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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2008-CP-23-0231

Gary Hoyt,

Appellant,

v.

CollaborativeMed, LLC and
Richard L. Grounsell,

Respondents.

RECORD ON APPEAL, VOLUME 1

Mario A. Pacella
John R. Alphin
STROM LAW FIRM, LLC
2110 N. Beltline Blvd.
Columbia, South Carolina 29204
(803) 252-4800
Attorneys for Appellant

Richard L Grounsell, Pro Se
313 Jungle Road
Edisto Island, SC 29438
Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Garry Hoyt,

C.A. No. 2008-CP-23-02321

Plaintiff,

vs.

FINAL ORDER

CollaborativeMed, LLC, and
Richard L. Grounsell,

Defendants.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2014 JUL 29 AM 9 28

PROCEDURAL HISTORY

Garry Hoyt (hereinafter "Hoyt") instituted this suit on March 26, 2008 and subsequently amended to allege in pertinent part: 1) breach of fiduciary duty against Richard Grounsell (hereinafter "Grounsell"); 2) for the establishment of a constructive trust for shares of stock; 3) fraud; and 4) violation of Unfair Trade Practices Act. To the complaint Grounsell and Collaborative Med, LLC (hereinafter "Collaborative Med") entered a general denial and waiver among other defenses not pertinent here.

The matter came before me for trial on September 30 and 31, 2013. At the close of the evidence the court dismissed Hoyt's claim for Unfair Trade Practices Act violations.

FACTS

Hoyt and Grounsell were associates and acquaintances in the medical supply field. Collaborative Med is a limited liability company formed by Grounsell.

Prior to 2005, a group of doctors in Atlanta, Georgia developed an insulin delivery device which was ultimately named "Glucommander". While the doctors used the Glucommander to a limited degree, it was not approved by the Federal Drug Administration (FDA) and therefore not commercially marketable.

At a meeting with one or more of the doctors in 2005, Grounsell recognized the commercial potential of the Glucommander and began efforts to develop and market it. He contacted Hoyt with the idea that Hoyt would be in charge of marketing the Glucommander throughout the United States. Hoyt agreed.

Hoyt, Grounsell, and one doctor were to be one-third owners of a yet-to-be formed corporation that would market the Glucommander. Later the number was extended to include other shareholders. Additional shares were to be sold to raise capital.

Collaborative Med obtained the intellectual property rights of the Glucommander from the doctors by an assignment in 2005. (Defendant's Exhibit 7)

Prior to the formation of the corporation which was to market the Glucommander, Hoyt incurred expenses for travel and other costs in reaching out to hospitals and other potential customers. Through Collaborative Med Grounsell invested personal funds in seeking FDA approval and developing the necessary framework for marketing the Glucommander.

Grounsell exhausted his personal funds to gain FDA approval and to establish an organization to market the Glucommander. To raise funds Grounsell prevailed upon his family members to invest funds in Collaborative Med in exchange for the promise that they would receive a percentage of the stock granted to Collaborative Med in exchange for the right to market the Glucommander once FDA approval was obtained.

With the prospect of soon gaining FDA approval for the marketing of Glucommander, Grounsell moved forward to organize a corporation to be named Glucotec, Inc.

On March 24, 2006 an organizational meeting was held for subscribers to the capital stock of Glucotec, Inc. Grounsell and Hoyt were among the eight persons present. The incorporators unanimously adopted the Articles of Incorporation of Glucotec. (Plaintiff's Exhibit 8).

Also on March 24, 2006 Grounsell entered into what was styled as a Stock Subscription Agreement wherein Collaborative Med purchased 18,129,066 shares of Glucotec stock. This stock subscription was in exchange for Collaborative Med's right to sell the Glucommander under the FDA approval it was seeking.

On March 24, 2006, Hoyt signed a Stock Subscription Agreement for his 250,000 shares of founder's stock.

Glucotec, Inc. was formally incorporated March 28, 2006 as reflected in Plaintiff's Exhibit 1.

Among the By-Laws of Glucotec, Inc., was a provision requiring notice of meetings of the shareholders as to the place, date, hour and purpose of the meeting and for such notice to be sent to the shareholders at their address as it appears on the books of the Corporation not less than ten days and no more than fifty days before the date of such meeting.

On March 28, 2006 a Shareholder's Agreement was entered into by Hoyt, Grounsell and others which allocated what were known as founder's shares of stock. These founder's shares were given to the original contributors to the foundation of the corporation and at a very nominal sum. The founder's shares were restricted in terms of sale. Both Hoyt and Grounsell received the same number of shares and both signed the Agreement. The Shareholder's Agreement does not contain any mention of the stock subscription of Collaborative Med.

On May 11, 2006, six of the eight original stock subscribers for Glucotec met for what was styled as a "Glucotec Founders Group Stockholder's Meeting." Hoyt was not present. No notice was mailed to him and he maintained he had no notice of the meeting. Some Glucotec business was transacted at that meeting. According to several witnesses oral notice was given to Hoyt of the meeting.

On May 18, 2006, a Stockholders Meeting Minutes (Plaintiff's Exhibit 6) reflected that six of the eight incorporators were present to include Grounsell but not Hoyt. According to the minutes of this meeting the Shareholders voted to exchange the 18,129,066 shares of Glucotec stock in exchange for Collaborative Med's right to the development of the Glucommander. Grounsell had another shareholder vote his stock in favor of the exchange. Grounsell's two sons also vote their stock in favor of the agreement as well.

On May 18, 2006 Hoyt signed a Non-Disclosure, Non-Compete Agreement.

By check dated May 18, 2006, Hoyt paid \$250 for his 250,000 shares of Glucotec stock which were subsequently issued to him. Hoyt was also issued additional shares for his expenses. Hoyt sold all of his Glucotec stock at a profit and currently owns no stock.

Hoyt was employed by Glucotec for a short period of time and then fired.

CONCLUSIONS OF LAW

1. Stockholder Oppression.

Hoyt's first cause of action for stockholder oppression is governed by §33-8-310, S.C. Code. That section governs the conduct of corporate officers.

Although the parties dispute whether Hoyt had actual notice of the May 11 stockholders meeting, they do not dispute that notice was not given in strict compliance with Glucotec By-Laws. Grounsell does not dispute that he had an interest in Collaborative Med's receiving Glucotec's stock in exchange for the intellectual property rights of Collaborative Med. The burden is therefore on Grounsell to prove that the transaction was fair to the corporation. §33-8-310(c).

Without the legal right to market the Glucommander, Glucotec was not a viable corporation. The sole business of Glucotec was to sell Glucommanders for medical uses and without legal authority to sell the Glucommanders the business would fail. Collaborative Med

was under no obligation to permit the marketing and sale of Glucommanders by Glucotec. In essence, Collaborative Med could name its price for the right to market the Glucommander. Under these circumstances, Grounsell met his burden of benefit to the corporation and the transaction enabled Glucotec to begin business.

Hoyt was subsequently employed by Glucotec and signed a Non-Disclosure Non-Competition Agreement on May 18, 2006. He also accepted additional stock in the company.

For a short period of time Hoyt marketed the Glucommander through Glucotec and by doing so he accepted the assignment of the right to market the Glucommander as assigned by Collaborative Med. By accepting the benefits of the assignment of the rights to market the Glucommander Hoyt approved the transaction which benefited Glucotec for whom he worked.

2. Constructive Trust.

Hoyt claims a constructive trust should be imposed on twenty-five (25%) percent of the 18,129,066 shares of Glucotec stock transferred to Collaborative Med in exchange for the rights to the Glucommander. As quoted in Carolina Park Assoc., LLC v. Marino, 400 S.C. 1, 732 S.E.2d 876 (2012), "a constructive trust would arise whenever the circumstances under which property was acquired makes it inequitable that it should be retained by the one holding legal title." [p. 6 quoting Lollis v. Lollis, 291 S.C. 524, 354 s.e.2D 559 (1987)]

Hoyt has failed to establish a claim for a constructive trust for the following reasons. Grounsell and his family members contributed funds to Collaborative Med in exchange for twenty percent (20%) of the stock Collaborative Med was to receive for assigning the intellectual property rights of the Glucommander. Eighty percent (80%) of the 18,129,066 shares had been distributed to family members other than Grounsell. None of these parties are named defendants and therefore beyond this Court's jurisdiction.

Grounsell testified as to his financing Collaborative Med's attempts to get FDA approval and to develop the Glucommander in amounts of several hundreds of thousands of dollars. Without question, Grounsell is entitled to recover these funds that he spent toward the venture.

In essence, Hoyt requested that he be given 4,532,266 shares of Glucotec stock based on an oral promise that he would receive a fourth of the company stock. Hoyt tenders no payment of the said stock and has previously accepted shares of stock in exchange for the sweat equity he initially put into marketing the Glucommander.

Under these circumstances the Court does not find it inequitable that Grounsell retain the shares of stock allocated to him in exchange for the intellectual property rights of the Glucommander.

3. Fraud.

Hoyt's cause of action for fraud must fail.

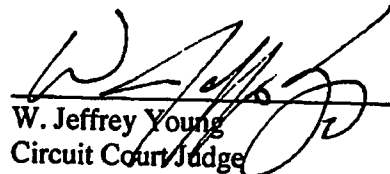
The nine elements of fraud, which are not repeated here, must be proved by clear, cogent and convincing evidence. Ardis v. Cox, 314 S.C. 512, 431 S.E.2d 367 (Ct. App. 1993). Failure to prove any one element is fatal to a cause of action for fraud. Brown v. Stewart, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001).

The first element of fraud is the representation. Hoyt relies on the representation that he would own twenty-five percent (25%) of a stock in a corporation that would market the Glucommander. To support a cause of action for fraud the representation must relate to a present or preexisting fact rather than a statement of a future event or an unfulfilled promise. Emerson v. Powell, 383 S.C. 293, 321 S.E.2d 629 (Ct. App. 1984).

Any representation to Hoyt concerning his share of a corporation not yet in existence or with a marketable product to sell is a future event.

Finally, Hoyt has the burden of proving damages in a set amount. No evidence was presented as to monetary damages allegedly suffered by Hoyt. While he may have a cause of action in contract, he does not have a cause of action for fraud.

AND IT IS SO ORDERED!


W. Jeffrey Young
Circuit Court Judge

July 12, 2014

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

FORM 4

JUDGMENT II CIVIL CASE

CASE NO. 2008 CP-23-02321

Garry Hoyt

CollaborativeMed, LLC and

PLAINTIFF(S)

Richard L. Grounsell

DEFENDANT(S)

Submitted by: O. W. Bannister

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.
- ☐ **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
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2156
Judge Code

7/17/2014
Date

or Clerk of Court Office Use Only

This judgment was entered on the 29 day of July, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of July, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

Mario Pacella, Esq.

2110 N. Beltline Blvd., Ste. A

Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

O. W. Bannister, Esq.

P.O. Box 10007

Greenville, SC 29603

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 CP-23-02321

Garry Hoyt

CollaborativeMed, LLC and

PLAINTIFF(S)

Richard L. Grouse, II

DEFENDANT(S)

Submitted by: O. W. Bannister

Attorney for: ☐ Plaintiff or ☒ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.
- ☐ **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
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2156
Judge Code29 April 2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Mario Pacella, Esq.

2110 N. Beltline Blvd., Ste. A

Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

O. W. Bannister, Esq.

P.O. Box 10007

Greenville, SC 29603

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Garry Hoyt,

C.A. No. 2008-CP-23-02321

Plaintiff,

vs.

FINAL ORDER

CollaborativeMed, LLC, and
Richard L. Grounsell,

Defendants.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2015 FEB 5 AM 11:24

This matter is before the Court on the Plaintiff's (Garry Hoyt) Motion for a new trial or in the alternative to Amend or alter this Court's Judgment filed on July 29, 2014. The gist of Hoyt's Motion is that the Court never ruled on Hoyt's breach of fiduciary claim and erroneously ruled in holding the Defendant Grounsell's action in the formation of a corporation, Glucotec, Inc. was fair to be Glucotec, Inc. pursuant to SC Code § 33-88-310(c).

The findings of facts by the court are set out in the Final Order of July 17, 2014 and need not be repeated in detail. Facts necessary to address the motion are set out however.

In 2005 Grounsell, Hoyt and a doctor verbally agreed to form a corporation to market a medical device called a Glucometer. At that time neither Hoyt nor Grounsell had any rights to the Glucometer and it could not be marketed to the public without Federal Drug Administration approval. Never the less, the parties agreed that each would own a one-third interest in the corporation.

Hoyt made some efforts to obtain customers for the Glucometer. He was later repaid for his expenses. Grounsell put up substantial personal funds to organize the business enterprise to include getting FDA approval and incorporating the business entity. At one point Grounsell needed funds to obtain the rights to the Glucometer so he could move forward. To secure the necessary funding Grounsell persuaded his family to put up money in an LLC (Collaborative

Med, LLC) to secure FDA approval. In exchange for this investment the five Grounsell family members were to receive an equal share of stock in Glucotec Inc., in exchange for their rights in the Glucometer.

Following the infusion of capital by Collaborative Med, LLC, Grounsell was able to obtain FDA approval of the marketing of the Glucometer and to incorporate Glucotec, Inc.

During the organization of Glucotec, Inc. Hoyt agreed to become a one-fourth owner of shares in Glucotec, Inc. along with an expanded group who received founder shares as well as Hoyt.

Once Glucotec, Inc. was organized, the corporation transferred 18,129,000 shares to the Grounsell limited liability company (Collaboration Med., LLC) in exchange for the rights to the Glucometer. Hoyt claims he is entitled to 25% of their stock (4,532,266 shares) based on the oral agreement in 2005 that he would be a one-third owner of the shares of Glucotec, Inc., which was later amended to a one-fourth owner.

Hoyt asserts that Grounsell owed him a fiduciary duty as a promoter or founder of Glucotec, Inc. and that is a correct statement of the law.

Hoyt's position that he should be awarded 25% of the stock used to obtain the product that Glucotec was to market is a perversion of that principle.

Grounsell's actions must be viewed in the light of economic and factual reality. At the time of the initial discussion about setting up a corporation to market the Glucometer, neither Grounsell nor Hoyt had the right to market the Glucometer and, indeed, the Glucometer could not be marketed without FDA approval. No written agreement was prepared or signed and no one bound themselves to pay for the anticipated expenses.

Following the initial meeting, Hoyt made some effort to fulfill his part of the bargain in approaching potential customers. Whatever funds or expenses he incurred he was reimbursed for.

While Hoyt was exploring the market for the Glucometer, Grounsell was spending substantial funds and making a substantial effort to advance the project. He reached a point where he needed money to keep the project going. At this point no corporation had been formed and no FDA approval had been obtained.

Grounsell turned to his family and entered into an arrangement with them to put up the money to secure the rights to the Glucometer in exchange for stock in the yet to be incorporated business to market the device. Without this infusion of capital the project could not go forward. After Glucotec, Inc. was formed, Glucotec, Inc. purchased the rights to the Glucometer in exchange for 18,129,066 shares of Glucotec, Inc. stock paid to Collaborative Med, LLC. Hoyt claims the 2005 discussion that he would be a one-third owner of Glucotec, Inc. entitled him to his portion of this stock.

Here are the factual positions of the parties. Hoyt had some monetarily small expenses in contacting customers for which he was reimbursed. He also had some time involved.

Grounsell had personal funds invested in seeking FDA approval and in setting up Glucotec, Inc. to market the Glucometer. Grounsell's family members had put up money in Collaborative Med, LLC to buy the rights to the Glucometer.

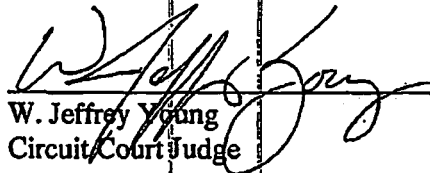
Without Grounsell's efforts, money and time, the project would never have gotten started. Without the Grounsell family money being invested through Collaborative Med, LLC the project would never have gotten started.

The Court finds these efforts and funds were devoted toward a common goal of marketing the Glucometer successfully. In reality Hoyt benefitted from these efforts and the

monetary advances of other people. Rather than violating any fiduciary duty owed to Hoyt, the Court finds the actions of Grounsell actually benefitted Hoyt and ultimately delivered to him a windfall for which he invested no money and very little time. The Court finds no violations of any fiduciary duty owed to Hoyt under these facts.

Finally, Hoyt seeks to set aside this Court's findings that Grounsell's actions benefitted the corporation and the failure to follow requirements for corporate meetings should be excused. After considering the matter, the Court declines to change its decision.

AND IT IS SO ORDERED!


W. Jeffrey Young
Circuit Court Judge

Date: 29 April 2015

1 STATE OF SOUTH CAROLINA)

) COURT OF COMMON PLEAS
) 2008-CP-23-2321

2 COUNTY OF GREENVILLE)

3)
4)
5 Garry Hoyt)

) TRANSCRIPT OF RECORD
)

6 -vs-)

7 Collaborativemed, LLC)

8 Day 1 - September 31, 2013
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE JEFFREY YOUNG, Judge.

12 A P P E A R A N C E S

13 MARIO PACELLA, Esquire
14 JOHN ALPHIN, Esquire
Attorney for the Plaintiff

15 OSCAR BANNISTER, Esquire
16 Attorney for the Defendant

17
18 CAROLINE HISKELL
19 Thirteenth Circuit Court Reporter
20
21
22
23
24
25

I N D E X

WITNESSES

DR

CR

RED

REC

Bruce Bode

10

25

Garry Hoyt

49

E X H I B I T

IDENTIFICATION

ID

IN EVD

Plaintiff

1 Articles of Incorporation

18

18

2 Agreement

19

22

3 Bi-laws

22

22

Hoyt vs. Collaborativemed, LLC

P R O C E E D I N G S

1
2 THE COURT: This is the case of Garry Hoyt
3 versus Collaborativemed, LLC and Richard Grounsell, Docket
4 No. 2008-CP-23-2321. Gentlemen, would you all introduce
5 yourself for the court reporter, please.

6 MR. PACELLA: Mario Pacella from the Strom
7 Law Firm behalf of the plaintiff Garry Hoyt.

8 MR. ALPHIN: John Alphin from the Strom Law
9 Firm on behalf of Garry Hoyt.

10 MR. BANNISTER: Bill Bannister on behalf of
11 the defendant Mr. Grounsell.

12 MR. GROUNSELL: Rick Grounsell.

13 THE COURT: Alright, gentlemen, anything
14 preliminarily?

15 MR. PACELLA: Your Honor, plaintiff had a
16 pending motion for partial summary judgment pending for
17 about a year. We actually appeared twice. It's our
18 argument that it had been continued and a third scheduled
19 time it got cancelled before we even came here. So we'd
20 like to proceed with our motion of partial summary
21 judgment first.

22 THE COURTS: I'm getting ready to try to
23 whole case. How long do you think this case will take?
24 How many witnesses do you have?

25 MR. PACELLA: We'll be calling three

Hoyt vs. Collaborativemed, LLC

1 witnesses.

2 MR. BANNISTER: Judge, we have the defendant
3 and I have four under subpoena.

4 MR. PACELLA: The summary judgment motion
5 would streamline the trial if the Court agrees with my
6 motion.

7 THE COURT: Okay. Well, let's proceed with
8 motion for summary judgment.

9 MR. PACELLA: Your Honor, may I? I do have a
10 copy for the Court if Your Honor would like a courtesy
11 copy.

12 THE COURT: Thank you.

13 MR. PACELLA: Mario Pacella on behalf of
14 Garry Hoyt in this action against Collaborative Medical,
15 Collaborativemed, LLC, and Richard L. Grounsell.

16 This case is really about the number of
17 founding shareholders of the corporation called GL and the
18 purpose of the corporation was the market a product called
19 the glucommander.

20 The parties, there were three partners, a
21 Dr. Bruce Bode, Mr. Garry Hoyt, and Richard L. Grounsell.
22 They sought to form this corporation with essentially with
23 a third partnership which became 25% each because the 25%
24 of the shares of stock were to go to employees.

25 In May of 2011, there was a shareholder's

Hoyt vs. Collaborativemed, LLC

1 meeting where Mr. Grounsell who was president and CEO of
2 the board was seeking to have in excess of eighteen
3 million shares to be authorized shares of GL stock
4 transferred to Collaborativemed, LLC, a company which he
5 wholly controlled. So it's an interested director
6 transaction where Mr. Grounsell was on both sides of the
7 transaction.

8 Under South Carolina Code 33-8-310 sets forth
9 the standard of what needs to happen for an interested
10 director transaction and in this case is requires the
11 material facts to be disclosed to the shareholders and the
12 shareholders approve the transaction. It also requires
13 under Section D of that statute for the person, the
14 interested director, interested shareholders, shares to be
15 not counted for any purpose.

16 This are also when you're doing an interested
17 director transaction is a special meeting of the
18 shareholders which requires notice under both the bi-laws
19 of the corporation which is, I believe, attached as
20 Exhibit E to our submission and under 33-7-105a. I think
21 what I'd like to do is go through the requirements of the
22 notice as the statute requires and as the bi-laws require.

23 The statute requires the notice be no less
24 than 10 days before the meeting and no more than 60 days
25 before the meeting where as the bi-laws require notice to

Hoyt vs. Collaborativemed, LLC

1 be provided no less than 10 days before the meeting no
2 more than 50 days before the meeting. That notice
3 requires description of the meeting and the purpose of the
4 meeting. The statute requires that the notice be in
5 writing unless oral notice is reasonable. However, in
6 this case the bi-laws which on Page 6 of the bi-laws
7 establishes that notice actually needs to be made by
8 direct mail to the address of the shareholders at their
9 home address within that 10 to 50 day range.

10 And, in this case, I've got deposition
11 testimony attached that neither Mr. Hoyt nor Dr. Bode
12 received notice of the meeting either in writing or
13 orally.

14 In contrast and the only opposition to
15 plaintiff's motion for partial summary judgment is a fact
16 in Paragraph 5 of Mr. Grounsell affidavit and I will read
17 that for the Court: "Garry Hoyt received notice of the
18 initial Glucotec Shareholder's meeting of May 11, 2006.
19 Lori LePoint, Glucotec's corporate secretary emailed
20 Mr. Hoyt with notices of the initial shareholder's
21 meeting. In addition there were several telephone
22 conversations between Mr. Hoyt and the GL office regarding
23 the meeting. Mr. Hoyt's contention that he did not
24 receive the notice of the initial shareholder's meeting is
25 simply not true." Those statements by Mr. Grounsell are

Hoyt vs. Collaborativemed, LLC

1 not admissible evidence. It's actually pointing to
2 hearsay evidence. There's no affidavits of Ms. Lori
3 LePoint attached to this. There's no emails attached to
4 this submission and the reality is under the case law in
5 South Carolina, and I'll point to a case Laus versus
6 Poiter Brothers which 292 SC 444. It's a Court of Appeals
7 decision in 1987 that if it's inadmissible at trial, then
8 it's inadmissible at summary judgment in response to
9 summary judgment.

10 There's no evidence even if you take this
11 statement in Mr. Grounsell affidavit as evidence of
12 opposing motion for summary judgment, there's no evidence
13 that the bi-laws of the corporation were complied with,
14 the bi-laws requiring the notice to be mailed to the
15 shareholder's address. And there's also interestingly
16 enough the bi-laws require a 50% quorum and this meeting
17 of the shareholders, if Mr. Grounsell abstained from
18 voting like he was supposed and abstained from the shares,
19 they wouldn't have had a quorum to have that meeting. So
20 that eighteen million, one hundred and twenty nine
21 thousand and sixty-six shares of stock should not have
22 been transferred. That's a breach of fiduciary duty as to
23 another incorporator or another founding member, Mr. Garry
24 Hoyt, my client. It also has damaged him because it has
25 reduced the value of the stock that he had. It also did

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1 not allow him to maintain his 25% shares of the
2 corporation.

3 As to the breach of fiduciary duty claim,
4 additionally Collaborativemed, LLC received this stock.
5 Because it received it improperly Collaborativemed, LLC
6 holds that in a constructive trust for the plaintiff.

7 There's no genuine issue of material fact as
8 to notice. There's no genuine issue of material fact as
9 to the fact that Mr. Grounsell shares voted in this
10 interested director transaction in violation of South
11 Carolina law and requires partial summary judgment as to
12 liability, Your Honor. And those are the facts. Thank
13 you, Your Honor.

14 THE COURT: Thank you. Mr. Bannister.

15 MR. BANNISTER: Judge, there is a return to
16 the motion for summary judgment that sets forth the
17 standard he would have to meet for that and it's basically
18 a case of he said, she said.

19 Mr. Grounsell says Mr. Hoyt did have notice
20 of the meeting of the shareholders. He refused to sign a
21 non-compete non-disclosure agreement and therefore he
22 would have been precluded from the meeting in any event.

23 Subsequently, he did sign the non-compete
24 agreement, I believe, the 18th and therefore he received
25 his shares of stock. Under the circumstance, we would

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1 contend as set forth here that there was sufficient
2 evidence to make it a question as to whether he had notice
3 and complied with the requirements that was set forth for
4 him to come into the initial shareholders meeting. Thank
5 you.

6 THE COURT: Reply.

7 MR. PACELLA: Your Honor, there is actually
8 no notice in the bi-laws of the corporation that requires
9 the signature of a non-compete before attending an initial
10 shareholder's meeting and because of that, that argument
11 isn't sufficient to establish notice and to establish he
12 wasn't permitted to be at the meeting and there's nothing
13 that controverts the fact that Mr. Grounsell voted his
14 shares of -- he actually had an employee of Glucotec voted
15 his shares in that interested director transaction and
16 that makes the transaction void under the South Carolina
17 law.

18 THE COURT: Y'all have studied this case for
19 a long time. I have seen it for ten minutes. It would be
20 impossible for me to make a quick decision. I'm going to
21 have to take that under advisement, but while I take it
22 under advisement we'll start the testimony for the trial.

23 MR. PACELLA: Your Honor, my summary judgment
24 is my opening statement.

25 THE COURTS: Okay.

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1 MR. BANNISTER: I'm not used to having
2 opening statements in a non-jury trial. Judge, I think it
3 will become fairly obvious as we go through so I'll forego
4 the opening statement.

5 THE COURT: Alright. You may call your first
6 witness.

7 MR. PACELLA: Your Honor, Dr. Bruce Bode.

8 And, Your Honor, there is a witness under
9 subpoena in the court and I'm not making a motion for
10 sequestration.

11 THE COURT: So you're not?

12 MR. PACELLA: I am not.

13 BRUCE BODE, having been duly sworn, testified
14 as follows:

DIRECT EXAMINATION

15 BY MR. PACELLA:

16 Q. Dr. Bode, would you state your name and address?
17

18 A. Bruce Welch Bode. I live at 3972 Crestant Court,
19 Atlanta, GA, 30319.

20 Q. How long have you lived at that address?

21 A. Been living there since 1989, June of 1989.

22 Q. Could you briefly go over your educational
23 background.

24 A. I grew up in the Boston area. I went to college
25 at the College of Whister in Whister, OH, got a BA in

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1 Biology. I then attended Emory University School of
2 Medicine in 1977, graduated there 1981 and then did my
3 internship and residency in internal medicine finishing in
4 1985 from Emory University School of Medicine, and then I
5 did a fellowship in the field of diabetes under Paul C.
6 Davidson from 1985 through '87.

7 Q. Do you have any board certifications?

8 A. Yes, I'm board certified in the field of internal
9 medicine.

10 Q. Since the completion of your residency and
11 program with Dr. Davidson, what's your employment history?

12 A. I stayed employed since 1985 initially under Paul
13 C. Davidson, PC which in turn became Atlanta Diabetes
14 Associates the last ten or so years. So I been in the
15 same employment since leaving my internship and residency.

16 Q. Do you belong to any professional organizations?

17 A. Yes, I am a member of the American Diabetes
18 Association, Juvenile Diabetes Research Foundation, the
19 American Association of Clinical Endocrinologists.

20 Q. At one time you had a partnership with a
21 Dr. Steade and a Dr. Davidson?

22 A. Yes. When I joined the practice with Paul C.
23 Davidson, his associate at the time was R. Dennis Steade
24 and we were together as a group which was made up of Paul
25 C. Davidson, PC.

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1 Q. And they were endocrinologists; is that correct?

2 A. Yes, they were both board certified
3 endo chronologists.

4 Q. Have you heard the term glucommander?

5 A. Yes, glucommander is an IV insulin delivery
6 system that was the -- the algorithm was initially
7 developed by Paul C. Davidson. Back in the early 1980s,
8 he had mathematical formulas to calculate insulin delivery
9 to be delivered along with IV along with glucose. Dennis
10 Steade who at that time was a resident and then a fellow
11 with him computerized the algorithm known as what is known
12 today at glucommander.

13 Q. During that time frame, the 1980s to 1990s, where
14 was it used?

15 A. Initially we started using it in 1985 at a
16 hospital in Atlanta known as Shaleford Community Hospital
17 which had a diabetes unit under the asepis of Diabetes
18 Treatment Centers of America. Dr. Steade at the time
19 allowed Diabetes Treatment Centers of America to also use
20 glucommander in their other hospitals so it was being used
21 in about 60 to 70 other hospitals around the country.

22 Q. And at some point were there any publications
23 about the glucommander?

24 A. Yes, we published our initial abstract in
25 glucommander. In 1986 was our initial abstract. We then

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1 published our initial ten years worth of data in Diabetes
2 Care in 2005.

