 cleaning out each other's interest in each other's company
16 was in Atlanta?

17 A We had actually talked a little bit about that either
18 at Charleston or before And we had decided not to do
19 that But yes, that was -- that's primarily where we kind
20 of hit loggerheads, in Atlanta

21 Q So you may have talked about that before Atlanta?

22 A Yes, might have, yeah

23 Q Was it P J or Billie?

24 A (There was no response)

25 Q You don't remember anything special about those

1 Q So not signing refers to the document right there
2 that we just looked at, right?

3 A Correct

4 Q He confused the termination agreement reflected what
5 y'all talked about in Atlanta?

6 A Correct

7 Q Other than that you don't remember anything P J said
8 about the termination agreement, do you? At that meeting?

9 A No, that's not accurate

10 Q Okay Let's look at Exhibit one Okay Have you
11 ever seen this document before?

12 A Preparing for trial

13 Q Okay And where did it come from, do you know?

14 A I do not know

15 Q Okay Let's look down there at the bottom where it
16 says 2005 It came out of Mr Stodghill's file

17 A I'm assuring you're right

18 Q Is it possible that Mr Stodghill had this
19 computation?

20 A It's possible Curt prepared it or it's possible that
21 Curt forward it from somebody else so I don't know

22 Q So you've never seen it before?

23 A No

24 Q Has anybody ever mentioned to Castellani,
25 Castellani's share is 415,000, did anybody ever tell you

1 trat?

2 A Is this part of the Dobson deal or this part of
3 another deal?

4 Q I'm asking the questions again, Mr Castellani?

5 A I'm sorry, again, I don't have any specific
6 recollection that somebody said they were giving me
7 415,000

8 Q You just don't know Nobody ever told that to you?

9 A I'm saying I don't recognize it, no

10 Q Okay Let's go back to number 31

11 A Okay

12 Q And let me get that out Bob, do you remember when
13 Reeves sold, generally?

14 A Generally I don't know the date

15 Q January 2, 2005 sound right?

16 A I have no reason to question that

17 Q You don't know?

18 A If that's what you say I believe you

19 Q Okay Let's go to the first paragraph Just that
20 third part, Nancy

21 Okay So this e-mail from Curt to Rod as late as
22 April, right? Do you see that?

23 A April 14th

24 Q Right And he mentions -- Curt mentions through
25 going through the projected closing dates twice Do you

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APP_0255

1 see that?

2 A I do

3 Q And do you know what closing that was?

4 A I'm assuming it's the Dobson

5 Q But you're not sure, are you?

6 A No

7 Q Now, let's go back down Now in this, Curt says, If
8 we can't come to some resolution, I guess we can go back
9 to an option or maybe we should just end the whole
10 discussion and leave the money and the ownership as they
11 are Do you see that?

12 A I do

13 Q The money refers to the money from the sale of
14 Reeves?

15 A I know it refers to that but I don't understand,
16 there must be another option or something because this has
17 to be referring to the Dobson deal or I guess go back to
18 an option agreement That's what I thought all along the
19 Dobson deal was I'm sorry, that just threw me So I
20 don't know -- yeah, I'm sure Okay, so he put ownership

21 Q And the ownership is the ownership in NARP?

22 A There was ownership in NARP

23 Q Okay Again, there's no stock, I don't bore people

24 A I'm sure he's talking about the deal, ownership
25 agreement

1 Q But you don't think that ownership refers to
2 ownership in NARP or Reeves, you just don't know, do you?

3 A I know neither one of us had ownership in each
4 other's company

5 Q Let's go to Exhibit 38 Bob, this is an e-mail from
6 you to P J , correct?

7 A Uh-huh

8 Q In May of 2005?

9 A Yes

10 Q And I think you talked about this in your direct
11 And you see that part there where you say the original
12 handshake agreement worked so well because it was simple
13 Do you see that?

14 A Yes, I do

15 Q And that refers to the 2000 agreement, doesn't it?

16 A The 2000 agreement memorialized kind of a handshake
17 deal.

18 Q So there was a handshake and then it was memorialized
19 in a written document, correct?

20 A Correct

21 Q And it was written by Curt, correct?

22 A Yes

23 Q And at this point in time, you mentioned that you had
24 paid Curt \$12,000 in the last few months, so are you
25 frustrated at this time?

1 A I was frustrated

2 Q Okay Let me go down to the second paragraph Bob,
3 where you say, My concern is we had a great deal on the
4 table Does that refer to the Dobson deal?

5 A It's my understanding, it was the Dobson deal But
6 the other e-mail mentioned another option, so going back
7 to an option

8 Q Well, see if this makes it any clearer where it says,
9 In my opinion, it was the perfect agreement Are you
10 talking about the Dobson deal was the perfect agreement?

11 A This talks about missions to support so this is
12 talking specifically about the Dobson deal

13 Q Okay It is talking about the Dobson deal?

14 A It is talking about the Dobson deal

15 Q Okay And you considered the Dobson deal the perfect
16 agreement?

17 A For we had migrated I mean, we had already --
18 again, if you think about what happens, this is -- he's
19 getting ready to sale (inaudible) perfect deal it could
20 have been to exchange the 7 1/2 -- 7 1/2 the perfect deal
21 from whatever we could hobble together So that's what I
22 meant by perfect deal

23 Q Okay The perfect agreement And Curt thought it
24 was the perfect agreement, too?

25 A No, I mean, I don't know if he thought it was the

0253

APP_0258

1 perfect agreement or not. He was working within the
2 constraints of what I was telling him, what Rod was
3 telling him so I don't know.

4 Q Okay. Let's go to the next paragraph. I want to
5 read this first part. Since it's clear the NARP stock
6 price is going to rise, which will nullify our original
7 proposal and I've liquidated stock to cover some of the
8 most time critical pledges I've made. Bob, did you write
9 that?

10 A I did.

11 Q Did Curt review this before you sent it?

12 A Probably not because I wrote in there my bad grammar.

13 Q Okay. Let's look down at the next part of that
14 sentence, keep reading, Time critical pledges I've made
15 with my share of the sale of Reeves. Is that supposed to
16 be sale of Reeves?

17 A Yeah.

18 Q And you had, actually, then, made some commitments
19 with what you were going to get from the sale of Reeves?

20 A I had.

21 Q And you covered those elsewhere?

22 A I did cover them.

23 Q Okay. And let's see, if we take the termination
24 agreement that was entered into in November, correct?

25 A November, yes.

1 or hold your discussions about the Dobson deal during the
2 D-S lawsuit?

3 A Yeah Just so you know that was talking getting it
4 done about the Dobson deal, not getting -- specifically
5 talk about that deal we were still working

6 Q Okay So did you agree to put your discussions that
7 you were paying Curt \$12,000 a month for, did you agree to
8 put those on hold in June?

9 A We put on hold in June the general discussions about
10 how to move forward We -- again, we just blew through
11 the evaluation, so the Dobson probably couldn't begin to
12 work at that point So generally we still wanted to try
13 to honor it again I was pretty mad at P J I wasn't
14 mad at Billie Billie represented that P J had told her
15 that he didn't put that in the agreement Billie was an
16 incredibly important person to me So I was -- they're
17 married, this deal is with P J , I was trying to honor
18 that entity That's what I meant by that

19 Q I understand that and I appreciate it But the
20 question is at the Stax meeting, did y'all have an
21 agreement that you were doing to table any further
22 discussions about these interests until after the D-S suit
23 was resolved?

24 A Yes

25 Q Let's go look at Exhibit 40

1 interested in buying any of this company would be
2 interested in buying?

3 A No It's even hard for me to believe when you look
4 at how quickly the company grew It was a niche We
5 filled a need that nobody else had Actually, today,
6 after 10 years, nobody else fills that niche So the
7 difficulty in doing a corporation as you look for a
8 partner to help you grow your company, they didn't
9 understand the niche So the lesson is that people don't
10 understand it, so it's hard to get into that market space
11 The downside of it is it's hard to find somebody that
12 understands to want to partner with you So it's a good
13 problem to have, but it depends on what you're trying to
14 do

15 Q Have you had another experience in life with stocks
16 fluctuating in value?

17 A I do

18 Q Has it been your experience that stocks sometimes go
19 up and stocks sometimes go down?

20 A They do

21 Q I think you were asked about when you all were
22 working on the 2000 outline, was it clear to you that

23 P J was planning to sell his company Do you recall
24 being asked about that?

25 A Yeah, I do I mean, again, it wasn't a big issue,

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APP_0261

1 out it was kind of understood that he was going to
2 eventually sell his company and, you know, in between
3 maybe grow his company But if you're asking me for the
4 totality of our relationship he was looking at selling it
5 or my sons

6 Q How many years went by before P J actually sold his
7 company?

8 A Timeline, right? 2000 to he sold it in 2000 five

9 Q So it was nearly five years from that period, wasn't
10 it?

11 A Correct

12 Q Let me just ask you again if you could comment a
13 little bit more on the Reeves Group

14 A Exhibit?

15 Q I'm sorry, it's Exhibit 4 in that notebook

16 A Okay

17 Q Once again, could you explain for the jury, was this
18 Reeves Group a company that you worked for?

19 A No I don't know if it ever officially got
20 incorporated or not, I don't know if the name officially
21 got changed

22 Q Just say one more time, what was the Reeves Group?

23 A Again, if I remember correctly, the decon business
24 had become a big business, whether it was mass
25 destruction You had the Oklahoma City bombing and you

1 had those things So the president put extra funds
2 into -- it wasn't called Homeland Security then, it was
3 called Homeland Defense, maybe it was even around the
4 Olympics So small companies could operate in that market
5 pretty efficiently because those were big guys that never
6 got involved in it a lot There was lots of room to
7 compete at a lower level Regional distributors and
8 stuff And you started seeing bigger companies come in
9 that market space to kind of offer all the services, radio
10 communications, tents, heaters, litters, trailers to move
11 back and forth They could kind of come in and give them
12 the whole package and give them training The Reeves
13 Group did two things One, it allowed us to kind of put a
14 bigger image focus, look at all these guys in this
15 company The other thing put it more into -- and I don't
16 know if it happened before or after, but the vehicle
17 started kind of -- merging together or acquiring
18 companies So the group was kind of like -- you know, and
19 people switched from North American Rescue Products to
20 North American Rescue International Supposed to make
21 people think now I'm a
22 Q So why did you put Reeves Group on the bottom of your
23 email then?
24 A Marketing, it was just a marketing thing And I
25 don't think I put it on my catalog that year, but it was

0258

APP_0263

1 just a easy line to type at the bottom

2 Q Let me ask you if you will turn to page 30 of your
3 deposition I'm sorry, page 31 I believe you were asked
4 a question at line 17, it said, Did you commonly talk
5 about owning a stake in each other's companies? And your
6 response was?

7 A Yes

8 Q Okay You said, Uh-huh, which the court reporter
9 marked as affirmative you said an interest, yeah Would
10 you go down to page 31 and begin reading at line -- I
11 mean, I'm sorry, still on page 31, going down a little
12 further on the same page, line 25 Okay

13 A Yeah I mean, here's what I guess the best -- just
14 let me explain what I -- what I understand Is we had an
15 interest in each other's company, but as an owner, I
16 didn't -- as an owner, I didn't review the books I
17 didn't have anything to say about the business I
18 couldn't alter the decisions I couldn't -- so it's not
19 like a shareholder or a normal owner We talked about,
20 yeah, how the companies were doing All the -- there's a
21 space I mean, it was -- yeah

22 Q So Mr Stillwell asked you a question about what you
23 said earlier?

24 A I'm not sure what I just said

25 Q I tell you what, I might -- I might with their

0259

APP_0264

1 permission just flash that up on our screen here so you
2 can kind of see what the confusion was I couldn't offer
3 a decision I couldn't, so it's not like a shareholder or
4 a normal owner We talked about -- yeah, how the
5 companies were doing All the -- I mean, yeah So we've
6 got that

7 A That's my second language

8 Q My question to you, though, is that just after you
9 had answered the thing about owning -- about -- talking
10 about having an ownership stake, the very next page, which
11 I don't think you were asked about, you went on to explain
12 that, didn't you?

13 A Correct

14 Q You went on to explain that it was not like a
15 shareholder or a normal owner?

16 A Correct

17 Q I think also look at page 65 of your deposition You
18 were asked about that as well

19 A Okay

20 Q And let me direct you to lines seven and eight

21 A Okay

22 Q And nine

23 A Okay

24 Q Says doesn't take any responsibility away, but
25 whatever Curt decided, please continue reading

1 A But whatever Curt decided, then that's probably going
2 to be it. He knew that, space, what he was trying to
3 do -- trying to do was to make the transaction equitable,
4 right.

5 Q Bob, my question to you is this, did Curt Stodghill
6 make decisions for you?

7 A No, he did not.

8 Q What does Curt Stodghill do for you?

9 A I tell him what my goals are and my objectives and he
10 tries to craft those in a way that's -- that we can put
11 into contracts. He gives me general business advice,
12 general attorney. He's seen lots of different deals, lots
13 of different mistakes and lots of different ways to work,
14 so it's a -- definitely the legal part. And then he
15 also -- like today, you're in court, he works with other
16 attorneys. And let me say, when I said he didn't make
17 decisions for me, in the end, I'm the ultimate guy, but he
18 does give me some real good advice on legal documents. I
19 mean, I have to kind of trust him.

20 Q Let me talk to you about -- I believe that
21 Mr. Stillwell showed you the draft option agreements that
22 had been sent back and forth between the lawyers. This
23 is -- this is -- it's in the Exhibit book and this -- I'm
24 sorry, turn the page. This is Exhibit 13, PJR's Exhibit
25 13.

0261

APP_0266

1 A Okay

2 Q In article one, I'll point to it if I can find the
3 per Says, At a price of one penny per share So, again,
4 it's an option -- date of the agreement an option to
5 purchase a limited share of the common capital stock
6 equivalent to 7 1/2 percent of the common capital stock
7 outstanding on the date of this agreement at a price of
8 1 01 per share Do you see that?

9 A I do

10 Q I believe that Mr Stillwell then asked you to look
11 at carve line in the drafts submitted by P J 's lawyer
12 and he ask you do you see where it says --

13 A What page?

14 Q I'm sorry, it is Exhibit 14 and it is the second page
15 of that exhibit?

16 A Okay

17 Q And he asked you do you see where this also provides
18 for exercise price of a penny per share Do you see that?

19 A I'm sorry?

20 Q It's Article 1 1, agreement of option

21 A I'm on 14

22 Q Exhibit 14, the second page of it?

23 A Oh, I'm sorry, different option agreement

24 Q I understand

25 A Second page?

1 Q Right

2 A Article three?

3 Q No, I'm sorry, Article 1 -

4 A Okay Oh, the second page I'm sorry

5 Q I'm sorry for the miscommunication

6 A It's been a long day

7 Q He asked you to look at this where it says the

8 exercise price is a penny per share Do you see that?

9 A Yes

10 Q Look at it again Does it say a penny per share?

11 A It doesn't say a penny per share

12 Q No, it doesn't say a penny per share It just says

13 one penny, doesn't it?

14 A Correct

15 Q Let me ask you to go back to Exhibit 13, the draft

16 that Curt prepared, back to Article 1 there?

17 A Okay

18 Q All right Where it says NARP with the approval and

19 at the direction of the committee hereby grants the

20 optionee with the direction of the Board, an option to

21 purchase the number of shares of common capital stock,

22 equivalent to 7 1/2 percent of the common capital stock

23 outstanding on the date of this agreement 7 1/2 percent

24 of the common capital stock outstanding on the date of

25 this agreement at a penny per share, right?

0263

APP_0268

1 A Correct

2 Q Let me ask you if you will, go back to draft prepared
3 by Mr Manning, which is P J 's lawyer?

4 A Yes

5 Q After 7 1/2 percent, you see what it says? Article
6 - 1 again?

7 A Yeah, it says that it's at a penny

8 Q Okay Go back before that NARP's approval and with
9 the direction of the Board hereby grants the optionee,
10 with the direction of the Board, the option to purchase
11 the number of shares of common capital stock, equivalent
12 to 7 1/2 percent of the common capital stock, outstanding
13 on the date of this agreement Subject to adjustments as
14 provided for herein?

15 A Okay

16 Q If you go back to Curt's draft?

17 A There's no reference to adjustment

18 Q There's no reference to adjustment, is there?

19 A It's not

20 Q So in the draft that P J sent back, his lawyer sent
21 back a draft that would make the option of exercise
22 subject to adjustment?

23 A Correct

24 Q Can you give some background as to what the
25 difference between those might be?

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APP_0269

1 A I would be -- I would be guessing This is a better
2 question for Curt, but I'm assuming that's the inflated --
3 the adjusted value of the company I don't understand the
4 difference I know it's different than the other
5 agreement I'm sure it wasn't put in there just to --

6 Q Give me just one moment In fact, I think I can do
7 something that might make it a little bit easier for you to
8 look at This is North American -- we've marked this as
9 North American Rescue Exhibit 17 It's not been offered
10 into evidence yet, but I would like to --

11 MR STILLWELL No objection

12 THE COURT 17?

13 MR ELLIS Yes, Your Honor

14 THE COURT It's in evidence without objection

15 (WHEREUPON, all Plaintiff's Exhibits were
16 previously admitted into evidence)

17 BY MR ELLIS

18 Q Do you know what this document is?

19 A It's looks like either one of these two drafts

20 Q Well, I'll tell you what, if you don't know what that
21 is, I'm going to go back and ask you about the other one
22 I thought it might make it easier to show you a
23 comparison, but I can ask another witness about that Let
24 me -- let me ask you to talk about, though, this is going
25 back to P J 's Exhibit 14

1 A Okay

2 Q Actually, first take a look at P J 's Exhibit 13?

3 A Okay

4 Q Yeah, that's the draft that Curt sent?

5 A Okay

6 Q If you look in Article 4, P J 's Exhibit 13, the
7 draft that Curt Stodghill has prepared

8 A Okay

9 Q You'll see on the bottom where it says adjustment of
10 the changes in NARP common stock If there is a
11 reorganization in capitalization, change in shares, stock
12 split spinoff, stock dividends and so forth and any other
13 changes in corporate structure or shares in capital stock
14 of NARP, the Board of Directors shall make such adjustment
15 as it deems appropriate in the number and kinds of shares
16 of common stock subject to the option or in the option
17 price provided However, that no such adjustment shall
18 give the optionee any additional benefit under the stock
19 option You see where it says that?

20 A Yes

21 Q That's the draft option that Curt sent to P J 's
22 lawyer?

23 A Which gives me flexibility

24 Q Let's look at the draft --

25 MR STILLWELL Your Honor, I'm interested in moving

1 things along, but I think these questions are somewhat
2 leading

3 THE COURT Well, I've given the both of you a lot of
4 leeway, I'm going to continue to do so

5 Go ahead

6 BY MR ELLIS

7 Q Let me ask you if you would look at common law
8 Article 4 in the draft that P J 's lawyer sent back?

9 A Okay

10 Q Then it went on to say, if there is a reorganization,
11 recapitalization, change in shares, stock split, spinoff,
12 stock dividends, and so forth, the Board of Directors is
13 to make such adjustment in the number and kind of shares
14 in common stock as necessary and sufficient so that the
15 number of share in common capital stock purchased by
16 optionee as option shares are equivalent to 7 1/2 percent
17 of common capital stock on a fully diluted basis Do you
18 see that?

19 A I do

20 Q If you look back at Exhibit 4 in the comparable
21 paragraph in Curt's draft -- I'm sorry, I'm on the wrong
22 page Is there any reference to the stock remaining at a
23 fully diluted basis?

24 A There is not

25 Q Okay Let's go on and keep comparing Mr --

1 A What that means, what's important -- what that means
2 is the stock will never decrease, his stock would always
3 stay Everybody else would get diluted for that stock

4 Q In the proposal that Curt sent, was there an
5 adjustment provision that would make his stock always stay
6 at 7 1/2 percent?

7 A No, what was good for me was good for him The other
8 agreement put that stock where you can't -- it's always
9 going to stay at 7 1/2 percent no matter what happens

10 Q P J 's lawyer's draft said, Fully diluted basis
11 means without duplication all shares of common stock
12 outstanding at the time of the termination, plus all
13 shares of common stock issuable directly or indirectly
14 upon a conversion of all outstanding -- including without
15 limitation to preferred stock, exercise the exchange --
16 and warrants or rights Skipping on down, All shares
17 reserved from -- from the company stock plans -- price
18 It has a lot more things to this -- well, let me ask it a
19 different way Can you tell whether or not this draft
20 would add a lot more rights to P J than the draft that
21 Curt prepared?

22 A Yeah, without -- I don't understand some of the words
23 in there, but it's, obviously, more restricting or it
24 gives the shareholder of the 7 1/2 percent a whole lot
25 more control So that 7 1/2, if you think about it, it

1 would be a little iron cut out and it would just cause all
2 sorts of problems if you wanted to still different classes
3 or whatever. But any way, it's definitely a mouthful

4 Q Bob, let me go back to -- again, to Article 1 of the
5 draft that Curt prepared and it said -- the draft said it
6 would be 7 1/2 percent outstanding on the date of this
7 agreement, okay?

8 A Okay

9 Q You see that?

10 A I do

11 Q And this is the draft P J sent back, outstanding on
12 the date of agreement second to the adjustment as provided
13 for herein. Then you have a paragraph explaining how the
14 adjustment would work. Let me show you another provision
15 in Curt's draft that he sent to you -- I'm sorry, Curt's
16 draft that he sent to P J's lawyer. Under Article 2,
17 2 1, Stock option and all rights hereunder with respect
18 hereto to the extent such rights have not been exercised
19 shall be terminated upon -- become void after expiration
20 ten years from the date of the agreement?

21 A Correct

22 Q If you will look at Article 2 1, this says
23 Termination of options -- I'm sorry, where it says
24 Exercise schedule. Let's look back, this is Curt's
25 provision, Article 1, do you see an Article 1 2 there?

1 A I do not

2 Q But you see an Article 1 2 in the draft that P J 's
3 lawyer sent?

4 A I do

5 Q Do you see where it says exercise schedule

6 A I do

7 Q It goes on to say that this stock option shall be
8 exercised in accordance with the following schedule, the
9 option (sic) shares subject to the stock options shall be
10 exercisable upon the closing of and approved sale as
11 defined in the stockholders agreement Was that provision
12 in what Curt said?

13 A No

14 Q Okay Let me show you, continuing on in Exhibit 14,
15 I don't know if you can find the stockholder agreement
16 part of that It's on page six

17 A I'm just going to -- just going to look at that

18 Q Okay The stockholder agreement where it defines an
19 approved sale If the Board approves the sale of the
20 company, an approved sale, defines approved sale Now, I
21 can ask another witness about this later, but do you know
22 under this agreement what an approved sale was?

23 A I think an approved sale has to be voted on by the
24 Board of Directors

25 Q Okay

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1 A If that's what -- but that's -- I mean, I know if you
2 have an approved sale, the Board of Directors have to
3 because they have to take into consideration votes of the
4 shareholders

5 Q Okay, well, you see where it describes the approved
6 sale of structured -- a merger or consolidation And then
7 number two, a sale of stock, assets and so forth So
8 we've talked about -- I think when Mr Stillwell was
9 asking you this, he was trying to get you to look at
10 places where the documents seemed similar He asked you
11 to see if the price point --

12 MR STILLWELL Your Honor, I think this is more
13 appropriate for closing arguments

14 THE COURT All right Let's confine our questions
15 instead of asking what opposing counsel tried to do

16 MR ELLIS Okay

17 BY MR ELLIS

18 Q Upon review of these, do you see that there are -- do
19 you see that these agreements were the same?

20 A They're different agreements And those changes are
21 pretty significant

22 Q Was there a difference in the proposed two documents
23 as to price?

24 A One was a penny a share, if I remember correctly, one
25 was the penny

1 Q And just to be fair, a penny a share for 100 shares
2 is only a dollar, but it's still a 100 percent different

3 A It is

4 Q In terms of when the option could be exercised, under
5 the two drafts, was that the same?

6 A It was not

7 Q And in terms of how much potential stock the optionee
8 would be able to acquire, were those the same?

9 A Were not

10 Q Okay And once again, are you aware of the parties
11 ever coming together and agreeing as to the terms of an
12 option agreement?

13 A No I wouldn't agree to the rebuttal by Rod Manning

14 Q Let me ask you if you would look at page 82 of the
15 deposition

16 A (The witness complies)

17 Q I'm sorry, I got the wrong page No, I don't Line
18 seven

19 A Okay

20 Q Do you see where you said -- do you see what you said
21 there at the beginning of line seven?

22 A Do you want me to try to read it?

23 MR STILLWELL Your Honor, I believe the proper way
24 to ask the question--

25 MR ELLIS I'll be glad to

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1 BY MR ELLIS

2 Q Going back to the question that you asked about Go
3 to the top of the page, I'm sorry

4 A Starting at one?

5 Q Starting at one

6 A You want me to start reading?

7 Q I'll read the question Do you recall that there was
8 an option agreement which was one of the things that was
9 on the table at the Atlanta meeting?

10 I objected to the form

11 And you said?

12 A I don't know All I remember about the Atlanta
13 meeting was -- at that Atlanta meeting is nobody really
14 could agree on anything

15 Q Let me ask you if you would turn back to page 79 in
16 the same deposition Go back to 78 I'm sorry, yeah, 78,
17 line 23 And I'll read the question

18 Set that up for me again

19 This agreement here is dated, it's looks like one
20 of -- you signed it on the 8th of November and the other,
21 signed it on the 5th of November Going over to the top
22 of page 79, continued his question, did y'all have this
23 agreement on the table at the Atlanta airport? And then
24 you started answering at line three, what did you say?

25 A This agreement memorialized the conversation that we

1 had when we left the Atlanta airport, we had an
2 agreement that we were going to terminate each other's
3 ownership in the company and were going to reconvene after
4 the DHS deal was done and try to work it out we had
5 talked about it, I believe, I think that was -- I do
6 believe we talked about the Dobson Ministries thing down
7 there, but I'm not convinced or I'm not sure, but that --
8 but that's what we agreed to do down there

9 Q Okay Thank you I'm going to mark this exhibit
10 We've got it marked as one of ours and he, of course, has
11 marked it one of his This is P J 's Exhibit 22 This
12 is Agreement Termination Settlement and Release

13 A Okay

14 Q Going over this next paragraph, I understand when I
15 ask this question that it wasn't dated December 15th, but
16 NARP -- did NARP, actually, provide an opportunity for
17 P J to acquire 7 1/2 percent of the company after he had
18 sold the assets of his company to DHS?

19 A We did

20 Q Okay Did you actually make it so that he could have
21 accepted that if he had wanted to and had been able to?

22 A Yes

23 Q Okay In terms of P J saying -- in terms of any
24 discussions you ever had about P J giving an option,
25 were any discussions you ever had with him about having an

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1 option ever done with his just having an option by itself
2 or was it -- well, was it ever done just by itself?

3 A No, it was always -- there's always kind of a
4 counterbalance for me. If there was an option that I
5 needed to be paid or I needed to be able to donate money
6 because of the agreement that we had about ownership or
7 potential ownership or swap in the company. So I needed
8 to realize whatever gain I got out of that company to
9 donate to charity or to keep and he would in lieu of that
10 get. So it's still a little confusing, isn't it?

11 Q When you talked about his being able to get an
12 interest in the company, whether through -- I'm sorry,
13 whether through the Dobson -- or proposed Dobson deal, was
14 a value assigned to what he would have to pay to Dobson in
15 order to get that?

16 A Yes. There always had to be a value for tax
17 purposes.

18 Q What was that value? I'm asking you to describe the
19 value for me.

20 A It was the current value of NARP and then the
21 discounted, again, or the ratio or lack of marketability
22 and become a company shareholder. Probably not the right
23 words, but it's the two discounts that you get.

24 Q Let me get back to P J 's Exhibit 39, this document.

25 A Okay.

1 Q And I just want to be sure your testimony is clear,
2 do you know the day that you found out for sure that P J
3 was not going to sign that?

4 A I guess my deposition said that day, I guess

5 Q Okay I'm sorry You were asked about this Exhibit
6 1 Again, were you involved in making this calculation at
7 all?

8 A I was not

9 Q Did you have any discussions with P J at any time
10 about the actual dollar -- do you recall having
11 discussions with P J about what the actual dollar value
12 of 7 1/2 percent interest from the sale of Reeves would
13 be?

14 A We might have talked about it, but we didn't talk
15 about where it came from or what it was It was probably,
16 if we did, in passing about a specific conversation that I
17 brought up in the context we talked about the corporate
18 taxes, transactions, always just numbers It's hard for
19 me to affix the number that we talked about, it kind of
20 all blurred together

21 Q And if 7 1/2 percent of the proceeds from the sale of
22 Reeves was ever going to be part of the deal, was there a
23 way that you presented it to him that in order to make the
24 deal work it had to be done?

25 A Can you ask that question again?

1 Q Yeah Did you ever agree re just pay you cash?

2 A No

3 Q Okay Was there a way that you said if you were
4 going to be able to reach a deal that from your
5 perspective the deal needed to work?

6 A Yes I remember some minor little things at the
7 beginning, but it all settled at the Dobson agreement

8 Q Okay Let me show you what was marked as PJR 46
9 And I think you were asked about this particular
10 paragraph It was Bob's hope that P J would make a
11 donation to the charity of Bob's choice Do you see that?

12 A At the first page?

13 Q Yes

14 A Okay, I got it

15 Q Bob hoped that the donation would be about 7 1/2
16 percent of the amount realized from the sale And
17 skipping on down, Bob (inaudible) upon P J being able to
18 purchase 7 1/2 percent of NARP stock at a favorable price
19 Do you see that?

20 A Yes

21 Q Now, Mr Stillwell indicated or asked you about were
22 you asking P J, basically, to make a double payment Do
23 you recall that question?

24 A I don't remember if I heard it that way, but there
25 was no double payment This is memorializing all the

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1 conversations prior to that meeting, that he was going to
2 make -- I was going to make a donation and he was going to
3 buy the stock for supplies

4 Q Well, skipping over --

5 A What page are you on?

6 Q I'm going to the next page To the third or the next
7 page, the new plan called for Bob to contribute 7 1/2
8 percent of NARP stock to charity, P J would then have
9 the opportunity to purchase the stock from the charity
10 Attribution and purchase would be effected at fair market
11 value Okay, is the plan that's talked about in this
12 paragraph the same idea that was talked about in this
13 paragraph?

14 A It's the same plan

15 Q Okay Well, was it -- when you say it was the same
16 plan, was P J going to be required under the plan to
17 make a contribution to charity in the amount of 7 1/2
18 percent of the sale of Reeves and pay 7 1/2 percent?

19 A No

20 Q Okay He wasn't going to be required to do that or
21 he was?

22 A He was going to make the donation to Dobson
23 Ministries And I was going to donate the stock to Dobson
24 Ministries and he was going to buy the stock out of Dobson
25 Ministries with all these things But that's what I

1 understood

2 Q My question was, on the first page, was there a first
3 discussion that was talked about where P J would make a
4 donation to a charity and then he would have the ability
5 to get an option at a cheap price?

6 A That was -- okay. That was, again, as I talked,
7 there were other little kind of things we were trying to
8 work out early on. That's early, or to get settled on the
9 Dobson Ministries

10 Q Was this early on?

11 A I'm trying to read all this lawyer talk. I can tell
12 you what the Dobson deal was

13 Q Okay. I think I can simplify it. I don't want to
14 beat this to death. Did you ever -- did NARP ever present
15 a proposal to P J where in order to be able to acquire 7
16 1/2 percent of the stock of NARP, he would have to make a
17 contribution in the amount of 7 1/2 percent of the sales
18 price of Reeves as well as pay to Dobson Ministries 7 1/2
19 percent of the sales price of Reeves?

20 A No, that wouldn't have been a fair equitable -- the
21 whole thing being he was to take those proceeds to do it.
22 There was no doubling payment. There was no double
23 dipping. It was a straightforward deal.

