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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

SC Court of Appeals

DeAndrea G. Benjamin, Circuit Court Judge
Diane S. Goodstein, Circuit Court Judge

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Consolidated Cases For Trial

Case No.: 2010-CP-28-322

Case No. 2010-CP-28-323

SC Court of Appeals

Jamie Curley, Plaintiff,

v.

SCENT Land Holdings, LLC, Amy Puchalski, and Robert Puchalski, Defendants
and Dr. Orville Dyce, Plaintiff,

v.

South Carolina ENT, Allergy & Sleep Medicine, P.A., Amy Puchalski, and Robert
Puchalski, Defendants

Of Whom Jamie Curley, and Dr. Orville Dyce are the Respondents/Appellants,

And

SCENT Land Holdings, LLC, Amy Puchalski and Robert Puchalski, South
Carolina ENT, Allergy & Sleep Medicine, P.A. are the Appellants/Respondents.

RECORD ON APPEAL VOL. V

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1 through all of them?

2 MR. ELLISON: Every page, every single page, which will
3 allow me to present certain things to you and Mr. Long that
4 are omitted in the papers.

5 MR. SHEHEEN: Your Honor, I think to do that he's going
6 to have to testify.

7 MR. ELLISON: Your Honor, the documents that got
8 produced that were represented to us to be the loan files
9 have been submitted as Exhibits 305, 306, 307, 308, 309, 310
10 and 311.

11 THE COURT: All right.

12 MR. ELLISON: All of those documents along with a few
13 others would be subject to the order that we talked about
14 earlier today talking about being entered.

15 (Brief recess held.)

16 MR. ELLISON: Your Honor, I'm not as organized as Mr.
17 Cleveland is, but I've got a book of documents I think might
18 be relevant.

19 THE COURT: Okay.

20 MR. ELLISON: There you go.

21 CROSS-EXAMINATION BY MR. ELLISON:

22 Q. Mr. Long, as far as you know the bank has produced all
23 the documents that were requested in response to the
24 subpoena?

25 A. As far as I know.

1 MR. ELLISON: Your Honor, part of what we're going to
2 get into, I've given the Court the numbers of the documents
3 that we seek to introduce which were produced in January and
4 early March this year. There was a prior production that was
5 dealt with, and I think it's going to be necessary for the
6 Court, unfortunately, to do a little bit of homework as
7 you'll see in just a minute.

8 THE COURT: Okay.

9 Q. Mr. Long, to the best of your knowledge if the bank had
10 a copy of the signed operating agreement of SCENT Land, would
11 that be in the bank's files?

12 A. That would normally be a document that we would have in
13 our file.

14 MR. ELLISON: Your Honor, I hate to ask you, but I think
15 you're going to have to go looking because I couldn't find
16 it. That's the signed operating agreement for SCENT Land.

17 THE COURT: For SCENT Land.

18 MR. ELLISON: SCENT Land.

19 THE COURT: Okay. And when you authenticate them you
20 can look too.

21 MR. ELLISON: This one he can't authenticate.

22 THE COURT: But he can see if it's in there.

23 MR. ELLISON: Because I'm asking the Court -- I looked,
24 I put my hands on every page, looked at every one, and I
25 didn't see it.

1 THE COURT: Okay.

2 MR. ELLISON: I may have missed it.

3 THE COURT: Got it.

4 MR. ELLISON: And I'm not going to be a witness, but
5 that's why I put them all together.

6 THE COURT: Right. Okay.

7 Q. Now, Mr. Long, if the bank had a copy of the original
8 articles of organization of SCENT Land, you would expect that
9 to be in the files that the bank has produced in response to
10 the subpoena, would you not?

11 A. Yes.

12 THE COURT: Hold on a minute now. Now what is it again
13 that you want me to look for.

14 MR. ELLISON: I don't think you want to do it now, Your
15 Honor.

16 THE COURT: I know but just say what it is.

17 MR. ELLISON: First I asked about the operating
18 agreement, a signed copy of the operating agreement for SCENT
19 Land. The second question was a copy of the amended articles
20 of organization for SCENT Land.

21 THE COURT: Well, hello (indicating).

22 MR. ELLISON: In the bank's files?

23 THE COURT: I don't know. Isn't that what you just gave
24 me?

25 MR. ELLISON: I gave that to you, Your Honor, but that

1 also includes documents that were not in the bank's files.
2 The documents that are in the bank's files, Ms. Baker would
3 have to help me, are documents, what, 305 -- we've given you
4 a copy, Your Honor -- 305 through I believe it's 315 -- 305
5 through 311, that's what was produced to us in January.

6 THE COURT: Gotcha. Because I was going to say, okay,
7 here it is.

8 MR. ELLISON: I wish it was that easy.

9 THE COURT: All right.

10 Q. Mr. Long, same question with regard to the original
11 articles of organizations of SCENT Land, you would expect
12 that to be -- when the loan files were produced in January,
13 which are documents 305 through 311, you would expect if the
14 bank had a copy that those would have been produced in that
15 production; is that correct?

16 A. That's correct, all documents, that would be customary
17 for that type of transaction to be in our file.

18 Q. I may have missed it, and you all may have it somewhere
19 else, but the expectation is that if you had it, you would
20 have produced it, and unless I was getting really bored going
21 through 2,000 pages of documents, I think I would have seen
22 it.

23 Okay. Now, let's talk about the structure of the SCENT
24 Land loan in May 2010 as it closed. And we're not going to
25 go to the loan files, Your Honor. We're going to go to some

1 loan documents that are referred to earlier that we used back
2 in November, specifically, Exhibit 283, pages 176 through
3 181. And I'll hand you a copy in case you can't see it on
4 the screen.

5 A. Okay.

6 Q. I'm going to refer to Exhibit 283 beginning on page 176.
7 Mr. Long, this document was contained in the banks files that
8 were produced to us previously. It says up here, loan
9 approval, slash, loan summary memorandum, do you see that?

10 A. I do.

11 Q. That's a copy of the loan approval that was granted by
12 the bank for the loan that was ultimately closed by SCENT
13 Land in May 2010, is it not?

14 A. I believe so. I think the date is February, but I'm not
15 sure exactly when.

16 Q. The approval is dated February.

17 A. Correct.

18 Q. And also the date of the request was February 10th,
19 2010.

20 A. Okay.

21 Q. Okay. As far as you know is that the date that Dr.
22 Puchalski requested this loan?

23 A. I'm not sure of the date that he actually requested it.

24 Q. Do you have any reason to think that the date of
25 February 10, 2010 is incorrect?

1 A. No, I don't think that's incorrect. The reason I
2 hesitate with the answer is that sometimes you have a request
3 and it doesn't get to the actual approval memo until sometime
4 afterwards.

5 Q. Right. But this is a copy, as far as you know, of the
6 actual approval memo that was the basis for the loan that was
7 closed in May 2010, is that correct?

8 A. That's correct, this is an underwriting document,
9 internal document that we use for underwriting purposes.

10 Q. Right. This is the internal approval.

11 A. Correct.

12 Q. And if the bank is going to close the loan under any
13 different terms, you would expect that there would be another
14 loan approval memo, correct?

15 A. I'm not sure I'm following you.

16 Q. If you change the collateral, there would be another
17 loan approval memo would there not be?

18 A. Yes, prior to closing.

19 Q. Prior to closing there would be another memo.

20 A. Yes.

21 Q. Okay. Look at the bottom of the first page. It says,
22 the hard copy of guarantor Puchalski's 2008 tax return is
23 located in Tim Hudson's office. Tim Hudson, he was the CEO
24 of the bank, was he not?