3 Q. Explain how the glucommander works in a hospital
4 setting briefly for the Court.

5 A. Sure. This is an algorithm where you have a
6 software system loaded on a computer where the nurse will
7 input the name of the patient and then input the glucose
8 value in the computer system and it then calculates the
9 insulin dose to be delivered. The algorithm also
10 incorporates not only amount to be delivered by how often
11 to check the glucose. Typically the variable is anywhere
12 from twenty minutes up to two hours. And then you put the
13 target in that you wish to control the patient to be.

14 So it's basically instead of a nurse
15 contacting a doctor to actually determine the amount of
16 insulin you deliver, it's there in the software to
17 actually tell the nurse what to do and if they have any
18 questions, they can certainly call me, a medical physician
19 at that time.

20 Q. And this product for a number of years was not
21 marketed.

22 A. The product in 1980 -- Dr. Steade allowed
23 American Health Ways or Diabetes Treatment Centers to use
24 it but it couldn't be marketed because IV insulin itself
25 was not approved by the FDA. At the time regular insulin

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1 was only approved for subq. use and we needed to gain
2 approval for IV use. And so the only one that could do
3 that is a pharmaceutical company that made the insulin.
4 So eventually NoVonortus obtained approval for IV regular
5 insulin use in late 2005. It was September 2005.

6 Q. And you said subq., is that subcutaneous?

7 A. Yes, it means subcutaneous insulin. As you know
8 it's made by the pancreas. People with diabetes do not
9 make sufficient amount of insulin so you can either give
10 it subq., which is what people do at home, but in the
11 hospital you can give it intravenously which has been done
12 for 50 plus years but nobody ever submitted it to the FDA.

13 And the FDA requirement is that if a medical
14 device is going to be approved, that the drug utilized has
15 to be approved for that method and delivery. So the
16 glucommander could not be marketed under the FDA until IV
17 insulin gained FDA approval.

18 Q. Were you kind of involved in a business venture
19 to try to market the glucommander?

20 A. Yes. I had worked with Dr. Davidson and
21 Dr. Steade to develop a partner with us and I met Rick
22 Grounsell in the summer of 2005. I had known him before.
23 He used to work for a company called MiniMed and I and
24 Dr. Davidson and Steve Rosso, prescribers of MiniMed, so
25 we knew Rick back in the 1980s throughout the early '90s.

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1 And then he came to our office in the summer of 2005
2 wanting to know what was hot in diabetes and he had two
3 sons that had just graduated college and he was wanting to
4 hopefully get them in the diabetes field.

5 I told him that one of the hottest items at
6 the time was the need for type glycemic control and that a
7 publication was made in the New England Journal of
8 Medicine showing that if you normalize glucose in the
9 intensive care unit, specifically the surgical intensive
10 care unit, you not only reduce mortality significantly by
11 over 30%, you also had a marked decrease in morbidity
12 including renal failure, pneumonia, sepsis and length of
13 stay.

14 I also told Rick at that time I knew
15 NoVonortis because I was working with them to gain FDA
16 approval of IV regular insulin and that the glucommander
17 could possibly be marketed and approved by the FDA. And
18 so he became interested in that.

19 After that time I met him -- this was in late
20 June 2005, he decided to come with me to the American
21 Association of Diabetes Educators because I was giving a
22 presentation there on type glycemic control also by
23 glucommander which we had made several presentations and
24 publications at that time. So basically I then finally
25 met with -- we discussed further about this and he said he

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1 had wanted to join me in taking this commercially to make
2 it commercially available and he said we would be 50/50
3 partners. I was representing Dr. Steade and Dr. Davidson
4 as our portion and he was representing himself and the
5 deal was he was going to go ahead and gain FDA approval of
6 it, develop the marketing in the commercialization of the
7 product and we were the science and the medical support
8 for the product.

9 Q. How did plaintiff, Mr. Hoyt, become involved?

10 A. Garry Hoyt, he also had worked for MiniMed and he
11 had run the western division of MiniMed back in the late
12 -- back in 1985 through the early 90s and Rick had run the
13 east division so I had known Garry through MiniMed days of
14 insulin pump delivery, which was subq. delivery by a pump.
15 If I had known him then and he seemed to obviously do well
16 from marketing and sales of a product.

17 Rick asked if Garry could come in and he
18 wanted him to be a third partner in it so we would each
19 have 33 percent ownership. So we discussed this time
20 frame was around September that he brought Garry into my
21 best knowledge. I started working with Garry as well as
22 Robbie Booth on the commercialization of this product and
23 what we need to look at.

24 Q. Who is Robbie Booth?

25 A. Robbie Booth is a software developer that worked

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1 with us to develop the commercialization of the product as
2 well as going ahead and gaining FDA approval, submit to
3 the FDA and gain FDA approval of the product. At that
4 time he was working for Rick Grounsell.

5 Q. Did that deal one-third, one-third, one-third,
6 did that deal change?

7 A. Later on in the fall -- I can't remember -- it
8 was the fall of 2005 or early 2006 Rick came and felt -- I
9 think it was early 2006 -- that he felt like Robbie was
10 crucial as well as other employees that he needed to hire
11 for the company and bring the company -- bring the
12 commercialization and the sales of glucommander
13 nationwide. He would need to have to employees have
14 partial ownership and so he wanted to have 25% given to
15 the employees and so we were now each 25%.

16 I and my entity with Paul Davidson was 25%,
17 Garry Hoyt was 25%, Rick Grounsell was 25% and the
18 employees were 25%.

19 Q. At this time, did you have a position with
20 Glucotec, a title?

21 A. Yes. My title was basically chief medical
22 officer and intimately involved in business development
23 and looking for partners for Glucotec.

24 MR. PACELLA: Your Honor, may I approach the
25 witness?

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1 THE COURT: You may.

2 (Articles of Incorporation marked as
3 Plaintiff's Exhibit No. 1 for identification.)

4 BY MR. PACELLA:

5 Q. Dr. Bode, I've handed you a document which is
6 marked for plaintiff's identification Exhibit 1 and have you
7 seen this document before?

8 A. Yes, I've seen this document before. It's part
9 of the Articles of Incorporation in the company named
10 Glucotec, Incorporated in Greenville, South Carolina.

11 MR. PACELLA: Your Honor, the witness
12 actually has a certified copy from the Secretary of State
13 Department.

14 THE COURT: Do you have any objection?

15 MR. BANNISTER: No, Your Honor.

16 THE COURT: Plaintiff's Exhibit No. 1 is
17 admitted without objection.

18 (Articles of Incorp previously marked as
19 Plaintiff's Exhibit No. 1 for identification was admitted
20 into evidence.)

21 BY MR. PACELLA:

22 Q. Dr. Bode, you've seen this document before but
23 did you see this at the time it was filed?

24 A. No, I did not. I did not see this at all.

25 Q. Can you identify the signature at the top of the

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1 first page as well as the top of the second page?

2 A. Yes, it's Richard L. Grounsell at both places.

3 Q. Do you recognize that as Mr. Grounsell's
4 signature?

5 A. Yes, it is.

6 Q. It also notes that the authorized number of
7 shares was 40 -- how many?

8 A. Authorized shares is forty million.

9 Q. Were you aware when Glucotec was incorporated
10 there was forty million authorized shares?

11 A. No, I was not.

12 MR. PACELLA: I beg the Court's indulgence
13 for just a moment.

14 THE COURT: Yes, sir.

15 (Agreement marked as Plaintiff's Exhibit No.
16 2 for identification.)

17 BY MR. PACELLA:

18 Q. I'm handing you Plaintiff's Exhibit 2 for
19 identification purposes, have you seen this document
20 before?

21 A. Yes, I have seen this document before.

22 Q. Can you identify that document?

23 A. It's a Glucotec, Incorporated Shareholder's
24 Agreement where it's witnessed at that time by all the
25 shareholder's of the corporation at that time.

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1 Q. Could you look at Page 6, are there any
2 signatures on that page?

3 A. No, there are not.

4 Q. Dr. Bode, in your capacity as medical director of
5 Glucotec, is this a document that is kept in the regular
6 course of business?

7 A. I would have kept this in the ordinary course of
8 business.

9 Q. And is this a true and accurate reflection of the
10 shareholder's agreement that you were testifying about?

11 A. It's the agreement to the -- if the shares added
12 up to when I initially saw this when I talked to this
13 which wasn't until May or June of 2006, he says they were
14 allocating one million shares, I would get 250,000
15 founding shares, he would get 250,000, Garry Hoyt would
16 also and then the remaining employees at the time, key
17 employees, would get 250,000. This adds up to 60,000 more
18 given to Hank Durschlag as the additional shares.

19 Q. Who is Mr. Durschlag?

20 A. I had known Hank Durschlag at that time but I
21 guess he had come in and at that time he said he was
22 president of Glucotec and he was getting 60,000 shares in
23 addition because he had signed on as president and chief
24 operating officer.

25 MR. PACELLA: Your Honor, I'd like to make a

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1 motion to admit Exhibit 2.

2 THE COURT: Any objection?

3 MR. BANNISTER: You have a signed copy?

4 MR. PACELLA: Mr. Bannister, the only signed
5 copy I have is the one that was submitted in response to
6 the motion for summary judgment, but it's a direct copy of
7 what is submitted in Mr. Grounsell's affidavit.

8 THE COURT: Any objection?

9 MR. BANNISTER: No objection.

10 THE COURT: Plaintiff's Exhibit No. 2 is
11 admitted without objection.

12 (Agreement previously marked as Plaintiff's
13 Exhibit No. 2 for identification was admitted into
14 evidence.)

15 BY MR. PACELLA:

16 Q. Dr. Bode, I'm going to show you a document
17 entitled bi-laws of Glucotec, Incorporated, have you seen
18 this document before in your capacity as medical director
19 of Glucotec?

20 A. Yes.

21 Q. Is this a document that you would keep in the
22 ordinary course of business?

23 A. Yes.

24 Q. In terms of the last page, there is no signature;
25 is that correct?

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1 A. That's correct.

2 Q. Have you seen a signed copy of these bi-laws?

3 A. I have not seen a signed copy.

4 Q. Is this a true and accurate copy of the bi-laws
5 of Glucotec, Incorporated to the best of your knowledge?

6 A. Yes, to the best of my knowledge.

7 MR. PACELLA: Your Honor, I move to admit.

8 THE COURT: Any objections?

9 MR. BANNISTER: No objection.

10 THE COURT: Without objection Plaintiff's
11 Exhibit No. 3 admitted into evidence.

12 (Bi-laws marked as Plaintiff's Exhibit No. 3
13 for identification was admitted into evidence.)

14 BY MR. PACELLA:

15 Q. Going back to Plaintiff's Exhibit 2, you
16 testified who Mr. Durschlag is, who is Mr. Ethridge?

17 A. Mr. Ethridge was a friend of Giddeon Clark
18 Grounsell's who was one of the sales people who was
19 working under Garry Hoyt.

20 Q. And the two Grounsells were Lee Grounsell and
21 Rick Gounsell, Richard Grounsell's children?

22 A. Yes. Lee Grounsell was also a salesman working
23 under Garry Hoyt -- sorry -- Clark Grounsell was a
24 salesman working under Garry Hoyt and Lee was working more
25 with Robert Booth and distribution of the product.

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1 Q. Dr. Bode, what was the role of Collaborativemed,
2 LLc?

3 A. I really didn't get to know Collaborativemed, LLc
4 until 2006, but apparently it was an LLc, so instead of us
5 forming a new LLc, he would just use that because he had
6 formed it for future medical entity but nothing was
7 entered, so he was going to use that in order to help
8 facility the development of commercialization of Glucotec
9 and glucommander.

10 Q. Dr. Bode, I'm going to turn your attention to May
11 of 2006, were you aware that there was a shareholder's
12 meeting in May of 2006?

13 A. No, I was not aware at all.

14 Q. Are you now aware that there was a shareholder's
15 meeting?

16 A. Yes, I know there was a shareholder's meeting but
17 I did not become aware of it until later in 2006.

18 Q. Now, remind the Court what your address was at
19 the time?

20 A. My address was 3972 Preston Court, Atlanta, GA
21 30319.

22 Q. And that was through the entirety of 2006?

23 A. Yes, and my office at the same time had not
24 changed either.

25 Q. And did you ever receive a written notice of the

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1 shareholder's meeting to that address in May of 2006 or
2 within the two months before that?

3 A. I never received any shareholder meeting either
4 by telephone calls, emails, or written notice.

5 Q. Did you get any information that you might be
6 able to appoint a proxy to vote at any shareholder's
7 meeting in May of 2006?

8 A. I never received any knowledge of this meeting
9 what so ever.

10 Q. Would you have voted to give Collaborativemed
11 eighteen million, one hundred and twenty nine ---

12 MR. BANNISTER: Your Honor, I believe that's
13 a speculative question would he have done something in
14 regards to that.

15 THE COURT: If this were a jury, I would
16 probably grant that, but I'll sustain the objection. I'm
17 trying to get as much information as I can.

18 THE WITNESS: I would not have voted any
19 eighteen million shares to Collaborativemed under the
20 ownership of Rick Grounsell by himself, because that means
21 he was taking way more than 25% of the shares of Glucotec
22 so I certainly would not have done that. From what I
23 understood right from the very beginning I was a 50%
24 partner with Rick, I managed the money with him. I then
25 was a 33% partner with Rick. I still matched whatever

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1 money he put in. I then became a 25% partner with Rick
2 with Garry Hoyt as 25% and the employees is 25%, I still
3 matched all the money on whatever he spent on that.

4 Q. And this corporation Glucotec has gone through a
5 couple of different iteration in this litigation; is that
6 correct?

7 A. Yes. Glucotec has gone through different
8 iterations. It's now held by another holding company
9 called Desico, which is based in Delaware. It has a very
10 significant board of very well respected people and the
11 company looks like it will become successful we hope in
12 marketing glucommander to the rest of the US.

13 Q. What's your role with the current corporation?

14 A. I am currently a consultant, a medical advisor,
15 as well as involved in business development with them. So
16 I am still -- I'm an advisor to the board. I have a board
17 seat but not a voting member and I will continue to work
18 with them on a daily basis.

19 MR. PACELLA: Your Honor, may I consult with
20 my co-counsel.

21 THE COURT: Okay.

22 MR. PACELLA: That's all the questions I
23 have.

CROSS-EXAMINATION

24
25 BY MR. BANNISTER:

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1 Q. Dr. Bode, you testified to the agreement that you
2 had with Rick Grounsell and about a partnership. Nothing
3 was every put in writing, letter, memorandum or document
4 that you produced here today that ever spoke of any type
5 of agreement that you had with Rick Grounsell or Mr. Hoyt;
6 is that correct?

7 A. There were eventual documents, but when I did my
8 initial handshake agreement with Rick there was no
9 document at all through 2005. There was no document. I
10 then wrote a check at that time and I think that was my
11 first -- I think I wrote the check to Collaborativemed in
12 January 2006 when I asked how much money Rick had spent on
13 the venture because I wanted to make sure I was equal with
14 him in the money.

15 Q. Was this to be a partnership or a corporate
16 venture, or did y'all even discuss whether it was to be a
17 partnership or a corporate venture?

18 A. In essence in my mind as he termed it as a
19 partnership. We worked together as partners, initially
20 two equal partners and then three equal partners giving
21 the employees benefit.

22 Q. Now, you're in a partnership, I think, with some
23 other doctors.

24 A. Yes, we now have Atlanta Diabetes Associates
25 which is now an S-Corporation, but I don't really know the

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1 legality of that.

2 Q. Back in 2005 when you were dealing with
3 Mr. Grounsell, were you a member of a partnership with the
4 other doctors at that time?

5 A. Yes, at that time we had five people in our
6 practice that were partners.

7 Q. And y'all had it set forth each person's shares
8 and responsibilities?

9 A. They were developed after that in 2005. They
10 came in 2006 or so, so we did not. It was a handshake
11 agreement.

12 Q. They were your partners prior to Mr. Grounsell?

13 A. Yes.

14 Q. Had you ever been in a partnership and had a
15 written document showing your partnership?

16 A. Not that I'm aware of.

17 Q. So this is new to you?

18 A. Very new to me.

19 Q. Would you discuss how the partnership would be
20 set up in any manner, how the profits, if any, would be
21 shared, how the expenses would be met?

22 A. I discussed with Rick, as you know it's a
23 development company, so it's really developing thing so we
24 knew there wouldn't be profits for quite some time and any
25 money to be made would be put back in the corporation. I

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1 think Rick at that time discussed salaries of each
2 individual and what each would do. I know Garry Hoyt
3 wasn't getting paid, he was just using his time. I'm not
4 sure if Rick was getting paid. I know Robin Booth was
5 getting paid and I know the employees were certainly
6 getting paid.

7 Q. You used the term when you were describing the
8 conversation with Mr. Grounsell as S-Corporation. You had
9 heard the term corporation in connection with this
10 venture, is that not true?

11 A. I heard the term Glucotec, Incorporated so I
12 guess that's a corporation.

13 Q. Were you aware of the difference between a
14 partnership and a corporation?

15 A. I probably not know the difference the two.

16 Q. So you did not know the difference?

17 A. I don't know the true difference. When I formed
18 it -- when he was forming Glucotec, Incorporated, I
19 thought our partnership is going into a corporation again
20 four equal entities as he described, initially three, then
21 four.

22 Q. Dr. Bode, did you ask or seek anybody's advise or
23 clarification as to this relationship you were entering
24 into with Mr. Grounsell?

25 A. At that time it was a handshake agreement and I

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1 did not seek advise. I certainly got advise after I
2 realized the allocation of shares. He took eighteen
3 million plus shares and allocated me 250,000 shares. I
4 thought that was inappropriate and I put the same amount
5 of money he did.

6 Q. Who kept the accounts of how much was being spent
7 in this venture?

8 A. At that time, I don't know who kept the account.
9 I know eventually Hank Durschlag came in and did a full
10 summary of all the accounts and all the money spent. I
11 know that for a fact because I asked him when I met him in
12 june of 2006 I needed to know what the money what the
13 money was spent.

14 MR. BANNISTER: Your Honor, I have to object.
15 I believe he's getting into hearsay.

16 THE COURT: Sustained.

17 BY MR. BANNISTER:

18 Q. So you really were, in your own mind, didn't have
19 a business plan other than you claim it was supposed to be
20 a third and then fourth?

21 A. Yes, and it was his idea to go to a fourth, yes.

22 Q. After the corporation was formed, was there any
23 other money raised by you?

24 A. After the corporation was formed, yes, there was.
25 When he said he needed money to keep it going and he was

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1 getting \$100,000 from each of his children or equivalent.
2 I said, well, I knew he had three children and that's
3 \$300,000. He said the deal was closing immediately so I
4 had my friend in Spartanburg bring down a \$300,000 check
5 to get it to him immediately.

6 Q. That was not your money, though?

7 A. It was my money but I couldn't get it wired up to
8 them that quick but he certainly cashed that check.

9 Q. And you made reference to earlier a check made to
10 Collaborativemed?

11 A. Yes, and I asked him what Collaborativemed was
12 and he said it's a holding company. There's nothing in it
13 and it's just to hold the company and that's all it was.

14 Q. On the check he put loan.

15 A. He told me it would be appropriate to put loan.

16 Q. Yes or no, first.

17 A. Yes.

18 Q. From this check of \$100,000 you put loan?

19 A. Yes.

20 Q. And made it to Collaborativemed?

21 A. Yes.

22 Q. So you know there was a Collaborativemed was an
23 LLC at that time?

24 A. I knew at that first time when he told me to make
25 it to that, yes.

Hoyt vs. Collaborativemed, LLC

1 Q. And you designated on the check "loan"?

2 A. Yes.

3 Q. And subsequently you were paid back these funds?

4 A. I was never paid back those funds.

5 Q. You were never given Glucotec stock in exchange
6 for your \$100,000 loan?

7 A. Yes, I was given Glucotec stock.

8 Q. So the answer is, yes, you were paid back.

9 A. Yes. I thought you meant cash, but stock, yes.

10 Q. Collaborativemed, when did you learn
11 Collaborativemed was getting FDA approval for
12 glucommander?

13 A. I know Robbie Booth and I were instrumental with
14 Garry Hoyt in working on the FDA submission to the
15 glucommander. Robbie lived in our office from late 2005
16 early 2006 until he submitted it to the FDA making sure
17 everything was there that he needed. I was working with
18 him all the time in between patients as I was seeing
19 patients.

20 Q. Robbie Both was an employee of Collaborativemed?

21 A. I don't know what he was an employee of but he
22 was being paid through the partnership or the corporation
23 Rick Grounsell and I had started. Was it paycheck from
24 Collaborativemed, I don't know.

25 Q. So in any event you were working with him prior

Hoyt vs. Collaborativemed, LLC

1 to the FDA approval which was submitted by
2 Collaborativemed?

3 A. I did not know the FDA approval was being
4 submitted by Collaborativemed. I did not know that. I
5 know we were submitting for the FDA approval of
6 glucommander, I knew that. I didn't know the entity that
7 it was being submitted by. I didn't know if it was
8 Glucotec or Collaborativemed. I didn't look at that.

9 Q. Did you have a position in 2005 or 2006 with
10 either Collaborativemed or Glucotec? Glucotec was not
11 formed at that time, was it?

12 A. I guess the Articles of Incorporation are here.

13 Q. In Exhibit 1, Glucotec was not formed until March
14 28, 2006?

15 A. Yes, that's correct.

16 Q. And the FDA approval was prior to that time, is
17 that your understanding?

18 A. FDA approval was not prior to that time, it got
19 approved in June of 2006.

20 Q. So it was after the formation of Glucotec, the
21 incorporation of it?

22 A. Yes.

23 Q. Glucotec work had been done by the FDA to have
24 FDA approval prior to the formation of Glucotec?

25 A. State that again.

Hoyt vs. Collaborativemed, LLC

1 Q. Work had been done with the FDA to have
2 glucommander approved prior to the formation of Glucotec
3 Corporation?

4 A. Yes.

5 Q. And it is your recollection that it was not
6 approved to after the formation of Glucotec?

7 A. Yes, that's correct.

8 Q. Now, during this whole time you were still
9 practicing medicine full time?

10 A. Yes.

11 Q. It required you to be in Atlanta and you saw
12 patients?

13 A. Yes.

14 Q. So during the period of 2005, 2006, how much
15 actual contact did you have with Rick Grounsell in terms
16 of meetings?

17 A. We'd probably meet initially weekly. He would
18 come and meet me somewhere and have me speak. He would
19 then bring different people from nurses to -- he brought
20 Garry Hoyt involved. I would then talk to them weekly.
21 By then we would meet with Robbie Booth probably two or
22 three days a week through the FDA submission to make sure
23 it was done appropriately. He was working in my actual
24 office room. He was there using one of the desks.

25 Q. You recall meeting in Texas?

Hoyt vs. Collaborativemed, LLC

1 A. Yes, I do.

2 Q. What took place at that meeting and when was it?

3 A. To the best of my recollection was in June of
4 2006 but it could have been late May 2006.

5 Q. This would have been after the formation of
6 Glucotec.

7 A. Yes. I was one of the experts on it on the
8 committee of diabetes specialists from around the US. I
9 think it was being put on by Cardinal Health but I'm not
10 certain. We were having a televised program going out to
11 several hundred sites in the country at that time control
12 of glucose in the hospital, the importance control of
13 glucose in the hospital and how to do that.

14 At that time they wanted me to meet the
15 potential future president, president, or director of
16 sales or something involved in this what I called a
17 partnership. Now it's called Glucotec Incorporation and
18 that Garry Hoyt was bringing that person in for me to meet
19 to see if he was suitable to be the national sales manager
20 and Rick was there. At the same time, I'm vague and
21 almost positive, Hank Durschlag was there, but I'm not
22 positive.

23 Q. Okay. And what was discussed at that meeting?

24 A. At that time Rick was saying we had a million
25 shares was allocate and I was getting 250,000, he was

Hoyt vs. Collaborativemed, LLC

1 taking 250,000, Garry was taking 250,000, and he was
2 giving the employees 250,000. So that's in this exhibit
3 Plaintiff's. I don't remember Hank D* getting 60,000 then
4 but it could have certainly been there. So we discussed
5 that. I then talked to him are you getting any other
6 shares and he was very vague about it. I said how about
7 the money I put in so far, where is that going and he said
8 well, we're thinking about putting any monies spent put in
9 would be at 25 cents a share and we would allocate that
10 and we are going to go raise money at \$1 a share.

11 At that time, I had raised upwards of almost
12 three million dollars from my friend's money to put in the
13 company. Sometime around that same time they had a
14 private placement memorandum that they were developing by
15 some company. I think it's here in Greenville.

16 Q. I have two questions for you, have you ever heard
17 of the term founder's shares?

18 A. This is what they say here ---

19 Q. Is that a yes or no?

20 A. I've heard the term founder's shares.

21 Q. When did you first hear it?

22 A. I'm not sure when I first heard it, but I don't
23 know.

24 Q. Do you know what it signifies?

25 A. Well, those are the people who founded the

Hoyt vs. Collaborativemed, LLC

1 company.

2 Q. Do you know whether founder's shares can be
3 issued without being purchased and paid for?

4 A. They implied to me they could be issued without
5 being paid for at a penny a piece, but I think they're
6 still paid for.

7 Q. By who?

8 A. By the founders. I think you have to pay and you
9 get a 1009 at a penny a piece for those shares.

10 Q. Did Mr. Grounsell use the relative term founder's
11 shares?

12 A. I don't know if he did. I know Hank Durschlag
13 did.

14 Q. So the term founder's shares, as you understood
15 it, is shares that you would be issued as one of the
16 founders of the corporation?

17 A. Yes.

18 Q. And I believe Glucotec shareholder agreement is
19 Exhibit 2 refers to that as restricted shares. Did you
20 understand that the 250,000 shares you were getting were
21 founder's shares as you understood the term?

22 A. I'm looking to see if it says -- all it says here
23 is restrictive shares. I thought they were founder's
24 shares, but maybe they were just restrictive shares. I'm
25 not sure.

Hoyt vs. Collaborativemed, LLC

1 Q. Did you get any shares that you would designate
2 as founder's shares initially other than the 250,000
3 shares?

4 A. I don't remember but there was something about
5 50,000 shares at one time but I'm not sure what that was
6 initially.

7 Q. So this 250,000 shares could be your founder's
8 shares?

9 A. They certainly could be.

10 Q. For which you did not pay any money, exchange any
11 money?

12 A. I'm not sure if we got a 1099. I remember
13 getting several 1099s over these.

14 Q. Did you take money yourself and buy these 250,000
15 shares as exhibited in Exhibit 2?

16 A. Yes, I wrote a check to Glucotec but it was very
17 little money, \$250 or whatever it was for these.

18 Q. Are these initial shares are 25 cents a shares or
19 some small amount?

20 A. No, these shares were 25 cents, these were one
21 cent a share.

22 Q. One cent a share.

23 A. Yes.

24 Q. You paid \$250.

25 A. Yes.

Hoyt vs. Collaborativemed, LLC

1 Q. Now, you also mentioned that you had sold your
2 friends shares or had an arrangement to buy stock from
3 Glucotec, did I understand you correctly, to fund
4 Glucotec?

5 A. Yes, there was a private memorandum going around
6 and Rick was asking his acquaintances and I was asking
7 mine and Garry Hoyt was asking his for people who would be
8 interested in purchasing shares in Glucotec Incorporated
9 which I thought it was 25 percent shareholder, so we were
10 looking for money to be invested.

11 Q. The money that was coming from your investors
12 going to Glucotec Corporation?

13 A. Yes, they would do it upon signing a private
14 placement memorandum.

15 Q. And in exchange for your investors putting this
16 money in the corporation, they would get shares of stock?

17 A. Yes.

18 Q. Now, that would dilute your one-fourth ownership
19 of the company, would it not?

20 A. Yes, it would.

21 Q. And that was acceptable to you?

22 A. Yes.

23 Q. You understood that these investors would dilute
24 your shares of stock?

25 A. Yes.

Hoyt vs. Collaborativemed, LLC

1 Q. By putting money in it.

2 A. Yes.

3 Q. Now, going back to May, did you recognize at that
4 time in getting these investors, recognize at that time it
5 would take funds to run Glucotec Corporation in this
6 venture?

7 A. Sure.

8 Q. And you had a position there in good faith?

9 A. Yes.

10 Q. What was your position?

11 A. Chief medical officer.

12 Q. And how much were you to be paid? Did you draw a
13 salary?

14 A. At think at that time they were allocating ---

15 Q. Is that a yes or a no?

16 A. Yes.

17 Q. What was your salary?

18 A. From what I remember it was \$5,000 a month.

19 Q. \$60,000 a year.

20 A. Yes.

21 Q. In exchange for that were you to come to
22 Greenville, that was the headquarter's location.

23 A. I would come to Greenville whenever they
24 requested me to.

25 Q. And this would be in addition to your practice of

Hoyt vs. Collaborativemed, LLC

1 medicine?

2 A. Yes.

3 Q. Did you check to see what anybody else, Mr. Hoyt,
4 Mr. Grounsell's salaries were?

5 A. At that time, no, I did not look. I did not look
6 at it. I was going to find out later. It wasn't
7 disclosed to me.

8 Q. By then you recognized you were not going to end
9 up being one-fourth owner of the entire Glucotec venture?

10 A. Yes, I knew that.

11 Q. At some point, you recognized that Mr. Grounsell
12 or Collaborativemed had gotten the FDA approval of this
13 glucommander?