24 Q I think Mr. Stillwell asked you about Exhibit 38

25 A Okay

1 Q I think I heard him make reference to you paying Curt
2 Stodghill \$12,000 a month?

3 A Yes

4 Q Let's look and see what the e-mail actually says

5 A I paid him a total of \$12,000, Curt Stodghill
6 \$12,000, not a month

7 Q This email doesn't say that you're paying him
8 \$12,000, does it?

9 A No I'm sure it was a mistake

10 Q Going back to where he puts in quotes, my share of
11 the sale of Reeves Again, why did you put that in
12 quotes?

13 A I don't know the right English term for it, but as I
14 said, we had a handshake agreement that got memorialized,
15 it was talk My share, again, I wasn't an owner We were
16 working a deal out that we were trying to do, so in
17 parentheses, I put my share And it is important, I wrote
18 this document I guess, in the opening, it may seem like
19 someone wrote this document for me I wrote this
20 document I actually was going to write a nice general
21 letter

22 MR ELLIS Thank you, Mr Castellani I don't think
23 I have anything else at this time

24 THE COURT Very briefly

25 MR STILLWELL It's brief, your honor

RECROSS-EVALINATION

BY MR STILLWELL

Q Mr Castellani, did you say that -- Mr Ellis asked you some questions that you didn't consider yourself a normal owner of Reeves

A Can you ask the question again?

Q Did you consider yourself -- whatever y'all had before you went to Atlanta, did you consider yourself to be a normal owner?

A I did not

Q And you don't consider yourself to be a normal businessman either, do you?

A Different context

Q Is that yes or no? Do you consider yourself to be a normal businessman?

A Yes

Q Okay

MR STILLWELL Could you give me page 30 of his deposition, please?

BY MR STILLWELL

Q Right here on page 30 at line 20, this is me Q and you A again At this point in time in 2000, did you actually have stock certificates? I had a book I can't tell you about stocks, but, again, at this point, I don't consider myself a normal businessman Now, I do remember

1 I had 1500 shares of no par stock So we're talking there
2 about ownership of stock, right?

3 A We are

4 Q And you said you don't consider yourself a normal
5 businessman, true?

6 A Again, I thought you were asking me today This is
7 going back to 2000, this context So no, when I -- before
8 when we were talking about me as a normal kind of owner,
9 in 2000, it's a different context than you asked me today
10 I'm much more of a traditional businessman than I was
11 then

12 Q Okay That's fair enough Let's go to a different
13 context and let's look in August 2004 after y'all got back
14 from the beach

15 MR STILLWELL Mandy, could you give me Exhibit 10,
16 please?

17 THE WITNESS What exhibit, please?

18 BY MR STILLWELL

19 Q Ten

20 A Thank you

21 Q Okay So this is -- Bob, this is or NARP's old
22 letterhead, right?

23 A It is

24 Q And it's from Tony Papalaya to you, to Bob
25 Castellani, true?

- 1 A It is
- 2 Q And it's dated August 5, 2004, right?
- 3 A Uh-huh
- 4 Q So this is after the beach meeting in July, correct?
- 5 A Yes
- 6 Q Now, could you flip to page S-233 there, the back
- 7 where your handwriting is Okay Down at the bottom
- 8 there, that's your handwriting, isn't it?
- 9 A It is
- 10 Q And Rob there, that's Rob Miller?
- 11 A Correct
- 12 Q And that's 1 25 percent, that's the value of the
- 13 stock he owed in the company?
- 14 A Yes
- 15 Q I mean, that's the share that he owned, right?
- 16 A I'm assuming at that time he owed the shares of
- 17 that, I don't know what this is in
- 18 Q At that time, you and Rob are the only two
- 19 shareholders, correct?
- 20 A I don't know the date of the paperwork, but I'm
- 21 assuming we were
- 22 Q Do you want to go back to the front, it's August of
- 23 2004?
- 24 A I trust if you tell me he was a shareholder
- 25 Q And you and he were the only two shareholders,

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1 correct?

2 A Correct

3 Q And where it says he, 91 25 percent, that's your
4 share of the company, right?

5 A yes

6 Q And the P J , 7 5 percent, is that P J 's
7 percentage of the company?

8 A P J didn't own the company at that point The 7 5
9 percent, again, is me treating him as an actual
10 shareholder If I shared -- I'm assuming this was the
11 same just like when it was 25 All that number means is
12 if I take \$700,000 out of the company, this could have
13 been bonus, taxes or whatever, the disbursement was just
14 like he was an owner Again, I was treating him like my
15 brother That's all I'm doing

16 Q Okay And this --

17 A That doesn't say he owns 7 1/2 percent That means
18 if I'm going to disburse and I did that he would get 7 1/2
19 percent of the proceeds

20 Q And the 7 5 percent is what y'all agreed to in
21 Charleston, correct?

22 A We agreed to this in Charleston

23 Q Now, did I hear you say that the Dobson deal, the
24 perfect deal in your words, was a simple matter?

25 A Again, the context, it wasn't the perfect deal from

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1 the beginning It had crunched down where we only had a
2 few options So at the time, it was, basically, the only
3 option we ever had that I remember So it was about as
4 perfect as you could get because our values had kind of
5 just lined up right He was selling, my company had just
6 caught up to where he was, so it was a perfect deal

7 Q You may be getting hung up on the perfect deal part
8 Was the Dobson deal a simple deal?

9 A Again, in context, it was the simplest -- if you're
10 asking if it was a simple deal, I don't know which one of
11 these deals would be real simple It might have been
12 simple to have us execute this 7 5, 7 5 in Charleston,
13 that was probably simplest I don't know where you put
14 this on simple I don't understand the whole thing I'm
15 not a tax attorney

16 Q So the Dobson deal wasn't a simple deal?

17 A To a lay business, it may have been a little bit
18 different

19 Q Now about that tax option stuff you went through with
20 Mr Ellis, that's not simple stuff either, is it?

21 A The stuff that --

22 Q The options you just went through with Mr Ellis,
23 that's not simple stuff either, is it?

24 A I can explain it simple

25 Q It is simple?

1 A Yes

2 Q Okay I just want to know what your position is
3 Now, I want to know, that termination agreement that we
4 looked at, Exhibit 4?

5 A Okay

6 Q Do you believe that this agreement reflected what Rod
7 and P J thought they had agreed to in Atlanta?

8 A Exhibit --

9 Q Yeah, the termination agreement, Exhibit 4?

10 A I don't think this is Exhibit 4

11 Q I'm sorry, I gave you the wrong exhibit number
12 Twenty-two Yeah, Exhibit 22, the termination agreement
13 There's one document we find we think it's this one Do
14 you believe that this agreement reflected what Rod and
15 P J thought they had agreed to in Atlanta?

16 A I do not

17 MR STILLWELL Okay Let me see page 90 of his
18 deposition, Mandy

19 T-E WITNESS Of my deposition?

20 BY MP STILLWELL

21 Q I ask you -- are you with me, on line 15?

22 A Thank you

23 Q Do you believe that this agreement reflected what Rod
24 and P J thought they had agreed to in Atlanta?

25 And you said, I don't know, I know that's not what I

1 agreed to

2 Bob, isn't it possible that y'all agreed to something
3 different than each other in Atlanta?

4 A No

5 MP STILLWELL Okay That's all the questions I
6 have

7 THE COURT All right You may step down, sir

8 All right, Mr Ellis, your next witness, please, sir

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

11 MR ELLIS Your Honor, I would like to read the
12 designations from the deposition of Mr Barry Harper

13 THE COURT All right, sir

14 MR ELLIS I'll pass it up to, Your Honor

15 MR STILLWELL Your Honor, can we just figure out
16 how we're going to do this? It seems like somebody should
17 just read them in order I've cut mine considerably to
18 try to help move this along and I don't think y'all have
19 time -- we have original designations

20 THE COURT Well, I think at this point in time, it
21 probably will be just as easy to go along -- at the end of
22 Mr Ellis doing that, if you want to read some others,
23 then I'll let you do that at that time

24 MR STILLWELL I think we're probably okay, Your
25 Honor If I could just look at these while he's reading

1 presentation of your case

2 MR STILLWELL That will be fine

3 THE COURT All right Mr Ellis, proceed on

4 MR ELLIS Your Honor, the Plaintiff calls P J
5 Richardson

6 THE COURT Please come around and be sworn, sir

7 P J RICHARDSON, after being duly sworn,

8 testified as follows

9 THE CLERK State your name, please

10 THE WITNESS Patrick J Richardson

11 DIRECT EXAMINATION

12 BY MR ELLIS

13 Q Mr Richardson, how are you?

14 A Fine How are you?

15 Q I'm fine, thank you It's nice to see you I take

16 it you're the P J Richardson whose name has been

17 mentioned here a number of times is that right?

18 A Yes, sir

19 Q Okay And you were the sole shareholder of Reeves

20 Manufacturing, Inc , right?

21 A I was

22 Q That was prior to its sell to D-S in 2005, right?

23 A Yes, sir

24 Q Okay I want to talk to you first about your

25 understanding of what this case is all about When you

1 first started this case, do you recall what your claim was
2 against North American Rescue Products?

3 A I believe you started this case

4 Q Okay When the case first started, though, you had
5 asserted a claim, hadn't you, against North American
6 Rescue Products?

7 A Yes, sir

8 Q Okay And where this -- where this whole thing
9 started, I believe, you can correct me if I'm wrong, was
10 with this letter that your lawyer wrote dated April 7th,
11 2007, right? You recognize that letter, right?

12 A Yes, I do

13 Q I believe that's already in evidence as Plaintiff's
14 Exhibit -- yeah, NARP Exhibit 13 That was the initial
15 letter that your lawyer wrote to Curt Stodgnill, right?

16 A Yes, it was

17 Q And in that letter, Mr Orlinsky, your lawyer, set
18 forth that you had a claim to acquire 7 1/2 percent of the
19 common stock of NARP for one penny per share, right?

20 A Yes, sir, that's what it says

21 Q And at the time that letter was written, was that
22 your belief that you had a right to buy the common stock
23 of NARP for a penny per share?

24 A Yes, sir

25 Q And now, wasn't -- you don't recall that there was

- any option sheet or anything attached to that, do you?

2 A What I was sent was a copy of that letter. There was
3 not an option sheet attached to it.

4 Q Okay. Let's -- do you recognize this document?

5 A Yes, I do.

6 Q Okay. At the time Mr. Orlinsky wrote his letter, was
7 it your belief that that was an option in your favor for a
8 penny per share?

9 A This option that's up here was never a completed
10 option. That's an option -- I think it said up there, I
11 received it from Curt.

12 Q But it was not a completed option?

13 A It wasn't fully executed.

14 Q In fact, sir, there was never an option agreement
15 that the parties ever finally agreed on in this case, was
16 there?

17 A That's correct.

18 Q Okay. Sir, I want to go back to the original answer
19 and counterclaim that you filed in this action in August
20 of 2007, do you recognize that document?

21 A Yes, I do.

22 Q Okay. This is your initial claim in this case, I
23 believe, in the fall of 2004, the parties agreed to amend
24 the percentage each owned in the other party's company, for
25 25 percent and 7 1/2 percent of the common capital stock.

1 The parties reduced the 7 1/2 percent interest to a
2 writing and a stock option agreement treated herein as an
3 option agreement dated October 4th, 2004. The option
4 agreement is attached hereto and incorporated in by
5 reference. Now, I believe you just testified that the
6 document that's dated October 4th, 2004, was not, in fact,
7 a completed option agreement, right?

8 A Yes, sir.

9 Q So what's in paragraph 39 of your answer and
10 counterclaim is not correct, is it?

11 A That's correct.

12 Q Okay. Thank you. Going on down, as provided for in
13 the option agreement, Richardson will retain an option to
14 purchase 7 1/2 percent of the common capital stock. You
15 went on to say in November 2004, the parties executed a
16 continued agreement entitled Termination Settlement and
17 Release. A copy of this agreement is attached as Exhibit
18 C. Under the terms of the termination agreement, both
19 parties release each other from obligations owed in the
20 2000 agreement, however the termination agreement
21 specifically reserved Richardson's option to purchase 7
22 1/2 percent -- I'm sorry, the outstanding PARP stock,
23 Richardson's option right confirmed by the option
24 agreement was kept fully intact under the termination
25 agreement. Do you see where it says that?

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1 A Yes, I do

2 Q And I think we've agreed earlier that the option
3 agreement that's referred to here -- that sentence
4 actually isn't correct because that option agreement was
5 actually never agreed to by the parties, is that right?

6 A It was never finalized, that's correct

7 Q Now, s_r, you amended your answer and counterclaim, I
8 think early July of this year. And in that, there's a
9 different set of facts set forth. And it says the parties
10 agree to amend the percent each owned and the other's
11 party from 25 percent to 7 1/2 of common capital stock.
12 No formal writing was ever executed in relation to the
13 reduction of the parties' ownership, but both parties
14 agree such a reduction in ownership occurred. In the fall
15 of 2004, the parties met in Atlanta and looked again and
16 delved into the structure of the ownership in each other's
17 companies.

18 During this meeting, Richardson believed that he had
19 reached a new agreement with Castellani and NARP. Under
20 the new agreement, Castellani agreed to release his
21 interest in Reeves Manufacturing in exchange for 7 1/2
22 percent of the proceeds from the sale of Reeves, which was
23 imminent to occur. Richardson, likewise, agreed to
24 release his interest in NARP in exchange for an option to
25 purchase 7 1/2 percent of the stock of NARP. Each term of

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1 the parties' agreement was dependent upon the other terms
2 Only under separate such terms would Richardson agree to
3 release his ownership interest in NARP in exchange for an
4 option to purchase 7 1/2 percent of NARP stock for a penny
5 a share

6 Then it goes on to say that the parties memorialized
7 the 7 5 interest contemplated by this arrangement in a
8 document called a Stock Option Agreement hereinafter dated
9 October 4th, 2004. Once again, what's set forth in this
10 Court document is not correct, is not true, is it, because
11 there was not an option agreement dated October 4th, 2004?

12 A Well, what you're seeing here is discussions that
13 took place at the Atlanta meeting, which we talked about
14 numerous times today. And what we discussed was and what
15 we all left that meeting with was an agreement that we
16 were going to strike -- or, at least, work down on a plan,
17 the two attorneys, Stoghill and Manning, and they would
18 develop a three-part plan to get this done. One part of
19 it was the termination and settlement agreement. The
20 second part of it was the option agreement. And the third
21 part was the payment of the proceeds of Reeves into some
22 charity.

23 Q What I'm focusing on here is that this document, it
24 says you all actually reached a meeting in Atlanta -- let
25 me go back and be sure what it says. This document says

1 Richardson -- during this meeting, Richardsor believed
2 that he had reached a new agreement with Castellani and
3 NAPP and that an option agreement had been agreed to And
4 it says the stock option agreement dated October 4th,
5 2004, right?

6 A That's correct

7 Q So what's in this document, this pleading sets forth
8 your claim, that's actually not true either, is it?

9 A Well, it's not true, I guess, as far as the fact that
10 the stock option agreement was never completely executed
11 But it is true from the standpoint that we left there with
12 an agreement that it would take three things that would
13 have to be done to make this work One was the release
14 and termination and settlement agreement One was the
15 stock option for 7 1/2 percent of the company at one cent
16 a share for ten years and the third was the payment of
17 this money to a charity And the two attorneys left, as
18 Bob and I did, and they were to work on it

19 Q They were going to work on it after the Atlanta
20 meeting?

21 A That's correct But we agreed that's what we wanted
22 to do?

23 Q That's what you wanted to do?

24 A That's correct

25 Q But I'm just clarifying in this document where I

1 asked you where it says that you had -- an option
2 agreement was memorialized, this document was served as a
3 pleading answer, that's not correct?

4 A well, defining memorialized as not being signed, then
5 I would say you are correct

6 Q Well, and in fact, at the meeting in Atlanta, you all
7 did not reach any sort of final agreement in Atlanta?

8 A I guess I would say it depends on what's a final
9 agreement The way Bob and I ran our businesses and we
10 worked with each other, the bond and trust that we had, we
11 said this is what we're going to do and the attorneys were
12 set off to do it

13 Q Sir, if I could hand your deposition and ask you to
14 turn to page 113

15 A Thank you Yes, sir, you said 113?

16 Q Yes, sir, I sure did

17 A Yes, sir

18 Q Do you see beginning at line 15 where I asked you
19 this question, and you all met on October 29th, 2004 When
20 you left that meeting, you did not have an agreement, did
21 you, as to how to exchange any stock or have an sort of
22 option between the parties, did you? And your answer?

23 A No, nothing -- do you want me to read it?

24 Q Yes, sir, I do

25 A No, nothing was completed

1 Q So when I asked you in your deposition if a final
2 agreement had been reached, you said no, nothing was
3 completed?

4 A That is correct

5 Q Okay Can I just keep that for the time being I
6 may need it back I may get your original

7 A That's fine

8 Q Sir, I want to show you your -- I think it's your
9 most recent pleading in this case Now, this is a
10 document -- I'm going turn over the last page -- well,
11 actually, let me see the first page Do you see the file
12 date on that? The typewritten part here?

13 A Yes, I do

14 Q What's that date?

15 A Looks like 2008, July 25 at 3 16

16 Q I believe that was 11 days ago, right July 25th --

17 A It should be more than that, this is August

18 Q I apologize Oh, goodness

19 A That's okay

20 Q I had a bit of a time warp, I'm sorry That's what
21 this job will do to you, though, I'm telling you I
22 apologize That was 32 days ago?

23 A Sounds more accurate

24 Q My fault Let's go up here to paragraph 53 of your
25 most recent pleading It says in October of 2004, the

1 parties met in Atlanta. The Atlanta meeting, once again
2 an endeavor to restructure their respective ownership in
3 each other's companies. Out of this meeting, the parties
4 reached a new agreement. Under the new arrangement,
5 Castellani agreed to release his interest in Reeves
6 Manufacturing in exchange for 7 1/2 percent of the
7 proceeds from the sale of Reeves, which was imminent to
8 occur. Richardson, likewise, agreed to release his
9 interest in exchange for an option to purchase 7 1/2
10 percent of stock in NARP. Each of the parties overall
11 agreement was dependent on the other terms. Only under
12 such terms Richardson agreed to release his ownership
13 interest in NARP in exchange for an option to purchase 7
14 1/2 percent of the stock in NARP for a penny a share as
15 previously discussed by the parties. In November of 2004,
16 the parties executed a companion document entitled
17 Termination, Settlement and Release. I believe that says
18 it's attached to Exhibit 2. I think everybody here
19 probably recognizes this document by now. You see that
20 Termination, Settlement and Release Agreement?
21 A Yes, I do.
22 Q Okay. I'm sorry it looks so bad. Going back to this
23 theory now. This is your latest claim, out of this
24 meeting, the parties reached a new agreement. Castellani
25 agreed to release his interest in exchange for 7 1/2

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APP_0302

1 percent of the proceeds and you, likewise, agreed to
2 release your interest in NARP. Sir, I think we've
3 established that the parties never did reach a conclusion
4 or agreement as to an option agreement, right?

5 A That's correct. We reached an agreement to continue
6 to develop a three-part option. The option program
7 release and then using the charity that Bob wanted us to
8 use.

9 Q Well, I want to go on down here because in your
10 complaint you're saying the parties' overall agreement,
11 including Richardson's option agreement continues to be
12 valid and binding in terms of the contract between the
13 parties. By and through his attorney, NARP has refused to
14 honor Richardson's right to purchase 7 1/2 percent of
15 NARP's outstanding stock for one penny per share.
16 However, NARP simultaneously contends mistakenly that
17 Richardson has released his interest in NARP, therefore,
18 breaching the overall agreement, including the option
19 agreement. Through the option agreement, Richardson has
20 the right to own 7 1/2 percent of the stock in NARP. I
21 think we have established that there actually never was an
22 option agreement agreed to, right?

23 A That's correct. The option agreement was one of the
24 three parts of what the final agreement would look like.

25 Q Going back to paragraph 4, if I can see where this

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APP_0303

1 is, Castellani agreed to release his interest -- it says,
2 at the meeting, the parties reached a new agreement
3 Under the new arrangement, Castellani agreed to release
4 his interest in Reeves Manufacturing in exchange for 7 1/2
5 percent of the proceeds from the sale of Reeves. Now,
6 sir, you all never reached actually that agreement in
7 which Mr Castellani agreed to release his interest -- he
8 never agreed to accept 7 1/2 percent of the sale of Reeves
9 as part of the agreement, did he?

10 A That was all part of three pieces that were going to
11 be consummated at one time

12 Q Let's talk a little bit about the three pieces that
13 you're talking about. Mr Castellani, actually, never,
14 though, agreed to accept a payment of 7 1/2 percent of the
15 proceeds from the sale of Reeves, did he?

16 A Specifically, at the Atlanta meeting?

17 Q Or after the Atlanta meeting? Did he ever say just
18 send me cash from the sale of Reeves and I'll take that
19 and then you can have -- you can have stock in NARP?

20 A At the Atlanta meeting was the first time that we
21 actually discussed using a form of payment to charity. It
22 had always been my assumption we would simply write Bob a
23 check for whatever his entitlement was from the sale of
24 Reeves.

25 Q Sir, I know, but I'm trying to understand factually,

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APP_0304

1 what your position is because the most recent -- the most
2 recent pleading that I received from your attorneys in
3 this case, which is very recently, though, not as recently
4 as it struck me a moment ago, 30ish days ago or so, this
5 most recent pleading that sets forth your claim in this
6 case says that the parties reached a new agreement
7 Castellani would release his interest in Reeves for 7 1/2
8 percent of the proceeds of the sale and you would get an
9 option. Now, we can read every word of this if you would
10 like to, but I believe that your complaint in this case is
11 that through the option agreement, Richardson has the
12 right to own 7 1/2 percent of the outstanding stock of
13 NARP, such stock constitutes a unique property interest
14 for which money damages may not compensate Richardson.
15 Richardson is entitled to specific performance in the
16 overall agreement in the option contract along with money
17 damages and so forth. What I'm trying to understand is
18 what's in this complaint that's actually -- what's in your
19 counterclaim here, that's actually not true either, is it,
20 because an option contract had never been agreed to?

21 A That is correct, an option contract was never
22 finalized.

23 Q Well, then, your claim they breached the option
24 agreement isn't true then, is it?

25 A Well, part of that -- part of the agreement had been

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APP_0305

1 executed All three pieces of our plan should have been
2 executed at the same time and they were not

3 Q And they were not because you went to Mr Castellani
4 with the termination agreement without anything else
5 having yet been agreed to, right?

6 A That's correct On November 5th -- well, probably on
7 November 4th, I received part one from my attorney,
8 Mr Manning And understanding that at that time I was
9 working down two tracks because we were finalizing our
10 sale of our company And that requires a laundry list of
11 documents that would have to work on everyday So when
12 Mr Manning sent me the first piece of this three-part
13 stool, I simply sent it on to Bob Castellani on the 5th, I
14 said you need to review this and get it back to me And I
15 assumed the other two parts would be coming because my
16 attorney was working on the settlement It was my
17 understanding Mr Stodghill was working on the option part
18 and -- as well as the payment to the charity

19 Q Well, sir, my understanding is that you're here in
20 this courtroom -- the reason we're here is that we have a
21 dispute over whether or not you have a right, a contract
22 to require NARP to turn over to you 7 1/2 percent of its
23 stock That's what I understand is the principle -- the
24 big reason we're here Is that your understanding as
25 well?

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APP_0306

1 A Yes, it is

2 Q Okay Thank you In your first claim in this case
3 then, you said that you had an option that was
4 specifically reserved by the termination agreement That
5 was your first claim, right? I can put it back up for
6 you, your original counterclaim?

7 A Yes

8 Q Your second claim was well, no, the parties reached
9 an agreement in Atlanta, that was your second claim,
10 right?

11 A Yes

12 Q And that y'all entered into that option agreement --
13 y'all entered into an option agreement dated October 4th,
14 2004, that was your second claim, you changed it Now,
15 the third version of the facts was that an agreement was
16 reached after the Atlanta meeting and that somehow you
17 have an option and Mr Castellani had agreed to accept the
18 payment of 7 1/2 percent of the sale of Reeves And now I
19 understand that's not true either I mean, do I have it
20 wrong?

21 A well, I'm not sure that you have the whole story

(22 Q Well, I'm just trying to ask about what is in the
23 pleadings that you and your attorneys filed with this
24 Court as to what your claim is Because what I now
25 understand is that the document upon which you are basing

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APP_0307

1 your claim that says you are here to enforce an option is
2 really not correct because you actually don't have an
3 option?

4 A Well, if you look in the settlement agreement, there
5 is an option. In fact, I wouldn't have even signed the
6 settlement agreement if I didn't have an option in there
7 protecting me.

8 Q Yes, sir. But what I believe you talked about
9 earlier and I think you've answered this, as a matter of
10 fact, I've asked you several times, you never, actually,
11 though, did enter into an option agreement. You were
12 discussing entering into an option agreement, according to
13 you, but you never actually entered one?

14 A That's correct. There was never an option agreement
15 signed.

16 Q And Bob -- and, also, as part of this three-legged
17 stool that's been discussed, Bob Castellani had never --
18 you all had never reached a final agreement as to how
19 proceeds of any sale would be paid on his behalf. Isn't
20 that right?

21 A That is correct. Well, the only option that was on
22 the table to allow us to make payment was to use a payment
23 to a charity, which we were open to. The problem arose
24 when we were told -- or when I was told that it was a
25 Dobson Ministries, Tape Ministries, because I didn't know

0303

APP_0308

1 who they were and I wanted to find out who they were

2 Q Well, sir, what I want to understand is I believe
3 this is the diagram that was reviewed by your attorneys, a
4 three-legged stool termination option and I think that's
5 supposed to be 415,000?

6 A That's correct

7 Q The parties never actually finally agreed to do this,
8 did they?

9 A That's correct, we weren't able to finalize that

10 Q Well, sir, if nothing in your pleadings is correct
11 about your claim, what are you here for?

12 A I think that's your perspective that there's nothing
13 correct I've pointed out what we agreed to in Atlanta

14 Q Yes, sir And I believe you also just testified that
15 you all never actually finally -- the parties never
16 actually came together and reached a final agreement that
17 they were going to do that, didn't you?

18 A No, I said we were unable to complete it I don't
19 know that I said -- I did not say that the parties got
20 together and said that we weren't going to agree

21 Q No, that's not what I'm asking you And I'm sorry if
22 my question was unclear I'm asking you -- and we'll talk
23 a little bit about what you testified to earlier if we
24 need to, I'm asking you, wasn't it true that in Atlanta,
25 you all had discussions about what you wanted to do in the

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APP_0309

1 future, right?

2 A That's not quite accurate. We had -- I remember an
3 awful lot of what happened in Atlanta.

4 Q Well, let me ask you this question about -- because
5 I'm trying to understand the basis of your claim. If an
6 option agreement wasn't ever entered into and you and
7 North American Rescue Products and Mr. Castellani never
8 reached a final agreement as to how that part of the
9 transaction would occur, what is the final agreement that
10 you're here asking the Court to enforce?

11 A I was asking the Court to enforce my 7 1/2 percent
12 ownership in North American Rescue.

13 Q And where does that 7 1/2 percent ownership -- where
14 is the reference to that? Where do you believe there is
15 an agreement that gives you a contractual right to have 7
16 1/2 percent of the stock of NARP?

17 A Well, the only part of our agreement that we had
18 intended to complete as a result of the Atlanta meeting is
19 the settlement agreement, which I think is this here. And
20 in that, it clearly states that I am carried out a 7 1/2
21 percent option agreement.

22 Q Well, I believe it says that that document would not
23 have the effect of terminating 7 1/2 percent option
24 agreement, but I believe you've now testified a number of
25 times, and I appreciate that, because I believe you and

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APP_0310

1 Bob have both testified about this, you all never actually
2 finally entered into an option agreement, right?

3 A That is correct

4 Q Okay So, sir, isn't it true that the basis of your
5 belief that you had a right to acquire 7 1/2 percent of
6 the stock of NARP came only from the 2000 agreement, is
7 that correct?

8 A Certainly, I can go back to the 2000 agreement The
9 2000 agreement clearly states that was a 25 percent
10 ownership Bob and I both know, based on subsequent needs
11 in our agreement, that it was no longer 25 percent, but
12 was, in fact, 7 1/2 percent

13 MR STILLWELL Your Honor, can we do something with
14 the microphone

15 THE COURT Just move just a little bit further away
16 and speak up

17 THE WITNESS Is that better?

18 BY MR ELLIS

19 Q Yes, sir Now, just to be sure, we all agree that
20 the 2000 outline that y'all entered into, we all agree
21 that you all knew the percentage of that went from 25
22 percent to 7 1/2 percent, right?

23 A Yes, that's correct

24 Q And what you're seeking from this Court is an
25 enforcement of a right for you to be able to acquire 7 1/2

0306

APP_0311

1 percent of the stock of North American Rescue Products,
2 right?

3 A That is correct

4 Q And the right that you're asserting to do that is
5 actually not as is stated in your pleadings in this case,
6 right?

7 A You know, you may have me there because I'm not an
8 attorney I have counsel that has filed those pleadings
9 and I would say that's -- I have a base what's there, I
10 have a right to 7 1/2 percent of the company

11 Q Okay Okay What is the contract -- let me see if I
12 can dig down, dig down and get to this is a little bit
13 closer This was North American Rescue Exhibit 2 As far
14 as ownership interest go, this was the only agreement that
15 you and Bob ever had as far as ownership, as far as saying
16 this is what your ownership would be, this isn't the only
17 agreement that you all ever finally had an agreement on,
18 right?

19 A That is correct

20 Q Because out of Atlanta, at the Atlanta meeting when
21 you all were talking about doing something different,
22 there were still issues up in the air isn't that correct?

23 A That is correct

24 Q And those issues were never finally resolved, were
25 they?

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APP_0312

1 A That is correct

2 Q Well, this might be a good time to talk about the
3 2000 outline as long as I have it out Before I do that,
4 let me talk a little bit -- before I do that, let me talk
5 a little bit more, though, about this three-legged stool
6 you all talked about I think in a later version of facts
7 after your last pleading, you all may have taken the
8 position that what was discussed was a contribution by you
9 to a charitable trust as part of a proposed deal, right?

10 A The contribution to a charitable trust was an idea
11 that Bob put on the table

12 Q But isn't that a part of the proposed three-legged
13 stool that you all talked about?

14 A That's correct

15 Q And you never agreed to participate in that, did you?

16 A I'm sorry, are you asking me I never agreed to
17 participate in donating to a charity?

18 Q Certainly not Certainly, you made donations to
19 charities

20 A No, no

21 Q No, I'm asking you that I'm talking about the
22 proposal that you had talked about that came out of
23 Atlanta, as I understand it, in your pleadings, it said
24 Castellano agreed to accept 7 1/2 percent of the sales
25 price of Peeves What I understand you're telling me now

0308

APP_0313

1 is that -- well, the proposal that was on the table was
2 that you would make the contribution to a charitable
3 trust, right?

4 A That's what was proposed, correct

5 Q But you never agreed to do that, did you?

6 A No, I did not we said we would consider looking at
7 the charitable option

8 Q Let me go to -- as I said I would do earlier, let me
9 go to North American Exhibit 2 And again, this is a
10 document I think we're all familiar with now You're, of
11 course, familiar with, right? Right, you're very familiar
12 with that, right?

13 A Yes, I am

14 Q Okay Thank you Who were the parties to this
15 agreement?

16 A The parties to the agreement were North American
17 Rescue Products, RMI, which is Reeves Manufacturing, RAC,
18 Bob Castellani, and PJR, myself, Patrick J Richardson

19 Q So it was NARP, Reeves, you and Bob?

20 A That is correct

21 Q Well, define RMI's business and Reeves Manufacturing
22 business and it's actually defined as being the business
23 of designing, manufacturing and selling certain emergency
24 and medical rescue products, right?

25 A As well as decontamination systems, that's correct

1 Q I apologize, that is correct, you're right And it
2 talks about also as part of this contract was
3 cross-selling activities, right?

4 A That's correct

5 Q And it has a commission arrangement in it, right?

6 A That is also correct

7 Q Now, let's get down to this part Restricted stock,
8 this is an agreement, wasn't it, for Reeves to issue to
9 Bob and NAPP to issue to you 25 percent of companies'
10 capital stock, issued stock of all classes, right?

11 A Yes, it is

12 Q Let me go down to the next sentence where it says
13 such stock shall be subject to a right by either company
14 to purchase the issue arrangement between RMI and RAC and
15 NAPP and PJR is terminated, right?

16 A Yes, sir

17 Q So you had a buy back right -- once you issued the
18 stock, you had a buy back right if you terminated the
19 commission language, right?