25 A. No, he's not.

1 Q. What's his title?

2 A. He's our chief lending officer.

3 Q. It's unusual for tax returns to be kept in the office of
4 the chief lending officer, is it not?

5 A. It is, although they were locked away, but, yes, that
6 is --

7 Q. So it's unusual to keep copies of income tax returns and
8 credit reports in Mr. Hudson's office, is it not?

9 A. That is correct.

10 Q. And that's why it's mentioned in the loan approval memo.

11 A. That is correct. Can I explain.

12 Q. Yes, sure.

13 A. In this particular case we have a system that our
14 documents are imaged and financial documents are also imaged.
15 There was a point in time where there were members in our
16 bank that served in a capacity that Dr. Puchalski was
17 concerned for privacy reasons he did not want them aware of
18 his income, so Mr. Hudson agreed to keep those files in his
19 office and lock them in his vault so that they were not on
20 our system as a whole.

21 Q. I understand. Okay. Going further on the last
22 paragraph it says, a financial statement will not be
23 required, however. Brokerage statement for Dr. Puchalski has
24 been obtained. Now, that was referring to a brokerage
25 statement dealing with the Boenning & Scattergood account

1 that was in Mrs. Puchalski's name, is that correct?

2 A. I don't recall exactly.

3 Q. Do you have any reason to think that's not correct?

4 MR. SHEHEEN: Your Honor, I object. He answered the
5 question -- that's not an appropriate question to ask. He
6 asked the question. He said he didn't know.

7 THE COURT: Sustained.

8 Q. It says here that Dr. Puchalski will be the sole
9 guarantor for this loan. Do you see that?

10 A. I do.

11 Q. Is that the way the loan was approved?

12 A. The loan was approved -- can I look through the
13 document.

14 Q. Absolutely.

15 A. Yes, this document appears to indicate that Dr.
16 Puchalski was -- the loan was being approved with Dr.
17 Puchalski as the sole guarantor.

18 Q. But the bank was going to require that securities be
19 pledged as additional collateral; is that correct?

20 A. That's what this indicates, yes.

21 Q. And if you look on the following page, talks about the
22 summary of loan terms, 283.177, that's what it says, is that
23 correct?

24 A. That is correct.

25 Q. And we're going to fast forward for a moment to the

1 closing which took place on May 4th, 2010. That closing,
2 there was a promissory note, was there not?

3 A. There should have been.

4 Q. And let's look at document, 283.273. These were closing
5 instructions, were they not?

6 A. Yes.

7 Q. And these closing instructions track the loan approval
8 memo, do they not?

9 A. If you'll give me a minute to look through them, but,
10 yes, generally our instructions to our attorneys are
11 engagement letters.

12 Q. If you could talk into the microphone.

13 A. The engagement letter should mirror the terms outlined
14 in the approval memo, unless there is some amendment made.

15 Q. And when we look at the collateral property described at
16 the very bottom of 283.273, the collateral for the loan is
17 supposed to be a first mortgage and a brokerage account, is
18 that correct?

19 A. That's correct, yes.

20 Q. Now, let's look at the loan document, the closing
21 documents themselves. The promissory note is at 283.187.

22 MR. SHEHEEN: Could counsel reference the dates as we go
23 forward.

24 MR. ELLISON: This is May 5, I believe, 2010.

25 MR. SHEHEEN: Thank you.

1 Q. As far as you know is this the promissory note that was
2 signed in May of 2010?

3 A. This is a promissory note that is dated May 5, 2010,
4 signed by Dr. Puchalski on behalf of SCENT Land Holdings.

5 Q. There's a box on the bottom of the loan, of the note,
6 which describes the security for the loan; is that correct?

7 A. That's correct.

8 Q. And the security described includes a mortgage, is that
9 right?

10 A. That's correct.

11 Q. Includes assignment of leases and rents, is that right?

12 A. Correct.

13 Q. Includes a security agreement, is that right?

14 A. Yes.

15 Q. And includes a control agreement, is that right?

16 A. Yes.

17 Q. The control agreement and the security agreement would
18 both be obtained in order to perfect the bank's security in
19 the brokerage account, is that right?

20 A. That's correct.

21 Q. So let's look at those for just a couple of minutes.

22 There's a new guarantee that's signed by Dr. Puchalski which
23 is at 283.196 and 197, at least it's supposed to be, do you
24 see that?

25 A. Yes.

1 MR. SHEHEEN: Could you give me the number again?

2 MR. ELLISON: 283.196 and 197.

3 Q. There was a new mortgage signed, and that's at 283.217
4 through 225, is that right?

5 A. Yes.

6 Q. There was an assignment of leases that was signed, all
7 referring back to that note, which is at document 283.253
8 through 260.

9 A. That is correct.

10 Q. Then there's a control agreement which is at Exhibit
11 283.269.

12 A. Yes.

13 Q. Let's spend one moment with this one for a second. Look
14 in the upper right-hand corner. What's the date of that
15 control agreement? I know it's hard to read, but it's the
16 best copy we've got.

17 A. I believe it's February 17th, 2010.

18 Q. And then there's a commercial security agreement which
19 is at 283.291, is that right?

20 A. Yes.

21 Q. And the commercial security agreement near the bottom in
22 that page that was typed in refers specifically to the
23 brokerage account that was pledged as security, is that
24 right?

25 A. Yes.

1 Q. Now, there was also a hypothecation agreement dated May
2 5th, 2010 which you signed and Ms. Puchalski signed which is
3 at document 283.114.

4 A. I'm sorry, where are you?

5 Q. 283.114.

6 MR. ELLISON: Judge, I apologize. We're skipping around
7 a little bit.

8 THE WITNESS: Okay.

9 Q. This document was signed in connection with the May 5,
10 2010 closing, is that right?

11 A. This document is dated May 5, 2010.

12 Q. Okay. And it refers to the same brokerage account
13 that's referred to in the security agreement; is that
14 correct?

15 A. It refers to the same account number, yes.

16 Q. Right. And the security agreement and the control
17 agreement were both referred, I don't want to go back to it,
18 in the promissory note in that little box on the left-hand
19 side, do you remember that?

20 A. Yes.

21 Q. Now, normally the bank prepares these documents, do they
22 not?

23 A. That's correct.

24 Q. The closing attorney doesn't prepare it, it's actually
25 the bank who prepares them, is that right, normally?

1 A. Normally the bank would prepare these documents, yes.

2 Q. Okay.

3 A. Except for, you referenced earlier the mortgage.

4 Q. You need to speak up a little bit.

5 A. The attorney reviews the mortgage and prepares the
6 legal --

7 Q. Does the legal description.

8 A. Yes, sir.

9 Q. The attorney normally does the legal description, is
10 that right?

11 A. That's correct.

12 Q. But the form mortgage itself is generally prepared by
13 the bank.

14 A. That's correct, it's a banker system document.

15 Q. Now, as far as the bank knew -- let's go to the
16 signature page, I believe it's on page 283.259 for the
17 assignment of leases.