14 A. Yes, that was his agreement with me. That was
15 what he would do. We would give him the intellectual
16 property and the algorithm to do so.

17 Q. You loaned \$100,000 to Collaborativemed which you
18 got back Glucotec stock.

19 A. Yes.

20 Q. Did you pay any other funds towards the
21 development or approval of FDA?

22 A. Only my time and any expenses I incurred for
23 travel. I always covered my own expenses, I never
24 submitted them a bill and anywhere I went I covered hotel
25 rooms, meals, et cetera.

Hoyt vs. Collaborativemed, LLC

1 Q. Did y'all have an office anywhere for Glucotec
2 once it was formed?

3 A. Yes.

4 Q. And you paid the rent on that?

5 A. The corporation did.

6 Q. You didn't.

7 A. I did not.

8 Q. You didn't contribute to that expense?

9 A. I matched his expenses whatever he said he had
10 all the way up until April of 2006. He didn't give me any
11 more expenses after that.

12 Q. Then the corporation is up and running and
13 selling stock?

14 A. Yes.

15 Q. Now, do you actually know what Mr. Grounsell
16 spent out of his own pocket to get FDA approval and get
17 the building and get the salaries and the people in the
18 corporation up and running?

19 A. I don't know the exact amount. He told me what
20 he had spent in January when I wrote him a check for
21 \$100,000. He said he had spent anywhere from \$220,000 to
22 \$260,000, but he was going through it and he was having I
23 think it was Lee to go through it further to make sure
24 that was true. So I assumed he would have more expenses
25 so I decided to give him \$100,000 check at that time to

Hoyt vs. Collaborativemed, LLC

1 cover my one-third obligation.

2 Q. This is the check you referred to as a loan?

3 A. Yes.

4 Q. And subsequently you got repaid so I don't want
5 to go through again. You didn't keep up with the expenses
6 Mr. Grounsell was incurring in formation of the company,
7 would that be a fair statement back in January when you
8 wrote this check?

9 A. I asked him again was he putting any more money
10 into the corporation and he said, yes, he needed more
11 money. He was going to have each of his kids put in
12 \$100,000 each for the corporation so I matched it with
13 \$300,000 via my friend Doug Mayen wrote a check.

14 Q. You now understand Mr. Grounsell's
15 Collaborativemed had the intellectual property for the FDA
16 approval for it?

17 A. They had the FDA approval for glucommander. The
18 intellectual property really came from our group under
19 Paul Davidson and Dr. Dennis Steade.

20 Q. Was there any writing which you are aware that
21 assigned that intellectual property to Collaborativemed or
22 Glucotec from your doctors?

23 A. I don't know if they eventually signed it. I
24 know they were in a huge legal battle. I know Rick
25 Grounsell sued Dr. Dennis Steade, I know that. And that

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1 eventually got settled or disappeared. I know there was
2 legal action between Dr. Davidson and Rick Grounsell in
3 trying to settle that. I know that was going on but I
4 don't know the specifics.

5 Q. So you didn't ask your partner Dr. Steade or
6 Dr. Davidson what it was about?

7 A. I know exactly what it was about. It was about
8 Rick wanting the intellectual properties signed completely
9 over to him and Dr. Steade wanted the non-disclosure
10 agreement before he gave it and Rick Grounsell refused to
11 sign the non-disclosure agreement. So when Rick Grounsell
12 refused to sign it, he then sued Dr. Steade over not
13 signing it.

14 Q. But ultimately Glucotec received intellectual
15 property for Collaborativemed, is that a fair statement?

16 A. In essence they eventually received FDA approval
17 of glucommander, yes.

18 Q. They couldn't sell glucommander without FDA
19 approval, correct?

20 A. Glucotec could not sell glucommander without FDA
21 approval.

22 Q. Glucotec received something that belonged to
23 Collaborativemed in exchange for the same eighteen million
24 shares of stock. That's a yes or no and then you can
25 explain.

Hoyt vs. Collaborativemed, LLC

1 A. Yes. From what I have read subsequently
2 Collaborativemed was given eighteen million shares stock
3 apparently fourteen million for the intellectual property
4 and another four million for expenses, furniture,
5 telephone equipment, office space during that time so he
6 wrapped up all of his expenses in at that time.

7 Q. Now, you look back at your calendar as to where
8 you were physically when the shareholder meeting in
9 question, March, took place?

10 A. They claim I was in Europe and I don't remember
11 being in Europe. I was in Europe in June of that year.

12 Q. Were you ever in Ireland?

13 A. Yes, it was Ireland in June of that year. I
14 don't go to Ireland in March of 2006, it's too cold. I go
15 in the summer which would be June.

16 Q. So you dispute that you were out of town or out
17 of touch?

18 A. I was not out of town or out of touch. I have a
19 cell phone and I have it on 100% of the time until I
20 walked into the room and turned it off.

21 Q. Had you previously heard the figure thirteen
22 million shares approximately to go to Collaborativemed in
23 exchange for the FDA approval?

24 A. I heard from subsequently -- I thought there was
25 fourteen million.

Hoyt vs. Collaborativemed, LLC

1 Q. You heard some number like that?

2 A. This was later on in 2006 after I found this out
3 after June of 2006.

4 Q. When did you get a private placement
5 specifically?

6 A. I never got a private placement memorandum mailed
7 to me. My friend Tony Tintalla got one in the mail and
8 called me sometime in June of 2006 and informed me I was
9 not a 25% owner. I was barely a 2% owner of Glucotec
10 Incorporated and I was in a state of shock over that.

11 Q. That was the first time you heard that?

12 A. Yes. I called Garry Hoyt at the time and he said
13 he would take care of it and he said he would call Rick.

14 Q. You mentioned that you had gotten your investor
15 to invest \$300,000 in Glucotec, that was after private
16 placement had been disclosed to you?

17 A. No, it was before private placement.

18 Q. And do you remember that date?

19 A. It was either late February or very early March
20 2006. Rick had talked about his family was investing
21 sometime in mid-February. I called my friend, he came
22 down and met with Rick and discussed it with him and wrote
23 him a check for \$300,000. So I was just matching exactly
24 what his family was putting in.

25 Q. What was the name of the friend?

Hoyt vs. Collaborativemed, LLC

1 A. Douglas Armstrong MaHan.

2 MR. BANNISTER: Thank you.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION

5 BY MR. PACELLA:

6 Q. With respect to Mr. MaHan, did you pay Mr. Mahan
7 back?

8 A. Yes, I did.

9 Q. You testified earlier that you made a \$100,000
10 loan to Collaborativemed; is that correct?

11 A. Yes.

12 Q. And that you were paid back from Glucotec with
13 Glucotec stock?

14 A. Yes.

15 Q. And you didn't see any difference between
16 Collaborativemed and Glucotec for the purposes of this
17 business venture you were involved in?

18 A. To me, Rick said they were all one in the same.

19 Q. You testified about a salary, were you paid that
20 salary?

21 A. I was never paid the salary. Eventually when
22 they -- apparently when Hank Durschlag said they took in
23 account the shares they gave me at that time in lieu of
24 salary.

25 MR. PACELLA: Thank you, Your Honor.

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1 THE COURT: Any re-cross based upon his
2 redirect?

REDIRECT EXAMINATION

3
4 BY MR. BANNISTER:

5 Q. Did you receive the payment of that \$100,000 from
6 the shares of stock that was issued to CoMed out of this
7 eighteen million?

8 A. No, I received them from Glucotec is what they
9 said on it.

10 Q. You sure that you didn't get it from CoMed?

11 A. Not that I'm aware of, no.

12 Q. Could be, though, you got it from CoMed?

13 A. It would have said CoMed shares. It didn't say
14 CoMed shares.

15 Q. If CoMed received this eighteen million some odd
16 shares of stock from Glucotec and paid you back your
17 \$100,000 loan with the shares it receives from Glucotec,
18 it would be CoMed repaying the loan with Glucotec stock,
19 would you agree with that?

20 A. It certainly could have happened.

21 MR. BANNISTER: Thank you.

22 THE COURT: Why don't we take a break.

23 (Whereupon, there was a break.)

24 MR. PACELLA: As a matter of procedure, may
25 Dr. Bode be excused?

Hoyt vs. Collaborativemed, LLC

1 THE COURT: Any objection.

2 MR. BANNISTER: Dr. Bode is excused.

3 THE COURT: Time wise, how do you want to
4 proceed.

5 MR. PACELLA: What I would prefer to do, Your
6 Honor, is call Mr. Hoyt do his testimony and we'll be call
7 Mr. Grounsell as a witness for the plaintiff and start
8 that in the morning.

9 THE COURT: How long do you think your cross-
10 examination will be.

11 MR. BANNISTER: Would you give me an
12 opportunity to get out of the court this afternoon, I
13 would say I would be very ---

14 THE COURT: Whatever y'all want to do. If
15 you want to go ahead and start his testimony tomorrow
16 morning or take his direct and do his cross.

17 MR. BANNISTER: That would be ideal.

18 THE COURT: Let's go ahead and take his
19 testimony and do his cross in the morning. He understands
20 he won't be able to discuss it with you.

21 MR. PACELLA: He understand that and if you
22 would just me a moment, my co-counsel is doing a little
23 prep but if I can go out and ask him to come back in.

24 THE COURT: You can do that. If you want to
25 come up here and be sworn.

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1 Place your left hand on the Bible and raise
2 your right hand.

3 GARRY HOYT, having been duly sworn, testified
4 as follows:

DIRECT EXAMINATION

5 BY MR. PACELLA:

6 Q. Mr. Hoyt, would you please state your name and
7 address for the Court.

8 A. Garry W. Hoyt, 7 Alcove, Grapevine, Texas 76051.

9 Q. You are a resident of Texas?

10 A. Yes.

11 Q. And at that address, how long have you been at
12 that address?

13 A. Thirty years.

14 Q. Mr. Hoyt, what is your educational background?

15 A. College education at Butler University in
16 Indianapolis. I graduated with a business administration
17 degree.

18 Q. And if you could take the Court briefly through
19 your work history starting right after college?

20 A. The day after I graduated I started working for a
21 garbage collection company in Chicago that was eventually
22 bought out by Browning Faris Industries. I worked there
23 three years and then I was recruited by a company to
24 become a partner in a company to sell vertical bailing
25

Hoyt vs. Collaborativemed, LLC

1 presses to supermarkets for cardboard reclamation.

2 I spent three years there and then I spent
3 six years with a publishing company who had two
4 publications. One was for the solid waste disposal
5 industry garbage collection and the other was for scrap
6 metal processing. So I was a salesman there and I wrote
7 feature articles for both publications.

8 And then I was recruited by a friend to
9 switch into the medical business. I was recruited as an
10 IV pump salesman. I started the first week of 1980 as a
11 sales representative for IMED Corporation.

12 Q. That was IMED?

13 A. I-M-E-D. I spent four years in Chicago and then
14 was promoted as a regional management to Texas and spent
15 the last two years with them there. After IMED I was
16 recruited for MiniMed through some associates from IMED
17 and worked there for six years as western divisional sales
18 manager and after that I worked for a competitors of
19 theirs called Desiel Connect for three years as a paid
20 consultant. And then a paid consultant for a number of
21 different medical and other entities until about five
22 years ago at which time I joined a long term care nursing
23 home pharmacy in the Dallas Fort Worth area and spent four
24 years with them as a salesman.

25 Then that company dissolved and then I was

Hoyt vs. Collaborativemed, LLC

1 recruited by a long term care nursing home software
2 company to sell software to nursing homes.

3 Q. Mr. Hoyt, during some of that employment, you had
4 a relationship with Mr. Grounsell; is that correct?

5 A. While we both worked at IMED. We were salesmen
6 together and then we became regional managers together and
7 we worked six years together at that company and then he
8 and I both worked at MiniMed and I was there for six
9 years, I believe. He might have been there longer than
10 that and then I worked for him in two different companies,
11 Diabetes Management Services and another software company
12 that he owned and then Diabetes Pregnancy which he
13 eventually sold to a company and that was my last
14 involvement with Rick before we joined and pursued the
15 commercialization of the glucommander.

16 Q. When were you invited to do that?

17 A. After the AADE meeting that Dr. Bode mentioned in
18 Washington and then Rick called me and asked me if I might
19 be interested in pursuing that commercialization at which
20 time I said yes. I asked him at that point what the
21 arrangement was going to be company-wise and he said 33
22 1/3 for me, 33 1/3 for the doctor's group and 33 1/3 for
23 himself.

24 Q. What was going to be your role in the company?

25 A. Sales and marketing.

Hoyt vs. Collaborativemed, LLC

1 Q. That's what your history was?

2 A. Correct.

3 Q. At some point a third, a third, and a third
4 became a different arrangement; is that correct?

5 A. That's right. Rick's recommendation was to
6 dilute our stake in the company to allow stock to others
7 in the company that were contributing. Robbie Booth
8 certainly was and Hank Durschlag was brought in. That
9 wasn't part of the initial, but his two sons and another
10 gentlemen who did not have any experience in the medical
11 industry were awarded 50,000 founder's shares as well. So
12 it went down, supposedly 25 percent four ways, but then
13 with the addition of 60,000 to Mr. Durschlag, the
14 one-fourth the employees were supposed to be getting had
15 already gone past 250,000 shares to 310,000 shares, I
16 believe.

17 Q. We're talking about the partnership being 25%
18 shares, did you understand that you had to arrange funds
19 by selling stock?

20 A. Yes. Every company I had been in except the ones
21 that didn't last for long, ended up getting diluted to
22 attract more investment for the operation of the company
23 and I knew that going in. It had happened before and that
24 is the practice in growing business. You attract more
25 money and you get diluted.

Hoyt vs. Collaborativemed, LLC

1 Q. What was your understanding as to the ownership
2 relationship that you would have as to Dr. Bode and
3 Mr. Grounsell and the employees?

4 A. The three of us would be equal ownership
5 positions and at that point in time the employees that
6 identified that I just mentioned would get a 25% share,
7 which it went over the 25%.

8 Q. Did you have any understanding of the role of
9 Collaborativemed involved in the commercialization of
10 glucommander?

11 A. No, not really.

12 Q. Not at that time but you understand now?

13 A. Yes, I do.

14 Q. And you understand now what Mr. Grounsell was
15 claiming?

16 A. Yes.

17 Q. But at the time you didn't have any idea?

18 A. No.

19 Q. Who is approving the FDA approval on behalf of
20 this partnership?

21 A. Robbie Booth, Hank Durschlag, and myself.

22 Q. Did Dr. Bode help?

23 A. Dr. Bode, certainly.

24 Q. What role did you play in getting FDA approval?

25 A. Proofreading the submission because of my medical

Hoyt vs. Collaborativemed, LLC

1 history and making recommendation for changes for
2 clarification purposes.

3 Q. And what role did Dr. Bode have?

4 A. Very much the same.

5 Q. Robbie Booth, do you know who he was employed by?

6 A. Glucotec.

7 Q. And that was your understanding?

8 A. That was my understanding, yes, as I was at no
9 pay.

10 Q. And Robbie Booth was an employee receiving stock;
11 is that correct?

12 A. Yes.

13 Q. Now, you were here during the summary judgment
14 motion and you had heard Mr. Bannister talk about a

15 non-compete agreement that you had to sign. Were you
16 aware of that non-compete agreement that you had to sign?

17 A. I was made aware of it when Rick told me I had to
18 sign one or I would not be invited to a stockholder's
19 meeting.

20 Q. When he told you that, did he tell you when that
21 stockholder's meeting was?

22 A. No.

23 Q. Did he tell you what the purpose of that
24 stockholder's meeting was?

25 A. No.

Hoyt vs. Collaborativemed, LLC

1 Q. Did he ever indicate to you that he was going to
2 ask that Glucotec transfer over eighteen million shares of
3 stock to Collaborativemed, LLC?

4 A. Certainly not.

5 Q. And you didn't receive any written notice of a
6 meeting at your residence?

7 A. No.

8 Q. Did you ever get offer or document that you can
9 vote by proxy at a shareholder's meeting in May of 2006?

10 A. No.

11 Q. With respect to Glucotec, you didn't put any of
12 your own money in the company; is that correct?

(13 A. Well, no, I actually I put about \$30,000 worth of
14 expense money in the company on the come as you were I
15 invested my own money for all the traveling around the
16 United States and the agreement was that would be
17 converted into stock at some later time in Glucotec.

18 Q. Did you, in fact, receive that stock?

19 A. Yes.

20 Q. Ultimately?

21 A. Yes.

22 Q. And what were you doing? You said you were
23 spending your own money to pay for your expenses, what
24 exactly were you doing for the company?

(25 A. I was traveling the United States calling on

Hoyt vs. Collaborativemed, LLC

1 hospital chains and individually owned and operated
2 hospitals to introduce the glucommander concept to them
3 and I called on people that Dr. Bode suggested I call on,
4 contacts he had made and I knew a lot of endocrinologists
5 that were involved in hospital practices during my six
6 years with MiniMed and I contacted a number of those and
7 went to see them and demonstrate the concept of the
8 glucommander.

9 Q. This business relationship started in the fall of
10 2005?

11 A. Yes.

12 Q. And you did calling on hospitals and other
13 medical industries in 2005 and 2006?

14 A. Yes.

15 Q. And when you were calling on folks, who were you
16 working on behalf of Collaborativemed or future Glucotec?

17 A. I was working for the concept of what would we
18 presumed which was called Glucotec and Collaborativemed
19 was never in the mix and it was never brought to my
20 attention as someone I was working for.

21 Q. After Mr. Grounsell caused through a
22 shareholder's meeting that you didn't receive notice of,
23 there was to be eighteen million, one hundred and twenty-
24 nine thousand, sixty-six shares of stock transferred to
25 Collaborativemed, were you ever giving an opportunity to

Hoyt vs. Collaborativemed, LLC

1 match that or gain equal stock?

2 A. No.

3 Q. Were you ever given an opportunity to give any
4 portion of that?

5 A. No.

6 Q. Now, did you ever receive any emails about
7 shareholder's meetings?

8 A. No.

9 Q. The only information you have about a
10 shareholder's meeting is you need to sign a non-compete in
11 order to attend the shareholder's meeting?

12 A. Yes, and that was something that was not included
13 in the bi-laws of the company. It was not a requirement
14 in the bi-laws, but Mr. Grounsell decided to make it a
15 condition of my being invited to the meeting.

16 Q. But he didn't tell you what happened?

17 A. No.

18 MR. PACELLA: Your Honor, may I just have a
19 moment?

20 THE COURT: Yes.

21 MR. PACELLA: That's all the questions I
22 have.

23 THE COURT: Do you wish to question in the
24 morning?

25 MR. BANNISTER: Yes, Your Honor.

Hoyt vs. Collaborativemed, LLc

1 THE COURT: You may step down but you're
2 still on the stand overnight. You can talk about anything
3 you want to you but you can't talk about your testimony.

4 THE WITNESS: Yes, sir.

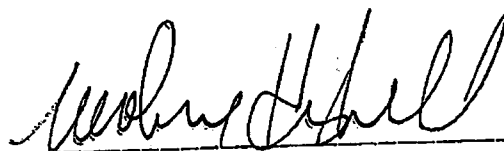
5 THE COURT: We will re adjourn tomorrow
6 morning at 10:00. I've got another thing I've got to do
7 at 9:00.

8 ---END OF TRANSCRIPT RECORD---

Hoyt vs. Collaborativemed, LLC

1
2 I, the undersigned, Caroline Hiskell, the
3 Official Court Reporter for the Thirteenth Judicial
4 Circuit of the State of South Carolina, do hereby certify
5 that the foregoing is a true, accurate, and complete
6 transcript of record of all the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of Common Pleas, South
9 Carolina on the 31st day of September, 2013.

10 I do further certify that I am neither of
11 kin, counsel, nor interest to any party hereto.

12
13 
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15 Caroline Hiskell
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Hoyt vs. Collaborativemed, LLc

1 STATE OF SOUTH CAROLINA)
2) COURT OF COMMON PLEAS
3) 2008-CP-23-2321
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COUNTY OF GREENVILLE

Garry Hoyt

-vs-

Collaborativemed, LLc

TRANSCRIPT OF RECORD

Day - 2 September 31, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE JEFFREY YOUNG, Judge.

A P P E A R A N C E S

MARIO PACELLA, Esquire
JOHN ALPHIN, Esquire
Attorney for the Plaintiff

OSCAR BANNISTER, Esquire
Attorney for the Defendant

CAROLINE HISKELL
Thirteenth Circuit Court Reporter

Hoyt vs. Collaborativemed, LLC

I N D E X

WITNESSES	DR	CR	RED	REC
Garry Hoyt		62		
Dennis Steade	85	87		
Rick Grounsell	105	162		

E X H I B I T

IDENTIFICATION	ID	IN EVD
Plaintiff		
4 Agreement	73	73
6 Minutes	123	123
8 Document	126	126
9 Document	83	83
Defendant's		
1 Agreement	73	73
2 Letter	75	75
5 May 18th Doc	174	174
7 Agreement	88	88
8 Log	178	178

Hoyt vs. Collaborativemed, LLc

P R O C E E D I N G S

THE COURT: We're back on the record in the case of Garry Hoyt versus Collaborativemed.

Mr. Bannister.

CROSS-EXAMINATION

BY MR. BANNISTER:

Q. You told us you had a business degree from Butler?

A. Yes.

Q. And you had been a partner at one time in a firm as I understood your testimony correctly.

A. A firm?

Q. A partnership where you had a partner.

A. Yes, that was Vertical Bailey Press Business.

Q. And you had worked for corporations in the past.

A. I had worked for corporations in the past, that's correct.

Q. You know the difference between partnership, LLc, and a corporation?

A. If you'd care to explain that to me.

Q. I'm just asking you if you know the difference.

A. I can't define the difference, no.

Q. So you do not know the difference between partnership and the corporation?

A. No.

Hoyt vs. Collaborativemed, LLC

1 Q. Is there anything in writing as to the agreement
2 that you testified to yesterday with Rick Grounsell
3 concerning the formation of a business venture which
4 ultimately became Glucotec?

5 A. No, our agreement was a handshake.

6 Q. Are you familiar with the term founder's shares?

7 A. Yes.

8 Q. What are founder's shares?

9 A. Well, I think they are used to attract talent to
10 come into the company without having to pay for those
11 shares. It's an incentive of sorts.

12 Q. Did you receive the same founder's shares of
13 Dr. Bode and Rick Grounsell?

14 A. Yes.

15 Q. Now, the corporation -- have you looked at the
16 exhibit regarding the foundation of the corporation that
17 it was authorized to issue 40 million shares of stock, did
18 you see that?

19 A. I don't recall.

20 Q. I believe that's Exhibit No. 1. I'm showing you
21 what's marked as Exhibit 1 and ask you to look at
22 Paragraph 3 of the Articles of Incorporation and just read
23 that out loud for me please, sir.

24 A. "The Corporation is authorized to issue shares of
25 stock as follows: Complete A or B whichever is applicable.

. Hoyt vs. Collaborativemed, LLC

1 The corporation is authorized to issue a single class of
2 shares, the total number of shares authorized is
3 40,000.000."

4 Q. Is it your contention that you are entitled to
5 one-fourth of those shares, ten million shares?

6 A. Ten million shares?

7 Q. Yes. That would be one-fourth.

8 A. I believe that issuance of shares in a
9 corporation like that are for the purpose of selling them
10 to raise capital to fund the objective company and all
11 those shares were not issues. They were possibly issued,
12 but they were not sold. They were in reserve to be sold
13 to raise capital for the company.

14 Q. Would it be fair to say that you did not claim
15 that you were entitled to one-fourth of all the shares of
16 this corporation Glucotec?

17 A. No, just the ones that were issued to different
18 people if we were to be equal partners and if one got ten
19 million shares, the other one should get ten million
20 shares. In this case it was Mr. Grounsell decided to
21 pursue a second corporation which we didn't understand he
22 was doing and that's where he tried to park the IP for the
23 glucommander and that he owned that stock which we owned
24 nothing of. But it was all one effort and then we found
25 out that he had, indeed, parked that IP there and we were

Hoyt vs. Collaborativemed, LLC

1 left out and he was the only shareholder in the company,
2 and then he got his family involved as shareholder's as
3 well.

4 Q. I'm not sure I quite understood your answer, but
5 you claim that whatever Mr. Grounsell received in shares
6 of stock you should have received an equal number?

7 A. If it weren't backed up by an investment of
8 capital, yes.

9 Q. So, Mr. Grounsell would be free to buy shares of
10 stock and that would dilute your interest if you didn't
11 buy an equal number of shares?

12 A. Yes.

13 Q. That would be a fair statement?

14 A. Yes.

15 Q. And that brings us to the question of when was
16 the first time you heard the term CoMed, LLC?

17 A. I don't know the date.

18 Q. Did you negotiate with the doctors for the
19 purpose of their intellectual property in this
20 glucommander?

21 A. No.

22 Q. That was done by Mr. Grounsell?

23 A. There were no negotiations. They were part of
24 the company that they formed.

25 Q. Would you give me a yes or no and then you can

Hoyt vs. Collaborativemed, LLC

1 explain your answer. Were you part of the negotiation
2 with the doctors for the glucommander intellectual
3 property, just yes or no?

4 A. Yes, I was.

5 Q. With whom did you deal in negotiation?

6 A. Well, I was involved in meeting with Dr. Steade
7 and David Simbode(ph) as the company representative ---

8 Q. What company were you representing?

9 A. Glucotec, the company we organized to pursue this
10 enterprise.

11 Q. Glucotec was incorporated, I believe, in March of
12 2006. Would this have been before or after?

13 A. Both.

14 Q. Well, how much before?

15 A. I don't know.

16 Q. How could you negotiate for a corporation that
17 wasn't even in existence?

18 A. Well, if the objective was to get the software
19 code for the glucommander, I don't understand why there
20 would be an negotiation to try to get the intellectual
21 property or something that these doctors were part of.
22 They were partners like we were in this enterprise and the
23 manipulation of Mr. Grounsell to create a competing
24 software that he says was his would have been part of
25 that. Once I figured out what was going on then I

Hoyt vs. Collaborativemed, LLC

1 objected and then all sorts of efforts were made to get me
2 to quit the company and then invariable fired with not
3 statement of cause what so ever.

4 Q. Let me show you a document and ask you if you are
5 aware of it.

6 A. No, I've never seen that.

7 MR. BANNISTER: We'll mark this, Your Honor,
8 for identification. I believe it would be Plaintiff's 7.

9 (Document marked as Plaintiff's Exhibit No. 7
10 for identification.)

11 BY MR. BANNISTER:

12 Q. In your negotiation with Dr. Bode and others, no
13 one ever advised you that there was an agreement between
14 the doctor's and CoMed for the intellectual property
15 rights? Today is the first time you've heard of it?

16 A. After seeing that document, yes.

17 Q. Today is the first you've heard there was an
18 agreement between the doctor's and CoMed for the
19 intellectual property rights to glucommander?

20 A. Right.

21 Q. Today is the first time you heard of it?

22 A. I just answered the question, did I not?

23 Q. Well, answer it again.

24 A. I said yes.

25 Q. I want to make sure I understood it.

Hoyt vs. Collaborativemed, LLC

1 A. I said yes.

2 THE COURT: Hold it. One at a time, ask your
3 question and he's answer it.

4 BY MR. BANNISTER:

5 Q. The answer is yes, today is the first time you
6 heard of this group.

7 A. Yes.

8 Q. When was the last time you negotiated with the
9 doctors, Dr. Bode, Dr. Davidson, Dr. Steade acquiring the
10 intellectual property rights to glucommander?

11 A. I was not negotiating for the intellectual
12 property of the glucommander. I was negotiating their
13 cooperation because Mr. Grounsell and Dr. Steade --
14 primarily Dr. Steade -- didn't get along and Dr. Steade I
15 don't believe trusted Mr. Grounsell's objectives and his
16 efforts to further the enterprise and an equal partnership
17 arrangement, I'd have to say. So I was one who was
18 interceding as one who could get along with the doctors
19 and then that responsibility was taken away by
20 Mr. Grounsell and he then had probably been involved with
21 Dr. Steade and his efforts to get the glucommander code
22 from Dr. Steade.

23 Q. Now, Glucotec was formed, I believe, in March 28,
24 2006 according to the document. Did you receive any
25 shares of stock on March of 2006 from Glucotec?

Hoyt vs. Collaborativemed, LLC

1 A. I don't recall the date when I got stock. I
2 don't have that in my mind the date that I got stock.

3 Q. Did you have contact with Rick Grounsell on a
4 fairly regular basis beginning in 2006 either email,
5 telephone, mail or in person?

6 A. I believe it was in 2005 when we started talking
7 about this.

8 Q. I'm asking you about 2006.

9 A. Yes, we had conversations on the phone and in
10 person during the course of business, yes.

11 Q. And email conversations?

12 A. Yes, that's a form of communication.

13 Q. Do you know name of Lori LePoint?

14 A. Yes, she was a secretary of Mr. Grounsell's.
15 That's who fired me actually. That's who got the message
16 from that I was fired.

17 Q. So you had communications with her around March
18 of 2006. Is that how you sometime communicated?

19 A. Yes, it was. Sometimes we did communicate by
20 email.

21 Q. Was there a period prior to May of 2006 that
22 Mr. Grounsell met you in Texas and gave you some
23 documentation, proposed private placement memorandums?