20 A Yes

21 Q And it says the rights shall be exercised by notice
22 of the holding stock in the interest of the terminating
23 company, shall pay \$100 to the portions of such stock If
24 the company exercises its right to purchase the stock and
25 it enters into an agreement to sell the consummated

0310

APP_0315

- transaction. Sell the material portion of the stock other
2 than the ordinary course of business, PJR in the case of
3 RMI and RAC in the case of NARP directly or indirectly
4 through related parties in a series of later transactions
5 entered into an agreement to sell or otherwise consummate
6 a transaction selling the capital stock of RMI and NARP,
7 respectfully. Then the terminating stockholder shall be
8 paid a portion in consideration as if they -- I'm sorry

9 A Thank you

10 Q Need one of those fancier machines, gotta get one of
11 those. Sorry. As if they still owned the stock. As if
12 they still owned the stock. Sir, my question for you
13 about this paragraph -- then it says this provision shall
14 be refuted ten years from the date of the stock purchase
15 at the hundred dollar price, right?

16 A Yes, it says that

17 Q Mr. Richardson, what the stock agreement was between
18 the parties then was that y'all had an agreement to
19 exchange stock in each other's companies, originally 25
20 percent, then you adjusted it to 7 1/2 percent, right?

21 A That is correct

22 Q And then the right was each of the companies had a
23 buy back right, right?

24 A Yes

25 Q Then after you had issued the stock and if you bought

0311

APP_0316

1 the stock back, then there was a right of the stockholder
2 whose stock had been bought to receive proceeds from the
3 sale of the company if that happened within two years
4 after the buy back, right?

5 A Yes, sir

6 Q But there's not a provision in the contract that ever
7 just called for something to happen without stock having
8 been issued, right?

9 A That is correct

10 Q And you and Bob never did exchange stock?

11 A I'm not sure that North American even had stock
12 certificates at that time So the answer to your question
13 is no, we never exchanged stock

14 Q Mr Richardson, you served on the Board of Directors
15 of North American Rescue from September of '04 to December
16 of '04, right?

17 A That's what I was told I never had any information
18 that would have indicated that My background is more
19 corporate There would have been typically some sort of a
20 Board motion that would have told me that But I would
21 say Bob told me I was on the Board

22 Q And you knew you were on the Board of Directors,
23 though, right, during this time?

24 A well, I trusted Bob We were extremely close he
25 said I was on the Board, so I was on the Board

0312

APP_0317

1 Q Well, in fact, you were paid your \$50,000 00 to be on
2 the Board, right?

3 A That's what the W-2 said, yes

4 Q Well, you actually got the money, too, right?

5 A Well, I think when it was discussed and the payment
6 came, I found it rather surprising because companies of
7 that size, typically, wouldn't pay Board assignments that
8 kind of money I think it was -- in our discussions, it
9 was more couched in terms of a bonus payment to me And
10 it was called a directorship But for a company of that
11 magnitude to pay a \$50,000 00 for Board positions is
12 rather pricey

13 Q Well, that was good, though, wasn't it?

14 A Yes, it was fine, yes

15 Q Now, tell us a little bit about your corporate
16 background I mean, you have a college degree in
17 business, don't you?

18 A Yes, I do

19 Q And tell us a little bit about what your corporate
20 background is?

21 A I started my business career in 1969 with Johnson &
22 Johnson Family and Companies I stayed with that company
23 approximately 10 or 11 years When the division that I
24 was with was divested, I went on with that division And
25 when that company was sold, I moved on to become a

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APP_0318

1 director of sales and marketing for American Optical
2 Company in Massachusetts Eventually, the weather just
3 became so severe after less than two years, an opportunity
4 became available in Maryland with a large international
5 company where I went to and, eventually, became president
6 of that company, was just about five years And in 1990,
7 I went off and decided that I wanted to work for myself
8 So at -- that's at the time that I acquired A Smith & Son
9 and started Reeves Manufacturing I had no investors at
10 that time as was indicated earlier I did it with bank
11 loans, 401 K's and all my own money Come from a very
12 simple background and we have built the company, my wife
13 and I, on our own

14 Q You took Reeves from being virtually nothing to being
15 really something, didn't you? Isn't that fair enough?

16 A It was a nice small business, yes

17 Q Well, I'm just -- I'm noting the fact that it's sure
18 easier for me to say than you, you are quite -- Reeves is
19 a success story, right?

20 A Yes, it was

21 Q So you have a lot of corporate experience You know
22 what members of the Board of Directors do, right?

23 A Yes, I do

24 Q And you know what a contract is, don't you?

25 A Yes, I do

1 Q You know that when parties are merely discussing
2 something, that's different than when the parties have
3 finally actually entered into a contract, don't you?

4 A Yes, I do

5 Q Okay And you know that a member of a Board of
6 Directors -- do you sit on any Boards right now?

7 A Yes, I do

8 Q What Boards are you on?

9 A I sit on the Board of a start up company in New York
10 City I'm on Board of Advisers on merging banking
11 company

12 Q A member of a board of directors is a fiduciary to
13 the company, right?

14 A Yes, it is

15 Q And a member of the Board of Directors has a duty to
16 look out for the best interest of the company, right?

17 A Yes, it does

18 Q In fact, a member of the Board of Directors has a
19 duty to put the interest of the corporation ahead of his
20 own personal interest, right?

21 A Yes, he does or she does

22 Q You heard earlier the -- well, before you -- before I
23 move on, you recall the fact that in the course of
24 discussing options in 2004 that there were draft options
25 going back and forth between Curt Stodghill on behalf of

1 NARP and Rod Manning on behalf of you, right?

2 A Yes, I do

3 Q And there were some points of disagreement in the
4 drafts, which I believe you heard discussed earlier with
5 Mr Castellani's testimony, right?

6 A Yes

7 Q And one of the points of disagreement was -- had to
8 do with a potential articulation clause, right?

9 A That was a topic of discussion, yes

10 Q Okay Let me just also -- I want to show you a copy
11 of the black line, do you know what this document is?

12 A Yes, I do

13 Q What is it?

14 A That appears to be a redline copy of a -- or draft
15 copy of an option agreement that was produced by -- that
16 looks like it came from Curt Stodgrill

17 Q Do you recognize this, though? Let me zoom out to
18 that comparison document

19 A I'm not sure I understand what the comparison
20 document means

21 Q I think we looked at this document with you earlier
22 in your deposition Do you recall that Rod Manning,
23 actually, did a comparison of the draft that Curt
24 Stodgrill had sent?

25 A Yes, I do

0316

APP_0321

1 Q And the draft that he had sent, right?

2 A Yes

3 Q And do you recall that Rod Manning had done a life
4 line -- or redline comparison of the two documents, right?

5 A Yes

6 Q And do you understand that the underlying parts of
7 this document are additions that Rod Manning had made to
8 the draft that Curt sent?

9 A I understand the underlying to be the portions of the
10 document added by Mr Manning that he would recommend he
11 put into the document

12 Q I'm just curious where it says exercise here?

13 A In 1 2?

14 Q Yes, sir?

15 A Yes

16 Q Did you understand that in the draft that your lawyer
17 had sent -- in the draft your lawyer had sent if you all
18 had entered into that, an option would only be exercisable
19 upon the closing of an approved sale?

20 A That's what it says, yes

21 Q Did you know that before today?

22 A Yes, I did

23 Q Okay Well, isn't it -- I mean, isn't it correct
24 that if that option agreement had been entered into, you
25 wouldn't yet have any rights to get the stock to MARP if

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APP_0322

1 that agreement had been entered into, would you?

2 A I'm not sure about that. This is a redline. This is
3 a document that was considered a draft. It was being
4 discussed by both parties. There is nothing signed, so
5 it's, therefore, not memorialized. It could mean a lot of
6 things. It wasn't finalized, obviously.

7 Q Okay. We talked a little bit earlier -- I mean, you
8 heard us read the deposition testimony of Barry Harper,
9 right?

10 A Yes, I did.

11 Q And you know Mr. Harper, right?

12 A Yes, I do. Known him for a very long time.

13 Q I didn't mean to interrupt you, I apologize. He
14 assisted you in the sale of the assets of Reeves, right?

15 A Yes, he did.

16 Q And tell me, I know we've talked a little bit with
17 him about what he did, I believe he said that he was the
18 point man, he was the point man in terms of your
19 communications with -- I'm sorry, the communications with
20 Reeves, DFS and Carlisle?

21 A Let me add a little bit of color to what point man
22 means. Reeves Manufacturing at that time was growing at
23 an incredible rate and I needed someone who could assist
24 in the sale of the company who would focus only on the
25 sale of the company, would not interfere or be involved in

1 the day-to-day workings of the company, who also allowed
2 me to put the quality of Mr Harper's background to stay
3 focused on the business. Because I, in fact, was the
4 business along with my sons and other supporting staff.
5 So I could not take large blocks of time away dedicated to
6 DHS, who not only was the company looking to buy us, but
7 they were also our largest supplier. So I needed to have
8 what we would call firewall, somehow to separate our daily
9 activities of running Reeves and the process of trying to
10 sell the company.

11 Keeping in mind, my wife and I were living the
12 American dream. We built this company from nothing. We
13 put every cent of our own money into it to build it. This
14 is an opportunity because like North American Rescue, we
15 were very specialized. We were a company in a position
16 during the start up of the war on terrorism and we
17 happened to respond with the right products. We were
18 there developing things that the country needed to provide
19 assistance to civilians in the event of an attack.
20 Mr Harper allowed me to focus on my business. With his
21 background, as was already in the record, he was able to
22 do that in a very professional manner and only bring me
23 into the transaction with DHS and Carlisle Group on as
24 needed basis. So he did everything. We ran what we would
25 call the war room, which was a room in our building where

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APP_0324

1 all the documents were brought, Carlisle Group and their
2 staff would come in and sit there on a daily basis from
3 eight in the morning till seven or eight o'clock at night,
4 go over those documents and I would be called in as
5 needed. So he did a lot of things more than just a simple
6 point man.

7 Q I mean, he really went through your company with a
8 fine-tooth comb, right?

9 A I guess the equivalent of doing an order

10 Q And he had told DHS -- and I apologize if I'm going
11 over something we talk about before, what was your
12 understanding of the Carlisle Group's relationship with
13 DHS?

14 A Carlisle Group was a significant investor in DHS

15 Q Okay. And he told them in due diligence that you
16 were the stockholder of Reeves Manufacturing, correct?

17 A That is correct.

18 Q And did you also tell DHS that yourself?

19 A Yes, I did.

20 Q And that was completely true, wasn't it?

21 A Yes, it was.

22 Q Because you and Bob -- you and Bob had this contract
23 that you had reduced to 7 1/2 percent, but since you had
24 not exchanged stock, it was absolutely true that you were
25 the sole stockholder in Reeves and he was the sole

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APP_0325

1 stockholder in NARP?

2 A That is correct

3 Q Mr Richardson, once you and Mr Harper told D-S that
4 you were the sole stockholder of Reeves, you really
5 couldn't do this deal anymore, could you? You really
6 couldn't do the exchange as described in the 2000 outline,
7 could you?

8 A I'm not sure I -- that I would agree with that, no

9 Q Well, I mean, unless that agreement changed pretty
10 drastically, you wouldn't be able to -- you had told D-S
11 there weren't any stockholders except for you, which was
12 accurate?

13 A Correct

14 Q You were getting ready to sell the assets of your
15 company to D-S, right?

16 A Correct

17 Q As well as assets that you claimed belonged to you,
18 right?

19 A Correct

20 Q So once you told them you were the sole stockholder
21 of D-S, actually, issuing stock to Bob and making him a
22 stockholder as well was really no longer on the table for
23 you, was it?

24 A I think there's a difference of opinion from the
25 standpoint of honoring a deal and your calculating -- you

0321

APP_0326

1 know, the way you categorized it I had every intention
2 of honoring my deal with Bob Castellan. It didn't really
3 matter to me what the provisions of this agreement may or
4 may not have said

5 Q Well, but -- now, you're a man of business and you
6 built the business from scratch to being able to sell it
7 for 9.1 million dollars. You understand the importance of
8 the parties putting an agreement down in writing, don't
9 you?

10 A Yes, I do. But I'm also a man of integrity and a man
11 of honor.

12 Q Well, yes, sir, but this agreement that you had with
13 Bob called for the issuance of stock from Reeves to Bob
14 and from NARP to you and all I'm asking you is once you
15 had told DHS that you were the sole stockholder and you
16 were going to do that, once that date had passed, you were
17 not going to be able to actually carry out the terms of
18 this agreement anymore, right?

19 A I do not agree with you. I can carry out that
20 agreement.

21 Q You can't issue him stock in Reeves.

22 A But I can still honor the agreement.

23 Q What you're saying is you could honor what you
24 understood the intent of the agreement to be, right?

25 A That's correct.

0322

APP_0327

1 Q But you can't actually follow the terms of the
2 contract and give him stock in Reeves, right?

3 A I'm not -- actually, I'm not sure I guess I would
4 seek legal opinion on that

5 Q Well, I mean --

6 A My intention is I would have honored my agreement
7 That's what I always have felt

8 Q If you had given Bob stock in Reeves after you had
9 already told DHS you were the only stockholder, you would
10 have been violating what you had told DHS to be true,
11 right?

12 A That's not what you asked me If I was going to --
13 if I had, which is a hypothetical because I did not issue
14 stock after I told DHS that I was the sole stockholder
15 Bob knew that the sale was going to be consummated and
16 that he was going to get his payout

17 Q Yes, sir What I'm trying to understand, though, is
18 that -- I think your speaking in terms of carrying out
19 what you understood the intent of the agreement to be
20 But in order to change an agreement like that, both
21 parties have to intend for it, don't they, based upon your
22 contract experience?

23 A And my response is that I would have to ask -- seek
24 counsel to tell me whether I can do that My intention
25 was to carry out and honor this agreement with Bob by

0323

APP_0328

1 paying out with proceeds of the sale of Reeves

2 Q That was your intent of now you wanted to do this,
3 right?

4 A That's correct

5 Q But in order to change the contract from what it
6 actually says, to still have a contract, the other side's
7 got to agree with that, too, right?

8 A I would assume so

9 Q Okay Let's go back to the agreement, the
10 termination, settlement and release You asked Bob to
11 sign this to help facilitate the DHS sale, right?

12 A That is incorrect

13 Q Well -- paragraph just a moment Do you have the
14 deposition transcript?

15 A Yes, I have it right here

16 Q May see that just a minute?

17 A Sure

18 Q I'm going to give you -- I'm going to give you the
19 original copy of your deposition if I can get into it
20 They wrap those things pretty tight Thank you Sorry
21 for the mess That's you, isn't it?

22 A Yes, it is

23 Q Thank you would you turn to page 121 in that
24 document?

25 A Okay

0324

APP_0329

1 Q I asked you beginning at line eight, this is a
2 document that appears to be a signed version of Exhibit
3 21, is that right? And you said that's what it appears to
4 be, right?

5 A Yes, I did

6 Q No -- you said -- I'm sorry, my -- I didn't do my
7 voice right I think you said that's what it appears to
8 be, right Let me just show that Exhibit 21 to this
9 deposition just so we're all on the same page Exhibit 21
10 to this deposition is the agreement to terminate,
11 settlement and release, right? You see it? The exhibit
12 is right there next to you

13 A I'm sorry?

14 Q I'm just confirming that the exhibit we were talking
15 about is actually the deposition --

16 A Yes, I'm sorry, I heard what you were saying It's
17 the terminate settlement agreement I read my deposition

18 Q Thank you

19 A I read my deposition

20 Q I understand Okay Tell me what you recall about
21 this agreement, who prepared it? And if you'll read your
22 answer

23 A I'm going to guess Rod Manning prepared this

24 Q And I said okay and do you know why he prepared it,
25 did you ask him to prepare it? And you answered?

0325

APP_0330

1 A Would you like me to read my answer?

2 Q Yes, sir

3 A No, I -- well, I might have I don't know I don't
4 remember the exact flow of who did what, to which and to
5 whom, but at that point, you know, we were getting down to
6 crunch time with DHS

7 Q And I said right and you said?

8 A And to make this whole thing just flow a lot easier,
9 although we hadn't pulled the trigger with an agreement on
10 our ownership, it was just going to be easier just to have
11 Bob release And my comments, as you remember earlier on
12 the record, was a lot of -- was a lot of all of this I
13 mean, we did more paperwork in last year of this
14 relationship than we had done in the prior nine It was
15 all done on trust And this document, I believe, was done
16 at the very end just to make the sale seamless It wasn't
17 affecting anything else that was in place

18 Q And I said make the sale to DHS seamless and you
19 said?

20 A Yeah, it wasn't a problem, even though there was no
21 stock, there was no ownership, Bob and I had our
22 handshake, swapping split agreement that we had set
23 initially back in 2000, modified it again in '04 Because
24 Bob knew, we told him when it was all -- when everything
25 was over, we already sensed there might be some problems

0326

APP_0331

1 as we went forward with DHS, so we were just trying to
2 keep him out of everything so he wouldn't have to worry
3 about it and this is where it gets you

4 Q Mr Richardson, let me ask you to turn over to page
5 128 and beginning at line 13 And I said, what I'm trying
6 to understand is, though, from this document and I'm
7 really trying to nail this down here is is it true, is my
8 understanding correct that this agreement -- and this
9 isn't in the text, but I'm referring to this termination
10 agreement --

11 A Yes

12 Q You wanted this agreement executed to facilitate the
13 sale of assets to Reeves is that correct -- I'm sorry,
14 the sale of Reeves to DHS? And you answered, DHS, right
15 and I said, That was the purpose of this document? And
16 you said, Right Do you see that?

17 A Yes, I do

18 Q So I asked you just a minute ago, I think, that the
19 purpose of this document, the reason you asked for this
20 document to be signed was to facilitate the sale to DHS
21 And I believe I just showed you in your deposition where I
22 had asked you that the purpose of that document was to
23 facilitate the sale to DHS and you said right Okay
24 Tell me why you're telling me today that it's incorrect
25 that that was the purpose of this document?

0327

APP_0332

1 A I don't believe that the -- reading that document for
2 the sale of DHS, that wasn't the primary reason. In fact,
3 this document was never even used in the sale of our
4 company to DHS. The primary purpose of this document was
5 just one piece of our overall intent to resolve the
6 outstanding issue with the -- with the stock option, the
7 charitable donation and then this agreement. The -- you
8 know, Bob had indicated early on he didn't want any part
9 of our sale. So not having him involved just made it a
10 whole lot easier.

11 Q Well, yes, sir, but how came when I asked you on May
12 22nd if this document -- if you asked Bob to sign this
13 document to facilitate the sale to DHS, you said yes and
14 today, you're saying no. Why are you changing your
15 testimony?

16 A I don't believe I am changing my testimony. I think
17 the document, as I said, was primarily for, which would
18 indicate it may have had a secondary use for it, was
19 primarily for resolving the outstanding issues with the
20 option agreement.

21 Q Well, let me go back to page 121. I want to be sure
22 I understand and that I'm not being unclear. I think on
23 page 121, I asked an open-ended question, why was this
24 document prepared? And you said, starting at 19, At this
25 point, you know, we were getting down to crunch time with

0328

APP_0333

1 DHS And I said, Right And you said, And to make this
2 whole thing just flow a lot easier, although we hadn't
3 pulled the final trigger with our agreement on ownership,
4 it was just going to be easier to have Bob release So
5 what I'm trying to understand is at that time, I asked you
6 an open-ended question It wasn't a leading question at
7 all, why was that document prepared? And I think you told
8 me on that day, I did it to help with the DHS sale
9 Today, you're telling me that the reason this was done was
10 it had -- was that not the main reason And I'm just
11 trying to understand why there's been a change in your
12 testimony from May 22nd, 2008 to today?

13 A I don't believe there is a change in my testimony I
14 said that there was a primary reason and it was the fact
15 that Bob signed the release just made it that much easier

16 Q Okay What was the primary reason?

17 A The primary reason for this document, this document
18 up here on the screen, was that it was part of a
19 three-part -- a three-part -- I'm trying to get the right
20 words he used to describe it, three-part agreement, which
21 would allow us to resolve the outstanding ownership issue,
22 which included our 7 1/2 percent option agreement at one
23 cent for ten years, the release agreement and the payment
24 to charity, all three of which needed to be done at one
25 time The fact that -- it's all a timing issue It

0329

APP_0334

1 should have all been signed and released at -- done at one
2 time And the fact that Bob gave it to me -- I mean, the
3 fact that it took eight days to get it back to me I think
4 is an indication that I wasn't in any rush to have that
5 document But it was nice to have and that's what I
6 thought I said to you

7 Q Mr Richardson, where in your deposition -- and I
8 certainly don't want to take the Court's time on this, but
9 where in your deposition did you tell me that the purpose
10 of that agreement was anything other than to facilitate
11 the DHS sale? I mean, you're familiar with it?

12 A Yes, I am

13 Q I asked you why that document was prepared and you're
14 telling me that what you said in your deposition is not
15 inconsistent with what you're saying today and I don't
16 want to beat this too much to death, but I don't
17 understand why you're telling me that you're telling me
18 the same thing today that you did in May?

19 A Well, I'm sorry you feel that way At that time,
20 that's what I could remember So I told you that I
21 don't think what I said to you then is any less consistent
22 than what I'm saying now That document had -- it had a
23 primary reason The fact that we had it during -- I mean,
24 you have to understand when -- and you may or may not have
25 gone through closing of companies, there are hundreds of

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APP_0335

1 documents that are coming through by courier, by fax
2 machines, by rail that have to be signed that's got to be
3 left -- you know, cataloged So, I mean, I'm moving a lot
4 of paper during that period of time

5 Q Okay And it is your claim now that you weren't in
6 any particular hurry to get the agreement of termination
7 settlement and release back, that's your testimony now,
8 right?

9 A It's always been my testimony

10 Q But you said at this point we're getting down to
11 crunch time with DHS, it's just going to be easier to have
12 Bob -- go ahead and have Bob released Let me ask you to
13 take a look at the agreement Since your position is this
14 isn't inconsistent with your deposition testimony, I take
15 it that you will stand by your deposition testimony that,
16 at least, a part of having this agreement signed was to
17 facilitate the sale to DHS, correct?

18 A I did not need this document to -- it wasn't a
19 required document I mean, I guess we're sort of parsing
20 this, but I was not required -- I was not told that I
21 needed to have a release by any of my counsel This was
22 actually part of another track we were going down I was
23 never asked to get a release from anyone This was never
24 a form that was given to DHS as part of a closing package
25 So it was -- I mean, with the circumstances going on at

0331

APP_0336

1 that time, sure, it was nice to have we didn't own stock
2 in the company, so it was nice to have

3 Q You didn't say to Bob, Bob, I need this document
4 because I'm getting ready to sell all the assets of DHS?
5 Your testimony you didn't say that?

6 A I do not remember saying that to Bob

7 Q Well, when I asked you in your deposition why you had
8 that document executed, you said, at least, twice -- at
9 least, twice when I asked you the reason then, it was
10 because of the sale to DHS?

11 A I might have very well said that

12 Q Thank you well, it's not right, we've actually read
13 it

14 A Okay

15 Q All right Let me ask you to look at the agreement
16 of termination, settlement and release You have it there
17 in your book I believe it's Defendant's Exhibit 21 what
18 you have?

19 A I'm sorry Is it in the back?

20 Q No, sir I think it's up there on that stack

21 A Thank you I have it, Mr Ellis

22 Q Thank you Could you tell me what in this document
23 is unclear to you? Is there anything in this document
24 that's unclear to you?

25 A There's nothing in the document that's unclear to me

0332

APP_0337

1 as I read it today,

2 Q I mean, it's a very clearly stated document, isn't
3 it?

4 A I'm sorry, repeat?

5 Q The words -- the terms in the document are real
6 clear, aren't they?

7 A With the number of times that I've read this
8 document, it's real clear to me now

9 Q Maybe a lot of people in here can say that Well,
10 let's just look at the first paragraph about what the
11 parties are agreeing to do Number one, termination of
12 2000 outline There's no doubt that in that document,
13 what it says in that agreement is that the parties are
14 totally getting rid of the 2000 outline, right?

15 A That's correct

16 Q So that means -- I take it -- would you agree with me
17 that what that means is we're not operating under the 2000
18 agreement anymore, right?

19 A Yes, that's what this says

20 Q Settlement, number two, settlement All claims or
21 potential claims of any nature whatever that could have
22 been or in the future be asserted by the parties arising
23 out of or relating in a matter to the 2000 outline are
24 hereby settled, compromised or released for and in
25 consideration of the payment by RMI PJR for the sum of a

0333

APP_0338

1 hundred dollars and so forth to NARP and Bob Castellani
2 Would you agree with me that what that provision means is
3 you can't sue each other for anything that happened in
4 that 2000 agreement, right?

5 A That is correct

6 Q And then you have a release portion of this document,
7 right?

8 A Yes, we do

9 Q Okay I think we've all looked at the release enough
10 we know what it says The parties will release each other
11 from everything, except it says specifically agreed and
12 understood by the parties that the foregoing release is
13 not intended to, shall not release any of the parties from
14 that certain separate option agreement dated 15-December,
15 2004, pursuant to which NARP and PAC have granted PJR an
16 option to purchase 7 1/2 percent of capital stock of NARP,
17 right?

18 A Yes, that's what it says

19 Q And this document was dated effective 5-November,
20 2004, right?

21 A Yes, that is -- my name isn't, but I don't think that
22 matters

23 Q What does your say?

24 A Doesn't say anything, but that's okay I know when
25 it was dated

0334

APP_0339

1 Q I just want to be sure we're talking about the same
2 document Does your have a signature page in the back?

3 A It's marked on the bottom It's that document, it
4 just doesn't have the date, the dates are blank

5 Q Do you have an unexecuted draft or --

6 A Mine is unexecuted

7 Q Well, let me ask you to look at the one we have Can
8 you see it from there or I can get -- that's fine?

9 A Yeah, this came out of this pile here

10 Q Right Thank you And it was signed by you
11 effective 5-November of '04 And it was signed effective
12 8-November by Bob Castellani, right?

13 A That's correct

14 Q Okay Let me go back to the dates on here,
15 December 15th, 2004 As of the date that you signed
16 this -- the date you asked Bob to sign it, you knew that
17 an option agreement had not yet been entered into, right?

18 A That's correct

19 Q Okay And yet you asked Bob to go ahead and sign it,
20 right?

21 A No, I asked Bob to look at it and he had to do it --
22 I assumed he was going to sign it because I had signed it

23 Q I think we've looked at an e-mail in this case a
24 number of times in which you said, Don't forget to sign
25 the termination agreement and return it to me, haven't we?

0335

APP_0340

1 Do you remember that?

2 A Year, there's an email I think dated about the 13th
3 or so

4 Q Yes, sir Well, I'm trying to understand -- this is
5 NARP Exhibit 9 -- a little tile up over there, sorry
6 NARP Exhibit 9, you asked him to sign this termination and
7 send it back, right?

8 A Yes, I did

9 Q Ever though you knew that the parties had not yet
10 entered into an option agreement, right?

11 A That's correct, but I didn't give it a second
12 thought It was just one part of the three things we were
13 going to do I mean, it was no big deal When it came
14 back, it just went in the file and sat there

15 Q What you're saying is you didn't do the other two
16 things?

17 A The intention was that we were going to get them
18 done, that's what the attorneys were working on

19 Q The attorneys and parties just never got it all
20 worked out, is that your testimony?

21 A That's why we're here

22 Q Well, sir, is it your position today then that that's
23 just not an effective document?

24 A well, without the other two pieces of the pie, I
25 guess it has some problems

0336

APP_0341

1 Q So you're saying that without these other two pieces
2 of the pie that were never agreed to that this agreement
3 was not effective to terminate the rights of the parties,
4 right?

5 A No, I was--

6 Q Is that your position --

7 A I'm sorry?

8 Q I didn't mean to talk on top of you, I'm sorry Is
9 that your position?

10 A No, my position is that this document says that I've
11 got 7 1/2 percent stake in the company I mean, my option
12 is protected It's the only reason I would have ever
13 signed it So when the document was sent to Bob, it was
14 my impression that this document protected both of us

15 Q Well, what I believe you said a number of times,
16 though, is that you had not yet entered into an option
17 agreement when you signed this, but you thought you were
18 going to later?

19 A That is correct

20 Q And you never did wind up entering into an option
21 agreement, right?

22 A That is correct

23 Q And it's your testimony that when you first asked
24 Mr Castellari to sign this -- did you -- is it your
25 testimony that you didn't understand that those references

0337

APP_0342

1 to the option agreement were only applicable to you and
2 not to Bob?

3 A At the time I executed it, if you look at these two
4 paragraphs very closely, which is what you have to do,
5 they look -- to me, they look identical. Bob called me
6 after he signed this document and told me that they were
7 different. In fact, he told me that he got a call from
8 his attorney and his attorney said to him, What the blank
9 you need me for if you're signing a document like this? I
10 called my attorney to find out what had happened. My
11 attorney, at that point, said the difference was because
12 my interest had to be protected. Bob's interest would be
13 protected when the money went to the charitable trust, so
14 he was covered.

15 Q Now, sir, it's your testimony that -- it's your take
16 on this case that this agreement cannot be read in
17 isolation and that it can only be read -- it was only
18 supposed to be applicable -- the termination was only
19 supposed to occur if you all had agreed upon the
20 charitable trust and if you had also agreed upon an
21 option, is that right?

22 A Well, we executed the agreement. I think the fact
23 that it's executed and protects the interest, then I'm
24 still entitled to be sitting here talking about an
25 interest.

0338

APP_0343

1 Q But you never agreed with MRP, though, as to the
2 term of that interest, though, did you?

3 A Well, it was the 7 1/2 percent That was what we
4 discussed and was the track we were going to go down as a
5 result of the Atlanta meeting

6 Q Well, yes, sir, but in order to have -- there's no
7 statement in there as to -- let me not get too wrapped up
8 in this, you testified that y'all never actually finally/
9 agreed to the terms upon which an option agreement would
10 be effective

11 A That is correct

12 Q Okay Now, as far as talking about this -- other
13 parts of the agreement, let me direct your attention to
14 paragraph 6 of the agreement that you asked Bob to sign
15 Do you see paragraph 6?

16 A Yes, I do

17 Q And it says this agreement sets forth the entire
18 agreement and understanding of the parties related to the
19 subject matter contained herein and merges all prior
20 discussions and agreements both oral and written between
21 the parties Right?

22 A Correct

23 Q And you're familiar with the term a merger clause,
24 aren't you?

25 A I don't believe I am

0339

APP_0344

1 Q You're not familiar with the term merger clause?

2 A Maybe if you tell me what it is, I'll tell you, but
3 I may know it by another name, I don't know

4 Q Well, I think I'm not supposed to do that, but I can
5 ask you to discuss the sentence that we just read that
6 said this agreement sets forth the entire agreement and
7 understanding of the parties relating to the subject
8 matter contained here and merges all prior discussions and
9 agreements between the parties So what you're saying is
10 that sentence -- that sentence wasn't true, is that what
11 you're saying?

12 A I don't believe that's what I said at all

13 Q I may have misunderstood I thought it was your
14 testimony that this was part of an overall agreement, this
15 was part of a three-part agreement in which there was
16 going to be a donation to a charitable trust I
17 thought -- that's not what you said?

18 A Yes, I did say we had agreed to develop a three-part
19 agreement

20 Q Okay And that agreement says there's not another
21 agreement concern the subject matter, okay?

22 A I'm not an attorney I mean, I couldn't give you a
23 conclusive opinion or what that means or doesn't mean

24 Q There's not anything in writing anywhere that
25 discusses any sort of agreement -- I'm sorry, that

0340

APP_0345

1 discusses an_ sort of discussions that you all were having
2 about the charitable trust thing, is there?

3 A Let me clarify, you're saying were there meros or?

4 Q It was an unclear question and I apologize It was
5 not a clear question at all I'm just trying to
6 understand what you understand about that sentence meaning
7 that it's the entire agreement If you're telling me that
8 there was supposed to be other agreements?