18 A. Which page?

19 Q. 283.259.

20 A. Okay.

21 Q. Do you see that? Now, the word manager is typed in here
22 in a different font, do you see that?

23 A. I do.

24 Q. Do you have any idea who put that in there?

25 A. I do not.

1 Q. If you look at the mortgage on page 283, I think it's
2 page 223.

3 THE COURT: What now, 2 --

4 MR. ELLISON: 283.223.

5 THE COURT: Got it.

6 Q. Got the same thing, is that right?

7 A. Yes.

8 Q. Now, the bank did not obtain a waiver of appraisal
9 rights, did it?

10 A. I can't answer that. I don't recall.

11 Q. If the bank had obtained one, there would be one in the
12 file; is that correct?

13 A. Customarily, yes, that would be a document that we would
14 have in the file.

15 MR. ELLISON: Judge, I think that's another one you're
16 going to have to look for, a waiver of appraisal rights.

17 Q. Now, let's go back to the promissory note for just a
18 second. First page.

19 MR. SHEHEEN: May 5th?

20 MR. ELLISON: Yes.

21 Q. Can you read the loan number up in the upper right-hand
22 corner?

23 A. Yes.

24 Q. Can you read that into the record please? The court
25 reporter can't get it unless you do.

1 A. And, I'm sorry, what's the question?

2 Q. What's the loan number that ends up getting assigned to
3 this loan?

4 A. It's a bad copy but it appears to be 750868695.

5 Q. And in the normal course the bank assigns loan numbers
6 to every one of its loans, does it not?

7 A. That's correct.

8 Q. Now, actually, the terms of Dr. Puchalski's guarantee
9 were a little different than what are contained in the form,
10 or do you know?

11 A. I don't know that.

12 Q. Okay. Let's look at Exhibit 307.266.

13 Your Honor, while he's looking, I also asked him a few
14 minutes ago about a waiver of appraisal rights. He said it
15 would be in there if they had one. I looked. I didn't see
16 one. I need to ask the Court to look.

17 THE WITNESS: I'm not -- I can speculate on something
18 but I can't --

19 Q. Don't want you to speculate.

20 A. But I can't attest to -- I think you need to be aware
21 that our bank went through a conversion two years ago where
22 our imaging system was transferred over, so it is possible
23 that documents were not transferred correctly.

24 Q. I understand.

25 A. Okay. But yes, to answer your question, if we had it

1 and it was transferred over, it would be in the file of
2 everything that you obtained.

3 Q. But I had asked you a different question, Mr. Long.

4 Let's go back to it, okay, and I appreciate your helping us
5 with that, and I realize that document production is not
6 perfect.

7 A. Sure. Okay.

8 Q. Have you looked at the document that's marked 307.266?

9 A. Yes.

10 Q. And as far as you can tell is that a document that
11 actually purports to limit Dr. Puchalski's guarantee on the
12 May 5, 2010 loan?

13 A. Let me read this again. I don't believe that's what
14 it's saying.

15 Q. Sure, no worries.

16 A. I think this is addressing two areas that aren't
17 customary with our normal note. Many of our notes,
18 specifically during this time, had a prepayment penalty for
19 a -- whether there was a refinance or at maturity or if the
20 loan was paid off, and this is saying -- I'm sorry, if it was
21 a balloon note, this is indicating that the bank would agree
22 to renew it at the end of the balloon period.

23 Q. I'm talking about the second paragraph with regard to
24 the guarantee.

25 A. I'm sorry, yes, that's limiting -- if you look at the

1 guarantee itself, I'm not sure where you might have that in
2 here, but there's a section in here in certain guarantees
3 that says that it's unlimited. In this particular case it's
4 stating that whatever the outstanding balance is is what the
5 guarantee would be limited to.

6 Q. But the form says -- we can pull it back up if you want.
7 The form guarantee that Dr. Puchalski signed said it was
8 unlimited, but this letter which is outside of the guarantee
9 says that it was limited.

10 A. Okay.

11 Q. Is that what it says?

12 A. That's what it says.

13 Q. And Dr. Dyce was not supposed to be, according to the
14 loan approval, Dr. Dyce was not supposed to guarantee this
15 loan, is that right?

16 MR. SHEHEEN: I object, Your Honor, as to what he was --
17 it speaks for itself, first of all. What he was supposed to
18 do or not supposed to do is contained within the document.
19 It speaks for itself. Also, this is predicated on the fact
20 that Dr. Puchalski could come up with \$300,000 and all this
21 kind of stuff, so there are things that happened afterwards.

22 MR. ELLISON: He can do all this on redirect.

23 THE COURT: I understand. That's certainly what it says
24 in the loan commitment, but there's a lot of documents. I'll
25 allow that as far as his understanding is.

1 Q. So your understanding is that the loan approval did not
2 require Dr. Dyce's guarantee, is that correct?

3 A. It appeared that that loan approval was having Dr.
4 Puchalski as the sole guarantor.

5 Q. And the loan approval required the pledge of \$300,000 in
6 securities.

7 A. That's correct.

8 Q. And all of that happened on May 5, 2010, eventually when
9 the loan closed.

10 A. Yes.

11 Q. And all the security for the loan is contained in that
12 little box in the left-hand side of the page, remember seeing
13 that?

14 A. Yes, but that's -- yes, generally that's where it would
15 be, summary of the collateral.

16 Q. It includes the control agreement right?

17 A. Yes.

18 Q. And it includes the security agreement, is that right?

19 A. That's right, and the mortgage.

20 Q. Now, let's look at a set of documents that the bank did
21 not produce, that is, document 301. Do you see that?

22 A. Yes.

23 Q. Now, this document was produced at the earlier hearing
24 and is a transmittal email with proposed loan documents. Do
25 you see that?

1 A. I'm not sure what you're asking, but it appears this is
2 an email and there are documents in this folder that are loan
3 documents, yes.

4 Q. And those are form documents from the bank, correct?

5 A. They are form documents, but I don't know that that is
6 part of this email or not.

7 Q. I'll represent to you that it was produced as part of
8 the email.

9 A. Okay.

10 Q. Now, before we get there I need Defendant's Exhibit 37,
11 and let's blow up the last paragraph. Mr. Long, this is an
12 email that you sent on -- a copy of an email that defendants
13 have produced that you sent on February 17th after the loan
14 approval but before that email that we just looked at.

15 A. Okay.

16 Q. In that email it says, I have spoken with Alan Thompson
17 this morning. Who is Alan Thompson?

18 A. I believe he's an attorney that was representing Dr.
19 Puchalski in some capacity. I don't recall if he was
20 representing Dr. Puchalski for this specific loan
21 transaction, but I know he's an attorney.

22 Q. Do you know what firm he's with?

23 A. I do not.

24 Q. It says, and he should be calling you to discuss which
25 account to pledge. Have instructed William Cox to proceed

1 with the closing today at 12:00. Do you see that?

2 A. I do, and I'm sorry, I don't think he is an attorney, I
3 think that -- by reading that I believe that to be Dr.
4 Puchalski's broker.

5 Q. Do you think that was the broker at Boenning &
6 Scattergood whose signoff that you might have needed?

7 A. I don't recall.

8 Q. Okay. That's fine. But William Cox, you know who he
9 is?

10 A. I do.

11 Q. He's an attorney with the Savage Firm.

12 A. That's correct.

13 Q. It says, have instructed William Cox to proceed with the
14 closing today at 12:00. Do you see that?

15 A. Yes.

16 Q. Let him know if this time does not work for you, call or
17 email with questions, do you see that?

18 A. I do.

19 Q. Now, let's go back -- and before we go back, 301, which
20 is where we're going to go in just a second, the loan
21 approval and this email specifically referred to the pledge
22 of securities, right?

23 A. Yes.

24 Q. And the loan approval specifically says that Dr. Dyce's
25 guarantee is not going to be required, is that right?

1 A. That's correct.

2 Q. And that's the loan approval that's used to close the
3 May 2010 loan for SCENT Land, right?

4 A. That's correct.

5 Q. Let's look at the loan documents that were attached to
6 301. This is everything that came. Bear with me for a
7 second.

8 There's no hypothecation agreement contained in the loan
9 documents, is there? Go ahead and look through the whole
10 thing. This one's not that big.