24 A. Yes.

25 Q. And those memorandums reflected that Glucotec

Hoyt vs. Collaborativemed, LLC

1 purchased the intellectual property rights of glucommander
2 from CoMed, is that a fair statement?

3 A. I am not a student of that PPM but it may very
4 well have been but I can't speak to that as fact. I do
5 remember getting that from him and then I found out later
6 on that that's when he had sent out that prospectus to the
7 respective investors without Dr. Bode or me seeing it or
8 proofreading it before he sent it out and then the copy
9 that we did get was not the same copy that went out to the
10 prospective investors. But that's when we first found out
11 that he had granted himself eighteen million shares of
12 CoMed stock as part of that prospective.

13 We as founders at that time and equal
14 partners as we understood it never got an opportunity to
15 see what -- to proof the prospectus he was sending out on
16 behalf of the company.

17 Q. So in answer to my question, prior to March you
18 had seen a prospectus as far as a document that disclosed
19 that Glucotec was going to purchase its shares of stock
20 from CoMed, the intellectual property rights of
21 glucommander? Give me a yes or not and then you can
22 explain.

23 A. Repeat the question, please.

24 Q. Prior to March, the formation of Glucotec in
25 2006, Mr. Grounsell presented documents to you that

Hoyt vs. Collaborativemed, LLC

1 disclosed that Glucotec was going to purchase the
2 intellectual rights of glucommander to CoMed in exchange
3 to shares of stock. Is that a fair statement?

4 A. It may be a fair statement, but I don't recall
5 that.

6 Q. You don't recall any meeting with them when this
7 was disclosed. You said you got a document where you and
8 Dr. Bode discovered this eighteen million shares or some
9 millions of shares, where was that?

10 A. In Dallas.

11 Q. When?

12 A. I don't know the exact date but it was in Dallas
13 when we interviewed Jeff Artbuckle to take my position in
14 the company and he handed it to us and I threw it in the
15 back seat and took it home and Dr. Bode told me the next
16 week and I think it was Tony Tantillo who was the one who
17 called him who was a stockholder or perspective
18 stockholder and said have you seen this eighteen million
19 shares that Grounsell has awarded himself and that's when
20 Bruce called me and said, well, let me read it and I'll
21 look into it. And then I talked to Rick about it and he
22 said that's what we did. That's the prospectus.

23 Q. Was that before May of 2006? Give me the best
24 date you can recollect?

25 A. It was when we met in Dallas with Jeff Artbuckle

Hoyt vs. Collaborativemed, LLC

1 as the executive that he handed it to me and I threw it in
2 the back seat of my car and read it the next week whatever
3 date that was.

4 Q. Well, give me the best recollection of what date
5 that was?

6 A. It was in the first half of that year we were in
7 Dallas together Dr. Bode and that's in my other deposition
8 what Dr. Bode was there for which he testified to I
9 believe. He was there to tape a diabetes conference, but
10 I don't recall the exact day.

11 Q. Do you recall if it was before you were presented
12 the shareholder's agreement?

13 A. No, I am not sure.

14 Q. Was it before there was this shareholder meeting
15 which you say you never received notice of?

16 A. I don't have those dates in my mind which days
17 were which.

18 Q. Well, let me show you what's been marked as
19 Defendant's Exhibit 1 which is a Glucotec Shareholder
20 Agreement and I believe that is your signature on the
21 back, is it not? I'll give you a moment to look at it.

22 A. Yes, that's my signature.

23 Q. You seen that document before?

24 A. Yes.

25 Q. And what is the date on the document?

Hoyt vs. Collaborativemed, LLC

1 A. May 18th of '06.

2 Q. And it has initials on each page May 18, 2006.

3 Are those your initials?

4 A. Yes.

5 MR. BANNISTER: Your Honor, we would like to
6 move that into evidence.

7 THE COURT: Any objection?

8 MR. PACELLA: No objection.

9 THE COURT: Defendant's Exhibit No. 1 is
10 admitted.

11 (Shareholder's agreement marked as
12 Defendant's Exhibit No. 1 for identification was admitted
13 into evidence.)

14 BY MR. BANNISTER:

15 Q. So on May the 18th of '06 you received a
16 shareholder agreement which is represented here and you
17 signed for it. That would be the date you got it.

18 A. I don't know that that's the date I got it.
19 That's the date I signed it.

20 Q. The date you acknowledged you received it was May
21 18th, would you have gotten it earlier?

22 A. I don't recall.

23 Q. At the time you signed the agreement or initialed
24 it which is May the 18th, were you aware at that time that
25 Glucotec was going to issue eighteen million shares to

Hoyt vs. Collaborativemed, LLC

1 CoMed in exchange for the intellectual property rights to
2 the glucommander?

3 A. No.

4 Q. You were not aware; is that correct?

5 A. I just said no.

6 Q. I'm going to show you Exhibit 2 and ask you if
7 you recognize that?

8 A. Yes, I recognize this as the document where I
9 paid \$250 to memorialize the founder's shares at a penny a
10 share, and this is where Mr. Grounsell introduced me to
11 the non-competition clause that he insisted that I sign or
12 I would not be party. I believe this is the plan where
13 that transfer of stock occurred at this May 18, 2006 as
14 well.

15 Q. And it bares your signature?

16 A. Yes.

17 Q. And your check for the stock May 18, 2006?

18 A. Yes.

19 MR. BANNISTER: We would admit this.

20 THE COURT: Any objection?

21 MR. PACELLA: No objection.

22 THE COURT: Without objection Defense Exhibit
23 No. 2 is admitted.

24 (Letter marked as Defendant's Exhibit No. 2
25 for identification was admitted into evidence.)

Hoyt vs. Collaborativemed, LLC

1 BY MR. BANNISTER:

2 Q. Again, you did not attend the meeting on May 11,
3 2006 of the founder's group?

4 A. I wasn't invited. No, I did not attend.

5 Q. And you did not attend the meeting on May 18,
6 2006?

7 A. No, I did not.

8 Q. Where were you when you signed the non-compete
9 agreement?

10 A. In my office in Dallas, Texas.

11 Q. How did you come to get the document? Did
12 Mr. Grounsell bring it to you?

13 A. Not that I recall. It could have very possibly
14 been sent by email and I printed it out or Mr. Grounsell
15 could have possibly given it to me or somebody could have
16 sent it by mail. I don't recall.

17 Q. On May 18th, did you actually have in your hand
18 stocks issued by Glucotec?

19 A. I don't recall.

20 Q. Well, you didn't pay for them until May 18th, is
21 that correct, according to your check?

22 A. That would have been the first stock I received,
23 yes.

24 Q. That's when you paid your founder's share cost
25 for the stock.

Hoyt vs. Collaborativemed, LLC

1 A. That's right.

2 Q. If a founder's meeting was held on the 11th, you
3 did not actually own any stock at that time.

4 A. I suppose that's correct.

5 Q. And if a meeting was held on the 18th, the day
6 you signed that agreement, you may or may not have owned
7 that stock depending on your transfer; is that correct?

8 A. Yes.

9 Q. Now, you have referred to the issuing of shares
10 to Mr. Grounsell. You do not know who the owners of the
11 LLC CoMed are, do you?

12 A. Are or where?

13 Q. Where, at that time?

14 A. No, I didn't.

15 Q. Did you inquire of Mr. Grounsell who owned CoMed?

16 A. At that time it was his company and I found out
17 later that his children and wife were stockholders in that
18 company, I believe.

19 Q. Did you also find out that they had advanced
20 funds to CoMed?

21 A. No.

22 Q. Did you find out at any time that they had
23 advanced funds to CoMed?

24 A. I don't recall.

25 Q. Now, the testimony of Dr. Bode and you were in

Hoyt vs. Collaborativemed, LLC

1 the courtroom and I want to ask you if you agree, Glucotec
2 could not market glucommander without FDA approval, is
3 that correct, from your understanding of the medical
4 industry?

5 A. Well, could not or should not. I would say we
6 should not because I actually inquired with Cliff Hagood,
7 very respected gentlemen, in the ---

8 MR. BANNISTER: I'm going to object as
9 hearsay.

10 THE COURT: You can't say what the other
11 gentlemen said.

12 THE WITNESS: Okay, fine.

13 THE COURT: But you can say what you did.

14 THE WITNESS: I inquired with a respected
15 expert with regard to his opinion as to whether we should
16 pursue commercialization of the algorithm without FDA
17 approval and he said no and I communicated that to ---

18 THE COURT: Sir, he's already made an
19 objection. You can't say what he said. You can just say
20 what you did.

21 THE WITNESS: I agreed with that.

22 BY MR. BANNISTER:

23 Q. Let me help. Based on your conversation with
24 this expert, did you sell glucommander prior to the time
25 you got FDA approval?

Hoyt vs. Collaborativemed, LLc

1 A. No.

2 Q. Now, I want you to assume that something for me,
3 CoMed had the intellectual property rights, obtained the
4 FDA approval to sell glucommander, was that a valuable
5 asset to CoMed? Just yes or no and then you can explain
6 your answer.

7 A. Ask the question again, please.

8 Q. If CoMed obtained the FDA approval to sell the
9 glucommander, would that be a valuable asset of CoMed?

10 A. Yes.

11 Q. And without acquiring the right to sell
12 glucommander by Glucotec had nothing to sell, isn't that
13 correct?

14 A. I don't know that we -- what we have here is two
15 different corporations now and I didn't understand the
16 manipulation of the intellectual property going to CoMed.
17 I thought we had one effort to pursue this
18 commercialization but in fact Mr. Grounsell had
19 manipulated to become two corporations of which he owned
20 all of one and we were still all working together for the
21 advancement of the Glucotec project, which is the
22 glucommander. And if it resided someplace else other than
23 Glucotec, I guess it was a value and then he would,
24 evidently, say well, we'll sell it back to you Glucotec
25 and he manipulated that back and forth working both sides

Hoyt vs. Collaborativemed, LLC

1 of that bargain.

2 Q. Would you agree with me that until Glucotec
3 obtained the right to sell the glucommander it had nothing
4 to sell?

5 A. Well, as a matter of fact before that
6 manipulation ---

7 Q. Would you mind telling me yes or no and then you
8 can explain your answer.

9 A. No. I would say that the purpose of forming
10 Glucotec was the pursue the commercialization of the
11 product and the contribution of Dr. Steade, Bode, Davidson
12 was the glucommander software code and that was of value
13 as we've agreed. It was my understanding that we were
14 pursuing that as the asset within Glucotec to sell to the
15 market so it had value. But then what Mr. Grounsell did
16 was he went over here and he created another corporation
17 and removed stock over there and created stock for himself
18 and his family and then Glucotec without anything.

19 So does Glucotec have any value or why would
20 we issue stock for Glucotec if the value of the
21 proposition was in his shell company called CoMed.

22 Q. When CoMed sold its right to sell the
23 glucommander to Glucotec, Glucotec then had a product to
24 sell and to profit from, is that a fair statement?

25 A. I'm sorry. Glucotec had a product to sell?

Hoyt vs. Collaborativemed, LLC

1 Q. Yes.

2 A. Well, it's my understanding we had a product to
3 sell and that was the glucommander.

4 Q. So when CoMed transferred its intellectual
5 property rights to the glucommander over the Glucotec,
6 Glucotec now had a product to sell; is that correct?

7 A. Yes.

8 Q. And, of course, that was the business model for
9 Glucotec to commercialize the sell of the glucommander,
10 that's what y'all were planning to do, is that not a fair
11 statement?

12 A. That's what we agreed to do, yes.

13 Q. Now, in the early stages of acquiring the right
14 to sell the glucommander from the doctors who developed
15 it, did you invest any money yourself?

16 A. Yes.

17 Q. Is that the \$30,000 some dollars of expenses?

18 A. Yes.

19 Q. And those expenses were marketing Glucotec?

20 A. Yes.

21 Q. And you were paid that back?

22 A. No, I wasn't paid back. I got stock for that
23 which it did not have any commercial value at the time.

24 Q. So at the end of the day, Mr. Hoyt, you advanced
25 some expense money to market the glucommander which you

Hoyt vs. Collaborativemed, LLC

1 received stock back for plus you got founder's stock was.
2 transferred to you?

3 A. I paid for those.

4 Q. A penny a share.

5 A. That's right.

6 Q. And I believe later you sold some of those shares
7 to this CoMed.

8 A. I sold them back for a dime a share, \$25,000;
9 that's right.

10 Q. \$250 you got \$25,000 back.

11 A. That's right.

12 Q. And there was some stock that I believe you sold
13 to CoMed later some and got \$115 some odd thousand dollars
14 for.

15 A. I sold that to a group of Texas collaborators
16 with the company and I don't know who I was selling it to
17 but I did get a cashier's check \$115,000 for the stock
18 that I received for the \$30,000 in expenses that I paid
19 and I believe they turned around and sold it.

20 Q. So for your \$30,000 in expenses you turned around
21 and made triple your money with Glucotec stock?

22 A. Yes.

23 MR. BANNISTER: Thank you, sir.

24 THE COURT: Any redirect?

25 MR. PACELLA: Yes.

Hoyt vs. Collaborativemed, LLC

REDIRECT EXAMINATION

BY MR. PACELLA:

Q. Mr. Hoyt, you were treated as a shareholder of Glucotec before those meetings in May of 2006.

A. Yes, sir.

Q. Mr. Hoyt, I'm showing you a document marked as Plaintiff's Exhibit 9 for identification; is that correct?

A. Yes.

Q. Can you identify this document for me?

A. Consent of the majority of shareholders.

Q. What's the date of the document?

A. 25 of April, 2006.

Q. And what is this? Do you recognize your signature on this document?

A. Yes.

Q. And can you identify what this document is?

A. Richard Grounsell is named to the board of directors of Glucotec for a term of 365 days becoming effective May 1. Richard Grounsell is named chairman of the board of directors of Glucotec, Incorporated for a term of 365 days becoming effective May 1 indicate consent or non-consent as below.

Q. And you indicated consent to the election to the board.

A. Correct.

Hoyt vs. Collaborativemed, LLC

1 Q. And that was on 25 April, 2006.

2 MR. PACELLA: I move to admit.

3 THE COURT: Any objection?

4 MR. BANNISTER: No objection.

5 (Document dated April 25, 2006 marked for
6 identification was admitted into evidence as Plaintiff's
7 Exhibit No. 9.)

8 (Minutes marked as Plaintiff's Exhibit No. 8
9 for identification.)

10 BY MR. PACELLA:

11 Q. Mr. Hoyt, I've handed you Plaintiff's Exhibit No.
12 8 for identification purposes and have you seen this
13 document before?

14 A. Yes.

15 Q. And this has to do with an organizational meeting
16 of Glucotec at a law office of Ben Leaphart on March 24,
17 2006, do you know if you were actually at that meeting?

18 A. I was not.

19 Q. The document actually lists you as a shareholder.

20 A. Correct.

21 Q. And says you were present at the meeting but you
22 don't recall being present at the meeting.

23 A. I was not present at that meeting.

24 Q. And if you turn to the last page the date of the
25 document ---

Hoyt vs. Collaborativemed, LLc

1 A. The Waiver of Notice.

2 Q. Yes, if you take a look at the Waiver of Notice
3 signed by Mr. Grounsell, what's the date above that?

4 A. March 24, 2006.

5 Q. You were not at this meeting?

6 A. No.

7 MR. PACELLA: Your Honor, we will reserve
8 moving to admit that as an exhibit until Mr. Grounsell
9 testifies.

10 THE COURT: Any recross based on his
11 redirect?

12 MR. BANNISTER: Yes, sir.

13 RECROSS-EXAMINATION

14 BY MR. BANNISTER:

15 Q. Mr. Hoyt, you did not attend this meeting?

16 A. No.

17 Q. When was the first time you saw the minutes?

18 A. I don't recall.

19 Q. Were they ever supplied to you prior to this
20 mediation?

21 A. Not to my recollection.

22 Q. So this is the first time you've seen it?

23 A. No, you asked when was the first time I saw this
24 and I said I couldn't recollect. I probably saw this
25 after this was actually signed.

Hoyt vs. Collaborativemed, LLC

1 MR. BANNISTER: Nothing further.

2 THE COURT: Thank you. You can step down.

3 Why don't we take a ten minute recess.

4 (Whereupon, there was a brief recess.)

5 Call your next witness.

6 MR. PACELLA: Dr. R. Dennis Steade.

7 THE COURT: Dr. Steade, come forward and be
8 sworn.

9 Place your left hand on the Bible and raise
10 your right hand.

11 R. DENNIS STEADE, having been duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. PACELLA:

15 Q. Dr. Steade, please state your name and address.

16 A. My name is Robert Dennis Steade and I live at
17 6331 Hunting Creek Road in Sandy Springs, GA.

18 Q. Dr. Steade, you're obviously a medical doctor; is
19 that correct?

20 A. That's correct.

21 Q. And you have a board specialty that you were
22 practicing at one time?

23 A. Endocrinology.

24 Q. And currently you're not working; is that
25 correct?

Hoyt vs. Collaborativemed, LLC

1 A. That's correct.

2 Q. Because you have a disability?

3 A. That's correct.

4 Q. Several years ago were you involved in the
5 development of glucommander?

6 A. Yes.

7 Q. And were you presented with a document to assign
8 the intellectual property of glucommander to
9 Collaborativemed?

10 A. I was presented with a document to assign the
11 glucommander but I can't recall the exact party's name.

12 Q. I'm going to show you what's marked as
13 Defendant's Exhibit 7 for identification purposes. Have
14 you seen this document before?

15 A. I have.

16 Q. Is this the document -- referring you to Page 3
17 of the document, is that your signature on that page?

18 A. It is.

19 Q. And is this the document that was involved in the
20 negotiations of the intellectual property for the
21 glucommander?

22 A. It is.

23 Q. And you do not have your initials on every page;
24 is that correct?

25 A. That's correct.

Hoyt vs. Collaborativemed, LLC

1 Q. And there's a little handwritten note on Page 3
2 -- can you read that actually.

3 A. "Subject to review and acceptance of final
4 draft."

5 Q. Is that your handwriting?

6 A. That is.

7 Q. And is that your signature below?

8 A. That is.

9 Q. And the document signature dates are 12-7-05 but
10 you did not date yours. Is there a reason why you did not
11 date your signature?

12 A. It was just a preliminary draft and we would
13 settle the final agreement.

14 Q. And prior to May 18, 2006, did you ever
15 accomplish a final draft of this agreement?

16 A. No.

17 MR. PACELLA: Thank you. That's all the
18 questions I have.

19 THE COURT: Mr. Bannister.

CROSS-EXAMINATION

20 BY MR. BANNISTER:

21 Q. You identified your signature on that document?

22 A. I have.

23 MR. BANNISTER: Your Honor, we would move
24 this document into evidence.
25

Hoyt vs. Collaborativemed, LLc

1 THE COURT: Any objections?

2 MR. PACELLA: No objection.

3 THE COURT: Without objection it would be
4 Defense Exhibit No. 7 is admitted.

5 (Assignment agreement marked as Defendant's
6 Exhibit No. 7 for identification was admitted into
7 evidence.)

8 BY MR. BANNISTER:

9 Q. Dr. Steade, did you have any further dealing over
10 the transfer of the Glucotec intellectual property with
11 either CoMed or anyone else?

12 A. In the spring of 2006 I was in discussions with
13 Robbie Booth.

14 Q. Did you come to any kind of agreement with
15 Mr. Booth in writing?

16 A. No.

17 Q. Now, according to the terms that you signed and
18 didn't date you were to receive certain compensation under
19 that agreement to transfer the intellectual property of
20 glucommander, is that a fair statement?

21 A. That's correct.

22 Q. And did you, in fact, receive stock in Glucotec
23 for that agreement?

24 A. I don't believe so.

25 Q. If the stock log showed that you received from

Hoyt vs. Collaborativemed, LLC

1 CoMed shares approximately 50,000 on June 15, 2006, you
2 would dispute that?

3 A. I would dispute that that was in any way
4 understood to be concluding that agreement.

5 Q. But you receive -- you tell me now that you did
6 receive stock from CoMed Glucotec stock.

7 A. I received one day a Federal Express envelop
8 which contained a stock certificate and no cover letter
9 and I did not understand its meaning.

10 Q. Did you pay for the Glucotec stock?

11 A. No.

12 Q. Had you subscribed for it?

13 A. No.

14 Q. Did you take the stock and inquire of anybody at
15 Glucotec why they were issuing you 50,000 shares?

16 A. No.

17 Q. Did you sell the stock?

18 A. No.

19 Q. Do you still have it?

20 A. I think it's still sitting in my file.

21 Q. So you do still have it.

22 A. I believe so. I haven't seen it in years.

23 Q. If you look at Exhibit 7, did you have an option
24 to receive one percent initial stock issued to CoMed
25 private investment of stock to issuance or \$50,000 cash,

Hoyt vs. Collaborativemed, LLC

1 is that part of the agreement?

2 A. No. It was actually what he was proposed was
3 (inaudible) which I understand is a method by which he
4 would purchase a publicly traded corporation that I might
5 receive stock in.

6 Q. Did you inquire if the Glucotec stock that you
7 received at that time was \$1 a share?

8 A. It was just a mysterious envelope that appeared
9 in the mail.

10 Q. Did you inquire as to the value of the Glucotec
11 stock at the time you received it?

12 A. It was just a mysterious document that appeared
13 in the mail.

14 Q. So your answer is no, you didn't, you did not
15 inquire?

16 A. I did not. I did not inquire. I may have asked
17 some acquaintances what it meant and told no and I just
18 waited to hear.

19 Q. Did you go back to Exhibit 7 and look at that and
20 say apparently this is what I was supposed to get from my
21 interest in this stock?

22 A. No, this is not what I was supposed to get.

23 Q. What were you supposed to get?

24 A. I was supposed to get a public company's stock.

25 Q. Did you look to see if Glucotec was a public

Hoyt vs. Collaborativemed, LLC

1 company?

2 A. No, I did not.

3 Q. Do you know whether Glucotec is a public company?

4 A. It's my understanding it has never been traded as
5 a public company.

6 Q. By public company you mean something on the New
7 York Stock Exchange?

8 A. Any exchange. It was a private company as I
9 later learned.

10 Q. What do you mean by a private corporation?

11 A. Let's see. I later learned about a year after
12 that that only a publicly traded corporation could be used
13 to give stock as payment to a non-qualified investor such
14 as myself. I was not a qualified investor.

15 Q. What you invested was actually the sale of the
16 intellectual property in the glucommander to CoMed, isn't
17 that what the document reflects?

18 A. Exactly, but to use in 2007 Glucotec sued me and
19 as part of the negotiation process I was asked to sign an
20 agreement that said that I was a qualified investor and
21 could accept the stock in Glucotec for intellectual
22 property and I asked what that meant. At that point, my
23 attorney explained to me that for me to accept stock ---

24 Q. Let me ask you this, I don't want you to tell me
25 what your attorney said, but based on your attorney's

Hoyt vs. Collaborativemed, LLC

1 advice, did you settle?

2 A. No.

3 Q. You never settled?

4 A. I'm not sure what the final outcome was. It was
5 open document and it just sort of expired.

6 Q. Well, did you get any additional stock?

7 A. No.

8 Q. Did you have to turn in the Glucotec stock that
9 you got?

10 A. I have never been asked to return it but I have
11 disavowed it.

12 Q. What do you mean disavowed it?

13 A. There was a stockholder's meeting maybe a year
14 later, I can't remember the exact terms, but I was invited
15 to the meeting and I asked my attorney I have never
16 accepted this stock and he sent a letter to Glucotec.

17 Q. But you still have the stock?

18 A. I still have a stock certificate. I don't really
19 -- it has never been explained to me what it means. It's
20 just a piece of paper.

21 Q. Did you ask your partner Paul Davidson if he had
22 also gotten stock pursuant to this agreement or any
23 agreement?

24 A. I believe he received a stock certificate.

25 Q. So you did talk to Dr. Davidson?

(Hoyt vs. Collaborativemed, LLC

1 A. I have talked to Dr. Davidson. He was a
2 co-defendant when Glucotec sued us.

3 Q. So he also got stock for which he didn't pay?

4 A. Actually Dr. Davidson eventually reached a
5 settlement with Glucotec and I don't what consideration he
6 eventually received.

7 Q. And I believe Dr. Bode also received shares of
8 stock, 50,000 shares of stock from Glucotec?

9 A. I have no idea.

10 Q. So you have not talked to him.

11 A. I have talked to him plenty, I just don't know
12 what he received.

13 Q. So is it your position today that you never sold
14 the intellectual property rights to CoMed?

15 A. Yes.

16 Q. And you're aware that CoMed sold the intellectual
17 property to CoMed?

18 A. Yes.

19 Q. And you're aware that Glucotec as we sit here
20 today almost eight years later is selling the glucommander
21 or at least in the business of commercializing the
22 glucommander?

23 A. Yes.

24 Q. Have you ever brought any action to stop the sale
25 or make a claim against Glucotec for that property?

Hoyt vs. Collaborativemed, LLC

1 A. I have.

2 Q. And where is that suit?

3 A. I brought an action in opposing the trademark
4 with Paul Davidson and we prevailed.

5 Q. So the glucommander trademark can no longer be
6 used by Glucotec, is that what you're telling me?

7 A. No. I'm telling you that Paul Davidson and I
8 prevailed but Paul Davidson had sold his part of the
9 intellectual property to Glucotec and Glucotec has
10 contended that they are co-owners to the glucommander
11 trademark with me and we both can use the trademark.

12 Q. Are you using the trademark?

13 A. Yes.

14 Q. Do you have a commercial venture selling
15 glucommander yourself?

16 A. I have. It's not currently my last contract as
17 expired, yes, but during this time I had a commercial
18 contract with Piedmont Hospital providing the Glucotec.

19 Q. Was there a litigation over that other than what
20 you've told me?

21 A. No. I think one of the reasons I would say --
22 you see it says here Piedmont Hospital was excluded and
23 Glucotec has sense taken on a contract with Piedmont
24 Hospital so I think they believe that this contract was no
25 valid.

Hoyt vs. Collaborativemed, LLC

1 Q. Well, Piedmont Hospital was excluded. Did you
2 put that exclusion in there?

3 A. No, Rick put it in there. Mr. Grounsell put it
4 in there.

5 Q. At your request?

6 A. Yes.

7 Q. And the reason you requested it is because you
8 wanted to sell Piedmont Hospital in your own venture?

9 A. I believe I wanted to be able to continue to use
10 the glucommander as part of my practice and the hospital's
11 part of practice was my primary concern. At that time, I
12 believe that glucommander properties -- the glucommander
13 was being provided by Diabetes Treatment Centers of
14 America so I'm a little fuzzy on exactly the point where I
15 took over the contract in relation to these negotiations.

16 Q. At least it was at the time you signed this
17 agreement?

18 A. No. I'm sorry I really didn't expect to be
19 called today so I didn't review any of my records before
20 coming here. I don't believe at this time that I was
21 providing glucommander service at Piedmont but I am not
22 certain without reviewing my records.

23 Q. In any event, was it your suggestion that
24 Piedmont was excluded from that group?

25 A. Yes, Piedmont and Saint Joseph.

Hoyt vs. Collaborativemed, LLC

1 Q. Was excluded at your request.

2 A. That was a stipulation. I also I believe I had
3 asked for more hospitals than that.

4 Q. But they are not reflected in the document.

5 A. I know. This was just a preliminary document not
6 a final.

7 Q. Is it marked any where on there draft?

8 A. Yes, right here. In my handwriting it says
9 subject to view and acceptance of final draft.

10 Q. No final draft was ever made?

11 A. No.

12 Q. Did anybody else reserve that right?

13 A. A right to what?

14 Q. To this subject to review of final draft?

15 A. I really don't know what was in other people's
16 minds if what I wrote there applied to other people's
17 signatures as well or just to mine.

18 Q. So you had reservations?

19 A. I did.

20 Q. And did you ever have a final draft prepared?

21 A. You mean on that was signed?

22 Q. Yes.

23 A. No.

24 Q. So you just let it die at that point?

25 A. No, after this Paul Davidson and I approached an

Hoyt vs. Collaborativemed, LLc

1 attorney. We were in a process of drawing up a final
2 drafter when Mr. Grounsell contacted us and said the deal
3 was off, that he chose just to develop it on his own.

4 Q. Did he did that?

5 A. I don't know how he developed it.

6 Q. You knew it was in the market for sale because
7 there was a lawsuit?

8 A. I know that in the spring after that document in
9 December after Mr. Grounsell had told me the deal was off,
10 that I was approached by Robbie Booth who worked at that
11 time with Mr. Grounsell only to re-negotiate an agreement
12 and those negotiations went on until after Memorial Day.

13 Q. That would have been in 2006, September?

14 A. Memorial Day so it would have been towards the
15 first of June.

16 Q. By that time you already had 50,000 shares of
17 Glucotec stock?

18 A. No. The 50,000 shares was mailed to me in late
19 June or I received them in late June.

20 Q. Your negotiations was still ongoing?

21 A. Yes. We negotiated even in the fall.

22 Q. Did you ever come to an agreement?

23 A. No.

24 Q. Did you ever hear the term public domain in the
25 glucommander project?

Hoyt vs. Collaborativemed, LLC

1 A. I've heard of public domain.

2 Q. What is your understanding of public domain?

3 A. Things that are in the public domain belong to
4 the public.

5 Q. In the algorithm or the delivery system published
6 I believed in a joint paper even prior to this agreement
7 being negotiated.