9 MR STILLWELL Your Honor, I think that's been asked
10 and answered

-- MR ELLIS Okay I'll move on
12 BY MR ELLIS

13 Q Let me talk a little bit about the asset sale to
14 Reeves -- I'm sorry, asset sale to DHS

15 A Okay

16 Q I got it mixed up Confusing

17 THE COURT would y'all come up here just a second,
18 please?

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

22 BY MR ELLIS

23 Q Let me just show you a couple of documents related to
24 your sale This is the coversheet of your sales documents
25 to DHS, right?

0341

APP_0346

1 A I believe that's one of them, yes

2 Q Okay And it says P J Richardson is sole
3 stockholder, right?

4 A That is correct

5 Q You have that purchase agreement between Reeves, the
6 seller, P J Richardson, as full stockholder, and EMS,
7 right, which we called DHS, right?

8 A Yes

9 Q EMS --

10 A EMS LLC was a new company that was established by DHS
11 just to handle the transaction

12 Q And this was done in a two-part agreement, right?

13 A There were two agreements

14 Q Right Reeves sold part of its assets -- I'm sorry,
15 the breakdown was basically between two -- there were two
16 contracts One was the sale of your goodwill directly to
17 the company, right, and one was the sale of the assets of
18 Reeves to the company, right?

19 A Yes

20 Q Okay And this was structured so that you can -- I'm
21 not asking you if it was accurate or not, this was
22 structured because it saved a lot of money on taxes if
23 part of the sale was structured as money directly to you,
24 right?

25 A Yes, sir

0342

APP_0347

1 Q And the total purchase price was 9 million, right?

2 A That is correct

3 Q And then five million two hundred -- and out of that
4 5,200,000 was payable to you, right?

5 A I believe that's the right amount

6 Q And the remaining 3,850,000 if I've got the number
7 right, was payable directly to Reeves, right?

8 A Yeah There were actually -- that's probably
9 correct, yes It's hard -- even though it's not
10 considered a large transaction, they tend to all be
11 complexed

12 MR ELLIS Your Honor, these are Exhibits 18 and 19
13 that I've previously marked that I would like to enter
14 into evidence

15 THE COURT Any objection?

16 MR STILLWELL None, Your Honor

17 THE COURT 18 and 19 in evidence without objection

18 (WHEREUPON, Plaintiff's Exhibit Nos 18 and 19

19 have previously been admitted into evidence)

20 BY MR ELLIS

21 Q I'm not going to go through each of the documents
22 about this, but as part of the sale, you were required to
23 sign a non-compete agreement, right?

24 A That is correct

25 Q And this non-compete agreement prevented you from

1 owning any stock in any company for a period of time after
2 the sale, right -- I'm sorry, any company that competed
3 directly or indirectly, right?

4 A That is correct

5 Q All right And I believe, without going into them,
6 all three of these -- both the contracts and -- both the
7 contracts have a noncompeting and the employment --
8 there's a separate employment non-compete agreement,
9 right?

10 A That is correct

11 Q The structure that you used to do that was called a
12 Martin's Ice Cream structure, right?

13 A That is correct

14 Q All right Okay And the reason is there was a case
15 called Martin's Ice Cream in which this structure, selling
16 the assets of the company that's partly belonging to the
17 company and partly belonging to the individual was
18 discussed, right?

19 A That's not completely accurate

20 Q Well, tell me how I missed it

21 A The -- IRS determined in the Martin's Ice Cream
22 Company sale that Mr Martin, the owner of the company,
23 was back -- synonymous with the company He had -- the
24 company, basically, was him He had all the knowledge in
25 his head And the tax -- my accountants came to us

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APP_0349

1 because of our -- type company that we were and they were
2 looking at different tax strategies that could be helpful
3 for my wife and I to be able to pay our fair share of our
4 taxes without reducing our main amount of money
5 dramatically So many cases, people thought my name was
6 Peeves I was so synonymous with the company

7 MR STILLWELL Your Honor, could I object to this
8 Martin's Ice Cream --

9 THE COURT Sustained
10 Move on

11 MR ELLIS Thank you, Judge
12 BY MR ELLIS

13 Q After the sale -- Bob, let me just make sure I
14 understand and I think this is well established After
15 the sale of the assets, the company and you together got
16 9.1 million dollars from the sale of Reeves, right?

17 A That is correct

18 Q And I think we've established fairly well, it was
19 never final -- you and NARP never finally agreed upon the
20 deal going forward about how to complete any kind of
21 transaction for you to acquire the stock of NARP, right?

22 A We weren't able to work out the details, but we
23 always planned to honor our commitment

24 Q Let me show you -- let me show you Exhibit 22 that we
25 previously marked You were involved in a lawsuit with

0345

APP_0350

1 Mr Tony Pabalaya, right?

2 A Yes, I was

3 Q And in that lawsuit -- I'm just going to show you, he
4 asked you to admit that no other individual other than Mr
5 Richardson was paid a portion of the proceeds from
6 Richardson sale or share in said proceeds with
7 Mr Richardson, right? And you -- if you look at the
8 response --

9 A Are we looking at number --

10 Q Eighteen, I'm sorry

11 A Okay

12 Q You admitted that, right?

13 A Yes, I did

14 Q Okay And then he asked you in 19, no legal business
15 entity or company other than Extol could pay a portion of
16 the proceeds from the Richardson sale or share in the
17 proceeds of Mr Richardson and you admitted that as well,
18 except for the payment to Evergreen Capital, right?

19 A That is correct

20 Q Let me just ask, Extol was the name of the corporate
21 entity that had been called Reeves was changed to after
22 the sale, right?

23 A That's also correct

24 Q So when he's talking about Extol, he's talking about
25 what was called Reeves prior to the sale?

1 A Yes

2 Q Then you asked -- he asked admit that Mr Richardson
3 was the sole shareholder -- I'm sorry, sole proprietor to
4 the sale to EMS and also that you were the -- the sole
5 shareholder and the sole owner and you admitted both of
6 those, right?

7 A Yes, I did

8 Q I'm not going to take you through these, but I'll
9 show you Exhibit 20, those were admissions on behalf of
10 the company And would you agree with me there were
11 similar admissions there, right?

12 A Yes, I would

13 MR ELLIS Your Honor, I'd like to offer 22 and 23
14 into evidence

15 THE COURT Any objections?

16 MR STILLWELL Your Honor, we objected to the whole
17 order before we started

18 THE COURT All right I'm going to allow it into
19 evidence over the objection

20 (WHEREUPON, all Plaintiff's Exhibits were
21 admitted into evidence)

22 BY MR ELLIS

23 Q You had later a -- I believe you discussed a dispute
24 that you had with D&S at some point after the sale to D&S,
25 right?

1 A Sorry, would you --

2 Q You were involved in a dispute with DHS, right?

3 A That is correct

4 Q And you needed Mr Castellani's help in dealing with

5 that dispute with DHS, right?

6 A I don't know that I would characterize it as needed

7 his help I would characterize it as he was helpful

8 Q But you asked for his help, didn't you?

9 A I believe I explained my situation and he offered to

10 help

11 Q Okay And I don't want to go into any of the details

12 of it at all, but, eventually, there was actually a

13 lawsuit Is that correct?

14 A That is correct

15 Q Okay And again, did Mr Castellani help you with

16 the lawsuit?

17 A Yes, he was helpful in the lawsuit

18 Q You eventually had a lawyer helping you named Eric

19 Orlinsky, correct?

20 A That is correct

21 Q And Eric's a lawyer in Baltimore, right?

22 A That is also correct

23 Q Mr Orlinsky had concerns about the non-compete that

24 you had signed with DHS and whether that would allow you

25 ever to acquire the stock of NARP, didn't he?

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APP_0353

1 A I saw that in his letter

2 Q Okay But he -- I'm not trying to invade your
3 privilege, we've all been trying to protect each other
4 here, but he actually told you that it would be better for
5 you not to try to acquire stock in NARP while you had a
6 non-compete effective with DHS, right?

7 A I don't know if that was said in exactly those words
8 or not

9 Q This is an email from you dated April 27th, 2005,
10 NARP's Exhibit 26, and you said, We need to consider the
11 ownership I think it should be one hundred percent
12 Billie Let me know you when get this what did that
13 mean?

14 A I think it's self-evidence That email pertained to
15 stock ownership in my wife's name

16 Q Well, you were, actually, in fact, thinking, though,
17 that it might be better if you were going to do a deal for
18 Billie to get the stock rather than you because of the
19 non-compete, right?

20 A No, the non-compete wasn't as much of an issue as
21 just the overall possibilities of what could potentially
22 happen with the company that acquired us

23 MR ELLIS Your Honor, I'd like to offer Exhibit 26
24 into evidence if that's okay

25 THE COURT Any objections?

1 MP STILLWELL No, Your Honor, we don't have any
2 objection to the whole binder except for that one
3 document

4 (WHEREUPON, all Plaintiff's Exhibits were
5 previously admitted into evidence)

6 BY MR ELLIS

7 Q And let me show you Exhibit 27 --

8 MR STILLWELL If you would like to move all the
9 numbers in, we don't object

10 MR ELLIS That will be fine, Judge, I'd like to
11 move all those in evidence, all my exhibits in evidence

12 THE COURT You retain your objection to 22 and 23,
13 but all the others are in evidence without objection

14 MR DAVIS Actually, Your Honor, 24 is one we also
15 objected to

16 THE COURT Twenty-four Very good

17 (WHEREUPON, it's noted again for the record that
18 all Plaintiff's Exhibits were into evidence
19 except for Plaintiff's Exhibit No 24)

20 BY MR ELLIS

21 Q On the bottom of this e-mail you sent April 28th,
22 2005, maybe some ownership entitled Richardson for him to
23 comment on in light of D&S agreements Is that in
24 reference to Mr Orlinsky's concern that you should not
25 acquire the stock of NARP because of the non-compete Or

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- not

2 A I'm not sure exactly what I was thinking at the time

3 that I rote that

4 BY MP ELLIS

5 Q I want to go back just quickly to touch on the DHS

6 situation If Bob -- if you had not gotten Bob to

7 terminate his rights with respect to Reeves, Bob could

8 have actually made a claim against you to become a

9 shareholder of Peeves prior to the sale of D-S, couldn't

10 he? I mean, legally, he could have, couldn't he?

11 A Yes, technically, he could have I wouldn't have

12 anticipated that because of our friendship and trust we

13 had It wasn't something I would have even thought about

14 Q But if he had become a shareholder, he would have had

15 certain rights as a shareholder, wouldn't he, while you

16 were trying to sell the company?

17 A Yes, he would have, but this is all hypothetical

18 Q NARP offered you the opportunity to buy 7 1/2 percent

19 of the stock of NARP, didn't they?

20 A Yes

21 Q And it was going to be done through Doosor

22 Ministries, right?

23 A That's correct

24 Q And the offer was made to do it at fair market value,

25 right?

1 A Correct

2 Q And at the time that was initially offered, fair
3 market value of 7 1/2 percent of the stock of NARP was,
4 actually, less than what you had calculated to be 7 1/2
5 percent of the sale of Reeves, wasn't it?

6 A Yes

7 Q And your adviser, Ed Kidner, told you that it would
8 be okay for you to do a Dobson deal as long as you paid
9 fair market value for the NARP stock, didn't he?

10 A You know, I had discussions with a number of people
11 I don't -- I'd have to have something to refresh my mind
12 Ed, eventually, agreed with all my other advisers that it
13 was not a deal that we should do

14 Q You never made a proposal -- outside of the deals
15 that Bob and Curt proposed, you never actually made your
16 own proposal to try to acquire NARP stock, did you?

17 A That's not accurate

18 Q Okay Tell me what's accurate

19 A In a phone conversation with Bob, we started talking
20 about -- it was probably around -- we started about just
21 how complex this was all getting I said, Wouldn't it
22 just be simple for me to write you a check for the whole
23 thing and then you do with it what you want? I don't need
24 any tax schemes to put my money into we were just very
25 uncomfortable with the Dobson Ministries deal, and so it

0352

APP_0357

1 would just be easier -- and so I offered that -- that was
2 done telephonically

3 Q Sir, but we've got a lot of e-mails and documents
4 going back and forth, you're not aware of anything in
5 writing, that was put in writing that said to Bob, we
6 don't want to do your proposal, but here's another
7 proposal?

8 A I don't remember one that was formalized

9 Q Bob and Curt -- well, basically, North American
10 Rescue Products kept advising you that in order to do the
11 Dobson deal, you'd have to pay fair market value and that
12 the price was going up, right?

13 A Yes, the price was going up

14 Q You understood that Bob and Curt did not believe that
15 there was a contract in place for you to acquire 7 1/2
16 percent of the stock of VARP? You knew that they
17 didn't --

18 A I'm not sure I know what they -- what they
19 understood

20 Q But when they wrote to you and asked you -- when they
21 wrote to you and asked you, sent you proposals, you re er
22 wrote them back and said there seems to be a
23 misunderstanding here, I think I have a right to buy it
24 now at a set price, did you?

25 A I personally did not write that, correct

0353

APP_0358

1 Q You're not aware of anyone acting on your behalf that
2 wrote that back, did you

3 A Well, I am aware that my attorney, Eric Orlinsky, had
4 written correspondence, may have had some telephone
5 correspondence with Curt I know there was written
6 correspondence

7 Q Isn't it true that the reason that you and your
8 advisers did not write back to NARP and tell them that you
9 all had a disagreement or that -- isn't it true that the
10 reason you did not write them back and say there seems to
11 be a misunderstanding, you, obviously, don't think there's
12 a contract, here's what we think is a contract, you didn't
13 do that because Bob was helping you with your dispute with
14 DHS, right?

15 A No, that's not right

16 Q Let me show you the April 17th letter again
17 Actually, let me show you Exhibit 14 Mr Richardson,
18 this is Exhibit 14 That's the draft that you signed,
19 right, and early on in this lawsuit, you were claiming
20 that that actually was an option, right?

21 A I don't believe I ever claimed it was an option -- an
22 executed option agreement

23 Q I showed you your answer and counterclaim earlier in
24 this case, do you remember that?

25 A You have to refresh me again

0354

APP_0359

1 Q Well, let me just ask you, you signed this and you
2 did not disclose to North American Rescue Products that
3 you had signed this until after this lawsuit started, did
4 you?

5 A Is this the fully executed document?

6 Q No, this is the draft that you signed?

7 A Well, I guess I'm uncertain why it matters if I
8 signed it if it was sitting in my file

9 Q Well, I mean, is it your position that since this,
10 wasn't fully executed, this document doesn't matter
11 anyway?

12 A I think it shows that there was an effort going on
13 This document was -- demonstrates that there was a lot of
14 work going on prior to when we met in Atlanta I think
15 this prior -- I think October document And I guess
16 that's what it demonstrates

17 Q Yes, sir, and I'm almost done, but in the early
18 stages of this lawsuit, until we got heavily into the
19 discovery in this action, you made a claim that you had an
20 option for a penny a share, right?

21 A That's correct I believe that

22 Q And all --

23 MR STILLWELL Your Honor, I object I believe he's
24 already plowed this ground

25 THE COURT I appreciate that I'm going to allow

0355

APP_0360

1 it I understand the attorney says that he is very close
2 to finishing

3 MR ELLIS I am very close Thank you, Your Honor
4 BY MR ELLIS

5 Q I don't want to keep going over plowed ground, it's
6 just that I asked you didn't you make the claim twice in
7 this case -- I want to show you your amended answer you
8 made the claim twice in this case that you had an option
9 agreement dated October 4th, 2004 And, sir, do you think
10 that that's fair to NARP to have signed a document when
11 you were a member of the Board of Directors and use it
12 later to claim that you had an option agreement? Do you
13 think that was fair to North American Rescue Products?

14 A I don't know that it's necessarily an issue of
15 whether it was fair or not I think Eric Orlinsky thought
16 there was a signed, executed document This document was
17 never put into play with anybody I mean, it stayed in my
18 file Again, this was all -- I don't know, I may have
19 signed that just so I knew I had read it and reviewed the
20 thing

21 Q You don't think filing and putting it in court
22 claiming that that constitutes an option agreement is
23 putting it into play?

24 A Maybe that's a poor choice of words, but

25 MR ELLIS Mr Richardson, this has taken a long

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APP_0361

1 ture and I thank you, very much I don't have anything
2 further at this time

3 THE COURT All right Ladies and gentlemen, Mr
4 Foreman, take the jury to the jury room, please Thank
5 you

6 Everyone else remain seated

7 (WHEREUPON, the jury left open court at
8 approximately 5 30 p m)

9 (WHEREUPON, a short break was taken)

10 (WHEREUPON, the jury came into open court at
11 approximately 5 40 p m)

12 THE COURT Ladies and gentlemen, I'm going to send
13 you home for the evening Before I do that, I want to,
14 obviously, do two things One, remind you about no
15 discussions or communications about this case with anyone
16 Don't let anyone communicate with you about this case
17 The second thing is, I want to give you fair warning that
18 tomorrow night, we may be working late So you need to
19 make whatever arrangements that may be necessary to warn
20 whomever that you may be somewhat late in coming home
21 And I cannot give you an approximation at this point in
22 time It will depend on what work we accomplish tomorrow
23 Because of a matter that was previously scheduled for over
24 four months, I will not be able to have you in the
25 courtroom before 10 00 tomorrow morning You need to be

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APP_0362

1 back in your jury room by 10 00 and we will resume the
2 case But there's another matter that I have to resolve
3 tomorrow morning I do not anticipate that I will be able
4 to get here before 10 00 so there's no sense in your
5 sitting in your jury room waiting for that So with that,
6 I'll see you back in your jury room tomorrow morning
7 10 o'clock Thank you, very much

8 (WHEREUPON, the jury came into open court at
9 approximately 5 43 p m)

10 THE COURT All right Gentlemen, I was going to
11 have you start working on a project that is your idea of
12 the verdict form in this particular matter I have
13 received something that I did not -- though it had some
14 good ideas, it's not workable There will have to be a
15 lot of work done on a verdict form that might go to the
16 jury in this particular case You have said you have
17 intentions to discuss a potential resolution of this
18 matter, so, therefore, I'm not going to have you work on a
19 verdict form tonight But, obviously, we'll need to begin
20 working on that when we resume tomorrow So I'm not going
21 to fuss at you anymore Y'all know where you are in this
22 case You, obviously, understand -- I, apparently, think
23 it's more important for y'all to resolve your differences
24 amicably and intelligently on your own than y'all do But
25 y'all work on it as you want to And I'll see you back

0358

APP_0363

1 tomorrow morning 10 00 Thank you, very much

2 MR ELLIS Your Honor, can I ask a question?

3 THE COURT Yes, sir

4 MR ELLIS I think they submitted proposed jury
5 charge, we have some ourselves Can we submit those
6 tomorrow?

7 THE COURT As soon as y'all want to, but, obviously,
8 I want y'all to exchange them and be able to discuss with
9 me whether you agree or disagree with the other side's
10 charges Thank you, very much

11 (WHEREUPON, the proceedings were concluded for
12 the day to be reconvened on August 27, 2008)
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APP_0364

wednesday, August 27, 2008

THE COURT All right Gentlemen, as I asked you and I understand that you have inquired of your clients that if the Court dismisses the alternate in this particular matter that both Plaintiff and Defendant agree to have this matter resolved by a jury of 12 or less Is that correct from the Plaintiff's perspective?

MR ELLIS That is correct, Your Honor

THE COURT From the Defense?

MR STILLWELL That's true, Your Honor, we consent

THE COURT Very good All right

Mr Bailiff, if you would ask the alternate, if would ask her alone to come into the courtroom, please

(WHEPEUPON, the alternate juror entered the courtroom)

THE COURT Ms Reeves?

ALTERNATE JUROR Yes

THE COURT Being the alternate in this particular case, the Plaintiff and the Defendant have agreed to try this case with 12 or less, so I'll not further impose on your time You are excused from this case and excused from jury duty

ALTERNATE JUROR Okay

THE COURT Thank you

Ask the jury to come in, please

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APP_0365

1 (WHEREUPON, the jury came into open court at
2 approximately 9 25 a m)

3 THE COURT Mr Foreman, ladies and gentlemen of the
4 jury, based upon written communication I received, I
5 discussed the matter with the lawyers and based upon that,
6 I have excused the alternate from the trial of this case
7 for violation of my Order to -- not to discuss this
8 matter, not to discuss this case I decided not to hold
9 her in contempt of court But I'm going to emphasize to
10 you that this is an absolute prohibition You shall not
11 discuss this case among yourselves until I give this case
12 to you at the very end for your deliberations and your
13 unanimous decision in this matter

14 That means you don't discuss it among yourselves, you
15 didn't discuss it at home, you don't discuss it with
16 anyone You keep your thoughts on this particular case
17 private It is your job and your duty to keep an open
18 mind and not to come to any conclusions until you've heard
19 the entirety of the case and I give you the law that you
20 apply to the facts as you so find them to be in this case
21 Please do not put me in the position of enforcing this
22 because I will do so

23 Now, I must inquire of you since there has been some
24 previous violation of this Order and I will ask each of
25 you, in turn, and I will just go as the list is here and

0361

APP_0366

1 I'll be asking you, if the actions of the alternate have
2 in any way affected you in making a decision in this
3 matter and can you now set that aside and render to the
4 Plaintiff and the Defendant in this case a fair and just
5 trial

6 All right Mr Jonathan Poore, if you would stand,
7 please All right, sir, understanding that there may have
8 been some violation of the Court's directive and the
9 alternate having expressed some opinion in this matter,
10 can you at this point in time set this aside and render a
11 true and just verdict in this matter both to the Plaintiff
12 and to the Defendant?

13 JUROR POORE Yes, sir

14 THE COURT Thank you, very much

15 Christopher Walker Understanding, again, that some
16 opinions may have been expressed, can you set that aside
17 and can you now render a true and just verdict both for
18 the Plaintiff and the Defendant in this particular matter?

19 JUROR WALKER Yes, sir

20 THE COURT Thank you, very much

21 Donna Reeves Ms Reeves, can you set aside any
22 opinions that may have been expressed in this matter --

23 JUROR REEVES Yes, sir

24 THE COURT -- and render to both the Plaintiff and
25 Defendant in this case a fair and just verdict?

0362

APP_0367

1 JUROR REIVES Yes, sir

2 THE COURT Thank you, very much

3 Christina Johnson Ms Johnson, can you set aside
4 any opinions that have been expressed in this matter and
5 render to the Plaintiff and the Defendant a fair and just
6 verdict?

7 JUROR JOHNSON Yes, sir

8 THE COURT Thank you, very much

9 Jennifer Barnett Can you set aside any opinions
10 that have been expressed in this particular matter and
11 render to the Plaintiff and to the Defendant a true and
12 just verdict in this matter?

13 JUROR BARNETT Yes, sir

14 THE COURT Thank you, very much

15 Betsy Exton Ms Exton, can you set aside any
16 opinions that have been expressed in this particular
17 matter and render to the Plaintiff and the Defendant a
18 fair and just verdict

19 JUROR EXTON Yes, sir

20 THE COURT Thank you, very much

21 Gloria Larkin Ms Larkin, can you set aside any
22 opinions that have been expressed in this particular
23 matter and render to both the Plaintiff and the Defendant
24 a fair and just verdict in this matter?

25 JUROR LARKIN Yes, sir

0363

APP_0368

1 THE COURT Thank you, very much

2 Eunice Jayne Stewart Ms Stewart, can you set aside
3 any opinions that have been expressed in this matter and
4 render both to the Plaintiff and to the Defendant a fair
5 and just verdict in this matter?

6 JUROR STEWART Yes, sir

7 THE COURT Thank you, very much

8 Jill Lafoy Ms Lafoy, can you set aside any
9 opinions that have been expressed in this matter and
10 render both to the Plaintiff and to the Defendant a fair
11 and just verdict in this matter?

12 JUROR LAFOY Yes, sir

13 THE COURT Thank you, very much

14 Mr Charles Varner Can you set aside any opinions
15 that have been expressed in this particular matter and
16 render both to the Plaintiff and the Defendant a fair and
17 just verdict in this matter?

18 JUROR VARNER Yes, sir, Your Honor

19 THE COURT Thank you, very much, sir

20 Gregory Prescott Mr Prescott, can you set aside
21 any opinions that have been expressed in this matter and
22 render both to the Plaintiff and to the Defendant a fair
23 and just verdict in this matter?

24 JUROR PRESCOTT Yes, sir

25 THE COURT Thank you, very much

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APP_0369

Robert Barney Mr Barney, can you set aside any
opinions that have been expressed in this matter and
render both to the Plaintiff and to the Defendant a fair
and just verdict in this matter?

JUROR BARNEY Yes, Your Honor, I can

THE COURT Thank you, very much, sir

All right Is there any member of the jury that I
did not inquire as to their ability in this case? I
believe I asked everyone

All right Further matters regarding this particular
issue from the Plaintiff?

MR ELLIS No, Your Honor

THE COURT Nothing from the defense?

MR STILLWELL No, sir Your Honor

THE COURT Very good All right We will resume
the trial of this case

So, Mr Richardson, you can resume the witness stand,
please, sir

MR STILLWELL Your Honor?

THE COURT Yes, sir

MR STILLWELL Just to clarify, I can just continue
to ask this witness small questions and call him later, am
I okay on that?

THE COURT yes, sir You're still able to call him
as your witness in your presentation of the case

0365

APP_0370

1 MR STILLWELL Thank you, Your Honor

2 CROSS-EXAMINATION

3 BY MP STILLWELL

4 Q Good morning, P J I'm just going to ask you some
5 brief questions, touch on some things Mr Ellis talked
6 about and we'll talk later in more detail, okay?

7 A Yes, sir

8 Q The first thing I just want to ask you about is like,
9 tell me about -- you said something about when you started
10 Reeves how you put all your money into it and everything
11 Can you just tell me briefly about that?

12 A Yean, we -- in order to acquire the company, we
13 were -- my wife and I were the only investors we had
14 cash in our 401K, all our savings, eventually, had to sell
15 our home It was a tough time

16 Q That was hard on you and Billie?

17 A Sure

18 Q You mentioned Bob saying that -- I mean, Bob
19 mentioned about it being an insurance policy when y'all
20 took a share in each other's company Was that how it was
21 for you?

22 A At the time, we were much further along We were
23 established in business for seven years or so You know,
24 it was just a good investment I spent an incredible
25 amount of time with Bob in those days and we talked a lot

1 And, frankly, my wife and I thought it was a good
2 investment and was going to be successful. It had been a
3 long time since I had seen anybody work as hard as he did.
4 Q You and Bob struck it off right off the bat, right?

5 A Oh, yes. I mean, the first time I met him was at a
6 disaster conference in Denver and he happened to be
7 sitting there reading his Bible. And we connected on
8 that. I just said, That's a great book you're reading and
9 that's really where our relationship developed.

10 Q Did you have great faith even back in the early days
11 when y'all signed that 2000 agreement that Bob was going
12 to make it?

13 A Yes, yes, I did. He's a hardworking guy. I mean, he
14 can figure out how to make eight days out of seven.

15 Q Let turn --

16 MR STILLWELL Mandy, if you could just put up
17 Exhibit C

18 BY MR STILLWELL

19 Q I'm only going to put one document up. I think we've
20 been seeing enough documents. Just the -- you see it up
21 there?

22 A Yes.

23 Q Or you can look it wherever.

24 A It's in here.

25 Q And it's up there, too, the 2000 agreement.

1 A Thank you

2 Q I'm going to move to the beach house Was this the
3 agreement that y'all modified at the beach house?

4 A Yes, it is

5 Q I guess I should call it a beach condo I don't want
6 to load that up Was this the original handshake
7 agreement put down on paper?

8 A Yes, it was

9 Q Tell me about the beach house, about how you went
10 from 25 to 7 1/2, 7 1/2, just briefly

11 A Well, the three of us, Billie, Bob and myself, you
12 know, Bob suggested we come down and see his house and
13 while we were there have a meeting and discuss the
14 ownership and business We all were very busy, so it was
15 an extremely difficult time This was all, you know,
16 post-9/11 where businesses -- other businesses were growing
17 very, very quickly, to take a few days off was good We
18 were all very stressed But it was a very relaxed
19 meeting It was no stress, nobody was being forced We
20 knew at that time, Billie and I, and we shared it with Bob
21 that we were going to be selling our company, so it was
22 just -- it was a good time to get together and share some
23 quality time with a good friend

24 Q So it was a mutual thing to go from 25 down to 7.5?

25 A Yes, it was

1 Q And this part, y'all never did issue each other
2 stock, right?

3 A That's correct

4 Q Did you still consider yourself an owner in each
5 other's company?

6 A Yes, we did

7 Q Did you talk about that commonly?

8 A Yes, we did

9 Q Tell me about -- I mean, how would y'all refer to it,
10 like, you know, I got a piece of him, he's got a piece --
11 how did that work?

12 A Just in general discussions, you know, our company
13 it was three of us

14 Q Okay And did you sometimes call this agreement --
15 since you hadn't issued the stock, did you sometimes call
16 it an option opposite agreement?

17 A Yean, I mean, we used different words Option was
18 one of them that we used, all kind of interchanged

19 Q And we'll talk about the formal options later, but, I
20 mean, this is the hardsnake deal, right?

21 A Yes, it is

22 Q This part about -- paragraph seven down here, I just
23 want to ask you this, we won't even read it again, okay, I
24 just want to ask you this general question Do you
25 understand exactly what all that language means?

1 A well, I probably don't understand it as well as the
2 attorneys would, but I have a businessman understanding of
3 how it works

4 Q And this whole agreement, did you find out later that
5 it was written by Curt?

6 A Yes, I found out later it was written by Curt

7 Q When did you figure that out?

8 A Sorry, when did I figure out --

9 Q When did find out that Curt had written it?

10 A Well, during the process of this trial, I -- was the
11 first time I heard that it had been written by Curt

12 Q And tell me, paragraph seven, I want to ask you about
13 when you and Bob first got together and did your handshake
14 deal and you had this agreement, did you have any kind of
15 discussion about what would happen if one sold their
16 company before the other? Did you talk about that
17 scenario?

18 A Yes, we had general discussions of what we would do

19 Q Okay And did you have some of those discussions at
20 the beach house, too, considering you were talking about
21 selling your company?

22 A Yes, we did

23 Q Tell me what y'all talked about

24 MR ELLIS Your Honor, I just want to object there,
25 the parol evidence rule

0370

APP_0375

1 THE COURT I appreciate it I'm going allow him to
2 do so

3 THE WITNESS You know, at the beach house, we knew
4 we had not exchanged any stock so it became a matter of --
5 well, at this point in time, is it really worth ever
6 going -- getting involved in that There was so much
7 trust in the relationship that it was just going to be
8 easier to make a simple payment of proceeds when our sale
9 to DHS was completed

10 BY MR STILLWELL

11 Q When you sealed that deal at the beach house -- I'm
12 going to try to get you out of the beach house in just a
13 bit, when you sealed the deal at the beach house, was it a
14 handshake or was it more?

15 A Well, it was certainly a handshake But like in any
16 of our meetings, when we would leave, we would hug, say
17 hey, I love you, man I mean, just friends, Christian
18 brothers

19 Q Now, I want to move on and talk about the option
20 stuff Considering y'all were coming out of the beach
21 house and you still hadn't issued stock, and the term
22 option start coming up? Do you remember Curt mentioning
23 an option deal?

24 A I think the first time that I had heard option deals
25 was either through Bob or from Curt

0371

APP_0376

1 Q Okay And I want to get you like right before you
2 come up to the Atlanta airport, okay You know, we've
3 seen there was some option deals exchanged back and forth,
4 right?

5 A I think we were exchanging deals right up until the
6 day before

7 Q And as far as the details of those deals were
8 concerned, had you every seen anything other than a penny
9 a share for 7 1/2 percent interest?

10 A No, I had not

11 Q Had you every heard anything like that come out of
12 Bob's mouth before you went in the Atlanta airport?

13 A I don't remember that level of detail I mean, it
14 was always the 7 1/2 percent But I remember seeing it in
15 the draft that, I believe, came from Curt

16 Q And before the Atlanta airport, you didn't talk about
17 terminating and going to zero before that, did you?

18 A No, we did not

19 Q Okay I want to get you to the day that you off the
20 plane in Atlanta, before anybody said anything between the
21 lawyers or between you and Bob that day Your deal
22 walking out of there, is it -- when you came in there, is
23 it 7 1/2 for 7 1/2 that day?

24 A Yes, it was

25 Q Did you ever agree to walk away from that deal

0372

APP_0377

1 without preserving your interest in Bob and his company?