11 A. I do not see a hypothecation agreement in this
12 information that you've provided.

13 Q. Looking at page 16 which is labeled 301.016, do you see
14 a guarantee that was supposed to be signed by Dr. Dyce and
15 Dr. Puchalski?

16 A. Yes.

17 Q. That's not consistent with the terms of the loan
18 approval, is it?

19 A. That's not consistent with the loan approval that we
20 just reviewed, no, it is not.

21 Q. And let's look at the note which is at page 301.027, do
22 you see that? Let's blow up the paragraph on the bottom
23 left. Do you see that, Mr. Long?

24 A. I do.

25 Q. There's no reference to a hypothecation agreement there,

1 is there?

2 A. No.

3 Q. There's no reference to a control agreement, is there?

4 A. No.

5 Q. And it refers to a security agreement, do you see that?

6 A. Yes.

7 Q. And if we turn to page 301.31, there's the draft
8 security agreement that was provided with the rest of the
9 documents, and let's blow up the paragraph that was typed in
10 at the very bottom, talks about the security. Do you see
11 that Mr. Long?

12 A. I do.

13 Q. It refers to a first mortgage on Highway 601 South,
14 Lugoff, South Carolina, do you see that?

15 A. Yes.

16 Q. There's no reference to the control agreement, is there?

17 A. No.

18 Q. There's no reference to the brokerage account, is there?

19 A. No.

20 Q. There's no reference to the securities in any way, shape
21 or form, is there?

22 A. Not on this document, no.

23 Q. Now, the email that we looked at a little while -- these
24 documents were sent to Dr. Dyce's counsel on March 1st, 2010,
25 and I think we've gone through the fact that they're not

1 consistent with the terms of the loan approval, is that
2 right?

3 A. These documents are not consistent with the loan
4 approval, correct.

5 Q. And the email that we looked at, Defendant's 37, a
6 little while ago says, and I'm paraphrasing and I apologize
7 to Mr. Sheheen for paraphrasing a little bit, he can jump on
8 me if he wants, we're ready to go, we've got to get the
9 brokerage agreement, but we're good to go, do you remember
10 seeing that?

11 A. I remember seeing that. I don't recall the date you
12 told me it was.

13 Q. We can go back to it, but it's February 17th.

14 A. Okay.

15 Q. Okay. What happened between February 17th, 2010 and
16 March 1st, 2010 that led to the production of loan documents
17 that are inconsistent with the loan approval that was used to
18 close the loan in May? And that's not a leading question.
19 I'm asking. I don't know what it is.

20 A. I would say that I don't see where these documents are
21 executed. I can't answer what -- I don't know what
22 transpired between then.

23 Q. These documents, the ones that we just went through, the
24 draft documents, they're not consistent with the loan
25 approval, are they?

1 A. They are not.

2 Q. But if you look back at the promissory note, it's for a
3 construction loan for the Lugoff building, right?

4 MR. SHEHEEN: Your Honor, I'm going to object simply
5 because he says the draft documents are not consistent.
6 There are many consistencies with them, and I think he
7 pointed out one inconsistency, but I don't want it to seem in
8 the record like everything in there's inconsistent with the
9 documents.

10 THE COURT: Very well, overruled, cross-examination, you
11 may proceed.

12 MR. ELLISON: Thank you, Your Honor.

13 Q. Let me restate the question, and it really is a
14 question, okay, we have a February -- and I did not depose
15 you and I do not know the answer, which is a bad thing for a
16 lawyer to do but I'm doing it. We have an email at 9:31 on
17 February 17th that is consistent with the terms of the loan
18 approval. We have loan documents that are executed in May
19 that are consistent with the terms of the loan approval, but
20 yet there are draft documents that are circulating that
21 include a requirement of a guarantee and no reference to the
22 pledge of securities on March 1st that, normal course, are
23 prepared by the bank I think you said earlier, bank documents
24 normally are.

25 A. Yes.

1 Q. So my question to you is, and I do not know the answer,
2 and if you don't that's okay, what happens between February
3 17th and March 1st?

4 A. These documents were sent by Terryn Cooper, it appears
5 that they were sent by Terryn Cooper to Keiley Taylor. It's
6 possible that the documents were reviewed and saw the
7 discrepancy and they were changed after that error was
8 determined.

9 Q. No documents were produced, that have been produced in
10 the loan files that the bank has produced or anywhere else,
11 between the March 1st loan documents and the May 5th loan
12 documents. Would you expect if they existed that they would
13 be contained in the bank's files?

14 A. Are there not documents that have been executed that are
15 in our file?

16 Q. They are in May, and they're consistent with -- this is
17 my mystery.

18 A. Okay.

19 Q. Okay. And it really is a mystery to me. You know, I'm
20 violating a cardinal rule of cross-examination, you always
21 want to know the answer when you ask the question, and I
22 don't know the answer, and if you don't, that's okay.

23 A. Apparently I'm not going to know the answer.

24 Q. And Mr. Cleveland may get all over me when we get
25 finished with this. But you have a loan approval on a loan

1 submitted on February 10 that seems to be referred to in the
2 February 17th email. Would you agree with that?

3 A. Yes.

4 Q. You have loan documents that are executed prepared by
5 the bank in May 2010 that are consistent with the terms of
6 that loan approval.

7 A. Yes.

8 Q. But in that interim time period on or about, not later
9 than September 1st a series of loan documents are produced by
10 the bank that are not consistent with the loan approval, and
11 my question is what happened, and if you don't know that's
12 okay, but I really -- if you do know, I'd really like to
13 know.

14 A. I don't know other than the speculation I gave you a
15 moment ago.

16 Q. I don't want you to speculate.

17 A. I don't know.

18 Q. Okay. The purpose of this loan, and I can go back
19 through the loan number in a minute and you'll do it, but the
20 purpose of the loan was to fund construction, is that right?

21 A. Correct.

22 Q. According to the loan approval Orville Dyce was not
23 supposed to be a guarantor.

24 A. At that time, yes.

25 Q. I'm sorry?

1 A. In that approval memo that's what that indicates, yes.

2 Q. And that approval memo is back in February.

3 A. Correct.

4 Q. And the loan documents that had him as guarantor
5 circulated on or about March 1st.

6 A. Correct.

7 Q. This was supposed to be a construction loan bearing the
8 loan number that it ultimately got, right?

9 A. I believe so, yes.

10 Q. Okay. Let's look at document 308.421.

11 A. I'm sorry. Can you say that number again?

12 Q. 308.421. Do you see that?

13 A. I do.

14 Q. Now, that document represents the first draw request
15 made by SCENT Land after the loan closed on May the 5th, is
16 that right?

17 A. Yes.

18 Q. I'm sorry?

19 A. Yes, that appears to be correct.

20 Q. And this was supposed to be to fund construction, is
21 that right?

22 A. That's correct.

23 Q. And the draw was for approximately \$741,000, do you see
24 that?

25 A. That's correct.

1 Q. Would it surprise you to learn, Mr. Long, that
2 approximately a quarter of a million dollars of that loan,
3 those loan proceeds --

4 MR. SHEHEEN: Your Honor, I'm going to object. Asking
5 him would it surprise him or to speculate on where did the
6 money go, that's not his knowledge.

7 MR. ELLISON: He's supposed to know where the money
8 goes.

9 THE COURT: Ask him the foundational question, then you
10 can ask him the followup.

11 Q. Normal course, Mr. Long, you're supposed to go out and
12 inspect the building, right?

13 A. That's correct, and the document indicates that there
14 was an AIA inspection. I'm not sure if that's in your file,
15 but that's what the bank would have based its draw completion
16 percentage.