8 A. The device was described but as some of the
9 details of the algorithm were never publicized.

10 Q. The basic delivery system of the glucommander was
11 published in medical journals?

12 A. Some of the formulas were published in medical
13 journals.

14 Q. Do you know whether Glucotec uses formulas in its
15 product outside of the ones you put in the public domain
16 by publishing your paper?

17 A. I do not know the formulas. I do not know all of
18 the formulas that Glucotec uses in their devices.

19 Q. But you have not brought any action to restrain
20 any additional algorithm or to date, just the trademark?

21 A. Just the trademark. I would characterize my
22 intellectual properties as being copy written and trade
23 secret.

24 Q. You brought no action against Glucotec for
25 fringing on her trade secret?

Hoyt vs. Collaborativemed, LLC

1 A. I only brought action against Glucotec for the
2 trademark.

3 Q. Not trade secret?

4 A. No.

5 Q. Alright, and that was settled satisfactorily?

6 A. I just never pursued it.

7 Q. So it hasn't been settled?

8 A. As far as I know there are things that are
9 unsettled.

10 Q. When you got notice of the stockholder meeting
11 for Glucotec, did you attend?

12 A. I attended several Glucotec stockholder's
13 meetings.

14 Q. As a shareholder?

15 A. No.

16 Q. Did the notice not come to you and identify you
17 as a shareholder?

18 A. I have received notices.

19 Q. And didn't they identify you as a shareholder?

20 A. They have.

21 Q. And as a result of those notices and you owning
22 50,000 shares of Glucotec stock, you went to the meetings?

23 A. No, I just went mainly for curiosity to know what
24 was going on.

25 Q. You went to the meeting as a result of being

Hoyt vs. Collaborativemed, LLC

1 noticed of meeting as the shareholder?

2 A. I went because people asked me do I want to go.

3 Q. You were, in fact, at the time you went you had
4 50,000 shares of Glucotec stock in your name, just yes or
5 no?

6 A. I honestly don't know what Glucotec has carried
7 on the books in those terms. I've heard various things.

8 Q. I have a certificate.

9 A. I have a certificate that I am confused about to
10 this day.

11 Q. That certificate says 50,000 shares of Glucotec
12 stock and names you as the owner, is that a fair
13 statement?

14 A. I think so.

15 Q. You had notice of that meeting of shareholders
16 which you attended, just yes or no?

17 A. I don't recall.

18 Q. Going or not going?

19 A. I recall going to the shareholder's meetings and
20 I recall receiving one invitation to come and vote my
21 shares which I declined by saying I still contested that I
22 had received the shares -- had received the shares as part
23 of an agreement.

24 Q. That's agreement was signed in December of 2005
25 and we're not ---

Hoyt vs. Collaborativemed, LLC

1 A. 2013.

2 Q. That's almost eight years.

3 A. It is.

4 Q. You've held the stock for eight years?

5 A. I have.

6 Q. You've never sought an explanation why you had
7 the stock?

8 A. I've sought plenty of explanations.

9 Q. Did you seek one from Mr. Grounsell?

10 A. I did.

11 Q. And what explanation did he give you?

12 A. When he sued me for pursuing the trademark
13 dispute, he at that time told me that he considered that
14 we had an agreement in place and I was dumbfounded.

15 Q. And when would that have been?

16 A. January of 2007, I believe, the first of the
17 year.

18 Q. 2007 Grounsell advised you that you had an
19 agreement in place, did that explain you got why you got
20 50,000 shares of stock?

21 A. Yes, that was his contention.

22 Q. What action did you take upon this information
23 from Mr. Grounsell?

24 A. I eventually hired an attorney and the attorneys
25 negotiated back and forth.

Hoyt vs. Collaborativemed, LLC

1 Q. Was there a settlement reached?

2 A. I don't recall what the final settlement was.

3 Q. Did you return the stock?

4 A. I have not.

5 Q. Did you receive any money?

6 A. Oh, no, not a cent.

7 Q. And you don't know what the agreement was.

8 A. You mean the final settlement?

9 Q. Yes.

10 A. I believe that it just simply expired on the
11 court docket after negotiations had tethered out.

12 Q. So we know no resolution.

13 A. Other than the suit expiring the period in which
14 he could proceed with it had expired.

15 Q. You would agree with me that as you sit here
16 today you have 50,000 of Glucotec stock with your name on
17 it?

18 A. I'm sure as it sits in my files it has my name on
19 it for 50,000 shares and I am still confused about it.

20 Q. So the answer to my question is as we sit here
21 today you have stock shares from Glucotec and the answer
22 to that is yes.

23 A. If you mean do I own it, I don't know. Is it
24 sitting in a file in my house, I believe so.

25 Q. With your name on it?

Hoyt vs. Collaborativemed, LLC

1 A. Yes.

2 Q. Do you have any evidence that you don't own it?

3 A. Only that we've never reached an agreement and I
4 don't know why I received it. There was no cover letter
5 explaining why I was receiving it whether it was a gift, a
6 gesture of good will in furtherance of negotiations, what?
7 I still don't have a clue.

8 Q. When Mr. Grounsell told you in a meeting that
9 that was in furtherance of this agreement, Exhibit 7, you
10 had that information or at least you knew Mr. Grounsell's
11 position or Glucotec or CoMed's position that 50,000
12 shares of stock was forwarded to you as part of this
13 agreement. Is that a yes or no? Isn't that what he told
14 you?

15 A. In January ---

16 Q. Give me a yes or no and then you can explain your
17 answer.

18 A. I'm sorry. Ask the question again.

19 Q. You told me you didn't know why the stock was
20 forwarded but you told me Mr. Grounsell had earlier told
21 you or later told you that 50,000 shares was in
22 satisfaction of this agreement which is Exhibit 7. You
23 told me you were shocked.

24 A. Yes.

25 Q. At that point, the information conveyed to you

Hoyt vs. Collaborativemed, LLC

1 that the 50,000 shares of stock that you received and
2 still have in your name was fulfilling this agreement, yes
3 or no?

4 A. Yes.

5 Q. Give me one second. One last question, was the
6 product that you were selling, this glucommander that you
7 were selling, was it FDA approved?

8 A. I wasn't selling glucommander as a product. I
9 was selling it as part of my professional services as a
10 physician.

11 Q. Was the glucommander that you were selling that
12 was part of your professional services FDA approved?

13 A. The FDA approves physicians creating and using
14 devices in their own practices. It is an exclusion.

15 Q. So you were excluded from having FDA approval?

16 A. I was excluded, I believe, from needing FDA
17 approval for the purpose I was using the glucommander.

18 Q. So you never inquired?

19 A. Only to the extent that I read the FDA
20 regulations.

21 Q. So you did read the FDA regulations and that's
22 what you carved out in the agreement that you could sell
23 it to your hospital as part of your services?

24 A. Yes.

25 Q. Okay. Thank you.

Hoyt vs. Collaborativemed, LLC

1 THE COURT: Any redirect?

2 MR. PACELLA: No redirect.

3 THE COURT: You may step down. Any objection
4 to this witness being excused?

5 MR. PACELLA: No objection.

6 MR. BANNISTER: No objection.

7 THE COURT: Thank you.

8 MR. PACELLA: I'd call Mr. Grounsell.

9 RICK GROUNSELL, having been duly sworn,
10 testified as follows:

11 THE COURT: State your name for the record.

12 THE WITNESS: Rick Grounsell, 313 Melville
13 Road.

14 DIRECT EXAMINATION

15 BY MR. PACELLA:

16 Q. Did you cause to be filed the Articles of
17 Incorporation for Glucotec?

18 A. I believe so, yes.

19 Q. And what was the date of that document? Do you
20 have it there? Plaintiff's Exhibit 1. Is that entitled
21 Articles of Incorporation, sir?

22 A. Yes.

23 Q. Does that bare you signature on the second page,
24 sir?

25 A. Yes.

Hoyt vs. Collaborativemed, LLC

1 Q. What is the date stamped right hand corner on the
2 first page, sir?

3 A. September 25th.

4 Q. What date did you sign it, sir?

5 A. This is indicated March 22, 2006.

6 Q. So back in March of 2006; is that correct?

7 A. Yes, sir.

8 Q. And how many shares are authorized in that
9 document, sir?

10 A. Forty million shares.

11 Q. Thank you, sir.

12 Have you been involved in corporations
13 before, sir?

14 A. Yes, I have.

15 Q. And has it been your experience that just because
16 a share is authorized doesn't mean that it is actually
17 going to be issued?

18 A. That's correct.

19 Q. Were you one of the founding shareholders of
20 Glucotec?

21 A. Yes, I was.

22 Q. Do you know who Bruce Bode is?

23 A. Yes, I do.

24 Q. Was he one of the founding shareholders of
25 Glucotec?

Hoyt vs. Collaborativemed, LLC

1 A. Yes, he was.

2 Q. Do you know who Garry Hoyt is?

3 A. Yes.

4 Q. Was he one of the founding shareholders in
5 Glucotec?

6 A. Yes.

7 Q. Their names listed on the Articles of
8 Incorporation with yours?

9 A. On this Exhibit?

10 Q. Yes, sir.

11 A. No.

12 Q. Were there any additional founding shareholders?

13 A. Yes, my two son, Lee Grounsell, Clark Grounsell,
14 Andy Ethridge, Rodney Booth and Hank Durschlag.

15 Q. If you look at Plaintiff's Exhibit 3 which are
16 the bi-laws, have you seen this document before?

17 A. During these proceedings. I could have seen it
18 earlier.

19 Q. Do you know if that document was ever executed?

20 A. I can't recall. At this time there were several
21 bi-law agreements that were put together with Glucotec, I
22 just can't remember.

23 Q. I'm going to show you what's been marked for
24 identification as Plaintiff's Exhibit No. 4 and if you
25 turn to the last page, Page 13, 30 you see that, sir?

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1 A. Yes.

2 Q. Is that your signature?

3 A. As chairman of the organization meeting of the
4 initial board of directors, yes, it is, sir.

5 Q. And date is that, sir?

6 A. 3-24-06.

7 Q. Thank you, sir.

8 MR. PACELLA: I'd like to admit this
9 document.

10 THE COURT: Any objection, Mr. Bannister?

11 MR. BANNISTER: None.

12 THE COURT: Plaintiff's Exhibit No. 4 is
13 admitted without objection.

14 (Bi-laws marked as Plaintiff's Exhibit No. 4
15 for identification was admitted into evidence.)

16 BY MR. PACELLA:

17 Q. Are these part of the pre-corporation?

18 A. Yes.

19 Q. And there were edits down to this but not before
20 the May 18th meeting; is that correct?

21 A. I think it was May 11th.

22 Q. At the shareholder's meeting?

23 A. At the shareholder's meeting.

24 Q. We'll get to that in just a minute. If you look
25 at Article 2, Section 6 of Page 2 on the exhibit, could

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1 you read that into the record for me, please, sir?

2 A. "Written notice of the special meeting of the
3 shareholders stating the place, date and hour and the
4 purpose or purposes for which the meeting is called, shall
5 be served upon or mailed to each shareholder entitled to
6 vote thereat, at such address as appears on the books of
7 the Corporation, not less than ten (10) nor more than
8 fifty (50) days before the date of such meeting. Business
9 transacted at all special meetings shall be confined to
10 the objects stated in the call."

11 Q. And the first part of that sentence says written
12 notice; is that correct?

13 A. That's correct.

14 Q. Can you turn to Page 6 of this document, sir. If
15 you look at Section 12 which is under the heading called
16 notices, can you read Section 12 into the record, please,
17 sir.

18 A. "Whenever under the provisions of these bi-laws
19 notice is required to be given to any director or
20 shareholder, it shall not be construed to mean personal
21 notice but such notice may be given in writing, by mail,
22 postage prepaid, addressed to such director or shareholder
23 at such address as appears on the books of the
24 Corporation."

25 Q. So this document requires that written notice be

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1 mailed, postage prepaid, to any shareholder of the notice
2 of meeting; is that correct?

3 A. That's what the document states.

4 Q. And this is the bi-laws of Glucotec,
5 Incorporated; is that correct?

6 A. Is this the one I signed?

7 Q. Yes, sir.

8 A. Yes, if I signed it.

9 Q. So these were the requirements that Glucotec was
10 required to abide by in order to have a special meeting;
11 is that correct?

12 A. That's correct.

13 Q. At some point, did you cause to be filed a stock
14 subscription on behalf of Collaborativemed, LLC in
15 Glucotec, Inc.?

16 A. Not really quite understanding your question.

17 Q. At any time did you send over a stock
18 subscription form to Glucotec on behalf of
19 Collaborativemed asking for stock?

20 A. I can't recall. I don't really quite understand
21 your question.

22 Q. I'm going to show you what's been marked as
23 Plaintiff's Exhibit 5 for the record. I'd ask you to
24 identify this document for the record, sir?

25 A. It says stock subscription.

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1 Q. What does it say below that, sir?

2 A. You want me to read the whole thing?

3 Q. No, sir. Is this a stock subscription for
4 Glucotec, Inc?

5 A. It's for Collaborativemed on my behalf stock from
6 Glucotec -- this is basically a proposed agreement to get
7 stock upon the exception from shareholders of Glucotec,
8 yes.

9 Q. And how many shares are you asking for in this
10 document?

11 A. I believe it's -- this document is asking for
12 eighteen million, one hundred and twenty-nine thousand,
13 sixty-six shares for CoMed to be approved by the Glucotec
14 board.

15 Q. Does it actually say that?

16 A. No, but that's what it actually involved because
17 we had to vote on the deal.

18 Q. Who had to vote on the deal?

19 A. The shareholders.

20 Q. And which shareholders are entitled to vote on
21 such a transaction?

22 A. Those that had paid their \$250 to purchase stock
23 and become shareholders and those that had signed
24 non-competes and those who had signed whatever other
25 protective documents the attorneys had given me for them

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1 to sign before becoming shareholders of they were
2 founders. We were giving a significantly reduced price on
3 the shares relative to the public value.

4 Q. And what was your public value at this time?

5 A. At the time that this was done was no assigned
6 public value.

7 Q. What is the date of this document?

8 A. March 24th.

9 Q. Had FDA approval been granted to the glucommander
10 at this time?

11 A. No, it was not granted until June 6th of that
12 year or that first week in June. It was at the ADA
13 meeting as we approached that which is the first week in
14 June.

15 Q. So at the time you sent over a stock subscription
16 in March of 2006, there was no way that Glucotec could
17 sell glucommander to make any revenue off of that product;
18 is that correct?

19 A. That's correct.

20 Q. Because the FDA approval had not been gained.

21 A. No, we had been told by the FDA they were going
22 to approve the product but they had not approved it.

23 Q. So FDA approval had not been granted; is that
24 correct?

25 A. Official approval had not been granted. Word of

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1 mouth had stated that they were going to approve it.

2 MR. PACELLA: I ask that the stricken. He's
3 testifying about what other people had told him.

4 THE COURT: Sustained.

5 BY MR. PACELLA:

6 Q. At the time of this transaction, isn't it true
7 that you were the sole member of Collaborativemed, LLC?

8 A. Yes.

9 Q. So you were the sole member, correct?

10 A. That's correct.

11 Q. So you were the only one in control of
12 Collaborativemed; is that correct?

13 A. That's correct.

14 Q. What was your basis for the eighteen million, one
15 hundred and twenty-nine thousand, sixty-six shares that
16 you were asking to be transferred?

17 A. Multiple factors involved, one is really we're in
18 the FDA approval process, two, personally assets that were
19 in the corporation, three was the intellectual property
20 that had developed within CoMed for the previous two years
21 related to software enterprise systems and based
22 applications and the last was we were looking for the
23 goodwill and the trademark name of the Atlanta Diabetes
24 Group. We really already intellectually had discovered
25 our algorithm we felt was superior to what the doctors had

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1 so moved on to our own product and we felt that was part
2 of the intellectual transformers alone.

3 We also thought the doctors, we had an
4 agreement with the doctors with regards to trademark name
5 which was were trying to get and goodwill physicians and
6 secondary we were trying to get the palm pilot version
7 that Dennis Steade had to market, but it was not approved
8 by the FDA.

9 Q. At that time, correct?

10 A. It was never approved to my knowledge.

11 Q. The product that you transferred was not approved
12 at the time you transferred it either; is that correct?

13 A. At the time I transferred it, it was not
14 approved. Written approval did not arrive until June 6th,
15 the first week of June.

16 Q. So at the time you transferred it, it was not
17 approved by the FDA; is that correct

18 A. I'm not going to say that's correct because we
19 were dealing with some advanced notice from the FDA that
20 the product was approved and it had been through the
21 channels of the FDA.

22 Q. Are you testifying to what somebody told you?

23 A. I'm testifying that I talked directly to and
24 indirectly through Underwriting Laboratories as to what
25 the FDA had sent directly to us as through the

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1 Congressional Office.

2 MR. PACELLA: I ask that testimony be
3 stricken as hearsay.

4 THE COURT: You can't testify to what
5 somebody says. Watch how you pose your question as well.

6 MR. PACELLA: Yes, sir.

7 THE WITNESS: So there were several factors
8 involved in the evaluations and the capital contributions
9 and the just outright cash was in the neighborhood of
10 seven, \$800,000, somewhere between three and \$700,000. I
11 went outside of this particular project outside to my
12 family members and other people asking to invest in it to
13 raise the capital. So some of the capital contributions
14 were included in this.

15 BY MR. PACELLA:

16 Q. Were those expenses that you advanced on behalf
17 of this project that you were working on?

18 A. No, they weren't -- they were in addition to the
19 expenses for the capital contributions from other members
20 of my family.

21 Q. Are those similar to the capital contributions
22 that Dr. Bode testified about yesterday?

23 A. Dr. Bode was talking about expenses and services.
24 I'm talking about hard cash as capital contribution.

25 Q. Did he bring you a check for \$100,000?

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1 A. Dr. Bode wanted to give me a check for \$100,000
2 but he wanted me to personally guarantee the stock and he
3 said if you want me to guarantee it, you're going to make
4 it a loan.

5 Q. Did he also deliver a check to you for \$300,000
6 at some point?

7 A. In conjunction with private placement, I was
8 given a check for \$300,000 to hold until the private
9 placement came out in which he cashed that check in, I
10 think, in July of that year but it had nothing to do with
11 CoMed. It had to do with Glucotec and the formation of
12 Glucotec.

13 Q. Was a shareholder meeting required for this
14 transfer of stock from Glucotec to Collaborativemed?

15 A. Yes, a shareholder meeting is required.

16 Q. When was that shareholder meeting held?

17 A. My recollection is May 11th.

18 Q. May 11, 2006?

19 A. 2006.

20 Q. And when was notice of that meeting sent to all
21 the shareholders?

22 A. We had discussed it probably four to six weeks
23 getting together as a group. I was told emails were sent
24 to Garry Hoyt and Bruce Bode.

25 MR. PACELLA: Move to strike, Your Honor,

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1 what someone told him.

2 THE COURT: You can say what you did, but you
3 can't say what someone else told you.

4 THE WITNESS: I requested my secretary to
5 send emails to both Bode and Garry Hoyt.

6 BY MR PACELLA?

7 Q. Did you send personal notice to Dr. Bode or to
8 Garry Hoyt?

9 A. No, I did not.

10 Q. Under the terms of the bi-laws that we read in
11 earlier which was the written notice must be sent US mail
12 postage prepaid, is that correct?

13 A. That's correct, but they weren't shareholders.

14 Q. What is the basis of your testimony that they
15 were not shareholders?

16 A. They had not paid any capital in and had not put
17 anything into the company.

18 Q. Had they been treated as shareholders prior to
19 that meeting?

20 A. They were treated as prospective shareholders.

21 Q. At what point did you make the determination they
22 had gone from prospective shareholders to shareholders?

23 A. Once they actually delivered cash.

24 Q. You had them actual vote as shareholders at
25 meetings and on other things?

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1 A. Not to my recall.

2 MR. PACELLA: If I may approach, Your Honor.

3 THE COURT: You may.

4 BY MR. PACELLA:

5 Q. Have you seen this document before?

6 A. Yes, that's prospective document.

7 Q. And what does it say above the names of the
8 bottom left hand side? Does it read shareholder?

9 A. It says shareholder

10 Q. It doesn't say prospective shareholder?

11 A. No.

12 Q. It says shareholder?

13 A. No, it says prospective shareholder.

14 Q. What is the date of that document? That's not
15 what the document says, is it?

16 A. No, it's not.

17 Q. What's the date of that document?

18 A. It says April 25th but that was the beginning
19 date of the beginning circulation of that document.

20 That's not the date that they actually signed it.

21 Q. As of April 25, 2006, you were asking the
22 shareholders to make you the chairman of the board; is
23 that correct?

24 A. I was asking prospective shareholders.

25 Q. Does it say prospective?

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1 A. No, but we clarified that.

2 Q. How was present at the May 11 meeting that you're
3 referring to?

4 A. Hand Durschlag, Andy Ethridge, Lee Grounsell,
5 Clark Grounsell, Robbie Booth, Roy LePoint I believe was
6 there was secretary. I believe that was all that was in
7 attendance.

8 Q. Were there minutes to the meetings kept at the
9 shareholder meeting?

10 A. Laurie kept some minutes to the meeting.

11 Q. I'm going to show you what's been marked as
12 Plaintiff's Exhibit 7 for identification which is the
13 Glucotec founding group May 11, 2006. Have you seen this
14 document before, sir?

15 A. Yes, during this process.

16 Q. Does it say at the top left hand corner,
17 "Glucotec Founding Group Stockholder Meeting Minutes."

18 A. Yes. That was the founders trying to get
19 together to show what the salaries would be and shares
20 they would be receiving in addition.

21 Q. What's the date of this document?

22 A. May 11.

23 Q. Is this the meeting you were referring to?

24 A. There were several things that we did as I recall
25 at that particular meeting. That where we voted on CoMed

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1 transferring their IP and all the personal property and
2 other things I mentioned earlier.

3 Q. Does that say that in these meeting notes?

4 A. It's not saying it in these meeting notes, no. I
5 could have the dates wrong on that. It's eight years ago.

6 Q. I understand. Let me see if I can help you out,
7 okay.

8 A. Okay.

9 Q. On this one what we wanted to look at if you look
10 at obviously listed who was in attendance is at the top of
11 that, correct?

12 A. Yeah, that's got the attendance right at the top.

13 Q. And then the next paragraph it starts talking
14 about the penny per share that's required that the people
15 have to sign non-disclosures, that checks were collected
16 from shareholders and copies were made and this is on May
17 11, correct?

18 A. That's what the document says.

19 Q. Did you send notice of this meeting where you
20 made these changes?

21 A. That's the meeting we noticed to Garry Hoyt by
22 email that I was under the assumption that it had been
23 emailed from my secretary.

24 Q. But you did not send it by US mail as required by
25 the bi-laws; is that correct?

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1 A. No, because he wasn't a shareholder then.

2 Q. We looked at the document dated April 25th where
3 he was identified as ---

4 A. Once again, I'll say it again, Garry was a
5 prospective shareholder and this was early forming stage
6 of the company and until people signed the non-compete and
7 non-disclosure and other things.

8 Q. Before the May 11, 2006 meeting was there a
9 requirement that you pay a penny per share for the
10 founder's shares, was there a requirement that you sign a
11 non-disclosure non-compete agreement?

12 A. We didn't actually go in a penny per share, we
13 went less than a penny per share.

14 Q. Is that what these notes reflect?

15 A. No, the notes don't reflect it correctly.

16 Q. Prior to this, there had been no requirement that
17 a non-disclosure agreement be signed in order to be a
18 shareholder; is that correct?

19 A. Prior to this we said that everybody had to sign
20 a non-compete, non-disclosure and you couldn't attend this
21 meeting unless you signed it and Garry Hoyt refused to
22 sign those documents.

23 Q. In these minute notes it actually says at this
24 meeting is when you adopted that; is that correct?

25 A. That's not when we adopted it, we adopted it

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1 before that. And I think we just clarified it in this
2 meeting.

3 MR. PACELLA: May I approach, Your Honor?

4 THE COURT: You may.

5 BY MR. PACELLA:

6 Q. I'm going to show you what's been marked as
7 Plaintiff's Exhibit 6 for the record. Are these the notes
8 that you were referring to earlier as to when the proposed
9 transaction took place?

10 A. I believe these were also the May 11 meeting.
11 May 18 is the correct date on it, but that's what the
12 document states.

13 Q. Who the document say was in attendance at that
14 meeting?

15 A. The same group of people.

16 Q. Have you seen this document before?

17 A. In the course of this process of going through
18 litigation.

19 Q. And these are the Glucotec shareholder meeting
20 minutes; is that correct?

21 A. That's what this document states.

22 MR. PACELLA: I motion to move this into
23 evidence.

24 THE COURT: Any objection?

25 MR. BANNISTER: None.

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1 THE COURT: Without objection it would be No.
2 6 is admitted without objection.

3 (Meeting minutes marked as Plaintiff's
4 Exhibit No. 6 for identification was admitted into
5 evidence.)

6 BY MR. PACELLA:

7 Q. Who was in attendance at this meeting, sir?

8 A. Myself, Durschlag, Booth, Lee and Clark Grounsell
9 and Andy Ethridge.

10 Q. Were Mr. Hoyt or Dr. Bode in attendance at this
11 meeting?

12 A. I will repeat again as prospective shareholders
13 without signing the documents of non-compete, they were
14 not allowed to attend the meeting.

15 Q. And in this document it says that you proposed to
16 transfer CoMed in exchanged for eighteen million, one
17 hundred and twenty-nine thousand, sixty-six shares; is
18 that correct?

19 A. That's correct.

20 Q. Do you know if your shares were voted at this
21 meeting?

22 A. Yes.

23 Q. So your shares were voted at this meeting.

24 A. That's correct.

25 Q. And you had been made director of Glucotec before

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1 this meeting?

2 A. I'm the guy that sort of put this thing together
3 so that would kind of make me the director or whatever.
4 It wasn't an official vote that put me in as director. It
5 was sort of incorporated and became a seeing person to the
6 deal.

7 Q. Had you been elected to the board of directors
8 prior to this meeting?

9 A. To the board of directors?

10 Q. Yes, sir.

11 A. I am the guy who incorporated and brought to the
12 table or the dance and say here, here's the deal. I guess
13 that would make the sole director in the submission and I
14 don't know legally what that status would be. I will take
15 credit for putting the corporation together and bringing
16 it down to the group and saying here's what it is. I did
17 that without any question.

18 Q. Do you have the meeting minutes of the
19 subscribers for capital stock dated March 24, 2006?

20 A. I think you gave me that. I just have to figure
21 out what stack it's in.

22 Q. It's been identified as Plaintiff's No. 8 for
23 identification.

24 A. Subscribers to capital stock.

25 Q. Yes, sir. Is this a meeting that was held on

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1 March 24, 2006?

2 A. No, I don't think so. I think this is a document
3 we put together saying if these prospective subscribers
4 and when I say subscribers as non-shareholders at that
5 time. None of us were until May 11th to my recollection,
6 it's May 11th.

7 Q. Would you look on the second page to the next to
8 last paragraph.

9 A. Yes, it says I, "was elected to the board of
10 directors to the initial Board of Directors to serve until
11 the first meeting of Shareholders and until successors
12 shall have been elected and shall have qualified."

13 Q. As of March 24th you were elected as the director
14 of corporation; is that correct?

15 A. There was no election on March 24th. I guess we
16 just put it together and plugged my name in and I signed
17 it.

18 Q. Is it correct that you were appointed to the
19 board of directors according to the minutes?

20 A. According to this document, yes.

21 Q. Do you have any reason to disagree with the fact
22 that you were director as of March 24, 2006?

23 A. I didn't argue with it if I signed it at that
24 time.

25 Q. Did you ever have a board of director's meeting

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1 prior to May of 2006?

2 A. We didn't do anything official until May 11th to
3 my knowledge that caused other than me gathering the
4 corporation document going down to Ben Leapart and telling
5 him I need to set up a shell corporation. It's basically
6 a corporation we can all vote on and establish
7 shareholders in and move forward as a new company.

8 Q. On Page 2 of this document, does it bare your
9 signature?

10 A. Yeah, it does.

11 Q. Did you sign as chairman?

12 A. Chairman.

13 Q. You recognize this document, correct?

14 A. Yes, as I initially set up the company.

15 MR. PACELLA: I'd like to move this into
16 evidence.

17 MR. BANNISTER: No objection.

18 THE COURT: Admitted without objection.

19 (Document marked as Plaintiff's Exhibit No. 8
20 for identification was admitted into evidence.)

21 BY MR. PACELLA:

22 Q. Did you set up a board of directors meeting on
23 March 30, 2006?

24 A. I don't recall setting up a board of directors
25 meeting on March 30, 2006.

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1 Q. I'm going to show you what's been marked for
2 identification purposes as Plaintiff's No. 10. What is
3 the title of this document, sir?

4 A. Organizational meeting board of directors.

5 Q. Does it say you are present at this meeting on
6 March 30, 2006?

7 A. Yes, it says that. I can't remember being with
8 Leapart when he did it. I guess he did.

9 Q. Did you see on the second page, where it lists
10 Collaborativemed, LLC as a subscriber of stock in the
11 eighteen million shares?

12 A. Yeah. That's the number of shares we had to get
13 before we were going to consummate Collaborativemed. This
14 is all proposed agreements.

15 Q. Can you show me in this document where it says
16 its proposed?

17 A. Doesn't say proposed but it was prior to us
18 getting anything until May 11th, which I think it's not
19 May 18th, it's May 11th. We voted to go ahead with all of
20 this which is what this document represents.