2 A I'm not crazy I mean, we had an agreement No, I
3 would never have considered it

4 Q If all this stuff that happens after Atlanta, the
5 three-legged stool, the Dobson deal, all that stuff
6 doesn't happen, that deal, the day you get off the plane
7 in Atlanta, is that the deal that you're going asked to be
8 enforced in this case?

9 A Yes

10 Q Okay I'm going to skip over Atlanta for these two
11 questions, okay, because we'll talk about that later
12 There seems to be a awful lot of disagreement there
13 Just ask you these couple of questions Was that a
14 pleasant meeting?

15 A Well, other than the fact that I was spending time
16 with Bob, no, not necessarily

17 Q Did you and Curt have a run-in at the meeting?

18 A Yes, we did

19 Q We'll just leave that and move on Okay I want to
20 talk a little bit about the termination agreement itself
21 Okay We talked about when Mr Orlinsky wrote that letter
22 talking about the October 4th agreement, the October 4
23 option, do you remember that?

24 A Yes

25 Q Okay And what is that binder you've got right

0373

APP_0378

1 there?

2 A This is -- whenever Eric asked me what information I
3 had on this, this is what I sent down

4 Q Okay Now, Eric did the DHS closing, right, I mean,
5 he had tons of documents about DHS?

6 A Yes, he did

7 Q Okay But as to NARP, that's what Eric had when he
8 wrote that letter to Curt?

9 A Yes

10 Q And those are your records, right?

11 A Yes, this is what came out of my files

12 Q Now, tell me, you talked about yesterday I signed it
13 and stuck it in a drawer What did you have in your
14 drawer? I mean, what, generally, did you have at the
15 point when Eric wrote that letter?

16 A This information, I just was compiling -- because I
17 was going down two tracks because we had our DHS closing
18 documents and get separate files for what we were working
19 on with NARP and with the documents that would come in
20 from Rod

21 Q Did you have a termination agreement that had both of
22 y'all's signatures or it in the file?

23 A Yes, I did

24 Q Okay Did you have that one, that October 4
25 agreement that said received from Curt in there?

0374

APP_0379

1 A Yes, I did

2 Q Okay And did you think there was one out there that
3 had Bob's signature on it, too?

4 A Well, I knew these documents had been circulating
5 back and forth, so it, certainly, very well could have
6 been

7 Q Okay Now, the option agreement, the termination
8 agreement itself, okay, this part right here, would you
9 ever have signed this agreement if it did not have these
10 two pieces in it referring to this release or something
11 keeping your share in Bob's company?

12 MR ELLIS Objection, Your Honor

13 THE WITNESS No, I wouldn't

14 THE COURT I will allow it Thank you

15 THE WITNESS No, I wouldn't have unless there was
16 something to protect my rights

17 B. MR STILLWELL

18 Q Okay Now, you had heard Mr Castellani talk about
19 there's nothing in here to protect my rights I want to
20 talk to you about the concept of the simultaneous closing,
21 okay?

22 A Yes

23 Q Did you understand that there was going to be a
24 payment to Bob at this closing?

25 A Yes, that's what I understood we would be doing, that

0375

APP_0380

1 would be our objective

2 Q And that pay was a calculated piece of Reeves sale?

3 A Just a calculation of what 7 1/2 percent was of the
4 Reeves sale

5 Q And you've seen that number we put up, Exhibit 1, it
6 was the \$415,000?

7 A Yes, sir

8 Q And was that document, that Castellani thing,
9 Castellani computation sent to Curt?

10 A Yes, it was

11 Q And I heard Bob say he had never seen it, did you
12 discuss the Castellani computations with Bob during this
13 time?

14 A I discussed them with Bob on several times

15 Q And this was after the termination agreement had
16 already been sold?

17 A Yes

18 Q Okay Now, y'all never did have that simultaneous
19 closing, did you?

20 A No, we did not

21 Q Did you think, perhaps, at that simultaneous closing
22 that Bob would sign that option agreement and you would
23 give him the money?

24 A Yes

25 Q Okay But it never happened, did it?

0376

APP_0381

1 A No, it didn't happen

2 Q And if it didn't happen, if nothing happened, the
3 Dobson deal didn't happen, three-legged stool didn't
4 happen, are you back to the morning that you got off the
5 plane in Atlanta?

6 A Yes, we would be

7 Q Okay In your deposition, Mr Ellis was showing you
8 that deposition about the purpose of the agreement and
9 stuff, did he ever ask you -- did he tell you that was the
10 only single purpose in the world for this termination
11 agreement?

12 A No, he didn't

13 Q Okay Let's go Stax And we're moving on down the
14 board there, okay When you met at Stax and Bob gave you
15 that document that says these insertions here that we
16 marked in red were made in error, did you know at that
17 time that Curt had ratified this agreement?

18 A No, I didn't

19 MR ELLIS Object to the form of the question

20 THE COURT What don't you rephrase your question,
21 please

22 BY MP STILLWELL

23 Q All right When you met at Stax, had you ever seen
24 that ratification document that we looked at before?

25 A No, I had never seen it

0377

APP_0382

1 Q Was the first time you saw it in this suit?

2 A Yes, it is

3 Q Okay

4 MR STILLWELL Mardy, can you put that ratification
5 agreement up?

6 BY MR STILLWELL

7 Q I tell you what, let's get back we'll save this
8 Okay I just want to leave Stax, okay, leaving Stax, did
9 y'all have an agreement that you were going to table all
10 the discussions during the DHS suit?

11 A Yes, we did

12 Q Now, I'm not going to get all into DHS, I just want
13 to ask you some simple questions Did the DHS suit have
14 anything to do with your interest in NARP?

15 A No, it didn't

16 Q Did the DHS suit have anything to do with Bob's
17 interest in the proceeds from the sale of Reeves?

18 A No, it did not

19 Q Okay And the last piece of that, did Reeves and
20 NARP compete with each other?

21 A No, they didn't

22 Q What about this issue about the stretchers that
23 Mr Ellis was sticking up there?

24 A Those were two totally different stretchers, two
25 totally different markets

0378

APP_0383

1 Q Is there any question in your mind about whether they
2 compete or not?

3 A No

4 Q And this non-compete agreement was not a part of your
5 suit with D+S, was it?

6 A No, it wasn't

7 Q Let's go to Trio We haven't really talked a lot
8 about the Trio meeting The Trio meeting was you, Bob and
9 Billie, correct?

10 A Yes, that's correct

11 Q And was that, basically -- that was during the suit,
12 right?

13 A Yes, it was

14 Q Okay Was that kind of a last ditch chance to kiss
15 and make up?

16 A Yes

17 Q Okay Do you recall Bob saying some things at that
18 meeting?

19 A Yes, I do

20 MR ELLIS Your Honor, I'd like to note an
21 objection I think what they're getting into are possible
22 talks that are excluded from evidence It was talk among
23 the parties

24 THE COURT I understand your objection I'm going
25 to allow the question, but I better not see it is that

1 ve_n

2 MP STILLWELL I'm not going to touch it, Your

3 Honor

4 BY MR STILLWELL

5 Q Do you recall Bob saying things have changed over and
6 over?

7 A I do recall him saying that several times

8 Q And without asking you to go into detail about
9 anything else that -- we'll save that for you or Billie
10 later, do you recall some other things y'all talked about?

11 A Yes, I do

12 Q Okay We'll save those Now, I want to ask you
13 about the \$50,000 they're asking for you to give back
14 And I want to ask you about it in relation to all these
15 lawsuit papers that Bernie was putting up yesterday, okay?
16 When you met at Trio, did Bob say anything about giving
17 the \$50,000 back?

18 A No, he did not

19 Q Did he ever mention it back when you were at Star?

20 A No, he did not

21 Q The first time you heard anything about them trying
22 to get the \$50,000 back, was that like June or July of
23 this year?

24 A It was in one of the subsequent meetings

25 Q And did Lane and I, actually, have to respond to

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APP_0385

1 those pleadings after that?

2 A Yes

3 Q And we looked at those pleadings that Mr Ellis was
4 showing you and did any of those look to be wrong to you?

5 A No, when I looked at them, it didn't appear to be
6 wrong to me

7 Q Did they actually seem to be any important
8 differences in them to you?

9 A No

10 Q Okay Simple question, considering the amount of
11 documents you've got there and the amount of documents
12 we've got there in the back of the case now, okay -- and
13 since this case started, we've gotten more documents from
14 Curt Stodgill?

15 A Yes, we have

16 Q Yeah All these guys, Korr, Orlinsky, Kidner, we've
17 got all those documents during this case, didn't we?

18 A Yes

19 Q Do we know more about this case today than we did
20 when Eric Orlinsky wrote that letter to Curt Stodgill?

21 A Absolutely

22 Q And do we know more about the case today than we did
23 when Lane and I made that first response when they sued
24 you down in South Carolina?

25 A Yes, we do

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1 MP STILLWELL I don't have any more questions, Your
2 Honor

3 THE COURT Mr Ellis, anything on those particular
4 questions?

5 MR ELLIS Yes, sir, just a very few redirect on
6 those particular questions

7 REDIRECT EXAMINATION

8 BY MR ELLIS

9 Q Mr Richardson, I just want to establish something
10 Mr Stillwell asked you if the three-legged stool deal
11 didn't get done, then your allegation -- your claim in
12 this case is that you're back at the 2000 agreement,
13 that's your claim, right?

14 A Yes, sir

15 Q Well, let's just clarify from yesterday, the
16 three-legged stool that you're alleging didn't get done?

17 A Only part of it got done

18 Q Well, but the three-legged agreement didn't get done?

19 A Part of it got done is my answer

20 Q The part that got done was the termination part?

21 A That's correct

22 Q Okay Let me talk to you a little bit further about
23 the Agreement of Termination, Settlement and Release
24 well, my primary question before I show it and we don't
25 need to discuss it too much That was -- that was a

1 document -- I just want to confirm we understand, that was
2 a document that your lawyer drafted, right?

3 A Would you clarify what document?

4 Q Yes, sir, I'm sorry I'm talking about the
5 termination agreement And I understand it will be
6 appearing here at any moment Slowly appearing Now do
7 you see it?

8 A Yes, I do

9 Q Thank you I'm just now seeing it myself That is a
10 document that your lawyer drafted, right?

11 A That is correct

12 Q Neither NARP nor Bob Castellani had any role in
13 drafting that document?

14 A Yes, the word load in Atlanta was distributed the two
15 attorneys

16 Q And you presented that to Mr Castellani and asked
17 him to sign that, right? He did not present it to you ask
18 you to sign it?

19 A I presented it to him to review and, subsequently,
20 the process that he would sign it

21 Q Okay Let me go to the 2000 outline Back to the
22 2000 outline as amended to 7 1/2 percent, I just want to
23 make a point on here, Mr -- I'm just going to ask you if
24 you would agree with me that the 2000 outline had more to
25 it than just the exchanging of stock, right?

0383

APP_0388

1 A Yes, sir, it did

2 Q The 2000 outline, as in existence, calls for
3 cross-selling, it calls for exchange in commissions, it
4 calls for what to do if commissions are terminated and
5 then goes into restricted stock, correct?

6 A Yes

7 Q In fact, you all did terminate paying any commissions
8 to each other when you signed the termination agreement,
9 right?

10 A Well, in fact, there were minimal commission fees
11 paid, which is the way we worked with this document

12 Q Well -- but I'm talking about after you -- after you
13 sold the assets of Reeves and you didn't have Reeves
14 anymore? Reeves wasn't --

15 A I sold the assets of Reeves, that's correct

16 Q Yes, sir After you sold the assets of Reeves,
17 Reeves wasn't paying commissions anymore to Bob Castellani
18 or NARP, was it?

19 A Why would we?

20 Q That's my question

21 A Well, we weren't making progress

22 Q Exactly Thank you That's my question Once you
23 sold Reeves, the cross-selling and the commissions weren't
24 going on, were they?

25 A I guess I'm not clear on the question what you're

1 asking me

2 Q I'm sorry about that And I appreciate your answer

3 Do we have a copy of the calculation of their Exhibit 1?

4 Let me just ask you, Mr Stillwell asked you a little bit
5 about the calculation of what 7 1/2 percent of the sale of
6 Peeves, would be?

7 A Yes

8 Q A little bit earlier and I think the number was
9 \$415,000 calculated by you and your advisers?

10 A It was calculated by my advisers

11 Q And that was calculated in -- that was calculated
12 with respect to the proposed Dobsor deal you were
13 discussing, right?

14 A Well, that would be one of the reasons It was
15 calculated because we had an obligation to pay Bob 7 1/2
16 percent of our company

17 Q Well, but, sir, in fact, I think you testified pretty
18 clearly, pretty thoroughly that you guys, actually, never
19 did reach a contract, never did reach an agreement after
20 Atlanta about any further agreement, didn't you? I mean,
21 you had the termination agreement, but the other parts of
22 the agreement never were finally agreed to?

23 A That's correct, but we still went on with our intent
24 to fulfill our obligation

25 Q Yes, sir, I understand I mean, I understand your

1 test. Tony to be there continued to be discussions and
2 there continued to be negotiations?

3 A But besides that, we were still -- in addition to
4 that, Billie and I were still committed to fulfill our
5 obligation to Bob

6 Q But, sir, in fact, no money was ever tendered from
7 you or from Reeves to Bob Castellan in or around 2004,
8 2005, 2006 or 2007, isn't that right?

9 A That's correct

10 Q Okay This is the calculation I think you all sent
11 over I noticed that in the way you calculated 7 1/2
12 percent, you deducted funds held in escrow, right?

13 A That's correct

14 Q Okay If someone else were to calculate 7 1/2
15 percent, they might not necessarily believe that was the
16 right way to do it because the total purchase price was
17 9 1/2, wasn't it?

18 A That is correct

19 Q And sir, ever to this very day, no one from your side
20 has ever offered to this side to pay cash in the amount
21 equal to 7 1/2 percent of the sale of Reeves taking into
22 account whatever the interest would have to be, would it?

23 MR STILLWELL Your Honor, I object based on one of
24 the -- I want to send the jury out, Your Honor There's a
25 piece of evidence that we said we wouldn't put in about

1 that

2 THE COURT I appreciate that Let's move on

3 MR ELLIS Okay

4 THE COURT Thank you

5 BY MR ELLIS

6 Q Mr Stillwell, asked you about you thought there was
7 going to be a closing with Bob?

8 A I'm sorry, would you repeat that again?

9 Q I'm sorry You thought there was going to be a
10 closing with Bob -- you were going to pay 7 1/2 percent to
11 Bob? You thought there was going to be a closing?

12 A We were informed a couple times that there had been
13 closings But as part of our proposal that was being
14 worked on, yes, there would be a closing at which we would
15 pay our 7 1/2 commitment to Bob

16 Q Yes, sir, but the closing that was ever discussed was
17 in terms of your buying the stock through Dobson
18 Ministries, right?

19 A That's correct That was the only avenue we were --
20 at that point we were given, but we still held out that
21 there would be some solution for us to get this money that
22 we were obligated to pay to Bob

23 Q And you did not -- you were the one who did not agree
24 to do the Dobson Ministries proposal, right?

25 A Based on conversations with my attorneys and other

1 adv_sers, the Dobson deal was felt there was just too many
2 parts to it and didn't work for us

3 Q Yes, s_r But my question is as part of the
4 three-legged stool that's been discussed here, part of
5 that three-legged stool was -- a part of the three-legged
6 stool that was proposed that you all were alleging was
7 money going from you to Dobson Ministries, right?

8 A I did not propose that money would go to Dobson
9 Ministries

10 Q No, sir, you didn't propose that, but the deal that
11 was discussed -- the only part of the three-legged stool
12 that was ever discussed as far as payment of money was
13 through a charitable trust for payment directly to Dobson
14 Ministries, right?

15 A That is correct

16 Q And you're the one who didn't want to do that part of
17 it, right?

18 A After talking with my attorney, it was considered
19 that it would be much cleaner way of doing it I did
20 suggest that I would simply pay cash

21 Q Mr Richardson, you were asked questions about
22 whether or not Reeves and NARP ever competed, right?

23 A Yes, I was

24 Q And you just testified that Reeves and NARP didn't
25 compete, right?

1 A That is correct

2 Q And just to clarify, -- and we may get into this a
3 little later, I just want to ask of your own knowledge,
4 the tax strategy that you employed to sell the assets of
5 Reeves --

6 MR STILLWELL You're Honor, this is the same
7 objection, they're about to march right into some stuff
8 and I think it's confusing to the jury and irrelevant to
9 the case

10 THE COURT Well, I appreciate that I'm going to
11 allow this particular question Let's not go any further
12 BY MR ELLIS

13 Q Did that require you as part of the strategy for your
14 benefit to sign a non-compete?

15 A In the asset sell to --

16 Q To D+S, yes, sir?

17 A Yes, sir A non-compete was part of that

18 Q A non-compete was part of that Thank you Sir, I
19 know you testified just this morning that you don't think
20 Reeves and NARP competed

21 A Yes, sir

22 Q I'd like you to look at Exhibit 13 that your lawyer
23 wrote, as you may be aware, one of the reasons that we
24 have been reluctant to pursue in addressing your interest
25 -- NARP, I apologize, is due to non-compete restrictions

1 that Mr Richardson had entered into with DPS and EMS,
2 right?

3 A Yes, sir

4 Q That's what that says?

5 A Yes, sir

6 Q And this is a letter dated April 17th, 2007, correct?

7 A That's correct

8 Q And I don't know if we've shown it to the jury or
9 not, but the earlier prior correspondence from your lawyer
10 was in January of '06 isn't that right?

11 A I believe that's the correct date

12 Q Okay So you may not have thought that Reeves and
13 NARP competed, but your lawyer advised you not to try to
14 acquire any interest in NAPP because he was concerned
15 about the non-compete restriction?

16 MR STILLWELL Judge, I object He's asking for
17 privileged information

18 THE COURT Sustained

19 MR ELLIS Well, your Honor, I don't want to go into
20 the privilege on that, but it's in a letter that was
21 written by his lawyer to us

22 MR STILLWELL Your Honor, there's nothing in there
23 about what he did --

24 THE COURT Gentlemen, I sustained the objection
25 you can ask him if that's the information that's in the

1 letter and that's as far as we're going

2 BY MR ELLIS

3 Q Well, Mr Richardson, you will just confirm to me
4 that that's the information that's in the letter, right?

5 A As written, yes

6 Q Yeah

7 MR ELLIS Beg the Court's indulgence just a minute,
8 please

9 THE COURT Yes, sir

10 MR ELLIS Nothing further, Your Honor

11 THE COURT All right You may step down, sir

12 All right Mr Ellis, your next witness, please

13 MR ELLIS Your Honor, I'd like to read the
14 deposition of Ed Kidner

15 THE COURT All right, sir

16 MR STILLWELL Actually, we've got film or video
17 I'll just read what they read and we'll show the video

18 THE COURT Very good Not a problem

19 MR ELLIS Your Honor, I would just note for the
20 record that we're reading deposition designations of Ed
21 Kidner

22 THE COURT All right

23 MR ELLIS I will just begin on page 6 at line 12,
24 Whereupon Edward Kidner is called as a witness and having
25 been duly sworn, testified as follows

1 (WHEREUPON, deposition designations of Edward
2 Kidner was read into the record by Hunter
3 Freeran)
4 (WHEREUPON, Court's Exhibit Nos 3 through 5
5 were marked for identification and received into
6 evidence)
7 MR ELLIS Skipping over to page 20, line 7
8 (WHEREUPON, deposition designations of Edward
9 Kidner continued to be read into the record by
10 Hunter Freeman)
11 MR ELLIS Now skipping to page 10 at line 16
12 (WHEREUPON, deposition designations of Edward
13 Kidner continued to be read into the record by
14 Hunter Freeman)
15 MR ELLIS I'm sorry, page 11, line 1
16 (WHEREUPON, deposition designations of Edward
17 Kidner continued to be read into the record by
18 Hunter Freeman)
19 MR ELLIS Going to page 11, line 17
20 (WHEREUPON, deposition designations of Edward
21 Kidner continued to be read into the record by
22 Hunter Freeman)
23 MR ELLIS Your Honor, going to page 13
24 (WHEREUPON, deposition designations of Edward
25 Kidner continued to be read into the record by

- Hunter Freeman)
2 MR ELLIS Page 14, line 7
3 (WHEREUPON, deposition designations of Edward
4 Kidner continued to be read into the record by
5 Hunter Freeman)
6 MR ELLIS Page 15, line 9
7 (WHEREUPON, deposition designations of Edward
8 Kidner continued to be read into the record by
9 Hunter Freeman)
10 MR ELLIS Page 19, line 19
11 (WHEREUPON, deposition designations of Edward
12 Kidner continued to be read into the record by
13 Hunter Freeman)
14 MR ELLIS Page 26, line 20
15 (WHEREUPON, deposition designations of Edward
16 Kidner continued to be read into the record by
17 Hunter Freeman)
18 MR STILLWELL Your Honor, I wasn't sure where Mr
19 Ellis was going I think this part about Martin's Ice
20 Cream is getting beyond anything that's relevant to this
21 case
22 MR ELLIS And the reason I'm hesitating is I'm
23 trying to find ways to cut it, but, yesterday, I had a
24 complaint that it was confusing
25 THE COURT All right well, let's just continue on

1 I'm reading through it If I see something, I'll let you
2 know

3 MR ELLIS If you could continue on page 32
4 (WHEREUPON, deposition designations of Edward
5 Kidner continued to be read into the record by
6 Hunter Freeman)

7 MR ELLIS Skipping over to page 33
8 (WHEREUPON, deposition designations of Edward
9 Kidner continued to be read into the record by
10 Hunter Freeman)

11 MR ELLIS Page 38, line 10

12 THE COURT Before you go, there was an objection
13 before as to that I said I would look at the matter and
14 I'm going to grant the objection as to page 38

15 MR ELLIS On, okay

16 THE COURT I did not allow as to matters that are on
17 page 38 as they continue on to page 38 I'm going to
18 sustain the objection

19 MR ELLIS Thank you, Your Honor

20 Beginning at page 42, line 4

21 (WHEREUPON, deposition designations of Edward
22 Kidner continued to be read into the record by
23 Hunter Freeman)

24 MR STILLWELL Your Honor, he is reading sentences
25 that he did not designate previously to which I objected

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1 You may have designated them five minutes ago

2 MR ELLIS I didn't designate them five minutes ago

3 THE COURT Gentleman, don't discuss the matter among
4 yourselves

5 Ladies and gentlemen of the jury, go to your jury
6 room, please

7 MR ELLIS My apologies, Your Honor

8 (WHEREUPON, the jury left open court at
9 approximately 11 25 a m)

10 MR STILLWELL Your Honor, the next question he was
11 going to read right there at the top of the page, I think
12 he was on 61 we could have worked this out, Your Honor,
13 I just didn't know he was going to read that part

14 MR ELLIS I'm sorry, I thought that that was
15 included -- well, it is

16 THE COURT Okay So the question on 61 lines 1
17 through 3, that's what your objection is to?

18 MR STILLWELL Yes, sir, Your Honor

19 THE COURT All right And what's your objection?

20 MR STILLWELL My objection to it, Your Honor, is
21 that he's leading him on direct Mr Ellis is testifying
22 on that The man's not a party to the case he's not an
23 officer of the corporation

24 THE COURT All right Hold on a second

25 MR STILLWELL And, Your Honor, this is not

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1 critical, I just don't know if he's going to do it on
2 other ones

3 THE COURT And I appreciate that Do you see --
4 okay Do you need to look at the -- do you have a copy of
5 the designation form?

6 MR STILLWELL Yes, sir, Your Honor

7 THE COURT It's dated -- I don't know the date You
8 got a copy of the three-page designation form?

9 MR STILLWELL Your Honor, the problem I have is, at
10 least, two of them, I may have three

11 THE COURT All right Do you have one, Mr Ellis,
12 that you are working from right now?

13 MR ELLIS Yes, sir

14 THE COURT All right How about show that to
15 Mr Stillwell and make sure that he has the one that
16 you're working from I just simply ask can you hand him
17 the one that you're working from? And make sure that
18 Mr Stillwell has a copy of the one you're working from

19 MR ELLIS Did you have any discussion with P J
20 about doing this proposal outside?

21 MR STILLWELL Okay

22 MR ELLIS I think after that --

23 MR STILLWELL Yeah, that's the way to do it, just
24 tell me what you want to read

25 MR ELLIS Page 62 and going down to page 63

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1 MR STILLWELL Yeah
2 MR ELLIS And up to page 64 at line 7
3 MR STILLWELL 64, line 7
4 MR ELLIS I think I can actually cut a good bit of
5 this
6 MR STILLWELL Okay
7 MR ELLIS Then I'll go to page 69, line 14
8 MR STILLWELL Okay
9 MR ELLIS And read down to page 70, line 12
10 MR STILLWELL Good
11 MR ELLIS And I think that's going to be it
12 MR STILLWELL Your Honor, we'll react to this and
13 cut down what we got down on our tape
14 THE COURT All right Thank you, very much
15 MR FREEMAN Where am I going to be starting when
16 they come back in?
17 MR ELLIS And if I mess it up --
18 THE COURT How about can you tell Mr Freeman where
19 he's starting from?
20 MR ELLIS Oh, that would be good Page 62, line
21 17 Then we're going to skip over to page 69 And let me
22 see if I can get Exhibit 17 out of here
23 THE COURT Just for my own information,
24 Mr Stillwell, will you be producing at this point in time
25 portions of this deposition, or are you going to do it at

0397

APP_0402

1 a later time

2 MR STILLWELL Your Honor, we'll do it later We've

3 got it on video Making it smaller and smaller

4 THE COURT Very good All right

5 All right, Mr Ellis, are you ready for the jury to

6 come back in?

7 MR ELLIS Yes, Your Honor, I am

8 THE COURT Very good

9 Ask the jury to come back in

10 (WHEREUPON, the jury came into open court at

11 approximately 11 30 a m)

12 THE COURT All right You may continue

13 MR ELLIS Thank you, Your Honor

14 Beginning at page 62, line 17

15 (WHEREUPON, deposition designations of Edward

16 Kidner continued to be read into the record by

17 Hunter Freeman)

18 MR ELLIS Your Honor, skipping to page 69, line 14

19 Going to Exhibit 17

20 (WHEREUPON, deposition designations of Edward

21 Kidner continued to be into the record by Hunter

22 Freeman)

23 MR ELLIS Thank you, Your Honor Nothing further

24 from this witness

25 THE COURT And as I understand it, Mr Stillwell, at

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APP_0403

1 this point in time, you will not produce any parts of this
2 deposition

3 MR STILLWELL No, sir, Your Honor, brief parts in
4 video

5 THE COURT All right Mr Ellis, your next witness,
6 please, sir

7 MR ELLIS Your Honor, we would like to read also
8 from the deposition testimony of Eric Orlinsky

9 THE COURT All right, sir

10 MR ELLIS Thank you Therefore, Eric Orlinsky,
11 Esquire, called as a witness and having been duly sworn,
12 testified as follows

13 (WHEREUPON, deposition designations of Eric
14 Orlinsky were read into the record by Hunter
15 Freeman)

16 (WHEREUPON, Court's Exhibit No 6 was marked for
17 identification and received into evidence)

18 MR ELLIS Page 10, line 17

19 (WHEREUPON, deposition designations of Eric
20 Orlinsky continued to be read into the record by
21 Hunter Freeman)

22 MR ELLIS Page 12, line 12

23 (WHEREUPON, deposition designations of Eric
24 Orlinsky continued to be read into the record by
25 Hunter Freeman)

1 MR ELLIS Page 14, line 10
2 (WHEREUPON, deposition designations of Eric
3 Orlinsky continued to be read into the record by
4 Hunter Freeman)
5 MR ELLIS Page 20, line 19
6 (WHEREUPON, deposition designations of Eric
7 Orlinsky continued to be read into the record by
8 Hunter Freeman)
9 MR ELLIS Page 27, line 17
10 (WHEREUPON, deposition designations of Eric
11 Orlinsky continued to be read into the record by
12 Hunter Freeman)
13 MR ELLIS Page 30, line 7
14 (WHEREUPON, deposition designations of Eric
15 Orlinsky continued to be read into the record by
16 Hunter Freeman)
17 MR ELLIS Page 31, line 20
18 (WHEREUPON, deposition designations of Eric
19 Orlinsky continued to be read into the record by
20 Hunter Freeman)
21 MR ELLIS I have the wrong exhibit pulled out, I'm
22 sorry
23 Your Honor, I can represent to the Court I think what
24 we're discussing here is the agreement of Termination,
25 Settlement and Release May I show that to the jury?

0400

APP_0405

1 THE COURT All right Any objection to that?

2 MP STILLWELL No, sir, Your Honor

3 THE COURT All right Very good

4 MR ELLIS I'd like to skip down to page 33, line

5 12

6 (WHEREUPON, deposition designations of Eric

7 Orlinsky continued to be read into the record by

8 Hunter Freeman)

9 MR ELLIS Page 38, line two

10 (WHEREUPON, deposition designations of Eric

11 Orlinsky continued to be read into the record by

12 Hunter Freeman)

13 MP ELLIS Page 39, line 18

14 (WHEREUPON, deposition designations of Eric

15 Orlinsky continued to be read into the record by

16 Hunter Freeman)

17 MR ELLIS Page 44, line 10

18 (WHEREUPON, deposition designations of Eric

19 Orlinsky continued to be read into the record by

20 Hunter Freeman)

21 MP ELLIS Let's go to page 55, line 11

22 (WHEREUPON, deposition designations of Eric

23 Orlinsky continued to be read into the record by

24 Hunter Freeman)

25 MR ELLIS Page 66, line 8

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1 (WHEREUPON, deposition designations of Eric
2 Orlinsk continued to be read into the record by
3 Hunter Freeman)

4 MR ELLIS Going to page 72, line 10

5 (WHEREUPON, deposition designations of Eric
6 Orlinsky continued to be read into the record by
7 Hunter Freeman)

8 MR ELLIS Page 77, line 10

9 (WHEREUPON, deposition designations of Eric
10 Orlinsky continued to be read into the record by
11 Hunter Freeman)

12 MR ELLIS Page 82, line 20

13 (WHEREUPON, deposition designations of Eric
14 Orlinsky continued to be read into the record by
15 Hunter Freeman)

16 MR ELLIS Skip to page 84, line 13

17 (WHEREUPON, deposition designations of Eric
18 Orlinsky continued to be read into the record by
19 Hunter Freeman)

20 MR ELLIS Page 90, line 13

21 (WHEREUPON, deposition designations of Eric
22 Orlinsky continued to be read into the record by
23 Hunter Freeman)

24 MR ELLIS Thank you, Your Honor Nothing further
25 from this witness

0402

APP_0407

1 THE COURT All right

2 Mr Stillwell, anything you wish to publish regarding
3 this particular deposition at this point in time?

4 MR STILLWELL No, Your Honor We would
5 respectfully reserve the right to allow us to call
6 Mr Orlowsky live or if we just don't have time because
7 we're running out read some tiny portions of this

8 THE COURT All right Very good

9 Mr Ellis, Mr Stillwell, could you come up here and
10 see me for a minute, please?

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

14 THE COURT Ladies and gentlemen, could you go to
15 your jury room for about five minutes, please

16 (WHEREUPON, the jury left open court at
17 approximately 12 15 p m)

18 (WHEREUPON, a bench conference was held)

19 THE COURT All right Be at ease for a moment

20 Mr Ellis, as I understand it, you have one witness
21 left in the Plaintiff's presentation?

22 MR ELLIS Yes, Your Honor

23 THE COURT All right, sir, ask the jury to come in,
24 please

25 MR ELLIS That's going to be relatively short

0403

APP_0408

1 THE COURT very good

2 (WHEREUPON, the jury came into open court at
3 approximately 12 30 p m)

4 MP ELLIS Your Honor, the deposition exhibits which
5 were identified in the deposition, Mr Stillwell
6 suggested, which I think is a good idea, is just to
7 cross-check them with the exhibits that are already in I
8 think all those exhibits are already in

9 THE COURT Why don't you do that first and make sure
10 they aren't already in and if they aren't, we'll address
11 that

12 MR ELLIS All right Thank you

13 THE COURT All right

14 Ladies and gentlemen, I am mindful of what time it
15 is It's my understanding that the Plaintiff has one
16 remaining witness, which it has been stated to the Court
17 will be relatively short It's my intention to accomplish
18 that before lunch

19 All right, Mr Ellis

20 MR ELLIS Your Honor, may it please the Court, the
21 plaintiff calls Ms Billie Richardson

22 THE COURT All right, ma'am, if you would please
23 come around to be sworn

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

0404

APP_0409

1 THE CLERK Thank you, ma'am, be seated

2 DIRECT EXAMINATION

3 BY MR ELLIS

4 Q Good afternoon, Ms Richardson?

5 A Hi there

6 Q I'll try to make this very, very brief so we move
7 along I just want to ask you, we've talked a lot
8 about -- I know I've got my wing ran back here, we've
9 talked a lot about the Agreement of Termination,
10 Settlement and Pelease?