17 Q. It's not my files. It's the bank's files, okay, but the
18 following is not in the bank's files: Would it surprise you
19 to learn that a quarter of a million dollars of that \$741,000
20 was used to pay Nelson Mullins for a legal bill that had not
21 been rendered?

22 MR. SHEHEEN: Your Honor, first of all it's improper to
23 say would it surprise you because that calls for speculation
24 clearly. Second of all, he's not laid a foundation this
25 witness has any knowledge about where the proceeds went.

1 THE COURT: Ask do you know.

2 Q. Do you know that a quarter of a million dollars of these
3 loan proceeds went to pay Nelson Mullins a quarter of a
4 million dollars on a bill that had not been rendered?

5 A. I am not aware of that.

6 Q. Is that a proper, in your opinion --

7 MR. SHEHEEN: Your Honor, I'm going to object to the
8 characterization of what happened. Whether things are proper
9 or not proper, he's characterizing the question. And number
10 two, asking the witness would it surprise you, do you think
11 it's proper is a speculative question.

12 THE COURT: Did you know is all he asked him. He asked
13 did you know and he said no.

14 MR. SHEHEEN: I was objecting to the next question. I'm
15 sorry.

16 MR. ELLISON: There isn't a next question. I mean, if
17 there's something that I should have thought of Mr. Sheheen's
18 already thought of, I'm open to it.

19 MR. SHEHEEN: If there's no next question there's no
20 objection.

21 MR. ELLISON: There are some other questions.

22 Q. Mr. Long, when a guarantee is signed by a guarantor in
23 the normal course that guarantor, in your experience, that
24 guarantor is guaranteeing the debt of a specific entity, is
25 he not?

1 A. That's correct.

2 Q. Who's the regulator for the bank?

3 A. FDIC.

4 Q. FDIC?

5 A. Yes.

6 Q. And the FDIC comes in and does audits, do they not?

7 A. That's correct.

8 Q. And the FDIC holds the bank, I think the magic words are
9 to safe and sound banking practices, does it not?

10 A. That's correct.

11 Q. And if it finds something in the files or missing from
12 the files that it determines are not in accordance with safe
13 and sound banking principles, it issues an exception, is that
14 correct?

15 A. The FDIC issues an exception?

16 Q. Yes. Sorry?

17 A. I'm not sure I'm understanding your question. You're
18 talking about banking internal document for an exception.

19 Q. No, I'm talking about when the regulators -- I'll use
20 the colloquialism. When the regulators come in to audit the
21 bank's loans, if it finds something missing, it criticizes
22 the bank.

23 A. Yes, that's correct.

24 Q. And I think in the bank documents that I've seen it's
25 referred to as an exception.

1 A. That's correct.

2 Q. And safe and sound banking practices require the bank to
3 always get a tax return, or not always, require on a regular
4 basis the bank to obtain a tax return for the borrowing
5 entity, is that right?

6 A. That would be customary practice, but as you already
7 pointed out, there are exceptions.

8 Q. But you're running the risk if you don't get it of the
9 FDIC writing you up, is that right?

10 A. That's correct.

11 Q. Customary practice is the bank gets on a regular basis
12 copies of guarantors' tax returns, is that right?

13 A. That's correct.

14 Q. And if it doesn't, it's running the risk of getting
15 written up, is that right?

16 A. Yes.

17 Q. Normal practice, bank goes and gets credit scores when
18 it does a renewal of guarantors, does it not?

19 A. That's correct, and there are cases where the bank may
20 not be cited for an exception if it justifies the reason why
21 it didn't obtain the documents.

22 Q. And you would expect the justification to be contained
23 in a loan approval memo, would you not?

24 A. That's correct, yes.

25 Q. And you would also expect it to be contained in a loan

1 review memo, would you not?

2 A. Correct.

3 Q. When I say a loan review memo, I'm referring to the
4 internal memoranda did that that the bank periodically does
5 to make sure it's sticking with safe and sound banking
6 principles.

7 A. That's correct.

8 Q. All right. Now this is going to get a little tough, and
9 I apologize, but this is the way the bank keeps its files. I
10 want to refer to Exhibit 305. Do you see that, Mr. Long?

11 A. Yes.

12 Q. That's a copy of a letter Mr. Sheheen wrote you on May
13 11, 2013, is that right?

14 A. It is.

15 Q. Now, in that letter Mr. Sheheen inquires of you what
16 loans do you think, of SCENT or SCENT Land, Dr. Dyce has
17 personally guaranteed. Do you see that?

18 A. Yes.

19 Q. And attached to that letter are a series of guarantees,
20 okay. And we're going to go through these. Judge, I
21 apologize but -- and the loan numbers matter.

22 THE COURT: Okay.

23 Q. Let's go through it page by page. Mr. Sheheen attached
24 a -- his was a better copy, this is not such a good copy, but
25 a copy of the guarantee that was signed, and it might be

1 better in the book, by Dr. Dyce and Dr. Puchalski of some
2 obligations, do you see that?

3 A. I do.

4 Q. And whose obligations are being guaranteed?

5 A. This particular document is SCENT Equipment Services.

6 Q. Okay. SCENT Equipment Services, LP, do you see that?

7 A. Correct.

8 Q. And is it your understanding that normally a limited --
9 LP normally stands for limited partnership, does it not?

10 A. That's true.

11 Q. And normally in order to have a valid limited
12 partnership a limited partnership has to file a certificate
13 of limited partnership with the Secretary of State's office,
14 is that right?

15 MR. SHEHEEN: Your Honor, I'm just going to object to
16 this line of questioning because I don't understand the
17 relevance.

18 MR. ELLISON: You will.

19 MR. SHEHEEN: If there's relevance to this case -- I
20 have a feeling he's going to be talking about obligations
21 between these parties in the future or whether this entity
22 was proper or not but not things that are at issue in this
23 case, but I'll withdraw the objection for now, and we'll see
24 where we go. I just don't want to waste a lot of time. The
25 purpose of my letter was not related to this case.

1 THE COURT: I'm with you, okay.

2 Q. Going back, the name of the entity who guarantees -- Dr.
3 Dyce and Dr. Puchalski guaranteed was SCENT Equipment
4 Services, LP, is that right?

5 A. Yes.

6 Q. And there's a reference to a loan number up here, do you
7 see that?

8 A. Yes.

9 Q. And there's a date on the bottom of the page which I
10 can't read right now because it's not blown up. Maybe it's
11 not on the bottom of the page, okay, but it refers to the
12 loan number, do you see that?

13 A. Yes.

14 Q. Let's go to the next page. Here's the next one. Mr.
15 Sheheen attached a copy of the guarantee. The entity -- and
16 this is on, it's 305.004 -- the entity whose obligations were
17 being guaranteed, SCENT Equipment Services, LP again, do you
18 see that?

19 A. I believe that's the same document, is it not?

20 Q. Different loan number.

21 A. Okay. Yes.

22 Q. And this one's dated March 19th, 2009..

23 A. Yes.

24 Q. Keep going, two more pages, here's the next guarantee
25 that contains Dr. Dyce's signature. The date on this one is,

1 and the name of the entity, October 7, 2008, do you see that.

2 A. I do.

3 Q. And the entity whose obligations are being guaranteed is
4 SCENT Land Holdings, LLC, do you see that?

5 A. I do.

6 Q. Let's go to the next one. It's kind of cut off.
7 There's a loan number referenced there, there's a date and
8 there's an entity, March 3rd, 2009, SCENT Land Holdings, LLC,
9 do you see that?