21 Q. Can you show me in this document where it says
22 that?

23 A. It doesn't. It just says the corporation coming
24 together. That's the way we had to get the paperwork put
25 together and take to the meeting and this is the paperwork

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1 we put together to take to the meeting.

2 Q. But there was a meeting held of the director,
3 that would be you, correct?

4 A. A meeting could have been a phone call because I
5 had just put this thing together. I could have told me,
6 make me the director or make me the chairman or whatever
7 but we got to go ahead and move forward if we're going to
8 do something with this Glucotec project.

9 Q. And the document we looked at earlier, you had
10 been elected by the stockholders at that time as to the
11 board of directors; is that correct?

12 A. Which letter are you referring to? The minutes?

13 Q. Yes, sir, the March 24th minutes.

14 A. Not on the 24th minutes. You're confusing me.
15 I've going to have to bring back up the documents you were
16 referring to.

17 Q. The March 24th minutes that we were just looking
18 at where you identified it?

19 A. Those minutes are May 18th and May 11th.

20 Q. There was minutes from March 24, 2006 meeting as
21 well where you were elected to the board of directors?

22 A. I'll state it again this is how we were putting
23 the corporation together. We didn't do anything to May
24 11, officially.

25 Q. Is that what the documents say?

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1 A. This document says March 24 but there was no
2 subscribers. I'm telling you it's not a valid document,
3 we didn't get the subscribers and we didn't get any checks
4 until after May 11 so this document doesn't truly reflect
5 anything. But if you want to reflect it, I'll take it as
6 a piece of paper that says what it says, but it's not an
7 accurate statement of fact.

8 Q. In that document does it authorize you to file
9 Articles of Incorporation on behalf of Glucotec?

10 A. I'm not seeing it yet. Can you point it out to
11 me?

12 MR. PACELLA: May I approach, Your Honor.

13 THE COURT: Yes.

14 THE WITNESS: It says, "Motion duly made in
15 carried, the attached resolution relating to the banking
16 arrangements of the Corporation were adopted."

17 And once we met with everybody we told them
18 what we did and if they wanted to agree with this, they
19 could. So we had to get a working document. Do you
20 understand that?

21 BY MR. PACELLA:

22 Q. So according to this there was a meeting on March
23 24, 2006 and you were authorize to file Articles of
24 Incorporation; is that correct?

25 A. That's what this document says.

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1 Q. Did you, in fact, file the Articles of
2 Incorporation a couple of days later?

3 A. Ben Leapart filed the Articles of Incorporation.

4 Q. But with your signature, correct?

5 A. Yes, sir. I told him to incorporate in the State
6 of South Carolina.

7 Q. And you had signed that document; is that
8 correct?

9 A. I signed this as a working document.

10 Q. And on the second page of that document, you had
11 been elected a director according to the minutes of that
12 meeting; is that correct?

13 A. That's what this document statements.

14 Q. And did you have any reason to believe you were
15 not a director of Glucotec?

16 A. We didn't really accurate take the corporation
17 from a personal standpoint to May 11 and I'll reiterate
18 that. I was going to walk away from that company and file
19 another company, if we had to, if CoMed didn't receive its
20 eighteen million shares. This is was a shell company
21 which we could operate from. I don't know how to keep
22 saying the same thing. We didn't get checks from anybody
23 as subscribers until May 11th and that was the \$250 check.
24 That's when the capital changes hand and when you got a
25 contract as far as I, as a business man, look at it. When

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1 I receive the check, I got a contract when it comes to
2 stock. And when I cash that check and take those funds,
3 then I got a subscriber now. Other than that, I got
4 someone who wants to get the stock and once I cash it and
5 issue a certificate, they are now a shareholder.

6 Q. So it's your position that until you get a share
7 of stock, you're not a shareholder?

8 A. Officially on 5-22 we issued shares to everybody
9 and signed the document so we weren't shareholders then
10 but we had to get a working document together to present
11 to the group.

12 Q. But it wasn't until May 11 that you decided you
13 had to pay in to become a founding shareholder; is that
14 correct?

15 A. Anytime you got to pay in to be a subscriber.

16 Q. You can be given founding shares in a corporation
17 for your work on the corporation; is that correct?

18 A. That's correct, but we were advised not to do
19 that, to collect a check for the shares.

20 Q. Did somebody tell you that?

21 A. Yeah, the White's Law Firm.

22 Q. How did people find out about the May 11, 2006
23 meeting that we been talking about?

24 A. By telephone calls, word of mouth, second hand,
25 first hand, calling each other saying we got to get

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1 together as a group and get this company formed and start
2 moving forward. We got to sign the non-compete, you got
3 to non-disclosure I think it was called, you got to sign
4 some of the protective documents from the attorney. If
5 you want to move forward with the group, this is a
6 requirement.

7 Q. Those requirements were put in place at the May
8 11th meeting, there is no document showing those were
9 requirements prior to May 11; is that correct?

10 A. There's no documents that show that prior to May
11 11th.

12 Q. So how was Mr. Hoyt supposed to know that he had
13 to do all of that prior to May 11 if you didn't determine
14 that until May 11?

15 A. Because when I went to Dallas in February, March,
16 I explained it to Mr. Hoyt and at that time I believe
17 CoMed was going to get fourteen million, six hundred
18 thousand shares and redistribute those shares to the paid-
19 in capital people, to people who had done our process with
20 the FDA and other shareholders. I wasn't receiving and
21 neither was CoMed exclusively receiving those shares from
22 their own benefit. Four hundred thousand shares was going
23 back out to Bruce Bode and all those sort of things. We
24 couldn't do that.

25 Q. How many shares did you end up with?

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1 A. I ended up with 20% of that.

2 Q. And why is that?

3 A. In CoMed that's what we agreed to when I bought
4 in additional capital and other partners.

5 Q. And who did you give the other 80% to?

6 A. Actually my wife and I had 40% and my children
7 took a credit line on their homes to put in their paying
8 capital.

9 Q. How much did they pay in?

10 A. I can't recall complete. It was either 50 or
11 \$100,000.

12 Q. So they received approximately 3.5 million shares
13 of Glucotec for \$50,000?

14 A. 3.6 million shares for \$50,000.

15 Q. And Bruce Bode made a loan for \$100,000 and how
16 many shares did y'all convert him to?

17 A. Bruce Bode didn't do risk capital. Risk capital
18 is a different thing. Bruce Bode did a loan and we
19 converted that to twenty-five cents.

20 Q. And when did your children put up the \$50,000?

21 A. I can't recall the date. It was to get the FDA
22 approval, I can recall needing the money for that.

23 Q. Is it possible it was after the shares were
24 already transferred to Collaborativemed?

25 A. No. I can't recall the dates but I would think

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1 it was before then. I would think it was February or
2 March of that year.

3 Q. But you don't recall.

4 A. I can't recall the specific dates. I'd have to
5 see a copy of the check.

6 Q. This is the shareholder ledge. If you can read
7 on here Line 10 and 11, please.

8 A. Line 10 is Bruce Bode, 441,000 shares transferred
9 to CoMed, Garry Hoyt 231,941 shares transferred to CoMed,
10 Robbie Booth 250,531 transferred out of CoMed's eighteen
11 million.

12 Q. So you received the eighteen at CoMed and you
13 started distributing them out; is that correct?

14 A. Yes, that's correct. That's the total amount.

15 Q. What was the basis to determine who got what
16 amount of stock?

17 A. Well, I had an agreement with the children that
18 we each get 20%.

19 Q. So you would give each of your children 20%?

20 A. That is correct. The agreement was whatever
21 number of shares I get and whatever venture I do they will
22 get for taking their home loans and credit lines, which
23 was substantial with them being young that they would get
24 that. They were upset doing that to be honest with you
25 even though they got 3.6 million, they were upset they had

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1 to do that.

2 Q. Did your two sons know they were going to get
3 those shares when they voted?

4 A. They knew they had 20%.

5 Q. They voted their shares in favor of the transfer
6 knowing they were going to get 3.6 million shares with
7 their vote?

8 A. They voted for -- I can't remember all the
9 details, but Clark was always attemptable to everything.
10 It was a sale to my own son.

11 Q. Yes, sir. But going back to when you voted for
12 this, your shares were voted; is that correct?

13 A. Yes.

14 Q. Based on the documents you looked at today, you
15 were a director at that time; is that correct?

16 A. That's correct. What date did you say I was a
17 director? I'm going off saying yes, yes, yes, what was
18 the date?

19 Q. I apologize. Based on the documents we've looked
20 at today on March 24th you were elected as an initial
21 director of the corporation; is that correct?

22 A. That's what this document says, but you didn't
23 move forward and I'll state it again because we've been at
24 it about five times now, it was May 11th that we went
25 forward with it.

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1 Q. I understand that you're saying it was May 11th
2 that you transferred the stock to Collaborativemed but I'm
3 asking you at the time you did that had you been elected
4 by the prospective shareholders, in your terms, as a
5 director of the corporation?

6 A. Repeat the question.

7 Q. Based on the documents you looked at today, you
8 were elected to the board of directors on March 24; is
9 that correct?

10 A. Yes, if that's what the document states.

11 Q. So you're serving on the board of directors. You
12 have a March 30th meeting as the sole director of the
13 board of directors, is that correct, according to the
14 documents?

15 A. According to these documents.

16 Q. You say May 11th, the minutes say May 18th, you
17 were a director of Glucotec; is that correct?

18 THE WITNESS: Your Honor, may I take a break?

19 THE COURT: Yes, we can take a 15 minute
20 recess. You're on the stand, you may not discuss with
21 your attorney anything concerning your testimony.

22 (Whereupon, there was a brief recess.)

23 THE BAILIFF: Please remain seated, court is
24 now in session.

25 THE COURT: Thank you. You may be seated.

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1 Please continue.

2 BY MR. PACELLA:

3 Q. If you look in the pile and it's No. 9. I think
4 it's been entered into evidence as No. 4 which is the
5 consent of majority of shareholders.

6 A. Yes.

7 Q. The date of this document is April 25, 2006; is
8 that correct?

9 A. That's correct.

10 Q. Can you read No. 1 into the record, please.

11 A. "Rich Grounsell is named as a member of the board
12 of directors of Glucotec for a term of 365 days becoming
13 effective May 1, 2006."

14 Q. And all of the shareholders consent to that,
15 correct?

16 A. Yes, eventually.

17 Q. Based on this document as of effective May 1,
18 2006, you were on the board of directors; is that correct?

19 A. Per this document.

20 Q. Do you have any reason to disagree with this
21 document?

22 A. I didn't consider it anything until 5-22, that
23 date that we became a corporation and issued shares and we
24 had shareholders. At that point I took everything
25 serious.

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1 Q. I understand that, but this document says
2 effective May 1st, you were on the board of directors; is
3 that correct?

4 A. As a working product document, yes.

5 Q. And you say May 11th but the May 18 minutes says
6 that your shares were voted in favor of the transaction to
7 transfer the stock to Collaborativemed; is that correct?

8 A. Yes.

9 Q. And according to this you were on the board of
10 directors at that time; is that correct?

11 A. As a working product document, that's correct.

12 Q. And who voted your shares for you?

13 A. Who voted my shares?

14 Q. Yes.

15 A. Hank Durschlag voted my shares of the founding
16 shares.

17 Q. So someone on your behalf voted your shares to
18 transfer eighteen million shares of stock from Glucotec to
19 Collaborativemed a company that you wholly owned; is that
20 correct?

21 A. That's correct.

22 Q. And you were on the board of directors at that
23 time, is that correct, according to this document, this
24 consent?

25 A. According to this document.

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1 Q. Thank you. Going back to the notice issue. Did
2 you send written notice in accordance with the bi-laws
3 that you read into the record earlier to any shareholders
4 of any meeting before May 18th of 2006?

5 A. We verbally communicated prior to us setting up
6 shareholders on 5-22.

7 Q. But does the bi-laws require written notice?

8 A. The bi-laws may require written notice once you
9 become a shareholder.

10 Q. And the bi-laws is what is controlling; is that
11 correct?

12 A. The bi-laws control the corporation.

13 Q. Can you show me in there where it says you have
14 to pay a penny a share for your founder's shares?

15 A. I think you stated that in the minutes.

16 Q. Correct, but I'm talking about the bi-laws dated
17 March 24, 2006 which you just testified control the
18 corporation, can you show me in there where you have to
19 pay a penny a share for your founder's shares?

20 A. Which document is that?

21 Q. It's Exhibit No. 3, sir. I think a signed copy
22 was also entered today.

23 A. Where does it say penny?

24 Q. Signed copy is Exhibit No. 4. Isn't it true that
25 no where in the bi-laws does it require a penny a share be

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1 paid for founder's shares?

2 A. Not in the bi-laws.

3 Q. And that is the document that controls the
4 corporation; is that correct?

5 A. That's the documents that control the
6 corporation.

7 Q. And can you show me in the bi-laws where it says
8 you had to sign a non-disclosure to be a shareholder?

9 A. But this is in the organization and the
10 management of the company.

11 Q. And that's controlled by the bi-laws which is
12 what you testified to earlier, is that not correct?

13 A. The organization and management of the company on
14 a daily basis we don't use bi-laws.

15 Q. How a company is set up and run is not controlled
16 by the bi-laws, is that your testimony?

17 A. No, I said the bi-laws are the guidelines in
18 which corporations are run but from the management of the
19 company from day to day we manage to be in accordance with
20 the bi-laws.

21 Q. We're talking about notice that's required in the
22 bi-laws.

23 A. And as I stated earlier we had no shareholders.

24 Q. You said Glucotec had no shareholders because
25 they had not paid their penny a share; is that correct?

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1 A. That's correct.

2 Q. And you said they were not shareholders because
3 they had not signed their non-disclosure; is that correct?

4 A. That's correct.

5 Q. And you had just testified that no where in the
6 bi-laws does it say those are requirements to be
7 shareholders; is that correct?

8 A. Yeah, but those are management requirements that
9 I set down.

10 Q. But the bi-laws control, isn't that what you
11 testify to earlier?

12 A. The bi-laws control the corporation but when it
13 comes to this particular decision, Rich Grounsell said
14 we're not having anybody come in here without protective
15 agreements to protect this corporation. We got legal
16 advise to do that.

17 Q. That was in direct contradiction of the bi-laws;
18 is that correct?

19 A. I don't think that's in direct conflict with the
20 bi-laws.

21 Q. But you're adding additional requirements that
22 are not set forth in the bi-laws just because you said so,
23 is that correct?

24 A. I haven't had time to read the bi-laws in detail
25 how it deals with legal conveyance such as non-compete

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1 agreements, non-disclosure agreements but from a legal
2 prospective we didn't want to run the company and let
3 people be able to come out there and do what they want to
4 that could potentially hurt the company so we put some
5 management rules and things in that may not be in the
6 bi-laws but that's the way the company was going to run.

7 Q. But prior to putting those into the bi-laws in
8 the May 11th meeting, you had to follow the bi-laws, is
9 that not correct?

10 A. I followed the bi-laws to the best of my ability
11 and the legal advice I received.

12 Q. Just a minute ago you hadn't read the bi-laws
13 fully, is that what you testified to?

14 A. That's correct.

15 Q. And you were the sole controlling member of the
16 board of directors for this corporation; is that correct?

17 A. That's correct.

18 Q. And you had not read the bi-laws?

19 A. That's correct.

20 Q. Collaborativemed did, in fact, receive those
21 eighteen million shares, did they not?

22 A. Yes, they did according to the stock ledger.

23 Q. Eighteen million, one-hundred and twenty-nine
24 thousand, sixty-six shares to be exact.

25 A. That's my recall.

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1 Q. Did Collaborativemed sell any of the eighteen
2 million, one-hundred and twenty-nine thousand, sixty-six
3 shares of stock it received?

4 A. Yes, it did.

5 Q. And it sold them for cash; is that correct?

6 A. That's correct.

7 Q. And you were on the board of directors at
8 Glucotec at the time you were selling shares of stock in
9 the corporation that were not held by the corporation; is
10 that correct?

11 A. That's correct.

12 Q. How much money did you obtain in 2007, 2008 from
13 the sell of stock held by Collaborativemed and Glucotec?

14 A. I can't recall the specific amount but I had got
15 two million that had come in which I turned around and
16 loaned it back to Glucotec exchange for the shares that I
17 did. I sort of acted in hindsight some people says as an
18 agent for Glucotec.

19 Q. In hindsight, but you received the money; is that
20 correct?

21 A. Received the money and put it back into Glucotec.

22 Q. Collaborativemed is the one who got the check; is
23 that correct?

24 A. Collaborativemed put the money back into
25 Glucotec.

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1 Q. How many shares -- you said about two million
2 dollars worth, is that what you said?

3 A. I think it was about two million.

4 Q. And what year was that?

5 A. Somewhere between '06 and '08.

6 Q. And you think it was only two million dollars is
7 what you received is that your testimony today?

8 A. Well, this is bogus deal with three million, I
9 see that in there.

10 Q. So that would be five million?

11 A. Yes. Whatever the shareholder records show it
12 was a couple million dollars and the funds were attached
13 on my income and then placed back into the corporation.

14 Q. Does 6.9 million dollars sound about right?

15 A. No.

16 Q. It doesn't?

17 A. No.

18 Q. Did we talk about this in your deposition about
19 the amount of money that you received in 2007 and 2008?

20 A. We could have. I don't recall that specific
21 amount.

22 MR. PACELLA: May I have a minute, Your
23 Honor.

24 THE COURT: You may.

25 BY MR. PACELLA:

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1 Q. At the time these sales were made, you were the
2 sole director of the corporation Glucotec; is that
3 correct?

4 A. At the time, no. Some of the sales were made
5 after that. I had stepped down as director.

6 Q. But some of the sales were made while you were
7 the director; is that correct?

8 A. That's correct.

9 Q. I think you testified early that you transferred
10 Collaborativemed interest, LLC interest to your children;
11 is that correct?

12 A. The 20%.

13 Q. 3.6 million shares each; is that correct?

14 A. That's correct.

15 Q. And how many total shares does Collaborativemed
16 hold today in Glucotec?

17 A. Family court has gotten rid of all of it.

18 Q. So that would zero.

19 A. Zero.

20 Q. How many do you hold today, sir?

21 A. Family court has reduced that to 300,000 and a
22 court settlement on a trust issue reduced another 200, I
23 got 35 to 50.

24 Q. So out of the eighteen million during the
25 pendency of this litigation ---

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1 A. That ---

2 Q. Go ahead, I'm sorry.

3 A. That was quoted in reverse terms which was a 10
4 to 1.

5 Q. So the eighteen million would become 1.8 million?

6 A. 1.8 million.

7 Q. So that 1.8 million shares you're all the way
8 down to 35 million shares?

9 A. Well, the reverse split took it down to 370,000
10 total and family court did its number and reduced it and
11 it was a trust during this time period of trying to fund
12 Glucotec there was a trust loan that had to be repaid and
13 it was settled.

14 Q. Do you know when the complaint in this case was
15 filed?

16 A. Not actually.

17 Q. Does March 28, 2008 sound about right?

18 A. That could be.

19 Q. During the pendency of this litigation, have you
20 transferred stock from Collaborativemed to other sources?

21 A. Yes.

22 Q. And have you sold stock to receive cash during
23 the pendency of this litigation?

24 A. Yes, we put it back into Glucotec and we received
25 some shares back.

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1 Q. So you received stock back. So you did a swap
2 and you got the advantage of that; is that correct?

3 A. I did it a dollar a share.

4 Q. But you got shares back; is that correct?

5 A. At the price I sold them for and they ended up
6 being a swap non-profitable.

7 Q. So while this action was pending and you knew we
8 were challenging the transfer, you transferred stock, is
9 that your testimony today?

10 A. Back into Glucotec I transferred funds, yes,
11 that's my testimony.

12 Q. And that was based on sales that you made of your
13 own stock; is that correct?

14 A. That's correct.

15 Q. During the pendency of this litigation?

16 A. It went back into Glucotec.

17 Q. But you got shares of stock for it; is that
18 correct?

19 A. Yeah, I got shares to cover the shares I sold, an
20 even swap.

21 Q. I thought you just said you were disadvantaged a
22 minute ago?

23 A. If I want to get down to penny's else, because
24 I'm down about three million dollars in the total bill.

25 Q. Is that an expense that you testified that you

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1 wrote off?"

2 A. Me paying taxes on it and the money back et
3 cetera, et cetera, I think I've lost 3.2 million dollars
4 on the total Glucotec bill.

5 Q. Is that after you've taken into account the sales
6 that you made of Glucotec stock?

7 A. That was for everything, yeah.

8 Q. Does that include money you transferred to other
9 places?

10 A. I didn't transfer money to other places that I
11 can recall.

12 Q. You didn't use any of the sales proceeds from
13 your sales of Glucotec owned Collaborativemed stock to
14 invest in other ventures?

15 A. For a short term period we were swapping funds
16 back and forth, debit, credit between Collaborativemed and
17 Glucotec.

18 Q. Who kept up with that?

19 A. Apparently nobody.

20 Q. At the time you did this, was there a loan
21 agreement in place for you to be swapping money back and
22 forth as you testified?

23 A. Yes, there was a loan agreement.

24 Q. Was the loan agreement subsequent to this or was
25 it done while you were doing it?

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1 A. It was prior to it.

2 Q. Was it done post-opt?

3 A. No, not post-opt. It could be a little bit of
4 it. No, I don't think any of it was, but the bottom line
5 the debit and credit I was ahead of the game except for
6 two weekends.

7 Q. But you were still selling stock; is that
8 correct?

9 A. Yes, I sold the stock to raise funds for
10 Glucotec.

11 Q. And you were the member of the board of directors
12 at the time?

13 A. That's correct and I was trying to keep Glucotec
14 a float.

15 MR. PACELLA: Give me just a second, Your
16 Honor.

17 THE COURT: Yes, sir.

18 BY MR. PACELLA:

19 Q. A lot has been made today about this non-compete
20 agreement that you talked about; is that correct?

21 A. Yes.

22 Q. Did you actually sign a non-compete agreement?

23 A. To my knowledge, I did. I wasn't worried about
24 me competing. To my best recall I think I did.

25 Q. Didn't you testify earlier that you had to as a

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1 pre-condition of being a shareholder?

2 A. Well, that's me being autocratic rule as
3 president.

4 MR. PACELLA: May I approach, Your Honor?

5 THE COURT: You may.

6 BY MR. PACELLA:

7 Q. I want to show you Page 156 of your deposition
8 where you testified that you didn't know whether you had
9 signed, is that what you testified in your deposition?

10 A. I could have but I subsequently have seen what I
11 signed.

12 Q. Do you have a copy of that document with you
13 today?

14 A. My attorney could have it with him today.

15 Q. Is that a document you produced in this
16 litigation?

17 A. I don't know.

18 MR. PACELLA: Nothing further.

19 THE COURT: Mr. Bannister, would you like to
20 reserve or call him direct in your case?

21 MR. BANNISTER: I would like to reserve.

22 THE COURT: You may step down.

23 MR. PACELLA: That's our case, Your Honor.

24 THE COURT: Are there any motions at this
25 time?

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1 MR. BANNISTER: The defense would like to
2 move for a directed verdict. The complaint is long,
3 Judge, but as to the first cause of action in the amended
4 complaint breach of fiduciary duty there was testimony
5 that was no business that Glucotec could conduct without
6 the intellectual property that was transferred to CoMed
7 and bought by CoMed. The were shares of stock that was
8 transferred from Glucotec to CoMed was for the right to
9 intellectual property and the trademark to actually market
10 the product that was set up to do, therefore, in essence
11 that CoMed owned the right and FDA approval and could not
12 otherwise be marketed rather than being in violation of
13 his fiducial duty actually enabled to corporation to
14 operate and to have a business of itself. So we would
15 contend it would not be in violation of fiduciary duty to
16 transfer the very essence of what the corporation was and
17 that was to commercialize this glucommander technology for
18 sale in the market place. So we would ask for a directed
19 verdict on that cause of action.

20 THE COURT: I'm going to let him argue as do
21 it. I think that's the best way to keep it straight.

22 MR. PACELLA: As of beach of fiduciary duty,
23 there are actually two breaches, one is the failure to
24 provide notice to shareholders in that shareholder meeting
25 for the special purpose of this transaction and the

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1 failure to provide notice in and of itself is going to
2 result in breach of fiduciary duty. Secondly, the South
3 Carolina Code 33-8-310 which is in the interest of
4 director transaction where the director is on both sides
5 of the transaction. Mr. Grounsell testified in according
6 to the documents that he was the director of Glucotec and
7 that he was the sole owner of Collaborativemed and he also
8 testified that his sons were voting in his meeting and
9 they were going to get and receive a financial interest in
10 Collaborativemed if Collaborativemed received the stock.
11 The all voted their shares. By the way, Your Honor,
12 there's a very good reason why they were all voting their
13 shares and abstaining is because they won't have a quorum
14 if they don't vote. So without Mr. Bode and Mr. Hoyt they
15 don't have a quorum of the founding shares available to
16 vote but for the fact of that 52% in the room with
17 Mr. Grounsell and his two sons.

18 That in and of itself under 33-8-310,
19 Subsection D requires an extension of the vote and failure
20 to abstain from the vote is a violation and it's a breach
21 of fiduciary duty as to Mr. Hoyt causing him damage
22 because his proportionate share of the corporation was
23 being harmed.

24 With respect to the other argument as to the
25 intellectual property, there was actually as we heard from

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1 Dr. Steade, the intellectual property hadn't been
2 completely transferred at that time and it was never
3 subject to a final memorialization of the agreement to
4 Collaborativemed. So it's a breach of fiduciary duty on
5 both lack of notice of the meeting and to the director
6 conflict of interest there's a breach cause of damage to
7 Mr. Hoyt and his proportionate share of ownership to
8 Glucotec.

9 MR. BANNISTER: Your Honor, the third cause
10 of action is for fraud and deceit and is not specifically
11 as to what Mr. Grounsell supposedly did disregarding the
12 truth so I would move that we also have a directed verdict
13 on the fraud. Certainly there were no acts taken on the
14 part of Mr. Hoyt that relied on anything which he was
15 unaware because he had \$30,000 of expenses which were
16 returned. He got founder's shares which he paid a penny
17 of share and made a profit of \$25,000 on it. He got other
18 shares of stock which he sold and made a profit on it, so
19 there is not any misrepresentation made except his
20 contention that there was an oral agreement was that he
21 was to have the same number of shares that Mr. Grounsell
22 had and actually got the same number of founder's shares,
23 but he also testified that he recognized that the sale of
24 stock necessary to fund the corporation because he had no
25 other funds other than the fact that sale of the stock had

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1 to fund the corporation.

2 The corporation in essence had to obtain from
3 CoMed the FDA approval before it could operate. That was
4 not any misrepresentation upon the testimony before the
5 Court that Mr. Hoyt relied on to change his position in
6 any manner what so ever. So we would move for a directed
7 verdict on all issues.

8 THE COURT: Mr. Pacella.

9 MR. PACELLA: Your Honor, the fraud is the
10 false statement. It's the misrepresentation that there's
11 going to be 25% ownership in the corporation knowing, of
12 course, there was going to then be authorized shares that
13 are going to be also sold to raise capital, but amongst
14 Dr. Bode, Mr. Grounsell and Mr. Hoyt, Mr. Grounsell
15 represented that they were going to be treated equally.
16 That's the false representation because that clearly was
17 not to case. Then to continue the fraud failed to notify
18 Dr. Bode and Mr. Hoyt of the meeting of the May 11th
19 meeting and subsequently we believe the May 18th meeting
20 that there was no notice of and reliance relying on
21 Mr. Grounsell as to director of the corporation provide
22 notice of any corporate meeting and as a result Mr. Hoyt
23 has been damaged.

24 MR. BANNISTER: I believe Mr. Hoyt's
25 testimony was that he objected earlier on before this

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1 transaction took place he objected to some sum shares
2 going to CoMed in exchanged for not yet granted approval
3 of the intellectual property agreement. He objected to
4 that. Once it was made and he was aware of it and after
5 it was done he still subscribed to the stock paid his
6 penny got his stock and made profit off of it. So I can't
7 say that he was harmed. If you elevate form over
8 substance and you put substance there had Mr. Bode and
9 Mr. Hoyt had come to the meeting and said we don't agree
10 to Collaborativemed getting any stock or disavow stock, at
11 that point Collaborativemed was the owner and was pursuing
12 the FDA approval, their stock would have been worth
13 nothing. They would have had nothing, no essence to
14 conduct business with because they would have not have had
15 a product to sell.

16 THE COURT: I understand, but at this point
17 in time I'm going to respectfully deny your motion.

18 MR. BANNISTER: I believe a cause of action
19 is unfair trade practices which also names Mr. Grounsell.
20 One of the essences of the unfair trade practice act is
21 that it must be capable of repetition, so I would ask for
22 a directed verdict on that cause of action as well.

23 MR. PACELLA: Your Honor, it's capable of
24 repetition because he's still a stockholder of that
25 corporation.

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1 THE COURT: Think this was a specific
2 situation with these specific people who all had some
3 special knowledge, I'm going to grant that.

4 MR. PACELLA: I understand that.

5 THE COURT: Anything further for today or do
6 you want to present your case tomorrow.

7 MR. BANNISTER: Mr. Grounsell has diabetes
8 and he advised me that at lunch today that his blood sugar
9 has gone up and he left his medicine back in his car and I
10 we would like to start tomorrow.