11 A Yes

12 Q You were familiar with this document at or about the
13 time it was signed, right?

14 A I was familiar with the document about the time it
15 was signed through conversations with Bob

16 Q Oka, You were actually an officer of Reeves
17 Manufacturing before it was sold -- the assets were sold
18 to D+S, weren't you?

19 A Yes, I was

20 Q You had also been an employee of NARP as well, right?

21 A Yes, un-nuh

22 Q You recall, don't you, that P J had asked Bob to
23 sign this document, don't you?

24 A I wasn't familiar with the document until, I believe,
25 after it was signed by Bob and by P J , through

1 conversations I had with Bob

2 Q But you're aware, aren't you, that the reason it was
3 sign -- the reason P J had asked Bob to sign this was
4 related to the sale of the assets of Pee es to DHS,
5 weren't you?

6 A No I -- well, let's see, I thought the -- in my
7 opinion --

8 Q Right

9 A This is strictly my opinion, that the termination
10 agreement, what is now the termination agreement, I didn't
11 even know it was called the termination agreement at that
12 point, was signed because if Bob was not interested in
13 what was going on at the time, he could be rather patient
14 with things and not focused And he was running his
15 business He had a lot going on I really thought, and
16 this is my opinion, that it was just so Bob didn't need to
17 be coming up to Maryland and be involved in discussions
18 with DHS

19 Q Okay

20 A I wasn't really -- I didn't know that much about it,
21 truthfully

22 MR ELLIS Okay Thank you I don't believe I have
23 any further questions Thank you

24 THE COURT Mr Stillwell, any questions at this
25 point in time of Ms Richardson?

0406

APP_0411

1 MR STILLWELL No, your honor, not at this time

2 THE COURT All right Thank you, very much You
3 may step down

4 All right Any further witnesses on behalf of the
5 Plaintiff at this point in time?

6 MR STILLWELL No, Your Honor

7 THE COURT With the understanding as to the
8 exhibits, does the Plaintiff rest at this point?

9 MR ELLIS With the understanding as to the
10 exhibits, the Plaintiff rest at this point

11 THE COURT Very good And I would understand that
12 the parties would have some matters of law for the Court
13 at this point in time, would that be correct?

14 MR ELLIS That would be correct, Your Honor

15 THE COURT All right Very good

16 Mr Stillwell, Mr Ellis, could you come talk with me
17 for just one second degree, please?

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

21 THE COURT All right, ladies and gentlemen, I'm
22 trying to avoid having you sit in the jury room waiting
23 for us to finish matters And I do have to give the
24 parties some period of time So I'm going to have you
25 come back at 2 00 I want you back in your jury room at

0407

APP_0412

1 2 00 and we will resume at that point in time Thank you,
2 very much

3 (WHEREUPON, the jury left open court at
4 approximately 12 35 p m)

5 THE COURT All right, motions on behalf of the
6 plaintiff?

7 MR STILLWELL Your Honor, may I ask, Your Honor,
8 one thing?

9 THE COURT Yes, sir

10 MR STILLWELL I never anticipated that he wouldn't
11 call anybody, so I don't even have my directed verdict
12 memo book over here I don't know how long he's going to
13 argue but I'd rather put our part of it up after lunch if
14 we could Or I got to at least get the guy here with the
15 book whose got my stuff

16 THE COURT All right

17 MR STILLWELL we can do them both after we eat
18 I'm actually having some blood sugar issues at this point

19 THE COURT All right I don't want to split them
20 up I mean, I want them all done at the same time So
21 y'all came back at 1 30 All right Come back at 1 30,
22 we'll do the motion, then Thank you, very much

23 (WHEREUPON, a lunch break was taken)

24 THE COURT All right, gentlemen, motions on behalf
25 of the plaintiff?

0408

APP_0413

1 MP ELLIS Yes, Your Honor, I have a motion It's a
2 little bit of an unusual posture to be in when you're
3 dealing with declaratory judgment Deferring that the
4 other side doesn't have a right that they asserted because
5 ordinarily I know that a directed verdict motion comes at
6 the end of the other side's case I do make a motion for
7 a directed verdict in this case at this time However,
8 and also I would fashion it also as a renewed motion for
9 summary judgment Motion for summary judgment doesn't
10 require 10 days notice if it's made at trial in the
11 presence of the court reporter

12 Your Honor, my motion for summary judgment is this
13 I believe that the plaintiff is entitled to judgment with
14 respect to the breach of contract claim, specific
15 performance claim alleged by Mr Richardson based upon the
16 three-legged stool approach Your Honor, I make that
17 based upon this I think Mr Stillwell framed up the
18 issue very, very well in his questions to Mr Richardson
19 Mr Richardson said -- Mr Richardson, is the three-legged
20 stool approach, the three-legged agreement that we talked
21 about, didn't happen, is the 2000 agreement the agreement
22 that you're here seeking to enforce?

23 Mr Richardson, I believe, said, Yes

24 On my cross-examination I asked Mr Richardson, Well,
25 the three-legged agreement didn't happen, did it? And his

0409

APP_0414

1 ne response to that was, I believe, well one part did

2 But, Your Honor, I think we've established very, very
3 clearly, over_y, maybe to the point of overkill yesterday
4 that the three-legged agreement, the three part agreement
5 that was alleged in the counterclaim, as the basis for
6 Mr Richardson's breach of contract claim did not occur
7 That, in fact, there was a meeting of the minds That, in
8 fact, it was just a decision between the parties

9 Your Honor, I would point out that under Ellis vs
10 Taylor, an agreement to agree is not enforceable I think
11 we all understand that That an agreement has to be a
12 meeting of the minds between the parties It's been very
13 clearly established that the three-legged approach that
14 was alleged was a donation to a charitable trust of some
15 sort In the termination agreement and an option
16 Mr Richardson testified candidly, and I appreciate that,
17 and I think this is consistent with his earlier deposition
18 testimony, he is the one who didn't want to do the
19 charitable trust part which is fine but he didn't want
20 to do that He did not agree to that provision He also
21 testified, I think, also again, consistent with his prior
22 testimony, that no option agreement had ever been agreed
23 to between the parties

24 Your Honor, I would note if I need to that we've made
25 quite an issue on our side, I would factor under Delaware

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APP_0415

1 law, an option agreement has to have very specific
2 portions to it. It has to be in writing, the terms have
3 to be set forth in writing, has to have board approval.
4 The terms have to be adopted within the instrument
5 granting the option and so forth. But, Your Honor, the
6 defendant's side isn't even that far. They admitted and
7 agreed, and I appreciate it, that there was never an
8 option agreement finally settled on with the parties and
9 there was no charitable trust. So the three-legged
10 agreement that was alleged as the basis of their claim did
11 not happen and I think we're entitled to judgment as to
12 that issue.

13 Your Honor, I think what the Court -- I think that
14 the issue for the jury at this point to determine is
15 whether or not the 2000 agreement was terminated either by
16 the termination agreement or otherwise. We have also
17 alleged that there was some abandonment or disablement.
18 And I realize that if the Court doesn't grant our motion
19 with respect to parole evidence rule, those might be
20 issues for the jury. Because I don't think -- I think the
21 2000 agreement can be terminated other than just by the
22 termination agreement. If Mr. Richardson is no longer in
23 a position to perform the 2000 agreement, that would end
24 the agreement as well as any termination agreement would
25 have.

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APP_0416

1 Your honor, I think where we are -- and I think it's
2 just been so clearly, very, very clearly established, that
3 at this point the defendant's counterclaim for breach of
4 contract, with specific performance, pursuant to an
5 agreement, amongst the parties, falls as a matter of law,
6 it's been clearly established that it didn't Your honor,
7 in their counterclaim, I would note for the Court, we're
8 not alleged to have breached the 2000 agreement That's
9 not been alleged that we have breached that agreement It
10 has been alleged that Mr Richardson would revert to his
11 prior interest under the 2000 agreement And it's my
12 understanding that it's the Court's, I don't want to say
13 ruling, that may be too strong to say at this point But I
14 think it's the Court's position at this point that the
15 parties rights and responsibilities and duties to each
16 other, if any, under the 2000 agreement, is a different
17 dispute for a different day Mr Richardson has not
18 tendered performance, for example, under the 2000
19 agreement we haven't been asked to comply with the 2000
20 agreement he has not yet explained to us now he's going
21 to comply and we haven't had a chance to react to that
22 So, I believe that where we are, again, barring the
23 parole evidence rule, which I'm bringing up in just a
24 minute I believe that where we are is what we would be
25 left with the jury to determine as a contract rule -- I'm

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APP_0417

1 sorry, where we would be -- where the jury would determine
2 an existence of a contract is the jury should be given a
3 verdict form that says, do you believe that the 2000 --
4 that the termination agreement terminated the 2000
5 outline? And check list. And then say, Do you believe
6 that the 2000 outline was terminated otherwise? And we
7 would present jury charges about that one party -- we
8 would ask the Court to give a jury charge that if one
9 party disavowed himself from performing, the other party
10 may consider it terminated and so forth.

11 So, Your Honor, I would ask for judgment as matter of
12 law. Directed verdict, summary judgment with respect to
13 the breach of contract claim, the two counterclaims that
14 the plaintiff has presented. Because, Your Honor, it is
15 very, very clear that the parties did this three-part
16 agreement. Mr. Richardson didn't agree to part of it --
17 I'm sorry, they had a discussion about the three-part
18 agreement, they had a discussion about having a three-part
19 agreement, Mr. Richardson did not agree to the charitable
20 trust part of it, the parties had a discussion about a
21 option agreement but no option was ever entered into.

22 Again, Your Honor, I would just make a point that
23 the -- that whether or not we would have some liability or
24 some duty under the 2000 agreement, as I say, I think --
25 we would ask the Court -- we would ask the jury to

0413

APP_0418

1 determine or ask the Court to determine that it's
2 terminated as a matter of law. But if it's not, then I
3 think it would be up to Mr. Richardson to attempt to
4 tender performance and now we would react to that. As I
5 said, it's something that has not been determined yet.
6 Because there are other rights and responsibilities under
7 that contract. For example, there's a buy back and the
8 parties can issue stock and then if the submissions have
9 been terminated, the parties can buy the stock back. And
10 as long as no sale occurs within two years or they would
11 also -- that could create a right within the next two
12 years to go further (sic). Maybe I'm understanding the
13 buy back provision in it so that one of the parties could
14 issue stock to the other, buy it back, then the other
15 party would have the right for two years to participate in
16 any profits if the company was sold. I'm not saying we
17 would do that. I can't obviously promise that we would do
18 that but our reaction would be, once Mr. Richardson --
19 what our position would be, as I said, is not yet
20 determined and again we're not alleged to have breached
21 it.

22 Your Honor, I'd like to take one more shot at parole
23 evidence rule.

24 THE COURT Go ahead.

25 MR. ELLIS If it's okay. I think that once again,

1 the issue before the Court is this It's up to the Court
2 to determine in the first instance if an agreement is
3 ambiguous If it's not ambiguous then the words also
4 control If it is -- if it is ambiguous then the Court
5 has to hear evidence -- this how I understand it The
6 Court has to hear evidence about the ambiguous part If
7 there's ambiguity I don't think in this case, your
8 Honor, there's any question whatsoever that the parties
9 entered into an agreement They entered into a contract
10 I think we're kind of somewhat close to where we were when
11 the Court asked us if the parties agreed that the 2000
12 agreement hadn't been entered into Mr Richardson
13 presented this, Mr Castellani signed it So you have
14 this agreement that they entered into The question
15 before the Court is based upon the evidence that's been
16 heard, did this agreement terminate the 2000 agreement as
17 a matter of law?

18 Your Honor, I think the testimony was abundantly
19 clear Mr Richardson knew that the December 14th
20 reference in there had not yet -- but he asked Mr
21 Castellani to go ahead and sign it That Mr Castellani
22 did sign it and that it was Mr Richardson's hope and
23 expectation going forward that an option agreement would
24 be entered into But for whatever reason, no other option
25 agreement was ever entered into Your Honor, again, I

0415

APP_0420

1 think what we're faced with the fact -- I think that we're
2 faced with the fact that you have a clear provision
3 terminating everything And then you have basically, I
4 think, what can most generally be described as an
5 agreement to agree I think that where we are is similar
6 to where we were in the case of McMaster vs Strickland
7 where the parties entered into a contract with the
8 expectation and hope, that all parties knew about, that he
9 would be able to get wetlands permits later What the
10 Court of Appeals said in that case is that the contracting
11 parties took a calculated business risk He wanted to go
12 ahead and terminate and get the benefits of that out there
13 was nothing on the table at that point for him to react to
14 or from him to accept

15 Your Honor, the rules of entering a contract, 17(a)
16 of entering a contract, The contract is capable of
17 construction which will make it valid, legal, effective
18 and enforceable, it will be given that construction if the
19 contract is ambiguous -- the construction renders the
20 contract valid (inadmissible) for the one that is invalid
21 And will not be considered invalid unless that
22 construction is required by the terms of the agreement in
23 light of the surrounding circumstances

24 Your Honor, once again, too, and I think South
25 Carolina law is very abundantly clear, a contract is

0416

APP_0421

1 ambiguous has to be construed against the drafting party
2 That party is Mr. Richardson. I think if you say, well
3 there's two ways you can read this. One way to read this
4 is this agreement is not effective unless -- unless there
5 was an option agreed on. The expectation -- the
6 expectation is that this is not effective unless an option
7 weren't going to be agreed upon. I think the other way to
8 read it, Your Honor, is to read it to say, No, this
9 agreement is a stand alone agreement. And if an
10 agreement -- if a December 5th option were entered into --
11 I'm sorry, December 15th option were entered into, this
12 agreement would not be effective so as to render that
13 agreement invalid.

14 And I would suggest, Your Honor, that actually, in
15 real life, that might make some sense to do that among the
16 parties. Because if someone thinks he has an option
17 agreement and somebody says, We got an agreement over here
18 that says that everything that arose from the 2000
19 agreement is terminated. Somebody over here says, Well
20 wait a second, I got an option we entered into six weeks
21 later and the person says, Yeah, but everything that arose
22 out of the 2000 agreement terminated. Let's read the
23 words. Everything that arose out of it was terminated.
24 This later agreement is invalid because it arose out of
25 something that was already void.

0417

APP_0422

1 It would take a certain amount of sense to have a
2 provision in here, no matter when this was drafted that
3 says, Well this is not going to have an effect in
4 validating something. But that doesn't mean that if
5 invalidity occurs for some other reason, that this whole
6 agreement falls apart. This is not a promise that the
7 parties are going to enter into an agreement. Because as
8 you know, the reason the agreement is not enforceable is
9 you just don't know what's going to happen. What happened
10 in Ellis vs Taylor, is they had three provisions in the
11 agreement.

12 Provision one says very clear obligation that the
13 father do certain things. It is very clear obligations.
14 And the third is I think the party will agree and
15 negotiate at a later time as to what to do. And the Court
16 said we can enforce the first two, we can't enforce that
17 third one because there's nothing to enforce. The parties
18 haven't agreed to anything. Your Honor---

19 THE COURT I'll hear you a little bit.

20 MR. STILLWELL I was concerned about the timing,
21 Your Honor.

22 THE COURT I understand, I'll just hear you
23 Go ahead.

24 MR. ELLIS I'll stop in just a minute. I'm about
25 through. So I think that the point is I don't know if

1 this is necessarily something where there's a severability
2 issue. It might be and we pled that. I don't think it's
3 a severability issue that has to be determined by a jury.
4 I think you can say look there's a common sense way of
5 reading this, taking the whole contract as a whole,
6 reading the clear language of the parties is that since we
7 now know, we now have evidence that the parties knew that
8 when this was entered into, that it was not an option
9 agreement entered into, that there were going to be steps
10 taken of that being entered into at some point in the
11 future. We know that the parties went ahead and decided
12 to terminate the agreement. With the expect of keeping
13 open the idea that maybe they would have an option in the
14 future.

15 Your Honor, once again, I do make that motion and I
16 would just say, I do think that regardless of anything, I
17 think it's extremely clear that the three-legged stool
18 approach breached the contract and the defendant's
19 counterclaim ought to be gone. I think that where we are
20 now is a determination by the Court as to whether or not
21 the 2000 agreement still remains in force. And also, ask
22 the Court to determine our breach of fiduciary claim,
23 thank you. Thank you, Your Honor.

24 THE COURT All right, thank you.

25 Mr. Stillwell.

1 MR STILLWELL Your Honor, I've been working on this
2 trial so long my dates are starting to run together but I
3 think deja vu is a good way to describe this same argument
4 that now I'm making for the third time in 15 days
5 Mr Ellis said that this is a matter of common sense
6 Your Honor, said when we started that common sense is the
7 jury's thing The issue about whether these meaning the
8 same thing, these two contracts, the one that's got those
9 options agreement referenced in there and the one that
10 Mr Ellis says is common sense and you should just ignore
11 them That's a straight jury issue

12 And, Your Honor, all the evidence that went in was
13 the same thing that was cited in our two summary judgment
14 briefs None of it was inconsistent with what happened in
15 depositions, other than Mr Castellani And so we're
16 looking at the exact same evidence, and we're looking at
17 the exact same law and we don't have any new legal
18 arguments Which I was a little bit worried about over
19 lunch but I feel better about now It's all the same
20 issues

21 Some of the issues, Your Honor, that Mr Ellis talked
22 about, they're already sitting in our jury charges For
23 instance, the issue about construing it against the
24 drafter That ain't all the law in South Carolina We
25 got one of the jury charges in there that says this rule

1 does not apply where there's no evidence of adhesion or
2 unequal bargaining power between the parties I don't
3 have my AM JUR either but Mr Ellis was citing that on
4 something and I know there's plenty of law out there about
5 whether you can just take a contract and render a term
6 meaningless or render it annulable There's plenty of
7 that law out there

8 Your Honor, Mr Ellis has this nicely framed up thing
9 about whether there was a final agreement or not That is
10 exactly the same thing that PJ said in his deposition
11 The issue about whether there was a final agreement begs
12 to question about was there a previous agreement? Was
13 there a standing agreement before everybody walked out of
14 the airport This issue about the three-legged stool
15 I'm glad, Your Honor, again is nearing this instead of the
16 jury because it ain't ready for them yet But this part
17 right here about this donation This donation to charity
18 Your Honor, there is a difference between a donation to
19 charity, don't give me the money, I'll give it to charity,
20 That's fine But let me purchase it out of charity,
21 that's what nobody ever agreed to This issue about
22 whether he actually tendered his money or not, I thought
23 PJ said on direct, I offered Bob the money and he said,
24 No And I tell you, if he didn't say that then, he's
25 about to say it

0421

APP_0426

1 Your Honor, where Mr Ellis started was we're the
2 ones who were saying we're trying to enforce these
3 contracts We haven't put our case on yet He's trying
4 to prove the negative, well how can he directed verdict a
5 negative? Because, Your Honor, we're at directed verdict,
6 the burdens are the same We are entitled to the
7 inferences That's what makes this round three of summary
8 judgment motions It's the same thing

9 Your Honor, this option agreement, this issue about
10 whether it's got to be written under Delaware law, I can't
11 say that any better than we've already briefed it in our
12 thing But when Mr Richardson says there's no final
13 agreement, he knows there's no option now that has a
14 signature on it The issue under Delaware law is, do you
15 have to have a signature? And the answer is, no We have
16 heard Mr Richardson testify, I knew it was a penny for
17 share for seven and a half percent for 10 years I never
18 heard anything different from Bob

19 Your Honor, the question of whether that is a final
20 agreement is a different question from whether that is an
21 enforceable agreement He knows it's not signed, that's
22 what he said That doesn't mean you can't enforce it
23 You can have a meeting of the minds without a signed
24 instrument Now there has to be a writing but we've got
25 so many writings we don't know what to do with The issue

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APP_0427

1 about stuff in that red line makes a difference as to
2 whether there was a meeting of the minds, that is an issue
3 of materiality Does it matter?

4 Your Honor, I did some quick calculations yesterday,
5 the difference between a penny a share and a penny is
6 \$176 Our position is the jury is entitled to look at
7 that and say, Is that material in the scope of how much
8 money these two people were moving back and forth? I
9 don't think so, Your Honor There's nothing here that's
10 appropriate to end the case I appreciate that Mr Ellis
11 has truncated his severely and I'm hoping now we're going
12 to get this one in the barn in a hurry

13 THE COURT All right All right, I appreciate that
14 you want to make some other arguments, Mr Ellis, but I am
15 respectfully declining to grant your motion for directed
16 verdict for judgment as a matter of law Y'all might be
17 certain that you entered into that November 8th, 2004
18 termination agreement but I don't think the evidence shows
19 that I don't know if you did or not Number one And
20 the terms of that contract are absolutely ambiguous Read
21 as a whole, it borders on being completely
22 un-understandable So all these matters barring some
23 change from the evidence presented by the defense and all
24 these issues are going to go to the jury

25 All right, any motions on behalf of the defense

0423

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1 MR STILLWELL No, sir, Your Honor

2 THE COURT All right Just for my own information,
3 was there any progress in trying to resolve this matter?

4 MR STILLWELL I don't know what happened right when
5 we started, if I can go outside in the railway

6 THE COURT I'll be glad for you to do so

7 MR STILLWELL I think, Your Honor, we've got a
8 frame work but I don't know the values we've got or
9 anything

10 THE COURT All right

11 All right, plaintiff ready for the jury, Mr Ellis?

12 MR ELLIS Yes, sir

13 THE COURT Defense?

14 MR STILLWELL We are, Your Honor

15 THE COURT very good

16 Ask the jury to come in, please

17 (W-DREUPON, the jury came into open court at
18 approximately 2 00 p m)

19 MR STILLWELL The Defense calls P J Richardson,
20 Your Honor

21 THE COURT Please come around and be sworn

22 I understand he was sworn before, I'm having you do
23 it again since we are in the Defense's case

24 P J RICHARDSON, after being duly sworn,
25 testified as follows

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DIRECT: Richardson by Stillwell

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1 THE CLERK State your name, please

2 THE WITNESS Patrick J Richardson

3 DIRECT EXAMINATION

4 BY MR STILLWELL

5 Q P J ?

6 A Yes, sir

7 Q Welcome back

8 A Thank you

9 Q P J , let's start this time and just start kind of a
10 little bit with the background The jury has already
11 talked to you a little bit, but they don't know that much
12 about you Tell me where you're from and how you got
13 here

14 A I was born in New York City, grew up in New Jersey

15 Q Okay Where did you go to school?

16 A I went to -- graduated from grammar school in New
17 Jersey, high school in New Jersey, and then I went to a
18 small Christian college out in New Mexico, graduated with
19 a four-year business degree

20 Q And you talked a little bit about your business
21 background and that was probably fine about it One part
22 I wanted to focus on a little more is about Regal, is that
23 where you met Rod?

24 A Yes, it is, that's where I met Rod Manning

25 Q Tell me something about Regal and what you did with

0425

APP_0430

1 Rod there?

2 A Regal helped me take the, what's part of the Regal
3 electronics group, don't know if you're familiar with the
4 (inaudible) Regal electronic phone, cellular phone
5 company, is a global company And I was responsible for
6 the North American operations for our health and safety
7 business Primarily, in respiratory protection Rod was
8 one of your counselors And companies that I was
9 responsible for, Rod represented us in liability suits,
10 acquisition, things of that nature

11 Q Now, I've probably got this a little out of order in
12 importance, but I apologize -- I mean, excuse me, it's in
13 trial, I talked about your lawyer before I talked about
14 your wife Tell me about how you met Billie and how long
15 y'all have been married

16 A Billie and I will celebrate our 38th wedding
17 anniversary in October, October 4th of this year We were
18 married in 1970 We met in Chicago It was a blind date
19 Anyway, the rest is some history, but it's been just a
20 great trip together We have two grown sons who live here
21 in the Greenville area We have two grandchildren, who
22 also are here Greenville

23 Q And your grandkids are in school right here?

24 A That's right, at Thurmond Academy

25 Q Okay And did you say y'all live in Greenville now?

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APP_0431

1 A Yes, we do. We live here in Greenville. Decided to
2 live here in Greenville, wanted to retire here.

3 Q And before, when you were still running Reeves, that
4 was the part when you were up in Maryland?

5 A We lived right outside Frederick, Maryland.

6 Q And how did you end up in Maryland, is that where
7 Reeves was or how did you end up there?

8 A Well, what originally brought me to Maryland was to
9 work at Regal Health and Safety. And being in the
10 corporate world, you move a lot, which we did. We spent
11 most of our business career through our marriage, we have
12 lived in a few cities. But Maryland, really, became our
13 home. The children were raised there. When I left Regal
14 in 1989, 1990, I set out to look for something that I
15 could -- that Billie and I could grow into a business. We
16 thought that that would be the best way for us to create
17 our nest egg for retirement. And I was in my mid-40's at
18 that time, mid-40's. And we found a small company in
19 Pennsylvania called A. Smith & Son. And part of that was
20 a product line called the Reeves flexible stretcher, which
21 is where the Reeves Manufacturing came from. The company
22 had been around since about since 1967 and technology on
23 this little flexible stretcher since 1903, which was the
24 original pattern. It was kind of a neat little company. I
25 had a good background having worked with Johnson & Johnson.

0427

APP_0432

1 for a long time and I saw the opportunities to grow this
2 stretcher from a regional product into a national company
3 And we were successful in doing that for a number of
4 reasons, the stretcher was just one part of it

5 Q How long was it between when you and Billie started
6 Reeves until you met Bob, just approximately?

7 A Probably seven years

8 Q Okay By the -- before you met Bob, what had you
9 done with Reeves

10 A We struggled There were a lot of tough nights We
11 put everything we had into our company The boys, rather
12 than going to college, they ended up coming to work in the
13 business But it's tough Anyone that starts a company
14 realizes quickly it takes twice as much money and probably
15 twice as much time than you would ever imagine You know,
16 seventy hour weeks, weekends, we just didn't know what a
17 weekend was, you know, we just worked continually to make
18 this thing go

19 Q The boys coming to work for you, that's because you
20 just had that much work or the money or what?

21 A Well, we, obviously, needed people we were a small
22 company, but we were growing By the time we sold, we had
23 50 employees Our revenues had grown significantly But
24 in the early days, we just needed all hands But it's
25 nice I never expected to have that opportunity coming

1 from the corporate world to work with my two sons, my
2 wife You know, to be married 38 years is, obviously, a
3 milestone, but to have spent 10 or 12 years working
4 closely with your spouse is another milestone because you
5 know each other I mean, e -- it was kind of a great
6 feeling when you go to retire and there was no surprise
7 I mean, we know each other

8 Q Well, that part, when Billie's working with you
9 there, when you were in the corporate world, she was at
10 home with the boys?

11 A For the most part, Billie was a homemaker, raising
12 our sons She had part-time jobs, but her career was the
13 big full-time job, raising our two sons

14 Q At Reeves, what was she doing there, I mean, she with
15 you live every step of the way?

16 A Every step of the way In fact, we always had her
17 sign over our desk -- her desk that said, Project Little
18 landing, details handled here You know, when you have a
19 small company, there's a lot of details And I have an
20 entrepreneur spirit She was the detailed person I can
21 go out and bring the bears home, but somebody had to skin
22 them and that's what she did She did everything I
23 mean, coming from the corporate world, you learn very
24 quickly that to a small business, you know, if you're
25 afraid to change the toilet paper or put in the light

1 bulbs, you're in the wrong business And you learn to do
2 that You don't have a staff You're the staff, so you
3 do a lot of that work yourself And between Billie and I,
4 we did that The boys came in We had like seven or
5 eight, so it was like -- at the time we started, we
6 probably had like eight or nine employees

7 Q Now, you guys -- your sons, they're living down here
8 in Greenville now?

9 A Yes, they are

10 Q What are they doing?

11 A The boys have -- Terry and Mike have a business
12 called Trailer Logic They have a manufacturing facility
13 in Belton right off of Highway 29 south of the Jockey Lot,
14 I'm sure some of you know where that is And then Michael
15 operates his little facility in Easley, but it is all one
16 business

17 Q And you and Billie are retired now?

18 A Yes, we are

19 Q Are you helping the boys?

20 A Yes, we are

21 Q What are y'all doing for them?

22 A Billie's been very involved down in Belton Part of
23 Trailer Logic is an outdoor power equipment business So
24 Billie spends -- we spend a lot of time In fact, if we
25 weren't here this week, she'd be in Easley -- in Belton

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1 helping the one son and I'd be in Easley helping my other
2 son in his manufacturing. We're very low overhead people.
3 We don't charge them much. Nothing.

4 Q Pretty good deal. Right price, as they say. I want
5 to move over to when you met Bob Castellani.

6 A Year.

7 Q Tell me about how you met Bob and when.

8 A In mid to late 90's, when the whole domestic
9 terrorism problem was beginning to grow. There was a
10 group called NDMS, National Disaster Management System,
11 which is physicians, first responders, EMT's, people out
12 of the emergency medical service, military people, large
13 core section of first responders. We happened to be in
14 Denver when I -- when Bob and I started our relationship.
15 He happened to be sitting between sessions at his booth
16 reading his Bible and I was coming back with a container
17 of coffee. And I saw what he was reading and I said, Hey,
18 that's a great book you're reading. And that just kind of
19 started the relationship. I had really renewed my faith
20 in the 90's and Bob was on his own faith walk. We just
21 meshed. It just all worked. It was great timing.

22 Q It's hard for me to run the numbers in reverse, but
23 you were in your 40's or something, Bob was in his -- was
24 he still in his 20's, what was y'all's ages then?

25 A Well, Bob was probably in his mid-30's, maybe early

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APP_0436

1 30's I would have been in my very late 40's, early 50's
2 It was probably 17, 18 years

3 Q And tell me about once you learned something about
4 NARP business what it was like when y'all met in those
5 first years

6 A When we first met -- well, at that point that
7 subcontracted -- we had outside manufacturing his
8 products And, you know, our relationship just kind of
9 grew very slowly, very gradually He knew I had some
10 background in fabrics We had a number of sewers, sewing
11 machine operators in our facility And we just started
12 talking about his products I made some trips with Bob
13 to, you know, supplier here, fabric supplier, a -- well,
14 showed his colors for him and it just kind of a
15 relationship that grew over time He'd come to visit us
16 At that time, Bob was living in Columbia, Maryland We
17 were -- our small manufacturing plant was up in Frederick,
18 Maryland I think the first time he came to visit us, he
19 brought his dog with him, Retington It just kind of just
20 grew

21 Q Now, Mr Ellis and I have had the pleasure of
22 traveling to Maryland together a few times, but Frederick
23 and Columbia are like outside of Baltimore there?

24 A They are They are due west of Baltimore we were
25 probably 35, 40 miles further west of Columbia

0432

APP_0437

1 Q Okay And was Mr Castellani from there, now did he
2 end up in Maryland?

3 A At that time, Bob was living in the Columbia,
4 Maryland area, I believe

5 Q And Mr Castellani, tell me about what -- what was
6 the status of NARP at that time as far as size?

7 A When we first met, I don't know that they had cracked
8 a million dollars in revenue yet, but it was probably
9 right there on the edge of cutting through a million
10 dollars

11 Q Okay That's total sales, right?

12 A Yes

13 Q Before you take all the costs out?

14 A That's wholesale

15 Q Just comparing apples to apples, now big was Reeves
16 then?

17 A Reeves, at that time, was just shy of five million
18 dollars

19 Q Okay Are those -- you talked about a nice small
20 little company earlier, were those small companies or even
21 tin_ companies, what were they?