10 A. Yes.

11 Q. One more. Okay. Here's the last one. This one is
12 dated July 6, 2009, do you see it?

13 A. Yes.

14 Q. And this is of the obligations of SCENT Land Holdings,
15 LLC, do you see that?

16 A. Yes.

17 Q. Presumably in connection with a loan made on that date,
18 would you agree with that?

19 A. That would be when we would customarily have a guarantee
20 signed, yes.

21 Q. Right. Okay. So I think we've got five guarantees.

22 A. Okay.

23 Q. Three for SCENT Land, one for SCENT equipment, all
24 referring to various loans. Now, you responded to this
25 letter on May 20th, 2013. This is 305.16, and in the letter

1 you responded that in your view at the time the loans that
2 had been guaranteed by Dr. Dyce were those five loan numbers.

3 MR. SHEHEEN: Your Honor, just for the record, I think
4 that letter shows that those documents that were attached
5 were sent back to me, not that I sent them to --

6 MR. ELLISON: That's fine. I'm perfectly okay with
7 that.

8 MR. SHEHEEN: -- Mr. Long.

9 MR. ELLISON: This is the way it got produced to us.

10 MR. SHEHEEN: I try to send you stuff when I get it.

11 MR. ELLISON: For purposes now it doesn't matter.

12 THE WITNESS: Okay.

13 Q. Okay. Is this a copy of your signature?

14 A. It is.

15 Q. And as far as you knew on May 20th, 2013, you were
16 responding saying, these are the five loans that are being
17 guaranteed, is that right?

18 A. These are the five loans that I can locate that had
19 guarantees' signatures in our file.

20 Q. Let's look at the loans. Let's look at loan 70-0877357,
21 and specifically let's go to Exhibit 309.4. This was a
22 renewal, was it not, Mr. Long?

23 A. It appears to be a renewal, yes.

24 Q. The obligor on this loan is SCENT Allergy & Sleep
25 Medicine, PA, do you see that?

1 A. Yes.

2 Q. That's not SCENT Land, is it?

3 A. No.

4 Q. And that's not SCENT Equipment, is it?

5 A. No.

6 Q. So as far as you know this loan's not guaranteed by Dr.
7 Dyce.

8 A. I don't know that.

9 MR. SHEHEEN: Your Honor, I'm going to object to this
10 line of questioning because it is what I thought it was,
11 which is just a question of not the issues between the
12 parties but the issues potentially between the bank and Dr.
13 Dyce, and that's not an issue in this case.

14 MR. ELLISON: He's trying to create --

15 THE COURT: First of all let me ask this question, I
16 need, because I was actually writing loan numbers down to be
17 sure that I was tracking the loan numbers, so tell me where
18 you are in terms of the notebook, what number you are on..

19 MR. ELLISON: This is 70-087735.7.

20 THE COURT: That's SCENT Equipment Services, that was
21 the first one.

22 MR. ELLISON: That's right.

23 THE COURT: But where are you in this book with this
24 note?

25 MR. ELLISON: This note is, I believe it's at 309.4

1 through 309.5.

2 THE COURT: Okay. 309.4. Now, Mr. Sheheen is concerned
3 because he thinks that you're going afield of the issues
4 raised by the litigation; is that correct?

5 MR. SHEHEEN: Yes, ma'am, Your Honor.

6 THE COURT: It doesn't have any relevance?

7 MR. SHEHEEN: And if you'll recall, on direct and up to
8 this point pretty much the questions have been, and of course
9 I object, about the construction loan, the line of credit,
10 who was required to sign things for the guarantee or the
11 closing and all that stuff, but these are questions about
12 loans that we haven't -- that aren't subject to dispute.

13 THE COURT: While I understand that, I know that during
14 the testimony, and I'm recalling my memory, that when we were
15 here in November, and I want to say that the concern was
16 expressed by Dr. Puchalski and maybe Professor Freeman,
17 because we were talking about the obligations that Dr. Dyce,
18 based upon Dr. Puchalski's position, that Dr. Dyce had walked
19 away from many, many obligations and had left him with those
20 obligations and that when you do an accounting, when you do
21 the setoff, that he's entitled to value because of the
22 obligations that Dr. Dyce had walked away from. I distinctly
23 remember him talking about a piece of very expensive
24 equipment that was now parked in Hartsville in a warehouse
25 that he was responsible now for repaying and that all of

1 that, those were all pieces of damages, and I haven't heard
2 from your accountant, and one of the things that I
3 anticipated was that I would be hearing about those damages
4 as setoff.

5 MR. SHEHEEN: The question of a guarantee was not an
6 issue in that, that was not what we were claiming because of
7 the guarantees.

8 THE COURT: Part of my problem is I don't know because
9 for this reason, because somebody had to pay for that very
10 expensive piece of equipment that's parked in Hartsville.

11 MR. SHEHEEN: We did that and it's there.

12 THE COURT: And I thought that there were a number of
13 different entities that were mentioned aside from SCENT Land
14 Holdings, aside from SCENT, I distinctly remember there were
15 other entities that were involved. It's almost 5:00 and I
16 don't remember specifically the name of them. So my concern
17 is that on the basis of relevancy how can I --

18 MR. SHEHEEN: I don't know how these guarantees and the
19 documents between Dyce and the bank fit into what you just
20 said, and that's why we can spend a lot of time talking about
21 did the bank do their docs correctly or not, but this is
22 essentially what's happening right now.

23 THE COURT: Here's what concerns me, what concerns me is
24 that what I may be hearing, what may be being set up is that
25 there's an obligation that remains with Dr. Dyce that

1 somehow --

2 MR. SHEHEEN: Offset what he would owe.

3 THE COURT: That Dr. Puchalski is in fact not
4 responsible for somehow. I don't know. I don't know. You
5 tell me.

6 MR. ELLISON: Judge, that's the argument that they've
7 made. That's part of the argument that they've made, and
8 that's why I'm going through this is because part of the
9 argument that they've made is, oh, well, ignore what's in the
10 shareholder agreement as far as the buy out is concerned, we
11 want to ignore that, you should be responsible, Dr. Dyce, for
12 these other obligations, and one of the things I'm showing
13 now is he's not responsible for them. I mean, in fact, I
14 don't want to tip all of it off but Mr. Sheheen --

15 THE COURT: That's the relevance, in other words, what's
16 going through my head is why you think it's relevant.

17 MR. ELLISON: Right. If they want to stick with the
18 formula that's in the contract, suits me just fine.

19 THE COURT: Great. Got it. It's 5:00. Court people
20 have got to go home, so I need to see you all -- you have an
21 assignment.

22 MR. ELLISON: Sorry.

23 THE COURT: To flip through and make sure -- just flip
24 through and make sure they're the banks documents.

25 MR. SHEHEEN: Your Honor, so far all the documents we've

1 seen we don't object. They're clearly the bank's documents.

2 We don't object to the ones we've been through.

3 THE COURT: Do you want it authenticated?

4 MR. ELLISON: Judge, I really don't think he's going to
5 have a problem with any of them.

6 THE COURT: Okay. Aren't you glad they said that?

7 MR. ELLISON: Judge, one other thing Mr. Cleveland
8 rightly points out to me, we don't think we've gotten full
9 production. Even now we don't think we've gotten it. I
10 think he's got an obligation -- the bank's got an obligation
11 to fully respond to the subpoena. I didn't file a motion to
12 compel because they say, gee, we've done everything we've
13 got. Well, part of the problem, and I think you'll see it --

14 THE COURT: I'll tell you what we'll do, this evening
15 get a list for Mr. Long, and if you give it to him in the
16 morning, I'm confident that he'll pass it along and say,
17 somebody's got -- I'm over in the court and you all have got
18 to help me, don't leave me on an island, don't leave me
19 alone, just double check to make sure, and these are the
20 specific documents that they're concerned about or concerned
21 about areas, take a look at that. Yes, you'll do that for
22 us, yes?