11 MR. PACELLA: No objection.

12 THE COURT: Alright. We will start tomorrow
13 morning at 10:00.

14 ---END OF TRANSCRIPT RECORD--
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Hoyt vs. Collaborativemed, LLC

1 I, the undersigned, Caroline Hiskell, the
2 Official Court Reporter for the Thirteenth Judicial
3 Circuit of the State of South Carolina, do hereby certify
4 that the foregoing is a true, accurate, and complete
5 transcript of record of all the proceedings had and
6 evidence introduced in the trial of the captioned case,
7 relative to appeal, in the Court of Common Pleas, South
8 Carolina on the 31st day of September, 2013.

9 I do further certify that I am neither of
10 kin, counsel, nor interest to any party hereto.

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14 Caroline Hiskell
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Hoyt vs. Collaborativemed, LLc

1 STATE OF SOUTH CAROLINA)
2) COURT OF COMMON PLEAS
3) 2008-CP-23-2321
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Day - 3 September 31, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE JEFFREY YOUNG, Judge.

A P P E A R A N C E S

MARIO PACELLA, Esquire
JOHN ALPHIN, Esquire
Attorney for the Plaintiff

OSCAR BANNISTER, Esquire
Attorney for the Defendant

CAROLINE HISKELL
Thirteenth Circuit Court Reporter

Hoyt vs. Collaborativemed, LLC

I N D E X

WITNESSES	DIR	CROSS	REDR
Clark Grounsell	160	162	
Lori LePoint	165	169	
Robbie Booth	170	175	

E X H I B I T

IDENTIFICATION	ID	IN EVD
Plaintiff		

4	Agreement	73	73
6	Minutes	123	123
8	Document	126	126
9	Document	83	83

Defendant's			
1	Agreement	73	73
2	Letter	75	75
5	May 18th Doc	174	174
7	Agreement	88	88
8	Log	178	178

Hoyt vs. Collaborativemed, LLC

P R O C E E D I N G S

THE BAILIFF: All rise, Court is now in session.

THE COURT: Thank you. Please be seated. We are back with Garry Hoyt vs. Collaborativemed. Now, the defense is ready to present your case. Call your first witness.

MR. BANNISTER: I call Clark Grounsell.

CLARK LEE GROUNSELL, having been duly sworn, testifies as follows:

State your name and address for the record.

THE WITNESS: Clark Grounsell, 107 Watkins Bridge Road, Greenville, South Carolina 29617.

DIRECT EXAMINATION

BY MR. BANNISTER:

Q. Mr. Grounsell, I believe you are a son of the defendant in his case Rick Grounsell.

A. I am.

Q. Go back to the year 2005, 2006, are you familiar with a company called Collaborativemed?

A. I am.

Q. Was there a point in which you invested some money in Collaborativemed?

A. I did.

Q. Do you recall about when that was?

Hoyt vs. Collaborativemed, LLC

1 A. January of February of 2006.

2 Q. And how much did you invest?

3 A. \$50,000.

4 Q. Was there an agreement between you and the other
5 members of the Grounsell family as to how you would be
6 repaid your loan?

7 A. We would all receive 20% of the stock that came
8 into Collaborativemed from Glucotec.

9 Q. Was Glucotec formed at that time?

10 A. I don't believe so or it could have been forming
11 soon there after.

12 Q. Do you recall subsequently attending founder's
13 meetings or meetings for people who were employed or owned
14 founder's shares in Glucotec?

15 A. I do.

16 Q. And I don't believe Mr. Hoyt was -- was he at any
17 of those meetings?

18 A. Not that I recall.

19 Q. Did you have to sign a non-compete and
20 non-disclosure agreement in order to attend a founder's
21 meeting?

22 A. I remember having to sign non-disclosures and
23 non-competes. I'm not sure if it was for the basis of
24 that.

25 Q. But you do recall signing it?

Hoyt vs. Collaborativemed, LLC

1 A. I recall signing it, yes.

2 Q. And subsequently have you received shares of
3 stock from CoMed in the corporation of Glucotec?

4 A. Yes.

5 Q. Do you recall how many shares have you received
6 today?

7 A. It was about 20% of eighteen million shares.

8 MR. BANNISTER: That's all the questions I
9 have.

10 CROSS-EXAMINATION

11 BY MR. PACELLA:

12 Q. Mr. Grounsell, take a look at Plaintiff's Exhibit
13 7, can you identify that document?

14 A. This is the stockholder meeting minutes.

15 Q. Can you tell the date of that meeting?

16 A. May 11, 2006.

17 Q. Can you read through those notes and see if that
18 refreshes your recollection of what took place at that
19 meeting.

20 A. Okay.

21 Q. Do you know if that's the meeting where you voted
22 to determine that each member would have to sign a
23 non-disclosure, non-compete agreement?

24 A. I don't remember specifically. Just judging by
25 this, that's probably what happened. It was seven or

Hoyt vs. Collaborativemed, LLC

1 eight years ago so it's kind of hard to remember all the
2 details of those meetings.

3 Q. Do you know how you receive notice of that
4 meeting?

5 A. I do not. At the time I was working out of
6 Greenville, living in Greenville, working around the
7 office so I don't know how notice as actually given to me.

8 Q. Do you know if you received something by direct
9 mail, do you recall?

10 A. I think at the time I think I might have been
11 living with my father. I don't really recall. Obviously
12 I knew about the meeting.

13 Q. And if you look at the next document, which is
14 Plaintiff's 6, that's the minutes of May 18, 2006, do you
15 recall there being a second meeting?

16 A. I recall having numerous founder's meetings.

17 Q. Do you remember voting a measure that would allow
18 Collaborativemed to receive eighteen million shares of
19 stock?

20 A. I remember one of these meetings we had such a
21 vote.

22 Q. At the time that you had vote, did you know you
23 were going to receive shares of stock from
24 Collaborativemed?

25 A. I had already invested the money back.

Hoyt vs. Collaborativemed, LLC

1 Q. You knew you were going to receive some shares.
2 Did you abstain from that vote?

3 A. I don't recall abstaining.

4 Q. And Mr. Richard Grounsell, your father, he was
5 going to receive shares from Collaborativemed as well?

6 A. Yes.

7 Q. He was the president and CEO of Glucotec at the
8 time; is that correct?

9 A. Yes.

10 Q. Did he abstain from that vote?

11 A. Not that I recall.

12 Q. If you take a look at the minutes and tell me if
13 that refreshes your recollection as to whether his shares
14 voted.

15 A. Yes, voted shareholders is what it says, so I
16 assume everyone.

17 Q. Everyone's shares voted, would that be correct?

18 A. I assume judging by this one line but I don't
19 recall. It was seven or eight years ago.

20 Q. And I'm going to ask you the same question about
21 the May 18th meeting about the notice and I assume your
22 answer is the same, but did you receive written notice
23 mailed to you from the May 18th meeting?

24 A. Same answer. If it did come by mail, I was
25 living at that household with my father at the time.

Hoyt vs. Collaborativemed, LLc

1 MR. PACELLA: Nothing further.

2 MR. BANNISTER: No redirect, Your Honor.

3 THE COURT: Thank you. You may step down.

4 MR. BANNISTER: No objection to him being
5 excused.

6 MR. PACELLA: No objection.

7 THE COURT: You're excused.

8 MR. BANNISTER: I call Lori LePoint.

9 LORI LEPOINT, having been duly sworn,
10 testified as follows:

11 THE COURT: State your name and address for
12 the record.

13 THE WITNESS: Lori LePoint, 110 Redrum Court,
14 Greenville, South Carolina.

15 THE COURT: Have a seat. Mr. Bannister.

16 DIRECT EXAMINATION

17 BY MR. BANNISTER:

18 Q. Ms. LePoint, where are you currently employed?

19 A. At Bli-Tech.

20 Q. And what do you do there?

21 A. I am the director of quality assurance.

22 Q. And you know Mr. Grounsell. How long have you
23 known him?

24 A. Since February 20, 2006 when he hired me.

25 Q. Who did he hire you for?

Hoyt vs. Collaborativemed, LLC

1 A. Collaborativemed at the time.

2 Q. And you were paid by Collaborativemed as an
3 employee for what period of time as best you can
4 recollect?

5 A. I believe after the corporation we moved payroll
6 under Glucotec.

7 Q. So after Glucotec was formed, you done all the
8 work for Collaborativemed and then went to work for
9 Glucotec?

10 A. Right.

11 Q. During the time that you worked for
12 Collaborativemed, did you perform services or duties in
13 regard to taking the intellectual property okay for
14 glucommander process to be marketed?

15 A. Just so I'm clear, did my position ---

16 Q. Did you do tasks in that regard?

17 A. Yes.

18 Q. Did you also do tasks in having Glucotec form a
19 corporation?

20 A. Yes.

21 Q. Now, I'm going to show you what has been marked
22 Plaintiff's 7 and 8 and ask if you recognize those.

23 A. I do.

24 Q. Are they minutes that you took of those two
25 meetings?

Hoyt vs. Collaborativemed, LLc

1 A. Yes, they are.

2 Q. Do you have any reason to doubt the accuracy of
3 them?

4 A. No.

5 Q. At any time in either the first or second meeting
6 or both, do you recall any effort being made to notify
7 plaintiff, Garry Hoyt of the meeting?

8 A. I do.

9 Q. What do you recall?

10 A. I was not asked to direct memos or really run
11 that effort, I just remember discussion in the office
12 overhearing the conversations.

13 MR. PACELLA: Objection.

14 THE COURT: Sustained. Don't go into
15 conversation.

16 BY MR. BANNISTER:

17 Q. Do you recall any effort made by either Mr. Rick
18 Grounsell or anyone else contacting Mr. Hoyt?

19 A. Yes.

20 Q. Would it have been by telephone?

21 A. Yes.

22 Q. In any regard, Mr. Hoyt did not appear at any
23 meeting?

24 A. That's correct.

25 Q. Do you recall any effort on your behalf of

Hoyt vs. Collaborativemed, LLC

1 anyone's behalf to get Mr. Hoyt to sign a non-compete,
2 non-disclosure agreement?

3 A. I do.

4 Q. What do you recall in that regard?

5 A. That it hadn't been signed and it needed to be
6 signed.

7 Q. Subsequently to your knowledge was it signed?

8 A. Yes, eventually.

9 Q. And Mr. Hoyt came on board I guess to the
10 corporation. Did you have anything to do with the
11 issuance of stock?

12 A. Yes.

13 Q. What did you do?

14 A. I worked with out attorney in issuing it.

15 Q. Those are administerial duties on your part,
16 paperwork?

17 A. That's correct. I didn't make any decisions.

18 Q. Once Glucotec was formed as a corporation, you
19 moved on and became an employee of Glucotec?

20 A. That's correct.

21 Q. And you're still there basically the same
22 company?

23 A. Yes, I am.

24 Q. Do you have any independent recollection of a
25 specific vote regarding the number of shares, eighteen

Hoyt vs. Collaborativemed, LLC

1 million, going to Collaborativemed?

2 A. I do.

3 Q. And what is your specific memory of that event?

4 A. I remember the founders voted on this. There was
5 a memo that was drafted to support the amount of shares
6 and I do remember the founders voting.

7 Q. Do you remember if Mr. Grounsell was present when
8 that specific measure was voted on?

9 A. Yes.

10 Q. Did he vote his shares or someone else vote his
11 shares?

12 A. No, he voted his shares.

13 Q. Is that your recollection?

14 A. Yes.

15 Q. Thank you, ma'am.

16 THE COURT: Mr. Pacella.

17 CROSS-EXAMINATION

18 BY MR. PACELLA:

19 Q. Ms. LePoint, just let's be clear, you didn't
20 personally notify Mr. Hoyt of either of those meetings?

21 A. No.

22 MR. PACELLA: Thank you.

23 THE COURT: Any redirect?

24 MR. BANNISTER: No, I just ask that she be
25 excused.

Hoyt vs. Collaborativemed, LLC

1 THE COURT: Yes. Thank you.

2 MR. BANISTER: We call Robert Booth.

3 ROBERT BOOTH, having been duly sworn,
4 testified as follows:

5 Have a seat set your name for the record.

6 THE WITNESS: Robert Booth.

7 DIRECT EXAMINATION

8 BY MR. BANNISTER:

9 Q. Mr. Booth, what's your educational background?

10 A. I don't have a college degree if that's what you
11 mean.

12 Q. What type of work do you do?

13 A. Software development.

14 Q. You operate a Cloud. Do you understand the
15 Cloud?

16 A. Yes, I do.

17 Q. Congratulations because I don't. Do you know
18 Mr. Rick Grounsell?

19 A. Yes.

20 Q. And how long have you know Mr. Grounsell?

21 A. Since 1999.

22 Q. How did you meet Mr. Grounsell?

23 A. I met him through a friend.

24 Q. Did you eventually become employed by him or an
25 entity that he was connected with?

Hoyt vs. Collaborativemed, LLC

1 A. I did.

2 Q. And what entity was that?

3 A. At that time I believe was called (inaudible)
4 Medical.

5 Q. Subsequently did you become employed by
6 Collaborativemed?

7 A. Yes.

8 Q. And when would that have been?

9 A. I was a consultant for a period of time and I
10 believe became a full time employee of Collaborativemed in
11 late 2005.

12 Q. At that time were you aware of a project called
13 glucommander which delivered insulin?

14 A. Yes.

15 Q. Did you become aware of that through
16 Mr. Grounsell?

17 A. Yes.

18 Q. Did you perform responsibilities and duties in
19 regard to developing that particular process or the
20 business end of it?

21 A. Yes, I did.

22 Q. And you were paid by CoMed?

23 A. I was employed with CoMed and I believe the
24 paychecks came from a payroll company.

25 THE COURT: Let me clear on something, y'all

Hoyt vs. Collaborativemed, LLC

1 are using words interchangeably. Collaborativemed is
2 CoMed.

3 MR. BANNISTER: Yes, sir.

4 BY MR. BANNISTER:

5 Q. You got your paycheck from a service company but
6 you were employed by Collaborativemed?

7 A. Yes.

8 Q. How long did you stay employed by
9 Collaborativemed?

10 A. I believe it was up until Glucotec was
11 incorporated in 2006.

12 Q. And then you became employed at Glucotec?

13 A. Yes.

14 Q. And then you were paid by Glucotec?

15 A. Yes.

16 Q. And you are still employed by Glucotec?

17 A. I am.

18 Q. Now, do you recall that you received some shares
19 called founder's shares?

20 A. Yes.

21 Q. So that gave you an interest in the corporation?

22 A. Right.

23 Q. Do you remember two meetings going on May 11, May
24 18, Plaintiff's 6 and 7? Have you reviewed those minutes?

25 A. Yes, I have.

Hoyt vs. Collaborativemed, LLC

1 Q. And according to the documents you were in
2 attendance in both meetings?

3 A. That's correct.

4 Q. Do you recall any efforts being made to contact
5 Mr. Hoyt or Mr. Bode concerning these meetings?

6 A. The details are a little fuzzy but when I
7 remembered it I remembered it being one meeting but the
8 documents show there were two different meetings and
9 that's possible to. I remember there were efforts going
10 on to reach everybody. I didn't participate in any of
11 that.

12 Q. But you attended either one or both meetings?

13 A. I remember attending both meetings, yes.

14 Q. One of the meetings there was a vote concerning
15 eighteen million some odd shares to Collaborativemed for
16 its ownership or interest to transfer its ownership or
17 interest in the glucommander technology which is, I guess
18 a shorthand way to say that. Do you recall that?

19 A. I do.

20 Q. And that was voted by the members present to do
21 that?

22 A. Right.

23 Q. Subsequently I'm going to show you what's been
24 marked Defendant's Exhibit 5 and ask you if you recognize
25 the signature on that?

Hoyt vs. Collaborativemed, LLC

1 A. Yes, it's my signature.

2 Q. So you signed it?

3 A. I did.

4 Q. Does it have a date of your signature?

5 A. It says May 18, 2006.

6 Q. Basically you signed it as an employee of
7 Collaborativemed transferring whatever interest there was
8 in Collaborativemed to this Glucotec process over to
9 Glucotec, is that a fair statement?

10 A. I believe so.

11 MR. BANNISTER: I'd like to offer that.

12 MR. PACELLA: No objection.

13 THE COURT: Without objection Defense Exhibit
14 No. 5 is admitted into evidence.

15 (Document marked as Defendant's No. 5 for
16 identification and admitted into evidence.)

17 MR. PACELLA: It looks like it's signed as
18 the provisional to Glucotec.

19 BY MR. BANNISTER:

20 Q. Subsequently, to your knowledge was the
21 glucommander technology approved for sale by the FDA?

22 A. It was not at that time.

23 Q. Not at that time, but later?

24 A. It was June 2006.

25 Q. Did you work on that process?

Hoyt vs. Collaborativemed, LLC

1 A. Yes, I did.

2 Q. And it was done primarily by Collaborativemed?

3 A. That's correct.

4 Q. And paid for by Collaborativemed?

5 A. I assume so.

6 Q. You don't know. That's fine. And you're still
7 there today with Glucotec?

8 A. That's correct.

9 MR. BANNISTER: That's all the questions I
10 have.

CROSS-EXAMINATION

11 BY MR. PACELLA:

12 Q. If you look back at the document that's marked
13 assignment of provisional patent, do you have that
14 document in front of you?
15

16 A. I do.

17 Q. If you would, read the first line of the third
18 paragraph into the record for us.

19 A. "Now, therefore, in consideration of an in
20 exchange for \$10.00 and other good and valuable
21 consideration, the receipt of which is hereby
22 acknowledged, said Collaborativemed, LLC, does sell,
23 assign, transfer and set over unto said Glucotec, Inc. the
24 entire right, title and interest in, to, and under said
25 provisional patent and any patent application or patent to

Hoyt vs. Collaborativemed, LLC

1 be filed or issued thereon."

2 Q. So it was transferred for \$10.00?

3 A. It appears to be, yes.

4 Q. Your background is in IT, correct?

5 A. Correct.

6 Q. Setting up software programs and making them run;
7 is that correct?

8 A. That's right.

9 Q. Where were you doing your work mostly at that
10 time?

11 A. In 2005 or 2006?

12 Q. Late 2005, early 2006?

13 A. It was at the Collaborativemed office on Pelham
14 Road, Greenville.

15 Q. Were you here when Dr. Bode was testifying the
16 other day?

17 A. I was here for part of that, yes.

18 Q. Did you hear him testify that you came down to
19 Atlanta and worked with him?

20 A. Yes.

21 Q. Did you testify accurate about that?

22 A. Yes.

23 Q. So you did a lot of the work from Atlanta as
24 well?

(25 A. I don't remember what percentage of time but I

Hoyt vs. Collaborativemed, LLC

1 certainly spent some time in his office in Atlanta well as
2 the Collaborativemed office.

3 Q. When you were working on the FDA approval, what
4 else worked with you on that application?

5 A. I led the effort. Mr. Hoyt contributed, Dr. Bode
6 contributed, Mr. Grounsell contributed, so there was a lot
7 of contributions.

8 Q. It was a team effort?

9 A. I suppose so.

10 Q. Everybody working for the same goal?

11 A. Yes.

12 MR. PACELLA: No further questions.

13 MR. BANNISTER: Nothing further.

14 THE COURT: Thank you. You may step down.

15 Any objection to this witness being excused?

16 MR. PACELLA: No objection.

17 MR. BANNISTER: We have no objection to him
18 being excused but we need to contact him if we need him
19 again.

20 THE COURT: Is he under subpoena?

21 MR. BANNISTER: Yes.

22 THE COURT: You're still under subpoena just
23 give your phone number.

24 MR. BANNISTER: I call Mr. Rick Grounsell.

25 THE COURT: Mr. Grounsell, you're still under

Hoyt vs. Collaborativemed, LLC

1 oath, sir.

2 THE WITNESS: Yes, sir.

3 DIRECT EXAMINATION

4 BY MR. BANNISTER:

5 Q. Mr. Grounsell, you testified yesterday in the
6 plaintiff's case but I want to ask you if you recognize
7 this document?

8 A. That's a stock log for Glucotec.

9 MR. BANNISTER: Your Honor, I'm going to
10 offer this into evidence.

11 MR. PACELLA: No objection.

12 THE COURT: Without objection, this will be
13 No. 8.

14 (Log marked as Defendant's Exhibit No. 8 for
15 identification and admitted into evidence.)

16 BY MR. BANNISTER:

17 Q. Mr. Grounsell, your background is the sale of
18 medical equipment primary to dealing with diabetes, is
19 that a fair statement?

20 A. Yes, sir.

21 Q. And in some time you became aware of an
22 instrument called a glucommander?

23 A. Yes, sir.

24 Q. Approximately when was that?

25 A. In the late 80s.

Hoyt vs. Collaborativemed, LLC

1 Q. So you see a business opportunity to
2 commercialize and sell glucommander in the medical field?

3 A. Yes, I did.

4 Q. Did you know Dr. Bode at that time and his group
5 of doctors?

6 A. Yes.

7 Q. You had some prior dealing?

8 A. Yes, they were my primary physicians.

9 Q. As part of your prospective plan, did you contact
10 the plaintiff in this case Mr. Hoyt to join in the
11 enterprise?

12 A. In late 2005, September I believe, yes, I
13 contacted him about the commercialization of the
14 glucommander product.

15 Q. And Dr. Bode was also to be involved?

16 A. Dr. Bode was to be involved and my children and
17 the other employees of Glucotec.

18 Q. Was the plan to form a corporation or to have a
19 partnership or an LLC to market this glucommander?

20 A. Plan was to have a corporation market the
21 product.

22 Q. Are you familiar with the term founder's shares?

23 A. Yes, I am.

24 Q. Was there any agreement between you Hoyt and
25 Dr. Bode concerning founder's shares?

Hoyt vs. Collaborativemed, LLC

1 A. We clarified things in December with an informal
2 founder's meeting in I believe it was a Christmas party.
3 Dr. Bode had spent the night there, assemble the founders
4 and passed around the sheet saying there be a million
5 sixty founders shares passed out and I get 24% voting at
6 24%. It changed to the 25% that we originally started
7 with because we added Hank Durschlag for 60,000 shares.

8 Q. What's your understanding of the advantage of
9 having founder's shares as opposed to just buying shares
10 to corporations?

11 A. Founder's shares for us is sweat equity and
12 basically for working with it with more freedom.

13 Q. Stock issued without exchange of price?

14 A. Just a nominal fee.

15 Q. Now, after the agreement was made, you, Hoyt,
16 Bode and the others would develop this glucommander
17 technology, what instrumentality did you go through to
18 fund the necessary steps to have the glucommander
19 marketable?

20 A. Originally I was provided the capital but I
21 started to run out of working capital and solicited
22 capital from the other partners in which Mr. Hoyt
23 testified and told me that he couldn't invest. He had
24 invested in a database management company and that he
25 couldn't include any funds. Bruce Bode didn't want to go

. Hoyt vs. Collaborativemed, LLC

1 at risk. The product had three times been attempted to be
2 marketed and been unsuccessful and I just provided my own
3 personal capital to go with it and I was a little
4 disenchanted that I was not receiving any funds from them.

5 Q. Did you do that through an LLC called
6 Collaborativemed?

7 A. Yes, sir.

8 Q. And that was a wholly owned LLC by you?

9 A. That's correct.

10 Q. In the course of it, did you negotiate with the
11 doctors to get their intellectual right to the
12 glucommander technology?

13 A. Yes, I did.

14 Q. And just to clear it up, were there provisions --
15 I'm going to show you Defendant's 7. How did you arrive
16 at that particular agreement?

17 A. I had probably 15, 18 million for the physicians
18 and we wrote that up and sort of put it together and have
19 some places in there to write some things and then Steade
20 said I'd like to see that in typing in my final draft and
21 I said okay and we'll move forward.

22 Q. So now, that's dated in December?

23 A. That's December and that's the intellectual
24 property agreement 12-7.

25 Q. And the rights are going to doctor? The rights

Hoyt vs. Collaborativemed, LLC

1 to the glucommander technology and the doctors to include
2 Dr. Bode?

3 A. That's correct.

4 Q. It was assigned CoMed, LLC?

5 A. That's correct.

6 Q. Now, what effort in terms of sweat equity did you
7 put in to obtaining that agreement?

8 A. I worked on that agreement hundreds of hours with
9 the physicians literally trying to get something done when
10 you count the transportation time back and forth to
11 Atlanta to meet for 30 minutes, 40 minutes with the
12 physicians.

13 Q. Subsequently after Glucotec was formed, did you
14 cause to be sent to Dr. Steade stock pursuant to that
15 agreement?

16 A. We sent Dr. Stead 50,000 shares and I know we
17 sent an email and a letter to Dr. Steade. At least I was
18 told we sent a letter that this consummated the final
19 agreement?

20 MR. PACELLA: Objection, Your Honor.

21 THE COURT: Sustained.

22 THE WITNESS: I asked that a letter be sent
23 and I was told a letter was sent.

24 MR. PACELLA: Objection, Your Honor.

25 MR. BANNISTER: I'll withdraw the question.

Hoyt vs. Collaborativemed, LLC

1 BY MR. BANNISTER:

2 Q. Referring to Defendant's Exhibit No. 8 to the
3 second page to the 13th certificate of shares issued.
4 Whose name appears to receive shares on No. 13?

5 A. Dennis Steade.

6 Q. And how many shares did he receive?

7 A. 50,000 shares.

8 Q. And what was the date these shares were issued?

9 A. 6-15 of 06.

10 Q. That's after Glucotec is formed; is that correct?

11 A. That's correct.

12 Q. And that's after the transfer of Collaborativemed
13 of the rights shown in Exhibit 7 over to Glucotec?

14 A. We asked the doctors if they wanted cash or they
15 wanted shares and they indicated they wanted shares.

16 Q. Did Dr. Steade ask you why he had shares, that
17 you recall or just yes or no?

18 A. No.

19 Q. You ever have a conversation with him or did he
20 ever complain about it?

21 A. No, he did not.

22 Q. Did he ever object to the use of the glucommander
23 technology in Exhibit 7?

24 A. Later on he did in Glucotec, not me personally.
25 He testified, I think yesterday that I sued him. I didn't

Hoyt vs. Collaborativemed, LLC

1 sue him, Glucotec was suing Dr. Steade for breach of
2 contract or taking some type of action, the legal people,
3 the White's firm. I don't remember specifics on it but
4 they were saying we couldn't use the name but Paul
5 Davidson was saying that, yeah, that was the contract I
6 signed and he had the rights to the name glucommander not
7 Dennis Stead.

8 As far as the algorithm, itself, being in the
9 public domain, we weren't really concerned about that.
10 All we wanted out of the deal was the good will of the
11 doctors and the name glucommander. The technology, the
12 programming and the software was irrelevant to us because
13 they had a product that we couldn't use that would be
14 potentially harmful to patients.

15 Q. I want to also have you refer to stock
16 certificate 14. Is that Dr. Davidson's stock pursuant to
17 your agreement?

18 A. That's 50,000 shares that Davidson had an
19 agreement with me on.

20 Q. And that's the agreement that's in D-7?

21 A. Yes. Davidson didn't disavowed the agreement at
22 all and I didn't know Dr. Steade had disavowed it until we
23 came down here.

24 Q. And Dr. Bode also received 50,000 of stock
25 pursuant to this agreement, is that your recollection?

Hoyt vs. Collaborativemed, LLC

1 A. Dr. Bode receive 250,000 founder's shares plus
2 additional shares from me. I believe it was 400 and some
3 thousand.

4 Q. Let me ask you about the stock certificate No. 10
5 for 441,000 shares, do you recall what that was for?

6 A. That was partially for a loan and I think 41,000
7 shares was for something else that I can't actually
8 recall.

9 Q. Let me ask you about this loan. When did the
10 loan take place that you recall?

11 A. I would say it was the first week of January.

12 Q. 2006?

13 A. Yes.

14 Q. How did the loan come about? Did you approach
15 who?

16 A. I had approached Bode and Hoyt in November and
17 December that I needed working capital to run this deal
18 and that I needed some money and Bruce said I'll send you
19 \$100,000 but I want you to personally guarantee it. I
20 said, well, if it's a personal guarantee, that's a loan
21 not an investment towards to CoMed project and I said I'll
22 give you the cash back or I'll give you shares back and I
23 gave him shares back for 400,000 as in this document No.
24 10.

25 Q. Was the loan made to CoMed?

Hoyt vs. Collaborativemed, LLC

1 A. The loan was made to CoMed.

2 Q. And you heard Dr. Bode's testimony. Do you
3 recall it was marked as a loan?

4 A. Yes. There is no question it was marked as a
5 loan.

6 Q. So the risk of that was on you?

7 A. That's correct and I told Bode at that time
8 that's risk capital. If you want a guarantee, then it's a
9 loan so write on the check a loan.

10 Q. Which he did?

11 A. Which he did.

12 Q. And ultimately he was repaid by that certificate
13 of stock for this loan?

14 A. Ultimately he was repaid.

15 Q. Okay. Now, and Hoyt contributed ---

16 A. Hoyt didn't contribute anything.

17 Q. So from the time that this concept about
18 marketing glucommander came on, the risk capital was put
19 up by you?

20 A. Yes. As of December of that year, I sent Bruce
21 Bode, and I think he testified to it, \$75,000. \$275 to
22 \$350,000 has been spend and we were going to need specific
23 amounts of funds and Dr. Bode, that's what originated the
24 \$100,000 loan. And I subsequently put in additional
25 capital in the neighborhood of about \$400,000. I think I

Hoyt vs. Collaborativemed, LLC

1 had around \$750 total in the project.