22 A Well, they were pretty small companies if you look at
23 what the federal standard is I mean, it's considered
24 small business Either way, we classified them as small
25 businesses

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APP_0438

1 Q Now, you talked a little bit about what Rees did
2 for NAPP, the sewing and stuff like that. Tell me
3 something about what P J did for Bob, the personal side?
4 A Well, it was a big difference in our backgrounds. I
5 mean, I came out of the corporate world and Bob came out
6 of the military world. And, you know, you just viewed it
7 a little bit differently. We both really respected the
8 way each other looked at things. We just had a different,
9 you know, pair of glasses that we looked at the business
10 world. I felt and feel that -- you know, I, certainly,
11 was a senior mentor to Bob. The one thing that was really
12 kind of neat about Bob is you didn't have to give him a
13 work ethic. He had that built into him. So -- that's not
14 true today, a lot of young people don't have that solid
15 work ethic. And he had that to the point where -- I mean,
16 it would be tough to talk late in the afternoon because he
17 had been probably up since four o'clock in the morning
18 working on his business plan. So Bob was very focused, he
19 knew what he wanted to do. And I always -- I like that.
20 The military ethic training gave him that. That being
21 said, you, you know, I had a lot of years, 30 plus years,
22 25 years at that time of corporate experience. You know,
23 I knew how to read a balance sheet and income statements,
24 so I was able to gather -- show him how all those things
25 worked. As our relationship developed and we started

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1 doing more things, we were able to set up a financial
2 structure for him in his business so he could see what was
3 happening in the company month to month. I mean, so many
4 small businesses, even today, don't close their financials
5 every month and we always did that. Some people could say
6 to me you're too small, why do you do it? Well, because
7 that's the only thing I knew coming out of the corporate
8 world. You close every month. You can't go back and
9 close once a quarter. You know what happened 90 days ago.
10 So I think I brought a lot of that knowledge. And, you
11 know, knowing where Bob is today, I think he made great
12 use of his own personal skills and the things that he
13 picked up, some of it came from me.

14 Q Were you somewhat of a mentor to him?

15 A Yes. And I used that word earlier, I was mentoring
16 to him. And I had done that. I had done that in my
17 community. Just coming out of Johnson & Johnson, you
18 train to give back to the community. I was in a mentoring
19 program, so I knew how that would work. If you were
20 struggling -- not necessarily a new business, but a
21 struggling business.

22 Q Tell me about Billie's relationship with Bob, what
23 they did professionally and personally.

24 A Well, you know, my wife ran -- she was our
25 administrative -- she was vice-president of

1 administration. She ran everything. I mean, she had a
2 staff that was in there doing order entry, doing
3 bookkeeping, accounts receivable, accounts payable, all
4 the bits and pieces that are behind the business. And she
5 worked on Bob's staff directly for him. She provided, if
6 Bob called and -- you know, have to give her many kudos
7 and hats off to her because she was running two hats. She
8 was working with two high energy guys that are
9 constantly -- you know, when I called, I wanted to talk to
10 her, when he called, he wanted to talk to her and she
11 managed to juggle it all. You know, we're both growing by
12 this time, that relationship with Bob was really growing.
13 We, at Reeves, were probably at 15 million dollars in
14 revenues and Bob had revenues of maybe six or seven, so
15 combined -- it was an awesome task for her to handle.

16 Q Okay. I want to get you to the 2000 agreement. At
17 the time that y'all did the 2000 agreement, was that the
18 relative size of the company, like 15 to six or seven?

19 A No, no, we weren't that big. That kind of volume
20 came in probably '02 or '03.

21 Q Okay.

22 A I would say the 2000 -- go on, going back, but the
23 spread was probably about the same, but we were probably
24 more in the \$8 million range, Bob was probably, at that
25 time, getting close to the three, four million dollar

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APP_0441

1 range

2 Q So let's not get wrapped around that, Reeves was
3 still about twice as big as NARP on the sales?

4 A Yeah, we actually remained that -- that spread
5 existed, actually, up until the time we sold. At the time
6 we sold, we closed at -- our revenue was close to 19
7 million and their revenue was under 10 million, just under
8 10

9 Q Now, before I get to the 2000 agreement, did you Bob
10 or have any discussions about entering into business
11 together or anything like that?

12 A Yeah. I mean, this whole idea of having a closer
13 relationship was something that Bob really liked. And I
14 was never opposed to it. I mean, me coming out of the
15 corporate world, I was really used to having a lot of
16 people around me. It's just natural, you go in an
17 office -- and when I started Reeves, I was a one-man band,
18 just like Bob, working out of the house. And that's
19 lonely. You know, you've got to get up every morning and
20 you've got to go to work, but I'm just going downstairs
21 Bob's case, maybe he just went down the hallway, but we
22 did the same thing. We became, as Bob said, a more
23 traditional company just quick because I had the skill
24 sets. I did that for a living, so I could do it.

25 Q Would you describe yourself as a normal businessman

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APP_0442

1 in that respect?

2 A Yeah, I was very much -- I mean, I'm a Type A
3 personality, high energy morning guy, but I've a very
4 conventional businessman in terms of the way I structured
5 my business

6 Q You heard yesterday I asked Mr Castellari some
7 questions about him being a normal businessman or not, how
8 would you describe him as a businessman?

9 A Well, I knew at the time when I knew Bob, he was a
10 guy that was really yearning to learn He had ideas He
11 knew what he wanted to do I think he just needed some
12 help to get there He's obviously gotten there Bob is a
13 unique individual He was driven towards success

14 Q Let's step to the 2000 agreement We've probably
15 looked at it enough right now, at least Tell me about
16 that, does that agreement have a 25/25 percent stake in
17 it?

18 A Yes, it does

19 Q How did y'all get there?

20 A Well, tagging onto the last talking about running
21 businesses Initially, Bob said why don't we merge our
22 businesses And I felt it was my obligation with my
23 family and all being involved, I didn't know that I --
24 that wasn't an interest, just putting it together just
25 didn't seem right So Bob proposed that we have a 25

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1 percent stake And we were small As I said earlier, you
2 know, relative to where we both ended up I was
3 comfortable with that I had been around Bob long enough,
4 I thought it was a darn good investment And I thought
5 together, we're going to grow There was so much energy,
6 the similarities between the companies, the ability to
7 trade back and forth, to him being able to help us into
8 military and us being able to take his products into our
9 market It just was an attractive business And most of
10 all, we trusted each other We had chemistry We just
11 worked well

12 Q Right Now, I'm going to get my board out here for a
13 second and put it down so we don't leave anything out
14 that's important I'm just going to leave it down here
15 for our reference we use the board, maybe we don't have
16 to use all these documents I know you can't see it, but
17 I'll read it okay

18 A Okay

19 Q Go to 9/11, okay? Well, first of all, y'all entered
20 this agreement in 2000, right?

21 A That's correct

22 Q I think it was January 2000?

23 A Yeah, I think it's dated January 1st

24 Q So business was good between January of 2000 and even
25 up to 9/11?

1 A Yes

2 Q Just generally?

3 A Generally, yes, it was

4 Q Okay And tell me what affect 911 had on your
5 company?

6 A It was incredible what happened Obviously, it was
7 incredible what happened on September 11th, but because of
8 the nature of our business, and I'm not talking about
9 Bob's business, I'm just talking about what we did at
10 Reeves Manufacturing with first responders After we all
11 stood in the office and watched what happened on that
12 fateful day, we just started scattering everywhere we
13 needed to be I personally deployed myself with one other
14 guy to a marine base right outside of Washington because
15 they needed some of our team examination equipment We
16 sent a small team up to Shanksville, Pennsylvania, who
17 arrived -- they were the third guys after United 93 went
18 down And then we had just the one-man party Went to
19 New York to work with the Federal government on a project,
20 which eventually -- we had to get involved with at ground
21 zero I, then, spent two solid weeks with a small team in
22 Shanksville on the actual recovery

23 Q Could I stop you there for one minute and talk about
24 this whole issue of what Reeves has done with decon and
25 snowers and stuff Can you tell me what that stuff was,

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APP_0445

1 was that your primary product?

2 A Well, it, ultimately, became our -- what we were best
3 known for. The company, up until the late 90's, was
4 really only known for the Reeves flexible stretcher. It
5 was used widely by fire departments and emergency medical
6 services throughout the northeast and then when we started
7 to expand across the country. That was really our number
8 one product. In the late or mid 90's, following the
9 (inaudible) Act, which was the first (inaudible) ever put
10 into domestic preparedness --

11 Q Homeland Security?

12 A Homeland Security. And then (inaudible) Act was part
13 of Presidential directive, '92, I think, and that allowed
14 them to spend money. We came up with an idea to build
15 water heaters that could be rapidly deployed at any event,
16 any event that needed contamination, and we could
17 instantaneously heat water to body temperature. Get it to
18 the same temperature as what your body was. And you could
19 do that anywhere. If we had a water source, we could heat
20 this water and we could continue to do it for as long as
21 we had water and power or fuel. We then put that together
22 with a tent system, a rapidly deployable tent system.
23 Originally, we used one style, we went to another, which
24 was just a better product for us to use. And these were
25 packaged together. Sometimes, they would have Boon's

0441

APP_0446

1 litters with them He would supply dressing gowns for
2 victims

3 And, simply, what would happen, was in the event of a
4 chemical or a disaster, could be a panic, whatever If
5 there had been chemicals used in New York City, that's why
6 we were there People have to be decontaminated They didn't
7 know what was there In this case, they were concerned
8 about asbestos in those very old buildings So everybody
9 going and coming from ground zero had to go through the
10 examination system And we provided that essential
11 service In the beginning, we were the only ones doing
12 it

13 Q Okay So at ground zero, that's what you were doing,
14 you were doing the, basically, portable shower stall
15 things?

16 A And every worker, and that meant every vehicle, every
17 truck, everybody walking in had to be decontaminated
18 before they left Ground Zero You have microfibers on the
19 edges of those aircraft We had it in all those
20 buildings The trade towers were loaded with asbestos I
21 mean, we lived in -- I was there for about three months,
22 wore a respirator everyday when I walked around the
23 street

24 Q You were up in New York for three months?

25 A Yes

0442

APP_0447

1 Q Billie was at home?

2 A Well, we had the company back here and, as you can
3 imagine, after September 11th, this business suddenly
4 changed I mean, everybody across the country, Chicago,
5 Los Angeles, didn't matter, everybody was calling for we
6 need decontamination you know, there was always that
7 discussion in Washington, you know, either it's not going
8 to happen, may happen you know, we always thought it
9 would happen, just didn't know when it would happen

10 Q Now, eventually, did your work with Reeves take you
11 overseas in connection with this 9/11 work?

12 A Yes We had built systems for the military to be
13 used in the event that there were -- was chemical warfare
14 in the Middle East

15 Q Right

16 A So we built a system to be used The concern was
17 what do we do with the dead, our soldiers coming home that
18 might have been covered with chemicals? Nobody knew what
19 Saddam Hussein had, but you have to be prepared So
20 myself and another gentleman, we were sent over there just
21 about a week before the war started, this current war we
22 didn't know it was going to start and then we couldn't
23 leave, we had to stay So we stayed we were, basically,
24 contractors, that was our job We went in there to train
25 So once we were there, we just stayed and we trained

0443

APP_0448

1 for -- I guess we were there about a month

2 Q This work at Ground Zero and this work in Iraq, is
3 this a source of pride to you with your work with Reeves?

4 A Well, of course, I mean, that chance you get to be a
5 patriot So yeah, I -- we got citations for doing it It
6 was good to be able to do it

7 Q Yeah Tell me about the affect of 9/11 on the other
8 side, on the military side, on the NARP business?

9 A Well, I can say during that period of time, Bob and I
10 would talk by phone I don't know that during that
11 period, from September to December, that we actually saw
12 each other We would see each other probably once a month
13 at a minimum because by that time, Bob was living down
14 here We were still operating out of Maryland, but we
15 would -- we would talk I ever called him from Iraq when
16 I was there The cell phones work everywhere anymore, but
17 we didn't get to talk, but I knew Bob, Bob was busy I
18 mean, he's fighting on a different battlefield than we
19 were because it wasn't our primary business You know, it
20 was his And it was -- obviously, with what was going on
21 in Afghanistan and Iraq, his business was taking off as
22 well

23 Q And his sales were primarily on the military side
24 then?

25 A Yes

0444

APP_0449

1 Q Okay Now, during this time, then, when y'all are so
2 busy, did y'all have any problems with the 2000 agreement,
3 is that what y'all were operating under?

4 A Yeah, we operated under it I guess, I should
5 characterize, we didn't take the 2000 agreement out, you
6 know, every week and kind of look at it and polish it up
7 you know, it was stuck in a drawer And I don't remember,
8 we didn't discuss it really much until we started getting
9 down to ney, you know, Billie and I are getting ready I
10 will say that between September 11 and the war in Iraq, I
11 was just getting tired, you know I'm a guy in my 50's
12 I was proud of what I did, but I was ready to retire
13 After New York City, I know I came home and I was
14 different I mean, it was tough and I didn't want to do
15 it anymore

16 Q Right

17 A And family businesses can be stressful So I knew I
18 was going to be -- Billie and I were going to retire we
19 didn't want to do anything else It had taken it's toll
20 and we saw this opportunity to get out and so that's --
21 year, then, suddenly, the 2000 agreement, yes, it becomes
22 something we were looking at

23 Q Right before this time when we talked about the
24 opportunity to get out, I want to ask you one question
25 We looked at that Reeves Group yesterday, can you just

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APP_0450

1 tell me briefly about what was the Reeves Group, briefly?
2 A Yeah, the Reeves Group, it was a -- and Bob, he
3 described it pretty well. It was a marketing alliance
4 You know, you fly a lot, you see how airlines can together
5 and they have an alliance. That's what this was. I mean,
6 it was an alliance. It gave companies -- I mean, it gave
7 three or four companies an opportunity to band together and
8 really save some costs. And as a group -- and the reason
9 it was called the Reeves Group was because the Reeves name
10 had been around since, you know, before the turn of the
11 last century. So people knew us in the fire service. And
12 everybody kept their identities, but it made us -- it
13 allowed us to go up against some really big defense
14 contractors, you know, people just -- you know, you had
15 your group and your small businesses -- this was a way you
16 could go to trade shows and we can share expense.
17 Q Were you and Bob going to trade shows together during
18 this period, not necessarily while you were in Iraq,
19 obviously, but, I mean, tell me about y'all traveling
20 together?
21 A Yeah, if the show made sense. If it was -- you know,
22 if it made sense to be there and -- because both
23 products -- if it was a big show and I needed help, then
24 Bob would be there. Because he knew enough about what we
25 did and I knew enough about what he was doing then, we

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APP_0451

1 could trade off and talk about each other's product If
2 it was a small show, then just one of us would go and take
3 both products

4 Q When you guys were at the same show, y'all shared a
5 room and everything?

6 A Yes, we did

7 Q Now, I talked earlier about you guys reading the
8 Bible in bed, I assume you were in two different beds?

9 A That is also correct

10 Q Okay Tell me just a little bit, too, about y'all's
11 faith together, I mean, how that worked I mean, I don't
12 want to talk about it forever, but, I mean, was that a
13 part of y'all's relationship?

14 A Yes, it was I mean, and we didn't have to be
15 together necessarily to share faith We talked on the
16 phone about it You know, I -- Bob spent a lot of time in
17 his Bible, so that was a side of the relationship where he
18 mentored to me He gave me an opportunity to learn more
19 about the Bible than I really -- than I knew at that time
20 So it was a real -- it was great relationship It was a
21 very positive influence, I think, I think we had on each
22 other

23 Q I'm going to go into a part where you're talking
24 about some of these names that have been flying around
25 You know, kind of the cast of players And I'm just going

1 to start with Rod in connection with the Reeves Group
2 while we're right here Did Rod do a little work on the
3 Reeves Group for y'all?

4 A Yeah Early on, Pod -- well, actually, Rod, with
5 another fellow who came out of the Reeves Group, they came
6 and started talking about it Yes, Rod did work in the
7 early stages of it

8 Q Was he working for both of y'all, what was going on?

9 A Initially, he was Then the Reeves Group started to
10 take on -- started thinking in some other directions
11 beyond just an alliance, the market But they looked like
12 there might be some possibilities that never panned out
13 But to get involved in buying small -- actually, buying
14 companies and putting them into the group But we just
15 hit it at a time where the investment community wasn't
16 really open to it We didn't have that kind of money that
17 we could just start writing checks and trying to buy
18 companies, so that aspect never got off the ground

19 Q Okay Let's just stick on the interpersonal part I
20 understand from what you told me before, Rod is, actually,
21 a former Marine himself?

22 A Right

23 Q How was the working relationship between Pod and
24 Curt -- I mean, not Curt Let's not get to Curt yet,
25 let's say Pod and Bob?

1 A I think initially, it was probably pretty good I
2 didn't -- I don't know that I knew Curt, I had not met him
3 because I think it came up yesterday, I didn't know that
4 Curt wrote the 2000 agreement until much, much later So
5 I don't know that Bob had a -- had counsel then So I
6 know Bob had asked Rod to look at a couple of things for
7 him independent of what he did for me But when we got
8 into discussions about trying to memorialize our
9 agreement, I think Rod made it clear to Bob he'd have to
10 get his own counsel

11 Q Now, just sticking with Rod, I know Rod's a big
12 player in this and I understand Rod's not going to be able
13 to be here this week Do you know why?

14 A Yes, I do, unfortunately Rod is a -- I guess, I'd
15 call him an international business lawyer But he's got a
16 young daughter who's gravely ill

17 Q Okay That's enough on that, but he can't be here
18 this week, right?

19 A That's correct

20 Q Let's go to another guy Rick Kohr There has been
21 some mention of who Rick Kohr is, I think his name came
22 up Who is Rick Kohr?

23 A Rick Kohr is the CEO of Evergreen Capital, who is the
24 investment banking firm who I brought in to do evaluations
25 on my company and helped us in the sale of Peeves

1 Q Okay I get these guys out of order sometimes, but
2 was Barry Harper the first one who started working on your
3 team when you were looking in selling the company?

4 A Yes, it was through Barry Harper that I met Rick

5 Q Okay And I think we read a little piece of Barry
6 Harper yesterday And then there's another member of the
7 team, Ed Kidner? How did you get to Ed Kidner?

8 A Well, at that time, Ed Kidner worked for an
9 accounting firm with Waynes -- something, something And
10 they were affiliated with Evergreen Capital So Rick Kohr
11 introduced me to Ed Kidner

12 Q Okay So if you can just summarize what those are,
13 you've got -- like you've got an investment banker -- tell
14 me what each of these guys' roles were

15 A Barry Harper, who was retired CPA He, actually,
16 came on as a consulting force He was not on our payroll,
17 but he was on our staff full-time and his job was to
18 manage at the time the process We talked about what the
19 process was at that time because early on it wasn't
20 necessarily to sell the company But Barry came in to
21 look at that because the rate at which this company was
22 growing, I couldn't risk taking my eye off the ball I
23 didn't want my own financial -- my CFO, who ran it
24 day-to-day, be taking his eye off the ball to be looking
25 at these investment opportunities So I felt it was good

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APP_0455

1 to bring somebody in to run this part of the company on a
2 regular basis I also wanted to do for the first time in
3 the company an independent audit, wanted to bring in
4 accountants to, actually, independently audit our books
5 Because if you're to proceed in investing or selling, you
6 need to have good quality financials, which we had, but we
7 wanted to have an independent voice in it

8 Q So Barry's the next set of hands, right?

9 A He was my first set, my first set of hands

10 Q Okay

11 A He then started laying everything out That's how
12 Rick Kohr came in Rick is an investment banking guy He
13 kind of had an overall picture And he said, you know,
14 you can't be using a small accountant to run a business
15 like this So we needed to upgrade our accounting program
16 and McClain (inaudible) He had a new accounting firm
17 And Ed Kidner was working for that accounting firm at that
18 time

19 Q Okay And so at this point in time when you're
20 getting your team together, DHS isn't even on the scene
21 yet?

22 A No, not in the early stages, they were not

23 Q Now, when -- skipping ahead a little bit, when you
24 get to DHS part of it, is that where Eric Ornitsky comes
25 in?

0451

APP_0456

1 A Eric came in early on, probably right after or just
2 before, I'm not sure, but right around the time we
3 received our letter of intent from D+S, Eric Orlinsky came
4 on board

5 Q Okay And so how did you -- tell me how the
6 relationship between Rod, being one of your lawyers, and
7 Eric, being another, what were their roles?

8 A Well, Rod is a very old friend and goes back more
9 than 20 years The problem I had with Rod was that he
10 worked for a law firm in Fort Lauderdale, Florida, and
11 we're sitting in Baltimore So my advisers said we don't
12 think that's going to work You need access to somebody
13 in Reeves, somebody close by that you can get to, you can
14 talk to, and I could have talked to Rod, but somebody that
15 we can have meetings with on a regular basis Rod was an
16 international attorney, so we were a very, very small
17 client He had huge clients, international clients that
18 he dealt with So it was a difficult decision, difficult
19 message to deliver, but Rod understood I had -- in order
20 to sell the company, I need to come to a local firm

21 Q Okay And these guys we talked about, Kohr, Kidner
22 and Harper, all those guys are up in Baltimore where you
23 are, right?

24 A That is correct

25 Q Eric's up there, too?

1 A yes

2 Q Did ~~you~~, actually, send you to Eric or do you
3 remember who sent you?

4 A He took me to several law firms and we selected out
5 of that group Eric

6 Q Eric's the guy who ended up closing the DHS sale?

7 A That's correct

8 Q And then what was Rod doing for you?

9 A Well, Rod was working on another tract because he
10 knew Bob -- I just -- the decision was made to stay with
11 Rod on that since he knew so much, trying to get Orlinsky
12 and his guys up to speed just didn't make sense And,
13 quite honestly, we thought that this other track with Bob
14 was going to be wrapped up pretty quickly

15 Q All right Let's talk about when you first -- this
16 DHS opportunity first came up, now that happened

17 A I was at a defense show with my wife In fact, it
18 was a week where -- it was a good example of where we
19 shared these show responsibilities There was a show in
20 Europe, defense show, and Bob and Lisa Castellani, they
21 did the first part of the show and came back to the states
22 and then Billie and I went and did the second part of the
23 show

24 Q This was in Paris?

25 A This was in Paris

0453

APP_0458

1 Q So that wasn't such bad duty, was it?

2 A No, it wasn't bad duty. But, believe me, we worked
3 darn hard, so whether we're there or not, it's part of the
4 work. And while I was at the show, during the time that I
5 was working the show, Bob had gone home, John Prossmac,
6 the CEO of DHS, was at the show as well. They were
7 standing -- they had a stand. And while I was at the
8 show, John told me that the Carlisle Group, who was a
9 large investment banking firm in Washington, D C, had
10 acquired a significant part of his company. And I said,
11 just in a passing comment, boy, that would be great to
12 talk to somebody like that but they wouldn't find us in a
13 hundred years. We're so far down in the system, they
14 wouldn't talk to us. And that was the end of that
15 discussion. And I would say that probably within five
16 weeks, I received a phone call from John Prossmac that he
17 and the managing directors of Carlisle would like to come
18 out and speak to me about our company.

19 Q Now, P J, this period, just to get us back to just
20 kind of a frame on the boards here, are we still prior to
21 that meeting Curt here in Greenville, when you meet D-S,
22 or is that after?

23 A Well, let's see, the Carlisle work was all done in
24 '04. We started talking in probably -- I'd have to say
25 our first was probably June.

0454

APP_0459

1 Q Okay

2 A So I see that board down there But to tell you
3 where we were, it was '04

4 Q Yeah Do you remember this meeting at Curt's to be
5 on April Fool's Day?

6 A Yes, I do

7 Q Okay Now, right before we get to Curt, before we
8 start talking about any of the 25 percent piece of
9 company, did you have any discussions with Bob about
10 changing the 25 percent?

11 A Yeah, there was some discussion In fact, I think it
12 may be one point, Bob -- not with me, but with Billie,
13 they were talking about going much lower than that I
14 mean, going to zero

15 Q What was your reaction to that?

16 A My reaction was absolutely not I mean, I felt that
17 I knew enough about where we were with Bob and what he was
18 doing that I -- I was going to be very happy to invest my
19 money into NARP when I sold my company if that was going
20 to happen At that point, we really weren't thinking
21 about selling, we were thinking more about investing So
22 it was a good -- it was a very good investment for us

23 Q Yeah

24 A But when we went to Greenville for that meeting, the
25 first time I met Curt, that was going to be one of the

0455

APP_0460

1 topics of discussion, reducing the stakes

2 Q Remember that email I was looking at with Bob
3 yesterday for a long time and it said we each own 25
4 percent of each other's company?

5 A Yes

6 Q Would you agree with that statement?

7 A Yes, I would

8 Q So the 25 percent before you walk into Curt's office
9 Let's get to Curt's office, okay? Who was at that
10 meeting?

11 A Curt, Bob, Billie, Rod Manning and myself

12 Q Okay What do you remember about that meeting?

13 A I think it was maybe some new space that Curt was in,
14 so he was sharing with some people and it was a little bit
15 awkward We had lunch in town and then drove over to the
16 office Kind of a rambling meeting We were trying to
17 get some resolution on what was going to happen with our
18 2000 agreement And I don't know, we spent a couple of
19 hours Then it was, all of a sudden, Bob jumped up and
20 said it's going to stay at 25 and the meeting ended

21 Q What do you mean he jumped up, what are you talking
22 about?

23 A Well, he had to go somewhere, so he said that was it,
24 the meeting was over

25 Q So that was, I guess, fair to say an inconclusive

0456

APP_0461

1 meeting?

2 A Yes, it was inconclusive But, I mean, I hadn't
3 really thought much about it We went down there thinking
4 that's what the discussion was going to be, Billie and I,
5 but it ended abruptly But, I mean, we had known Bob a
6 long time, so that wasn't -- it just didn't phase us that
7 he had done that I have seen that when it happened
8 before, so it was no big deal

9 Q Just to link it back up to Billie this morning when I
10 asked her and she said something about Bob being
11 impatient Tell me about that

12 A Yeah, I mean, it would happen, you know, realtime
13 would come and we all had eaten If things just didn't
14 interest Bob, then he didn't have time for them I had
15 some awkward situations I can remember being in a trade
16 show and after a certain situation happened, I had to tell
17 him, you know, I mean, if I'm standing here talking to
18 you, it's very difficult when there's somebody behind you
19 giving me all kinds of hand signals It's not a
20 professional way of doing things

21 Q What are you talking about giving me hand signals?

22 A If I was talking to you in a business situation,
23 talking to somebody in the jury in a business and the
24 person in the back row was sitting there giving me hand
25 signals, it would be very distracting That person in the

0457

APP_0462

1 back row trying to send me a message

2 Q Are you saying -- I mean, you're saying if it were,
3 you're saying this happened?

4 A Yes, that did happen. That would be categorized to
5 me as inappropriate behavior, I guess, in any situation.

6 Q You mean using hand signals like time to --

7 A Yeah, time to go. And, you know, I'm a businessman,
8 but I got there because I was a salesman. I've sold
9 things, principally for companies that make things.
10 That's not something you do in a sales presentation.

11 Q At the meeting at Curt's, was there actually a
12 discussion about going zero there, too?

13 A No, I don't remember any discussion about going to
14 zero.

15 Q Okay. What would your reaction have been to that if
16 it were discussed at Curt's office?

17 A My reaction probably would have been, I would have
18 probably chuckled and said you're kidding me, aren't you?
19 I mean, that's not what happened, but if it had been said,
20 that's how I would have reacted.

21 Q Is that the first time you had met Curt personally?

22 A Yes, it was.

23 Q How did you and Curt get along at that meeting?

24 A It was all right. I mean, it was no -- didn't have
25 any problems, but I mean --

0458

APP_0463

1 Q Did it get worse later?

2 A Not at that meeting, but, year, we' e had our
3 differerces of agreement

4 Q All right Save that We'll get to the Atlanta
5 airport, eventually, I promise you I want to take you to
6 the Charleston beach cordo Okay?

7 A Yes

8 Q Tell me now that meeting came about

9 A We -- Bob and I or Bob and Billied, we talked deal
10 And you know, Bob is a very gracious guy and said, you
11 know, we all need to get together down in -- let's go to
12 the beach house We'd never been to Charleston that I
13 know of It's a delightful place to go And he said
14 let's have a meeting down there We'll go down and have a
15 board meeting We kind of be kind of loose and discuss
16 how we're going to memorialize our agreements And so it
17 was proposed by Bob

18 Q I hear, you're talking about memorializing the
19 agreement, what agreement did you have at that point?

20 A The only agreement in place at that time was our 2000
21 agreement

22 Q Okay,

23 A So it wasn't memorializing, but how we would change
24 it, I guess, is probably a better way to categorize it

25 Q You talking about changing it in the context of maybe

1 selling the business, is that what you're talking about?

2 A Well, at that point, we probably either just had a
3 letter of intent or we knew something was going to be
4 coming to us from the acquiring company

5 Q Now, what were the relative sizes of the businesses,
6 and you can use gross revenue again, between you and VARP
7 at that time?

8 A In --

9 Q In Charleston? Just roughly

10 A Probably in the low teens They would have been
11 something below 10 million It would have been probably
12 10 million or so

13 Q Okay So sounds like if you used to be twice as big
14 as him now, he's gaining on you somewhat during this time?

15 A Ch, yes, he was definitely cutting into the --
16 filling in the gap

17 Q Did you and Bob actually kind of compete in business
18 like that? I don't mean compete, I mean friendly
19 competition?

20 A Oh, yeah We always knew when Bob would get a nice
21 order because he would call and tell us and we would call
22 and tell him the same So yeah, but that's healthy for
23 businesses We have a common interest and so, yeah, we
24 had a healthy kind of competition

25 Q Now, before Mr Ellis gets all excited, I would like

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APP_0465

1 to fix something I just muddled up We talked earlier
2 about whether y'all completed or not, remember, that NAPP
3 and Reeves competed?

4 A Yes

5 Q When I just say competing there --

6 A Oh, I know what you meant

7 Q What do you think I meant then?

8 A I took what you meant was that our competition was a
9 personal thing in terms of the size of our businesses

10 Q Yeah

11 A If Bob got an order, you know, we wanted to get an
12 order But that's a great way to drive your businesses

13 Q Right

14 A I mean, this wasn't a competition in terms of we were
15 both going after -- tried to beat each other up over the
16 same customer We weren't even in markets that were
17 remotely connected This was, I got an order, you know, I
18 just got one, too Mine's a little bigger than yours,
19 your's is a little bigger than mine But that's healthy
20 for businesses because you're both growing

21 Q Both growing well at that time in Charleston?

22 A Yes

23 Q Now, let's get down to Charleston Do you know whose
24 idea it was, was it a mutual thing, how did that happen?

25 A Well, Bob would have suggested it because I never

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APP_0466

1 would have invited myself down to his house

2 Q Tell me what y'all talked about down there Again,
3 this is you, Bob and Billie, right?

4 A Just the three of us, correct

5 Q Okay

6 A well, we talked -- we talked about the businesses
7 over all And we talked about some of the new products
8 that were coming, where we saw the market I mean, we
9 had -- I don't know whether we had a printed agenda We
10 had a certain agenda in our minds of what we wanted to
11 talk about But one of the main things to talk about
12 while we were there was the 25 percent in the original
13 agreement And so we spent considerable time on
14 discussing that

15 Q All right I tell you what, as good as we've been
16 doing, I want to put up one document and that's Exhibit
17 17, if we could, Mandy

18 Do you recognize the handwriting on Exhibit 17,

19 P J ?

20 A Yes, I do

21 Q And that's yours?

22 A Yes, it is

23 Q 29-July, that's the date y'all were down at Bob's
24 beach condo

25 A Yes

1 Q It says Board meeting of NARP, was this a Board
2 meeting?

3 A Well, that's what we -- Bob would have called it

4 Q Okay Had you ever been to a Board meeting of NARP
5 before?

6 A No

7 Q Had you ever known that -- was there a Board then?

8 A Well, you know, it's a funny thing Because of my
9 corporate background, when a Board is constituted, there's
10 certain documents that are created I have never seen any
11 of that, but I knew Bob well enough, when he said
12 something, I believed in him When he told me that's what
13 it was and I did not say oh, we've got to get that
14 corporate Minutes book together You should really have
15 it This is the way it's done

16 Q Were you guys -- what were you doing with your
17 corporate records and whatnot at that time? I mean, you
18 said that your 2000 agreement was sitting your drawer,
19 what were you all doing with the corporate formalities?