23 THE WITNESS: Absolutely.

24 MR. ELLISON: Your Honor, for purposes of assisting Mr.
25 Long, I'll give you a couple of examples very specifically.

1 THE COURT: He'll write those down.

2 MR. ELLISON: Do you want me to do it on the record or
3 no?

4 THE COURT: Do it in the morning because he can't call
5 now. It's 5:00. They're gone anyway.

6 MR. ELLISON: Okay.

7 MR. SHEHEEN: Thank you, Your Honor.

8 (Trial of the case adjourned for the day at 5:00 p.m.)

9 (Trial of the case resumed on 4/1/14 at 9:45 a.m.)

10 THE COURT: All right, Mr. Ellison.

11 MR. ELLISON: Your Honor, I'd like to go to Exhibit 306,
12 page 212.

13 Q. Mr. Long, I want to get us back in some context. This
14 document -- well, strike that.

15 To the extent that any one account officer at First
16 Palmetto was in charge of the relationship with SCENT and Dr.
17 Puchalski in the period 2010 through 2012, would that have
18 been you?

19 A. Three officers that were involved, Tim Hudson who's an
20 executive vice president with the bank, and then also Terryn
21 Patterson was a loan officer with the bank.

22 Q. But you as well, correct?

23 A. That's correct.

24 Q. Okay. And this document is a copy of -- it says loan
25 approval, loan summary memorandum, do you see that at the top

1 of the page?

2 A. Yes.

3 Q. And I want to spend a little bit of time going through
4 this document just as an example.

5 A. Okay.

6 Q. Now, this is the kind of document that would be prepared
7 generally in connection with making a loan or renewing a loan
8 to SCENT or SCENT Land; is that correct?

9 A. That's correct.

10 Q. And this document says that you were the loan officer up
11 here near the upper left-hand corner.

12 A. That's correct.

13 Q. And this document was prepared in connection with a
14 renewable loan to SCENT Land Holdings, LLC; is that correct?

15 A. It appears to be a renewal or refinance of existing
16 debt, yes.

17 Q. Okay. So let's talk about the form of the document, and
18 we talked yesterday about exceptions and how the bank wanted
19 to avoid exceptions. The format of this document on the
20 first page contains a financial summary, is that right?

21 A. Correct.

22 Q. And on the financial summary it notes what the Beacon
23 score was of the borrower and the guarantors, do you see
24 that?

25 A. Yes.

1 Q. That's basically getting a credit report, correct?

2 A. That's correct.

3 Q. And it also notes here that you got a credit report on
4 your guarantors; is that correct?

5 A. That's correct.

6 Q. And it also says that you had to get tax returns on your
7 guarantors, is that right?

8 A. It doesn't say we had to get tax returns, it indicates
9 that that's where the information would be presented on the
10 report.

11 Q. But normal course, you would get the tax returns on the
12 borrower as well as the guarantor.

13 A. We attempt to get tax returns on all of our borrowers.

14 Q. And if you don't get them, you run the risk of it being
15 an exception when the FDIC comes in and reviews the loan, is
16 that right?

17 A. That's correct.

18 Q. And it notes, again, we talked about this yesterday,
19 that Dr. Puchalski's guarantee was kept in Mr. Hudson's
20 office, which was a bit unusual.

21 A. His tax returns were, yes.

22 Q. Right. Okay. Now, let's go to the next page -- before
23 that, you've got a line up here, and we'll spend more time on
24 this later, that says SCENT Land Holdings, LLC, reports under
25 the name SCENT Land Holdings II, LLC and Tax ID, and it gives

1 a number for tax purposes, do you see that?

2 A. I do.

3 Q. Now, let's go to the next page. I think one more. Can
4 you blow this up, please? Now, it has here basically an
5 analysis in part of the tax return that you got for SCENT
6 Land, correct?

7 A. It should be, this document doesn't reflect what tax
8 return it is, but it should be referring back to the front
9 page, and so it should be for the Land Holdings, yes.

10 Q. As far as you can tell this analysis in this paragraph
11 here where it talks about comment to financial analysis, this
12 was part of an analysis --

13 A. Correct.

14 Q. Let me finish please.

15 -- of the SCENT Land tax return, is that right?

16 A. That's correct.

17 Q. And it notes here, about the middle of the page; income
18 was derived from totaling SCENT Land Holdings, LLC tax return
19 from 1/1/2010 to 5, I can't really read the number but it
20 looks like 5/9/2010, schedule C and E on Dr. Puchalski's
21 return and SCENT Land Holdings II, LLC from 9/1/2010 to
22 12/31/2010, do you see that?

23 A. Yes.

24 Q. Now, looking at that, do you remember, and we'll talk
25 more about this later --

1 A. Okay.

2 Q. -- the last tax return that the bank got for SCENT Land
3 Holdings was this partial return from 1/1/2010 to 5/9/2010,
4 is that right?

5 A. I don't know.

6 Q. Well, we'll go through that in some more detail later,
7 but you don't recall that sitting here right now?

8 A. No, I don't recall that.

9 Q. And the SCENT Land Holdings II, as far as you knew was
10 that a different entity?

11 A. I believe it was. I don't remember a lot about that. I
12 think there was some accounting reason that they had, but I
13 don't recall specifically what it was.

14 Q. But as far as you know it was a different entity.

15 A. It was a different entity?

16 Q. Yes.

17 A. I don't know. There was some -- there was some reason,
18 and I really don't know what it was, that there was a
19 transition from SCENT Land Holdings I to II for accounting
20 purposes but --

21 Q. But it had a different Tax ID number, right?

22 A. I can't --

23 Q. We'll look through the returns later.

24 A. I believe it said that on the first page. I don't know.

25 Q. Okay. That's fine. All right. Now, look back on the

1 first page for a second. We can do it here first. Do you
2 see this black box here?

3 A. Yes.

4 Q. The word used in court is that's redacted. Do you have
5 any idea what was redacted --

6 A. No.

7 Q. -- why this is blacked out?

8 A. That is not for redaction purposes. That is simply to
9 separate the two columns from the analysis.

10 Q. Okay. All right. And there's no mention here on the
11 renewal of the SCENT Land loan in 2012 of a guarantee by Dr.
12 Dyce, is there?

13 A. On this document I did not see any reference to a
14 guarantee for Dr. Dyce.

15 Q. And going back to the first page, the only guarantors
16 listed are Dr. Puchalski and Vidrine, is that right?

17 A. That's correct.

18 Q. Now let's go back to Exhibit 305, and I apologize if I'm
19 getting who attached -- who was the one who attached the
20 guarantees, this is just the way it got produced to us from
21 the bank, and I'll represent to you Exhibit 305 in its
22 totality, Your Honor, is one of the loan files that was
23 produced to us that we talked about yesterday, so the page
24 numbers are the way it was produced to us, and if Mr. Sheheen
25 says that the guarantees were attached to Mr. Long's, I have

1 no reason to challenge that. This is just the way it got
2 produced to us.

3 Now, to set context again --

4 A. I'm sorry, where are we on 305?

5 Q. 305, page 1. This was a letter from Mr. Sheheen to you
6 dated May 11, 2013. If you're having trouble finding it, we
7 can wait.