2 Q. And at some point did you hire lawyers or
3 consultants to get this project moving forward?

4 A. I hired Ben Leapart to incorporate Glucotec at
5 the recommendation of the White's firm. I went to Dorody
6 and Manning for intellectual property value on it. I gave
7 them the prior art and they put an intellectual value on
8 it and the modifications I made to seventy-five million
9 dollars on it. That's what they indicated to me. I went
10 to another intellectual property form and gave them the
11 prior art Dr. Davidson and Bode had and the changes that I
12 had made and they put a value of one billion dollars on
13 it. I went to another group that came outside that
14 valuates medical companies and they put three-hundred
15 million dollar evaluation on the company.

16 Q. And that's before Glucotec had made the first
17 sale?

18 A. Yes.

19 Q. What advice did you seek from the White's firm.
20 Don't tell me what they said but what were you seeking
21 them to give you advice for?

22 A. That Exhibit 7, that was a valid contract between
23 the parties. I asked them about all the legal
24 incorporations steps we needed to take. I asked them
25 about private placement and they did the private placement

Hoyt vs. Collaborativemed, LLC

1 and we went out and raised capital on that.

2 Q. So in the corporate structure, you were asking
3 for advice from the White's firm as how to have a private
4 placement memorandum?

5 A. That's correct.

6 Q. To raise money for Glucotec?

7 A. That's correct.

8 Q. Who paid the White's firm?

9 A. CoMed paid the White's firm.

10 Q. Did you also borrow money from your children
11 through CoMed to finance this venture?

12 A. Yes, I went to my children. I had maxed out my
13 own personal credit line and borrowed from my insurance
14 policies and I needed additional capital to fund the
15 quality assurance program and the FDA submission.

16 Q. How much did you borrow from your three children?

17 A. \$50,000.

18 Q. What was your agreement in regard to repayment?

19 A. 20% equity and whatever I received in number of
20 shares for the project glucommander as we call it
21 internally.

22 Q. Did you ever receive those shares of stock from
23 Glucotec?

24 A. Yes, we did receive shares from Glucotec.

25 Q. So your agreement was each in this exchange for

Hoyt vs. Collaborativemed, LLC

1 this \$50,000 received 20% of whatever shares you received
2 or CoMed received from Glucotec, Glucotec stock?

3 A. Yes. I had an agreement.

4 Q. CoMed owned the intellectual property, patent
5 rights, whatever to the glucommander technology?

6 A. CoMed had submitted intellectual property.

7 Q. And that was done entirely on your risk?

8 A. And my dime.

9 Q. Now, did you hire someone to help you in FDA
10 approval?

11 A. Yes, I hired a firm called Underwriters
12 Laboratory.

13 Q. Did you pay them through Collaborativemed?

14 A. Yes.

15 Q. Did Hoyt or Dr. Bode, either one, contribute any
16 of the funds to get FDA approval?

17 A. No, they did not neither did the contribute
18 towards quality assurance. Once you have been approved
19 you have to have quality assurance program and I had to
20 hire a firm to do quality assurance program and buy
21 software for that.

22 Q. And did you pay for that through CoMed as well?

23 A. To my recollection I did.

24 Q. So now the FDA approval was not in place at the
25 time Glucotec was incorporated; is that correct?

Hoyt vs. Collaborativemed, LLC

1 A. That is correct.

2 Q. Who paid Ben Leapart, to incorporate it?

3 A. I did via some stock out of Glucotec.

4 Q. So you gave him stock in exchange?

5 A. That is correct.

6 Q. Now, go back to these meetings, Glucotec needed
7 to be formed in order to market this technology?

8 A. Some type of corporation needed to be formed to
9 market it.

10 Q. And Glucotec had no money?

11 A. No cash.

12 Q. The cash had to be raised through this stock, the
13 private placement.

14 A. That's correct.

15 Q. To run the operation?

16 A. That's correct.

17 Q. Were you under pressure to get Glucotec up and
18 running so the project to go forward?

19 A. Yes, because we had no cash -- we were running
20 out of cash.

21 Q. Did you stay in contact with Dr. Bode and Hoyt
22 about the progress you were making in the corporation of
23 Glucotec?

24 A. Yes, I did.

25 Q. Two memorandums about two stockholder meetings or

Hoyt vs. Collaborativemed, LLC

1 founder's meetings, do you recall those?

2 A. Yes, I do.

3 Q. May 11th and May 18th.

4 A. As I said earlier, I recall having the meetings.
5 I didn't remember it as two meetings, I recall it as one
6 meeting.

7 Q. Do you recall any effort made to get a hold of
8 Dr. Bode or Hoyt to attend those meetings?

9 A. Yes. Mr. Durschlag was in charge of that project
10 to get in touch with them.

11 Q. And when the meetings were held, the minutes
12 accurate ---

13 A. As I recall Hoyt refused to sign the non-compete
14 agreement and refused to sign the non-disclosure agreement
15 and there was another document and I said if you don't
16 sign those Garry then you can't come aboard. We're not
17 going to work with you on it. Everybody is required sign
18 that.

19 Q. May 18th he signed the non-compete and the
20 non-disclosure.

21 A. That's what's dated on the document. I asked him
22 a week or two later when it came in with that date on it.

23 Q. In any event there was a check for his founder's
24 shares attached to that, is that your recollection?

25 A. That's my recollection.

Hoyt vs. Collaborativemed, LLC

1 Q. \$250.

2 A. Yes.

3 Q. And the stock ledger reflect that he got his
4 shares issued on 22nd.

5 A. 22nd.

6 Q. Part of the agreement with Hoyt was if he was
7 discharged that Glucotec could buy those shares back?

8 A. Yes.

9 Q. And after some period of time of employment with
10 Glucotec Mr. Hoyt was fired.

11 A. Yes. Insubordination.

12 Q. And did you buy the stock back according to the
13 agreement?

14 A. Yes, I did.

15 Q. You heard his testimony that he got \$25,000 back,
16 is that your recollection?

17 A. Yes.

18 Q. He paid \$250 for it and then sometime in June he
19 got \$25,000 back.

20 A. That's correct.

21 Q. Was he also issued stock for his efforts in
22 making contacts prior to the formation of Glucotec?

23 A. In addition to the founder's shares, he was given
24 some additional shares. I believe about 231,000 shares
25 which was to cover any sweat, any labor, and any expenses

Hoyt vs. Collaborativemed, LLC

1 that he may have occurred.

2 Q. If you look down here it has Garry Hoyt,
3 certificate 11, 231,941 shares, issued on May 22, 2006.

4 A. Yes, those shares came out of the CoMed. They
5 were part of the 18 million shares that CoMed received and
6 so was the 441 Bruce Bode got and the others there. It's
7 about 800,000 shares immediately came out of CoMed and
8 went to the parties outside the family.

9 Q. Do you hear any complaint from Hoyt concerning
10 the amount of shares issued to CoMed?

11 A. Yes. I flew the Dallas with a prospective
12 private placement memo in which it was somewhere between
13 14 and 16 million shares was on the document. It was the
14 time that Bruce Bode doing the taking and meeting with
15 Jeff Artbuckle as a prospective employee and I point that
16 out to say CoMed was receiving so many shares and Bruce
17 Bode was okay with it because of the investment capital.
18 Later on Garry from that point on argued about the amount
19 that CoMed was receiving. When the placement came out, it
20 was hire than that at the recommendation of the attorneys.
21 The attorneys said I should have taken thirty-two million.

22 MR. PACELLA: Objection.

23 THE COURT: Sustained.

24 BY MR. BANNISTER:

25 Q. Was the eighteen million shares fair, in your

Hoyt vs. Collaborativemed, LLC

1 judgment, compensation as to what CoMed had done in your
2 sweat equity and the risk capital you put up?

3 A. It was fair on both parties.

4 Q. Had CoMed not received any shares of stock from
5 Glucotec, what would have been the legal situation as far
6 as Glucotec concerned for being able to market the
7 Glucotec technology?

8 A. If they had not received any shares, I would have
9 taken the product to another company.

10 Q. Is the intellectual property transfer from CoMed,
11 in your opinion, to Glucotec the only marketable asset
12 that Glucotec has?

13 A. That's correct.

14 Q. It wasn't in developing any other medical
15 devices, medical lines, other than this glucommander
16 technology?

17 A. It claimed all the evaluation of Glucotec.

18 Q. Did you feel that was a fair price, a fair trade
19 to the corporation, from the corporation of Glucotec,
20 CoMed for the efforts that CoMed put in and the money?

21 A. I felt it was fair. Other people thought I
22 should take more, my attorneys did.

23 MR. BANNISTER: I believe that's all the
24 questions I have.

25 CROSS-EXAMINATION

Hoyt vs. Collaborativemed, LLC

1 BY MR. PACELLA:

2 Q. Can you look at Defense Exhibit No. 8 which is
3 the stock ledger, sir?

4 If you look at the second page at the top..
5 which is Collaborativemed, LLC, do you see that, sir?

6 A. Yes.

7 Q. And that's certificate No. 9, is that your
8 understanding, sir?

9 A. That's correct.

10 Q. And it says eighteen million, one-hundred and
11 twenty-nine thousand, sixty-six shares; is that correct?

12 A. That's correct.

13 Q. And if you look on the right column, it says new
14 certificates issue to, do you see that, sir?

15 A. Yes.

16 Q. Do you see all those certificate numbers that are
17 listed in that column there?

18 A. That's correct.

19 Q. Those are all shares that you have transferred
20 out of Collaborativemed or sold out of Collaborativemed;
21 is that correct?

22 A. No.

23 Q. Why is that in correct?

24 A. We did in 2010 a reconciliation because what had
25 happened is shares at CoMed sold were stamped with my

Hoyt vs. Collaborativemed, LLC

1 mother's stamp and taken out of my account and transferred
2 to people at CoMed received funds from and I didn't
3 discovery that until I think it was either July of '09
4 going over this document or July of '10, but they had to
5 be reconciled which they gave back the certificates back
6 into CoMed.

7 Q. If you look down at the very bottom, it says
8 remaining shares as of 5-1-2008; is that correct?

9 A. No.

10 Q. Does it say that on the document?

11 A. That's what it says on the document.

12 Q. So as of May 1, 2008, you had at least a million,
13 seven-hundred fifty-seven thousand eighty five shares
14 left? Obviously if you got some back you would have more
15 back, but you had at least that?

16 A. That's correct.

17 Q. Do you have those shares today?

18 A. No.

19 Q. Okay. Up until the time you transferred shares
20 to ColMed, which is a different company than CoMed or
21 Collaborativemed, but ColMed is a Texas LLC any
22 transferred before that would have been transfers by
23 Collaborativemed for sales or for transfers by you; is
24 that correct?

25 A. Prior to CoMed?

Hoyt vs. Collaborativemed, LLC

1 Q. Yes, sir.

2 A. No, because Texas -- when Bey Ingram came in as
3 CEO he was a crook, he was a con man.

4 Q. My question was before he came in any transfers
5 that happened ---

6 A. Before Bey Ingram arrived?

7 Q. Yes, sir. So you have no dispute that anything
8 that happened before CoMed got involved; is that correct?

9 A. When they got involved they were basically
10 crooks. Bey Ingram is in federal penitentiary right now
11 for serving eighteen months.

12 Q. What time did they get involved in the
13 corporation? In 2008 properly the issues with the stock
14 arose?

15 A. The issues with the stock arose in October of '07
16 through '08. There was some other issues with a transfer
17 that was supposed to be coming from Glucotec itself and
18 some other issues where they transferred shares to me that
19 was supposed to be coming from Glucotec itself. Some
20 physicians had purchased stock and from me and they took
21 the funds and there were several cases -- it actually came
22 close to several million dollars they took out of mine and
23 took the cash themselves, Glucotec, and they repaid part
24 of it but they never repaid all of it about a half
25 million. So about a half million is what they took from

Hoyt vs. Collaborativemed, LLC

1 my account and put in their account was not mine, it comes
2 from my shares.

3 Q. Did you have an agreement with them to transfer
4 two million shares?

5 A. Two million shares with the Texas which was part
6 of the, in my opinion, fraudulent agreement. It did
7 transfer and it was defaulted on that agreement.

8 Q. But it was in hopes of raising six million
9 dollars; is that correct?

10 A. Within 30 days of seeing it had been taken, I
11 viewed it was a crooked deal.

12 Q. But that wasn't my question. At the time you
13 entered into the transaction to transfer it the two
14 million shares, you thought you were going to make six
15 million dollars; is that correct?

16 A. I'm trying to think back what I thought at that
17 time because I found out about how it was done because it
18 was sort of shifting of the hand. Originally I had one
19 document that said I was going to get cash and then the
20 next thing it was a note, but I had already signed off
21 meaning not looking at it and then within, like I said,
22 immediately I saw it was not a good deal. But I thought I
23 was going to get it, yeah, I thought I was going to get
24 it.

25 Q. Thank you, sir. That was while this litigation

Hoyt vs. Collaborativemed, LLC

1 was pending, is that not correct?

2 A. While this litigation was pending.

3 Q. We had already filed suit in this case at that
4 point?

5 A. When did you file the suit?

6 Q. In March of 2008.

7 A. It was before March of 2008 as best as I can
8 recall. I'd have to look at the document because in that
9 February, April time frame because they took my voting
10 rights. It was in exchange for voting rights, that's
11 correct.

12 Q. So it was in February of 2008 right before this
13 lawsuit was filed?

14 A. I'd have to look at the document.

15 Q. Is this what you're referring to?

16 A. Yeah, that looks to be correct.

17 Q. Yesterday when you talked about how much money
18 you made in shares between 2007 and 2008, do you remember
19 that conversation from yesterday?

20 A. Yeah.

21 Q. And I had referenced the 6.9 million dollar
22 number, do you remember that?

23 A. I don't remember you saying it yesterday. To be
24 honest with you my blood sugar went up and I got -- I had
25 some problems in some of my attention in the stuff I did

Hoyt vs. Collaborativemed, LLC

1 yesterday, but if you said 6.9 million yesterday I'm not
2 going to dispute it.

3 Q. I'm going to show you the 2007 records and the
4 2008 records and if you look at the bottom of the 2007,
5 how much does that total up to?

6 A. Three million, eighteen thousand, four hundred
7 and fifteen.

8 Q. And would you read down here the number for 2008?

9 A. Three million, nine hundred and twenty thousand,
10 three forty.

11 Q. Thank you, sir. So over 6.9 million dollars; is
12 that correct?

13 A. That's what those documents read but as I said
14 three million of it was never received.

15 Q. But you thought you were going to receive it so
16 you thought you were going to make 6.9 million dollars?

17 A. Initially prior to actually me figuring out what
18 had happened, yes, which was immediately afterwards.

19 Q. But you got all the money in 2007; is that
20 correct?

21 A. In 2007?

22 Q. All three million dollars?

23 A. No, that's not correct. '07 is not completely
24 correct because some of the money had to do with
25 reconciliation to Glucotec. Some of the money they

Hoyt vs. Collaborativemed, LLC

1 charged me for and credited to my account that I received
2 and took stock out of my account but the money went into
3 Glucotec.

4 Q. In 2007?

5 A. In 2007.

6 Q. And you were the director of Glucotec at the
7 time?

8 A. That is correct. Hank Durschlag was my CEO. As
9 a matter of fact I would say it would be fraud. I'm
10 looking at litigation today on the issue of a half million
11 -- it was in the neighborhood of \$900,000 that they put
12 into their account and then charged me for the shares.

13 Q. Going back to Defendant's No. 8 which is the
14 stock log.

15 A. So that's why this thing doesn't represent
16 correctly because they put down here this is my shares but
17 they deposited checks were made to me or made for shares
18 for CoMed that I thought I was getting the money instead I
19 didn't get the money. Hank Durschlag put it in the
20 account to sooth me out of a second account that he had
21 Glucotec's name on it. So it's not reflective of the
22 actual cash that I received.

23 Q. Are you referring to the Glucotec escrow account?

24 A. Yes, the Glucotec escrow account and the Glucotec
25 hiring account. It was in the neighborhood of probably

Hoyt vs. Collaborativemed, LLC

1 1.3. I'd have to look at the documents.

2 Q. Is that the same money that you invested in the
3 Mexican gambling boat or loaned the Mexican gambling boat?

4 A. No, you're getting things crossed over.

5 Q. Is that another million dollars?

6 A. I thought I was borrowing money but I didn't
7 realize I was borrowing my own money. It was just a
8 fraud.

9 Q. Going back to this exhibit, you look at Line No.
10 9, you had at least a million, seven-hundred and fifty
11 seven thousand shares left as of May of 2008; is that
12 correct?

13 A. I probably had ---

14 Q. More than that but I'm saying ---

15 A. More than that but then the did a 1 to 10 reverse
16 on that so that become \$175,000 shares.

17 Q. And yesterday you testified Collaborativemed has
18 zero shares today?

19 A. Collaborativemed has zero shares once they
20 finished executing the family court order.

21 Q. So you transferred those shares while this case
22 was pending?

23 A. Those shares the family court found the children
24 owned 20% of CoMed and not been paid their CoMed shares.

25 Q. Why did they find that?

Hoyt vs. Collaborativemed, LLC

1 A. Because my wife's attorney was trying to get
2 their shares and my wife was trying to get their shares so
3 they had to make a ruling as to did the kids really buy
4 20% of the company and they short their shares so CoMed
5 owed them those shares from the original agreement because
6 they had not been distributed all those shares.

7 Q. Earlier I think you said they loaned you the
8 money, is that not correct?

9 A. They loaned Collaborativemed the money.

10 Q. They loaned the money, they didn't invest the
11 money?

12 A. They invested the money -- that may have been
13 mistake of my testimony. I'll retract that.

14 Q. Well, your son testified he loaned the \$50,000 in
15 response to a question from your lawyer. He loaned the
16 money, correct?

17 A. He invested the money in CoMed, that's what the
18 family court concluded that he invested. This is where we
19 got into the same thing with my wife saying, no, they
20 didn't but the family court going through the
21 documentation said it was invested in there.

22 Q. Is that because it was never repaid?

23 A. No, it was paid in stock just like everybody else
24 was.

25 Q. So they loaned -- made the investment later, did

Hoyt vs. Collaborativemed, LLC

1 they loan \$50,000?

2 A. They didn't loan it, they invested it.

3 Q. And they received, according to this stock ledger

4 Page 9 of this document -- see there, sir.

5 A. Yes.

6 Q. If you look at Line 166 through 170, do you see
7 that?

8 A. Yes.

9 Q. And how many shares does it say it's going to
10 each of those family members?

11 A. Two millions and that's the 3.6 million. So the
12 rest of CoMed had to be distributed to given 3.6 million
13 and the courts took it out of me or what had been left out
14 of CoMed.

15 Q. So for \$50,000, they got two million shares?

16 A. No, for \$50,000 they got 3.6 million shares.

17 Q. But at this time they had already gotten their
18 two million shares?

19 A. They had already gotten their two million shares.

20 Q. And Dr. Bode wanted \$100,000 and how many shares
21 did he get?

22 A. Dr. Bode got 400,000 for a loan. Theirs was an
23 investment. I'm sorry that the wording because my son
24 today is upset about it, believe or not.

25 Q. I think the record will reflect, your son

Hoyt vs. Collaborativemed, LLC

1 testified earlier in response to a question about a loan
2 from your lawyer that he had, in fact, loaned \$50,000.

3 A. Well, we can bring my son back and he'll be glad
4 to clarify that as an investment.

5 Q. One other thing, do you still have the December
6 2005 transfer from the doctors up there as an exhibit. I
7 think it's No. 7.

8 A. Yes.

9 Q. And does it say \$50,000 cash on this?

10 A. That's correct.

11 Q. So for \$50,000 in cash you gave them 50,000
12 shares but you gave your sons and family members two
13 million shares; is that correct?

14 A. I said they could have \$50,000 in cash or 50,000
15 in shares. Again, I was just buying a name.

16 Q. You were director of Glucotec at the time,
17 correct?

18 A. That's correct.

19 Q. And you're making the decision that \$50,000 in
20 cash here is 50,000, \$100,000 here is 400,000 shares, but
21 your children's \$50,000 is two million, is that correct?

22 A. There's a difference between risk capital and
23 paying somebody in debt. The went at risk capital.

24 MR. PACELLA: No further questions.

25 THE COURT: Any redirect, Mr. Bannister.

Hoyt vs. Collaborativemed, LLC

1 MR. BANNISTER: Just briefly.

2 REDIRECT EXAMINATION

3 BY MR. BANNISTER:

4 Q. Look on Page 13 of Exhibit No. 8. Look at shares
5 No. 2.

6 A. Yes.

7 Q. Do you see it? Transfer 259 or two million
8 shares?

9 A. Yes, I do.

10 Q. And that was taking out of Collaborativemed
11 shares and transferred to ColMed, LLC and that's the
12 Texans you referred to?

13 A. Yes.

14 Q. Those shares were never paid for?

15 A. Those shares were never paid for and actually the
16 funds would have gone to the kids.

17 Q. So they were never paid for and those shares are
18 still being held today?

19 A. Yes.

20 Q. On the same, a little bit later on 3-4-08 in No.
21 260 there's a 231,941 share transfer to Colmed, LLC, those
22 are the Texans and I believe those are Garry Hoyt's
23 shares.

24 A. That's correct.

25 Q. That he testified he received.

Hoyt vs. Collaborativemed, LLC

1 A. Yes.

2 Q. So the document that you were shown that you
3 received money for is inaccurate in terms of money?

4 A. Yes.

5 Q. You never got the money. Somewhere there's a
6 stock.

7 A. There's a legal issue as to what took place.

8 Q. And regardless of how you characterize it, there
9 was an agreement where the loan or investment that your
10 family members would get 20% of the CoMed stock?

11 A. The Glucotec stock that CoMed owned they would
12 get 20%, that was an agreement on their investment.

13 Q. And Collaborativemed never transferred any of the
14 rights to glucommander technology to Glucotec, there would
15 be no Glucotec.

16 A. That's correct.

17 Q. Regardless of what the money is?

18 A. Regardless. It would be valuable less.

19 MR. BANNISTER: That's all I have.

20 THE COURT: Any recross based on his
21 redirect?

22 MR. PACELLA: No, Your Honor.

23 THE COURT: You may step down.

24 MR. BANNISTER: That would be the case for
25 the defendant.

Hoyt vs. Collaborativemed, LLC

1 THE COURT: Any reply testimony?

2 MR. PACELLA: No, Your Honor.

3 THE COURT: Any motions?

4 MR. BANNISTER: Judge, I would renew my
5 motion as to the fraud and as to the violation of duties,
6 the conflict of interest duties on the basis as I
7 understand the statute -- if you give me just a minute,
8 I'll recite the statute to you -- Section 33-8-310, the
9 conflict of interest transaction is (inaudible) by a
10 corporation solely because of the director's interest in
11 the transaction if one of the following is true: No. 3
12 the transaction is fair to the corporation.

13 There's a case Strait versus Ross, 383 SC
14 180, 2009 case in which that principal is enunciated but
15 it also says that once conflict is shown and the burden
16 shifts to us shown it was fair and not criminal. The
17 essence of that, Your Honor, is the eighteen million
18 shares represented sweat equity, risk capital, and the
19 efforts of Collaborativemed informing Glucotec in getting
20 the intellectual property which Dr. Bode has compensated
21 for along with the other doctors in getting that approved,
22 getting FDA approval, which is paid for by
23 Collaborativemed, getting the corporation set up which was
24 paid for Collaborativemed and the efforts. So the
25 transaction of the eighteen million shares in the context

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1 that Collaborativemed is under no obligation to transfer
2 it at all, there's none.

3 There's no agreement that the effort he's
4 making if it fails then anyone else bares any liability or
5 responsibility. The risk is on Grounsell to get this kind
6 of venture off the ground and without his effort and the
7 money he extended and the transfer of the intellectual
8 right there is no Glucotec. Glucotec stocks is valueless.

9 Here's where you trying to elevate the form
10 over the substance and we would argue that the substance
11 of it is that without the effort and sweat and the
12 transaction there would be no Glucotec and no value what
13 so ever.

14 For purposes of argument, let's assume the
15 FDA never approved the marketing of the Glucotec
16 technology, at that point Dr. Bode has got a loan from
17 CoMed which he can collect. Hoyt has \$30,000 in expenses
18 which he can't connect. Mr. Grounsell and his family
19 members have over \$750,000 to a million of risk capital
20 that they can't collect and there is nobody to collect if
21 from because the connection has to come from the sale of
22 stock and for the sale of stock you have to have some
23 business plan to make money. So we say that if it's in
24 arms length transaction, all of the ability to negotiate
25 is with Collaborativemed and their transfer of that stock

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1 for the exchange of intellectual property, even today,
2 Glucotec operates on that transfer. So it is no
3 disadvantage to the corporation and we say it was fair to
4 the corporation.

5 As to the fraud, I had my argument as to the
6 fraud so I will not restate that but I believe it was one
7 other cause of action but I don't recall that was and I
8 won't bend your ears.

9 THE COURT: Mr. Pacella.

10 MR. PACELLA: As to the breach of fiduciary
11 duties, I guess I need to first remind the Court this is a
12 corporation and form matters and form is actually critical
13 when it comes to the corporation and I will -- SC Code
14 33-8-310 does have that catchall to the corporation, but
15 we didn't even get there in this case. All of the
16 testimony is absolutely clear that Mr. Hoyt was a
17 shareholder in March and we have meeting minutes in March
18 that identify him ---

19 THE COURT: Well, let me ask both of y'all
20 this, when does one become a shareholder? When the shares
21 are issued or when they call themselves shareholders?

22 MR. BANNISTER: Judge, form matters is when
23 you pay for it and you're issued the shares and that would
24 have been May 18th after the meeting after took place and
25 the shares were transferred.

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1 MR. PACELLA: Your Honor, Defense Exhibit 8,
2 all the shares were issued on 5-22-06 after that meeting
3 but there actually is a fiduciary duty between
4 incorporators in the pre-incorporation stage and to take
5 the incorporators in this incorporation stage, the
6 founders, and not notify them of the meetings where
7 critical decisions are going to take place including the
8 decision to essentially change the bi-laws and require the
9 signature of a non-compete, non-disclosure agreement and
10 have a meeting to convey these shares of stock that in and
11 of itself is a breach of fiduciary duty.

12 But it's not just the failure to notify
13 people of the meeting and follow the appropriate
14 notification in the bi-laws which went into effect in
15 March of 2006, it's also the unfairness of Mr. Grounsell
16 voting his own shares of stock and his son who testified
17 that he was going to get a financial in voting his own
18 shares as well.

19 There's a vote taking place between the
20 founders before the issuance of the stock. There's no
21 question that Mr. Hoyt is a founder. There's no question
22 that Dr. Bode was a founder. There's not question that
23 anyone received notice and the only evidence of notice
24 that we heard is Mr. Grounsell yesterday that Lori LePoint
25 provided those. After she testified that she did not, he

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1 changed and said he made phone calls so I would argue that
2 the testimony of Mr. Grounsell should found to be not
3 credible as to the extent of any notice.

4 So there is as breach of fiduciary duty in
5 that pre-incorporation stage. Then in the corporation
6 stage where there are corporate documents that identify
7 Mr. Hoyt as a shareholder, then Mr. Hoyt signs a document
8 voting Mr. Grounsell president and CEO for a term
9 beginning May 1st, 2006. That creates a further fiduciary
10 duty to the shareholders. There's a breach and there's
11 evidence of a breach and the Court should find in favor of
12 the plaintiff as breach of fiduciary duty.

13 We've made an argument as to fraud. There's
14 certainly this argument that we're presenting that there
15 was this statement of false agreement represented by
16 Mr. Grounsell that they were going to be third partners
17 with Dr. Bode and Mr. Hoyt and that changed to be 25%, and
18 then later on this Mr. Durschlag was added as a 60,000
19 vote so that Mr. Grounsell can have a control of Glucotec
20 if you have a voting that exceeds Dr. Bode and Mr. Hoyt.
21 Mr. Hoyt testified that he relied on that representation
22 in making his own sweat investment into the company.

23 The third claim is just a constructive trust
24 claim and it's really more of a remedy than anyone else.

25 THE COURT: Here's what I'm going to do, I'm

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1 going to order both sides to submit a proposed order
2 within thirty days. I'm going to order a copy of the
3 transcript and the parties will split the cost and then
4 I'll issue of my ruling.

5 MR. PACELLA: Do you want thirty days from
6 receipt of the transcript for proposed orders?

7 THE COURT: Yes. That way y'all can go back
8 through it and not misstate something that was stated.

9 MR. PACELLA: Thank you, Your Honor.

10 MR. BANNISTER: Thank you, Your Honor.

11 ---END OF TRANSCRIPT RECORD---

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1 I, the undersigned, Caroline Hiskell, the
2 Official Court Reporter for the Thirteenth Judicial
3 Circuit of the State of South Carolina, do hereby certify
4 that the foregoing is a true, accurate, and complete
5 transcript of record of all the proceedings had and
6 evidence introduced in the trial of the captioned case,
7 relative to appeal, in the Court of Common Pleas, South
8 Carolina on the 31st day of September, 2013.

9 I do further certify that I am neither of
10 kin, counsel, nor interest to any party hereto.

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14 Caroline Hiskell
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