20 A Well, you know, our accountant would send us -- you
21 know, at the end of each year, we would get our annual
22 statements from the accountants and there would be a list
23 of things that management needed to do So we would
24 generate from that list, you know, closely held companies,
25 in our case, you know, you just did not have time to be

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APP_0468

1 calling serious Board meetings And that's just the way
2 it was done then So it was kept in files

3 Q This part at the top up there, new products and
4 stuff, I don't want you to really talk too much about what
5 that is, but is that just everyday business like y'all
6 talk about? Like under number one --

7 A Yeah, those are all products that may -- I don't know
8 what it is, but they were NARP products at that time

9 Q That's everyday business?

10 A Yes

11 Q The part at the bottom there, 7 1/2 percent ownership
12 Reeves to NARP, NARP to Reeves?

13 A Right, that was the agreement we reached on how we
14 were going to amend the 2000 agreement

15 Q Okay And you what, you took it from 25/25 to 7
16 1/2 --

17 A Took it from 25 and then -- but, you know, we
18 discussed this and Bob didn't say it was going to be 7
19 1/2, that's not the way it happened This was a
20 free-flowing discussion I think we got to 25 percent and
21 said why don't we just split it The discussion was
22 dragging on -- I think, you know, 7 1/2 percent, that's a
23 nice -- we were both comfortable with it There was no
24 arm twisting

25 Q At that point, did Bob know that DHS was out there,

1 that the sale was coming?

2 A Yes, we knew We talked about that

3 Q Did y'all discuss how you were going -- you hadn't
4 issued stock at that point, had you?

5 A No, we had not we did not -- on July 4th of '04, I
6 don't believe we had a firm offer from D-S D-S, they
7 were in a pickle I mean, they -- I think we had a range,
8 but we didn't have a firm commitment from them

9 Q All right So taking up on my call for fire things,
10 they had you bracketed?

11 A Yes

12 Q Okay Now, tell me how y'all sealed the deal at 7
13 1/2, 7 1/2?

14 A In terms of what happened there at the meeting?

15 Q No, physically? I mean, you, Bob and Billie, what
16 happened?

17 A I think once we agreed that that was the number, I
18 think there was -- there was some emotions, say, hey, you
19 know what, this is good Everybody felt good, we embraced
20 and went out to dinner

21 Q All right I just said you hadn't issued stock,
22 y'all never did issue each other stock, did you?

23 A No, we did not

24 Q If you had, we wouldn't be here today, would we?

25 A No

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APP_0470

1 Q Tell me how y'all discussed what you were going to do
2 with the pending sale of DHS considering you hadn't issued
3 stock in each other?

4 A Well, because that step had really never been taken,
5 it was -- the belief was at that time, we were just going
6 to simply calculate what the proceeds were Out of the
7 proceeds what 7 1/2 of our company was and that would be
8 what would be delivered to Bob

9 Q I want to stick right here on these stock fees
10 because it calls for that question Mr Ellis asked you
11 about yesterday about issuing stock in Reeves Okay And
12 I think you said something about I'll have to ask my
13 lawyer about that Have you seen some stuff from your
14 lawyer in the interim since yesterday?

15 A In terms of?

16 Q In terms of issuing stock?

17 A Well, we have stock

18 Q Tell me about that What do you mean you have stock?
19 I thought you sold Reeves?

20 A well, Extol is the company that carried on from
21 Reeves We have stock certificates It's a duly
22 incorporated company we have stock certificates

23 Q Did you not sell the stock in Reeves?

24 A No, I did not sell the stock in Reeves I sold the
25 assets

0466

APP_0471

1 Q So Reeves became Extol?

2 A That's correct, and even has the same federal ID
3 number

4 Q Where did you get the name Extol?

5 A The Extol name is actually a -- means to extol, it's
6 a Christian word to praise

7 Q Oh, like in the Church days?

8 A Yes In fact, the logo that I put on there is called
9 a triquetra It's an ancient Christian symbol

10 Q Based on what you saw from the lawyers, could you
11 actually issue stock certificates to Bob if you wanted to?

12 A Yeah, yeah, I could

13 Q Okay

14 MR ELLIS Objection, Your Honor

15 THE COURT Going to allow the question Thank you,
16 very much

17 MR STILLWELL I'm finish with that, Your Honor

18 THE COURT All right

19 BY MR STILLWELL

20 Q Get you out of the beach house, okay?

21 A Okay

22 Q I'm going to get you just a little bit briefly before
23 you get to Atlanta You saw this stuff with the option
24 agreement going back and forth?

25 A Yes

1 Q The previous one Mr Ellis was talking about, I
2 think, probably a good big and maybe some more Were you
3 involved in those documents going back and forth?

4 A Well, I was involved from the standpoint I would see
5 them I wasn't part of the process of moving them around
6 I mean, they were just being sent

7 Q I think I asked you earlier this morning, but even
8 under the 2000 agreement, did y'all call that an option
9 agreement sometimes?

10 A Yes

11 Q Was that because you hadn't issued stock?

12 A Yes

13 Q Okay Now, how about going to options, for all
14 options, where did that idea come from?

15 A I think the first time that I heard that we were
16 going to talk about options was Curt brought it up

17 Q Okay was that sometime after the beach house?

18 A I believe it was

19 Q Okay Now --

20 MR STILLWELL Mandy, can you give me No 19 Can
21 you give me the body of it, Mandy, so P J can read it?

22 BY MP STILLWELL

23 Q P J, you can use the blow-up, too, whichever is
24 easier for you And we looked at this briefly with Bob
25 This is your October 27, two days before the Atlanta

1 meeting, note to -- from you to Curt, right?

2 A Yes, it is

3 Q Okay And it copy's Rod and it copy's Bob That
4 part down there at the bottom, Bob and -- well, first of
5 all, it talks about a services agreement and an option
6 agreement in the top line, right?

7 A Yes, it does

8 Q Okay And this is two days before the meeting, do
9 you know if option agreement drafts are already
10 circulating between the lawyers?

11 A Yes, I believe they were

12 Q Okay Tell me about that part down there, Bob and I
13 are committed to completing both agreements on Friday
14 while in Atlanta

15 A Well, Bob and I had been having phone conversations
16 We spoke -- I'm sure, you all heard both of us say this,
17 we spoke a lot

18 Q Okay

19 A Everyday So that was just the commitment we made to
20 each other, we've got to get this done

21 Q Did you discuss -- you were discussing a 7 1/2
22 percent interest?

23 A Yes, we were

24 Q Okay

25 A That would be part of that discussion

0469

APP_0474

1 Q Did you ever discuss anything other than a penny a
2 share?

3 A No

4 Q Did you ever discuss anything other than that
5 ten-year term?

6 A No

7 Q Did you and -- did you and Bob ever discuss any of
8 that stuff that was in that redline version that Mr Ellis
9 had up yesterday afternoon?

10 A None of the details of it, no

11 Q That was left to the lawyers?

12 A Yes, left to the lawyers

13 Q Okay Doing good here taking stuff out of the boat
14 Let's get to Atlanta All right Walking into Atlanta,
15 we said today, what deal did you have in your mind before
16 you got off that plane and walked down to see Curt and
17 Bob?

18 A Well, obviously, I had my 7 1/2 percent from our 2000
19 agreement

20 Q Okay Tell me about the Atlanta meeting, who was
21 there?

22 A Gosh, I remember a lot about that meeting It was
23 Curt and Bob and Rod and I

24 Q Where were y'all?

25 A We were at a restaurant outside of security in the

0470

APP_0475

- Atlanta Hartsville airport

2 Q And what -- other than the discussions, do you
3 remember anything else about that meeting? Were you
4 sitting out there where all the people are?

5 A No, actually, we were actually -- we were sitting at
6 a table The four of us sat at a table we were actually
7 inside the inner circle of the restaurant

8 Q Okay

9 A Amongst a lot of other patrons

10 Q Who was sitting where?

11 A Curt was sitting to my immediate left at a rectangle
12 table, across from me was Rod and Bob was sitting diagonal
13 across from me, opposite corner

14 Q So y'all had a table like this?

15 A Yean

16 Q And you're sitting here and Curt was sitting there?

17 A That's correct And then Bob was diagonally down and
18 Rod was at the end

19 Q Like that, where the jury is?

20 A Yes

21 Q So you were sitting side by side with Curt there?

22 A Yes, I was

23 Q Tell me, did you discuss a charitable -- well, let's
24 put up --

25 MR STILLWELL Can we put up No 21, Ma'am?

0471

APP_0476

1 BY MR STILLWELL

2 Q We'll talk more than just talk about the documents,
3 but I want to ask, did y'all -- these are your notes from
4 the meeting?

5 A Yes, they are

6 Q Okay And that date up there, 29-October, was the
7 date of the meeting?

8 A Date of the meeting, yes, it was

9 Q You see Bob, Curt, Rod and P J, like you just said
10 The first point up there about a contribution to a
11 charitable trust, did y'all talk about you taking money
12 and putting it into a charity in Atlanta?

13 A Yes, that's the first time I heard that would be the
14 vehicle that Bob would like to use for us

15 Q Now, prior to walking into Atlanta, we see you
16 talking about options, had anybody said anything about
17 these donation to charity things?

18 A No, that was that first time Rod and I -- at least,
19 that I knew about it

20 Q Did that take you somewhat by surprise?

21 A Well, a little bit by surprise, but, I mean, I
22 certainly was open I mean, I had no problems with
23 charitable trusts I mean, I've made donations myself,
24 but I didn't know that was -- it just surprised me because
25 I was always of the impression we were just going to write

0472

APP_0477

1 a check out of our proceeds and pay for our share

2 Q Now, tell me now -- at this time, this -- you know,
3 later in the spring, when we get over on this other board,
4 we'll talk about this thing about purchasing it out of the
5 trust and out of the Dobson Ministries and that stuff Is
6 that what this is or is this something different?

7 A Well, at the time I made that note, I don't believe
8 that, specifically, the Dobson Ministry was mentioned

9 Q Okay

10 A I mean, it may have been It didn't make my notes,
11 but I did not remember it But I wasn't -- I wasn't
12 opposed to the charity, I just didn't know any of the
13 details at that point

14 Q Whenever you did find out about the Dobson
15 Ministries, did you know what that was, did you know
16 anything about it?

17 A No, I didn't I didn't know anything about the
18 Dobson Ministries

19 Q Did you know who Bobby Dobson was?

20 A I knew the name Bobby Dobson because I thought he was
21 a Bible study friend of Bob's

22 Q Okay Did you know what his relationship with Curt
23 was at that time?

24 A No No, I did not

25 Q Okay What did you find out later about Bobby

1 Dobsor's relationship with Curt?

2 MP ELLIS Your Honor, I want to make an objection
3 based upon some prior matters before the Court about
4 limiting this area of inquiry

5 MR STILLWELL We're not touching any of that, Your
6 Honor I think P J was here when, Your Honor, spoke
7 about that

8 THE COURT I'll let you ask this particular question
9 then

10 MR STILLWELL I'm done with it, Your Honor

11 BY MR STILLWELL

12 Q Just that question, what did you know about Curt and
13 Bobby's past relationship?

14 A I knew that he and Curt worked together

15 Q Okay Now, tell me about what you remember about the
16 discussions at the table who was doing most of the
17 talking, was it you and Bob, the lawyers talking, how did
18 that work?

19 A well, when you have a meeting like that, when you
20 have two principals and two attorneys --

21 Q Right

22 A It kind of -- and that's probably why the dynamics of
23 the table was set up so that you can see your attorney,
24 but you can see your -- you know, the counterpart, your
25 partner And -- in terms of Bob and I being able to see

0474

APP_0479

1 each other So it was set up, I guess, like that on
2 purpose There was the normal, you know, just general
3 discussion We talked about some tax situations which
4 I -- Curt brought up that I didn't agree with, so that
5 kind of changed the tenor of our meeting for a while, it
6 got a little testy

7 Q Yeah All right Now about right there, the number
8 two bullet on your thing says 7 5 percent stock options
9 Do you remember talking about a 7 5 percent stock option
10 in Atlanta?

11 A Yes, I do

12 Q What do you remember talking about on it?

13 A well, I think at that point, if I could just make the
14 record clear for that meeting, you know, Bob and I were
15 saying, this is what we agreed to Now, you guys have got
16 to figure out how to make this all work for us You know,
17 take that 2000 agreement and it's not 25 percent, it was 7
18 1/2

19 Q Okay Now, tell me about -- you talked about it
20 getting testy for a portion Did tax discussions come up,
21 is that what made it testy, what happened?

22 A No, it was the discussion about some NAPP issues,
23 about their -- the type of corporation they were and how
24 assets could be moved from one -- from this corporation to
25 a new corporation in a taxable event I have limited tax

0475

APP_0480

1 knowledge from my college education, but it just didn't
2 sound ethical to me And when I challenged on it, I was
3 rebuked pretty severely

4 Q When you challenged whom?

5 A Challenged Curt

6 Q What was the form of this rebuke?

7 A Turned his back on me, like that He looked the
8 other way He just sat there and turned away from me
9 Then I called him on that

10 Q what do you mean?

11 A I said you're acting like a child I mean, I'm just
12 questioning I don't think this is an ethical way to do
13 something And so --

14 Q was he giving you --

15 A And the relationship hasn't been the same since

16 Q Was he giving you tax advice?

17 A No, no, no He was explaining how things could be
18 done And I just simply from a business perspective was
19 questioning him I didn't -- seemed a bit feisty to me
20 And I was told I didn't know what I was talking about

21 Q Did y'all talk about an IRS audit?

22 A I think I brought that up, that I thought the IRS
23 might be interested in hearing what this transaction was
24 all about

25 Q What did Mr --

0476

APP_0481

1 A Or, he welcomed them --

2 Q He said what?

3 A He welcomed them in to look at it I said, hey,

4 that's great Let's get together and talk about it, maybe

5 go for dinner or something

6 Q What did you think about that comment?

7 A You know, I didn't know I was concerned, but just

8 about that line of thinking I didn't understand it It

9 just didn't seem appropriate to me to be doing that

10 Q Now, had any of your tax advisers ever told you they

11 would welcome an IRS audit?

12 A No

13 Q Okay Tell me about when you said you called Curt

14 for turning his back on you, what was Bob's reaction?

15 A Bob thought it was pretty funny

16 Q What do you mean?

17 A Just laughed I think Bob liked that kind of stuff

18 anyway you know, a little confrontation, it was -- added

19 a little spice to our meeting

20 Q Yeah Well, how did y'all reconcile, what happened?

21 A Well, we knew we were there for a reason We were

22 there to conduct some business So, you know what, cool

23 heads prevailed and we got back to the matters at hand and

24 the sideshow was ended And we set out to accomplish what

25 we were there for in the first place

0477

APP_0482

1 Q Uh-huh At this point, was most of the talking being
2 done by the lawyers or who was the back and forth with,
3 you and Curt? How did that work?

4 A No, it was good free flow of good exchange I mean,
5 ideas were put on the table We discussed them, moved
6 them around I mean, lots of things get discussed as
7 everybody has heard this week that we didn't seem to all
8 agree to, but we discussed a lot of things

9 Q Okay Did y'all four of you stay there for the whole
10 meeting or did you ever split up or what?

11 A No, we never actually left the table At one point
12 that was suggested maybe we should split up, but when the
13 cooler heads prevailed, we got serious and we got serious

14 Q I don't understand this part about --

15 A Well, because when -- I don't remember the exact
16 issue, but it was either part of the Richardson/Stodghill
17 disagreement, you know, I made the comment, hey, you know,
18 Curt, you are here, you are counsel to us Bob and I are
19 the principals So maybe we should move to another table
20 We'll work out the details and then we'll come back And
21 then we'll tell you guys this is what we agree to and then
22 you guys work it out It was just -- you know, seemed
23 like there was always a road block that would come up when
24 we would start talking about things And I just felt they
25 were personally road blocks that were coming from Curt

0478

APP_0483

1 Q So y'all were stuck at that point?

2 A On whatever that issue was I mean, you were asking
3 about adjournment and that comes to mind that's when we
4 talked about it It never actually happened, we didn't,
5 you know, cooler minds prevailed and we got back on -- we
6 started some serious discussion and we tried to move this
7 thing ahead

8 Q When was Curt's reaction, when you suggested the
9 principals go to a different table?

10 A You know, I didn't even look I don't know what his
11 reaction was at that point I don't know if he -- I don't
12 remember

13 Q I assume at that point, he had turned back around and
14 he was actually talking to you?

15 A Yeah, oh, yeah, he was engaged, everybody was engaged
16 in the discussion at that point

17 Q When you suggested going to another table, what did
18 Bob say?

19 A Well, it was probably Bob that got us back on track

20 Q Okay How long was the meeting? I don't see
21 anything in here about time, but just generally, how long
22 were y'all sitting there?

23 A A couple hours

24 Q A couple hours?

25 A Yeah

0479

APP_0484

1 Q Okay And what did y'all actually agree -- now did
2 you break up? Where did you leave it?

3 A Well, I mean, I think once we decided now we thought
4 we could make this work, there were kind of like homework
5 assignments, what needed to be done You know, you heard
6 mentioned a couple of times about this three-legged
7 stool --

8 Q Yeah

9 A -- that was, basically, what we had settled on in
10 order to get this new arrangement at the 7 1/2 percent to
11 work, those were the pieces that had to be put together by
12 the attorneys So it was on that ground that we left
13 Curt had his responsibility Rod has his responsibility
14 We went our separate ways

15 Q Tell me about that three-legged stool Maybe we can
16 use this to help in this part Because we're about to get
17 in the termination agreement Have to spend a couple more
18 seconds on it But anyway, the three-legged stool
19 That's kind of tall, isn't it?

20 A It is

21 Q Just stick it down here, I think everybody can see
22 it It's just generally for a reference Was one of the
23 legs of the termination agreement that we looked at and
24 we'll look at it a little bit?

25 A Yes, it was

0480

APP_0485

1 Q Can you see the back of it? Okay, you're creating on
2 the one on the back Okay This other leg down here that
3 says opt-on?

4 A Or the right side?

5 Q Yeah We know that the opt-on agreement never got
6 signed, we settled that this morning, didn't we?

7 A Yes, we did

8 Q Did the option agreement ever get killed in Atlanta?

9 A No, no, it didn't

10 Q Okay What happened? I mean, that leg, like option,
11 Dobson deal, charitable trust, what happened with that leg
12 of it?

13 A Well, when we arrived there, the 2000 agreement was
14 what we had in place There were option agreements going
15 back and forth right there in the morning -- maybe -- I
16 don't know whether one came that morning, but the day
17 before, there were option agreements I mean, we were
18 right there I mean, I thought we were going to get it
19 done

20 Q Did either of you -- go ahead, I'm sorry

21 A well, my point was that's the track that I was going
22 down and I assumed that Bob was on the track, that was
23 going to happen because there was just so much work being
24 done getting these option agreements

25 Q Right This issue about the Dobson, either the

0481

APP_0486

1 donation or the purchase sale agreement or whatever, did
2 you ever agree to do that in Atlanta or after?

3 A Putting money into the charity?

4 Q Yeah -- well, first of all, the donation Would you
5 have been okay just donating the money?

6 A When that was originally put on the table, I wasn't
7 opposed to it at all I just, you know -- although,
8 counsel -- my counsel was sitting here It's obvious when
9 you start talking about donations to charity, there's
10 probably some tax ramifications I need to talk to, you
11 know, my tax guy to make sure that I'm on good solid
12 ground here So at that point in Atlanta, I do not
13 believe that the Bobby Dobson Ministries had been called
14 out

15 Q Okay Looking back here at your notes, you just
16 reminded me, you talked about your tax guy, that note that
17 says, Needs to have Ed speak with something Curt -- Ed is
18 Ed Kidner?

19 A Speak to Curt

20 Q Yes

21 A Speak to Ed, it says

22 Q Yeah

23 A It also says at the top, need to have Ed speak with
24 Curt

25 Q On, yeah, so it's got Ed in that part That's Ed

1 Kidner, right?

2 A That's Ed Kidner, that's correct

3 Q And that's the tax guy you're talking about?

4 A Yes, it is

5 Q Okay Now, actually, you're talking about the Dobson

6 deal and the donation and all that, we're over on 4/15 leg

7 of the stool?

8 A Yes

9 Q Tell me at that point, you had not -- these were

10 mechanisms for how money was going to go to Bob?

11 A Yes

12 Q Okay And that money was from what?

13 A The money was to come from the 7 1/2 percent of the

14 proceeds of the sale of Reeves

15 Q Okay If we look at this triangle, is your 7 5

16 percent over on the option side?

17 A well, it's, actually, written in the termination

18 agreement, the 7 1/2 percent

19 Q Okay And then --

20 A Then the option is for 7 1/2 percent

21 Q Okay Then on the 4/15 side, is that Bob's 7 1/2

22 percent side?

23 A Yes

24 Q So we're still -- coming out of Atlanta, you're still

25 7 1/2 for 7 1/2?

0483

APP_0488

1 A That's correct

2 Q Okay I think we said before that's the like for
3 like part of it?

4 A Yes

5 Q Did you guy -- did you and Bob talk about options
6 after you left the Atlanta airport?

7 A We -- I don't know that I can site specifics, but I
8 would say yes, we probably did, telephone calls back and
9 forth talking about the options Maybe Bob asking where
10 they were or I'm asking him those kind of things, general
11 discussions

12 Q Okay

13 MR STILLWELL Mandy, can you put up that
14 November 13 e-mail real quick? 25

15 P J, you can pull it up there if you want to look
16 at it before she gets there

17 Can you just give me the whole body?

18 BY MR STILLWELL

19 Q P J, you talked about phone calls with Bob after
20 Atlanta talking about option Right there in that first
21 line on November 13th, which is two weeks --

22 A Almost two weeks following the meeting in Atlanta,
23 yeah

24 Q Did you all have a discussion that morning of November
25 13th about a 7 1/2 percent option agreement?

0484

APP_0489

1 A Yes

2 Q Okay And at that point, were y'all still talking --
3 had you heard anything other than 7 1/2 penn' a share at
4 that point?

5 A No, I had not

6 Q Okay And do you recall anything specific how about
7 that conversation?

8 A I think this response here, there was a question with
9 our estate or Bob asked me if the language in the 2 2
10 would have anything to do with the --

11 Q Yeah, yeah, we looked at that a couple of times

12 A And I said I needed to talk -- Billie and I had
13 engaged an estate planner because of what we knew was
14 coming

15 Q Yeah

16 A This is the -- we're about to realize the American
17 dream, we wanted to make certain that we had done
18 everything properly We never had a need for any of that
19 before So we just wanted to run that piece by, is this
20 worded properly and going through our estate and the Wills
21 and so forth

22 Q So your estate planning guy, this is a different
23 lawyer, right? Let's just leave him nameless, but that's
24 a different lawyer?

25 A Yes

1 Q And re's actually looking at those option agreements
2 that y'all are exchanging before Atlanta?

3 A Yes

4 Q And we won't go into that any further Right here at
5 the end, it says, Don't forget to sign the termination
6 agreement and return to me

7 A Yes, it does

8 Q Does that mean you didn't have it by then?

9 A Yes

10 Q And let's flip, actually, to the termination
11 agreement and try to knock this out We've probably about
12 talked it to death already

13 MR STILLWELL Mandy, if you can just put up the
14 first page

15 BY MR STILLWELL

16 Q Have you got the exhibit there, 22?

17 A I do

18 Q All right Let's knock this out November 5, is
19 that when you send it to Bob?

20 A Yes

21 Q November 13, you didn't have it back?

22 A That is correct

23 Q Let's count days real quick, 5th, 6th, 7th, 8th, 9th,
24 10th, 11th, 12th, 13th Did I mess that up? Nine days?
25 Eight or nine days?

1 A Yes

2 Q And Bob had it eight or nine days?

3 A Yes

4 Q Were you in any rush to get this?

5 A No

6 Q Okay Were you in a rush, generally, considering all

7 the things that were going on with DHS and whatnot and

8 your business, running your business regularly?

9 A Yeah, I'd say my general demeanor, I'm sure, wasn't

10 an easy-going guy to live with

11 Q So you don't sit still that well, do you?

12 A No, it's difficult,

13 Q Okay Let's flip to the second page, which is up

14 here on the board

15 A Yes

16 Q Okay This is the part we've been talking about over

17 and over These parts that I have outlined in red here

18 referencing the option, did you know those were in there?

19 A The bottom three lines

20 Q Yeah, the bottom -- this part right here I'm going

21 to --

22 A Yes, I did

23 Q Right there You knew those were in there?

24 A I mean, I know from looking at this document that

25 they were there

0487

APP_0492

1 Q Yeah You heard -- we've heard Mr Ellis talk about
2 we were going to terminate and then we were going to see
3 if we could agree on anything else Was that ever
4 anything that you agreed to in your mind to do in Atlanta
5 or afterwards?

6 A No

7 MR ELLIS Your Honor, I'll make the same objection,
8 I know we're doing some leading

9 THE COURT I appreciate that I've given the two of
10 you so much leeway, at this point in time, I'm not going
11 to rain on either one of you

12 MR STILLWELL Thank you, Your Honor

13 BY MR STILLWELL

14 Q P J , would you have signed this agreement if it did
15 not have something showing your 7 1/2 percent interest in
16 it

17 A No, I would not have

18 Q Did you at one point -- at one point in time learn
19 from Bob that he was not happy with this agreement?

20 A Yes, I did

21 Q And let me go back, was that later than when this --
22 around the time when this was signed?

23 A It was probably shortly after Bob signed it, he told
24 me that he had gotten, you know, a pretty stern talking to
25 from Curt about signing it

1 Q Was Billie in the room during this conversation, was
2 that separate, how did that work?

3 A No, I think Bob had a separate conversation with
4 Billie about that, very similar to what Bob and I
5 discussed about the document

6 Q And what did -- was it a phone conversation?

7 A Phone conversation?

8 Q Yeah, with Bob?

9 A Yes, it was

10 Q Okay

11 MR STILLWELL You can put that down, Mardy

12 BY MR STILLWELL

13 Q Okay I think we've probably seen that enough If
14 we come back to that phone conversation?

15 A Yes

16 Q Tell me, what did Bob actually say about what Curt
17 had said to him?

18 A I think -- well, as I remember, Bob said that Curt
19 walked into his office and I believe he threw this
20 document on his desk, or Bob's desk, and said what the
21 clerk do you need me for if you're going to sign something
22 like this

23 Q This was the termination agreement you're talking
24 about?

25 A Yes

1 Q And Bob said yesterday he confronted Billie about it,
2 was that the tone of that conversation?

3 A No, it was not confrontational at all Bob laughed,
4 he thought it was funny he laughed to me, he laughed to
5 Billie or a separate time No, there was no confrontation
6 at all

7 Q Between the time of that conversation and Stax Omega,
8 which we'll get to eventually, did Bob ever say anything
9 about that agreement? Did he ever say let's fix it or
10 anything like that?

11 A No, he did not

12 MR STILLWELL Mandy, can you turn to the
13 ratification agreement and remind me what number, you're
14 better than I am

15 MANDY 23

16 BY MR STILLWELL

17 Q P J , can you turn to 23?

18 A I have it

19 Q P J , I see there on 23 the ratification agreement
20 we have looked at before?

21 A Yes

22 Q I see there's a blank there by your name?

23 A That's correct

24 Q Had you ever seen this before this lawsuit started?

25 A No, I had never seen it before

1 Q Okay So Bob never told you that the termination
2 agreement that he was talking to you about at Stax had,
3 actually, been ratified by NARP?

4 A No, he never mentioned that at all

5 Q Okay Let me see if I get this stuff out if you'll
6 give me a second It will probably save some time Okay
7 I think you said yesterday that that termination
8 agreement, you just stuck it in your drawer?

9 A That's correct

10 Q Oh, that was this morning, my days are actually
11 running together Okay And that October 4 agreement
12 from Rod and Curt, that was always sitting in your drawer?

13 A Yes, it was

14 Q Okay After Atlanta, I want to kind of switch facts
15 on you Talk about what you were doing on the D+S, okay?
16 Who was doing your computations and stuff on your D+S side
17 for you?

18 A Ed Kidner was the point guy on that

19 Q Okay Was he doing anything in that time after this
20 termination agreement had been signed with calculating
21 Bob's share of the Reeves proceeds?

22 A Well, yeah, we were looking at the various scenarios,
23 the various ways depending on the -- what the actual
24 purchase price of Reeves would be, what the tax
25 ramification would be for Billie and I on our federal

1 income tax

2 Q Okay

3 A As well as the new company and, you know -- they said
4 for a small transaction, this was very complex

5 Q Let me look at one Now, at this point in time, you
6 didn't have -- in December, for instance, before Reeves
7 sold -- Reeves sold when?

8 A We closed on the transaction on the 5th of January of
9 '05

10 Q I think I actually ran onto another board here I'm
11 going to put this up, it might help you a little bit from
12 this point forward I promise you we'll move this board
13 faster You need some water?

14 A No

15 Q Okay

16 A At my age, you don't drink a lot of water in these
17 situations

18 Q All right Let me see where we are Sale of Reeves
19 in January?

20 A Yes, '05

21 Q Let's look at --

22 MR STILLWELL Mandy, this is the January 26 email
23 You got it? There you go

24 BY MR STILLWELL

25 Q Exhibit 54, P J He's better with the numbers than

1 I am now

2 MR STILLWELL Can you blow that up for us, Mandy?

3 BY MR STILLWELL

4 Q January 26, P J , is that after -- that's after the
5 sale of Reeves has already been done, right?

6 A Yes, that's correct

7 Q And this is you, Ed and Rick and you see Billie
8 there What are these numbers that you're sending to Ed?

9 A This was in response to a call from Ed, if I can
10 gather the expenses associated with the Reeves
11 transaction

12 Q So you're sending Ed the figures so he can do the
13 coding, right?

14 A That's correct

15 Q Right down there at the bottom, it says, There are a
16 couple calculations you will be working on, i e , our tax
17 exposure and the Castellani computation What is the
18 Castellani computation?

19 A That would be the computation of what 7 1/2 percent
20 of the transaction was for Bob

21 Q Okay

22 MR STILLWELL And, Mandy, can you put up Exhibit 1
23 for just a millisecond?

24 BY MR STILLWELL

25 Q P J , right, is that the Castellani computation?

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- 1 A Yes, it is
- 2 Q Who did that?
- 3 A That was done by Ed Kidner
- 4 Q Was that done, at least, partly on the numbers you
- 5 sent him in that previous email?
- 6 A I would assume that was
- 7 Q And that's what it came out to, the 415?
- 8 A Yes
- 9 Q Did you ever hear anything back from them about
- 10 whether the 415 was the right number or anything, I'm
- 11 talking about Bob and Curt?
- 12 A I don't know that there was ever any disagreement on
- 13 the number
- 14 Q Okay And the Castellani -- the sharing rate of 7
- 15 1/2 percent, that's the 075 right there?
- 16 A Yes
- 17 Q What is that Castellani share right there, the share
- 18 of the proceeds?
- 19 A That's the share -- that would be 7 1/2 percent of
- 20 the share of the sale I assume those are the deductions
- 21 that would have been made
- 22 Q I mean, in businessman terms, you are taking it off
- 23 the bottom line, not the top line, right?
- 24 A Correct
- 25 Q You're not seeing any before tax money?

1 A Right

2 Q Okay All right This money, this 415, still got

3 that money?

4 A Yes, I do

5 Q Okay Mr Ellis asked you a term, did you ever

6 tender the money, which is a legal term Did you ever

7 offer the cash to Bob Castellani?

8 A Yes, I did

9 Q When was that?

10 A When it was becoming more and more obvious that we

11 were reaching -- that we had some problems, particularly,

12 with the Dobson Ministry donation And I said it would

13 just seem to be a lot simpler to write you a check and

14 just pay you this

15 Q What did Bob say?

16 A No, Bob was stuck on the idea that -- the only option

17 that he had given us that come from his side, first was

18 the charitable, then it was the Dobson Ministry There

19 was never any other option that we had

20 Q So you went from the -- I guess the first one was

21 just pay the money, then a charity, then a --

22 A Right

23 Q Okay How many lines did he drive in there?

24 A Three

25 Q Okay The Dobson deal, let's talk about that