8 A. Okay.

9 Q. Okay. So in 2013 Mr. Sheheen wrote you and asked you
10 about which outstanding loans of SCENT or SCENT Land
11 continued to be guaranteed by Dr. Dyce, okay, and we can flip
12 to the exact -- why don't you flip to the exact page. That's
13 probably a good idea. You responded to that letter by a
14 letter dated May 20th, 2013.

15 A. Okay.

16 Q. And in that letter you referenced five loan files that
17 you said Dr. Dyce still guaranteed.

18 A. Correct.

19 Q. And it says here that you included the copies of the
20 guarantees, okay. I have no reason to question who attached
21 it to who. It's just the way it got produced to us.

22 A. Right.

23 Q. Now, as far as you know these are the loan numbers of
24 the loans that you believed were still guaranteed by Dr.
25 Dyce.

1 A. I believe that's what I was able to locate on our system
2 at that point in time, yes.

3 Q. And I'll represent to you Exhibits 305, 06, 07, 08, 09
4 are loan files that the bank produced with matching loan
5 numbers to these.

6 A. Okay.

7 Q. Okay. So I want to go through a couple of those for a
8 few minutes.

9 A. Sure.

10 Q. I want to talk first about the non- SCENT Land Holdings
11 loans. Well, before I do, let me set context for the Court's
12 benefit, the way these were tagged, and I apologize for
13 having to get into the loan numbers, but I think it does
14 matter, Loan No. 70-087735.7 was tagged with the name SCENT,
15 Loan No. 70-087736-5 was tagged with the name SCENT, Loan
16 75-085326-2 was tagged with the name collateral of 696
17 Medical Park Drive in Hartsville.

18 THE COURT: Give me that name again.

19 MR. ELLISON: Collateral of 6 -- I'm not sure if this
20 was on the tab itself but it was tagged SCENT Land, and it's
21 a loan that deals with collateral of 696 Medical Park Drive.

22 THE COURT: The number that you gave me is not the
23 number in the letter. That's my concern.

24 MR. SHEHEEN: This is the way it got produced to us, and
25 if I've typed it down wrong, I've got it wrong.

1 THE COURT: What's in the letter, can I read you what's
2 in the letter?

3 MR. ELLISON: Absolutely.

4 THE COURT: 750853622.

5 MR. ELLISON: 622 you said, Your Honor? I've only got
6 one 2 typed in here, not two. I have 75-085326-2. I
7 understand, but this is what's on the folder that we got from
8 the bank.

9 THE COURT: Interesting. Now I'm going to ask you,
10 since that's a different number than is in the letter.

11 MR. ELLISON: Yes.

12 THE COURT: Would you give me that number again, please.

13 MR. ELLISON: Absolutely, Your Honor.

14 THE COURT: Thank you.

15 MR. ELLISON: 75-085326-2.

16 THE COURT: Thank you. Okay. That's a different loan
17 number.

18 MR. ELLISON: In that folder is information dealing with
19 a loan to SCENT Land with collateral, the collateral being
20 696 Medical Park Drive in Hartsville. The fourth folder that
21 we got, and I don't remember whether this was produced by CD
22 or hard copy off the top of my head.

23 THE COURT: This is the loan folder.

24 MR. ELLISON: Yes, I think it was hard copy. I think
25 they came -- I'm not 100 percent sure about this. I think it

1 was hard copy.

2 THE COURT: Okay.

3 MR. ELLISON: 75-086869-5. That's a loan to SCENT Land
4 with the collateral being 15 Exchange Drive in Lugoff, and
5 the last one that we got was Loan 77-086101-3, and the way --
6 that was collateral dealing with 145 Park Central Drive in
7 Columbia.

8 THE COURT: Okay. Park Drive.

9 MR. ELLISON: And SCENT Land.

10 And, Your Honor, bear with me for one second. I need to
11 make one note.

12 Okay. You're going to ask me something later and I
13 wanted to be able to respond to it.

14 THE COURT: I'm going to ask you something now.

15 MR. ELLISON: Okay.

16 THE COURT: Were you given a loan file for 750853622.

17 MR. ELLISON: No, ma'am. I think, to extrapolate for a
18 moment, perhaps those two digits, 26 and 62 were -- either I
19 reversed it or perhaps Mr. Long reversed it. You've got 62
20 in the letter and I have 26. Maybe I typed it wrong. I
21 would profess to not being the greatest typist in the world.

22 THE COURT: What I'm going to do is I'm just going to
23 connect these and think that they are probably the same.

24 MR. ELLISON: I understand.

25 THE COURT: Okay.

1 Q. Now, Mr. Long, I want to talk about the non-SCENT Land
2 loans for a while using these numbers, and I'm going to try
3 to get it so it's not confusing, but I'm going to go by loan
4 number. The first one I'm going to talk about is
5 70-0877335.7. And, Ms. Baker, if you could pull up Exhibit
6 309.4-309.5.

7 Now, this bears a different loan number, do you see
8 that?

9 A. Yes.

10 Q. And it says it's a renewal of that loan, do you see
11 that?

12 I'm sorry, Mr. Long, neither I nor the court reporter
13 can get nods or heads very well. I apologize, you need to
14 say yes or no?

15 A. Yes. I was just matching up the numbers, but yes,
16 that's what it says.

17 Q. Okay. And if we look at the bottom of the note, it
18 refers to the obligor here -- I'm sorry, let's blow up this
19 whole thing if we could. The obligor here is referred to as
20 SCENT Allergy & Sleep Medicine, PA, is that right?

21 A. That's correct.

22 Q. And it refers to a security agreement which we won't go
23 into and guarantee is dated 8/3/2009 and 9/1/2010.

24 A. That's correct.

25 Q. And those are two of the guarantees that were contained

1 in the exchange of correspondence between and you Mr.
2 Sheheen.

3 A. Okay.

4 Q. If we go back to those guarantees in Exhibit 305, none
5 of those guarantees are guarantees of debt of SCENT Allergy &
6 Sleep Medicine, PA, are they?

7 A. I'd need to go back and look at that.

8 Q. Please do. Please do.

9 A. Tell me where.

10 Q. Exhibit 305, if you look at all the guarantees that are
11 attached you'll find guarantees with the matching dates
12 included in that exchange of correspondence. Ms. Baker has
13 pulled up one as an example which has the same date, August
14 3rd, 2009. If you're having trouble I'll help you.

15 A. No, I'm sorry, I don't see that, I was also looking at
16 the loan number at the bottom of the page to see where that
17 matched up with and that loan number that is indicated on
18 this page at the bottom is not indicated in my letter to Mr.
19 Sheheen.

20 Q. Okay. I understand what you're saying, but if we look
21 at the guarantees attached to the letter with Mr. Sheheen, we
22 have guarantees that have the same dates as the ones referred
23 to in that promissory note, is that right?

24 A. That's correct.

25 Q. Okay. And we'll pull them both up if you want, but both

1 of those guarantees are guarantees of loans made to SCENT
2 Equipment Services, LP, is that right?

3 A. That's correct.

4 Q. Now let's go to loan approval Exhibit 309.

5 A. There were also guarantees I'm looking through now that
6 were to SCENT Land Holdings as well.

7 Q. We're going to get there. I'm doing the non-SCENT Land
8 loans first.

9 A. Okay. I'm sorry.

10 Q. I've confused the Judge. There are five loan files?

11 THE COURT: I know that, but I want to know what loan is
12 700863027. Are you going there?

13 MR. ELLISON: Which one?

14 THE COURT: I want to know what loan number is
15 700863027.

16 MR. ELLISON: I cannot tell you, Your Honor.

17 THE WITNESS: I might be able to shed some light on
18 that.

19 MR. ELLISON: Please.

20 THE WITNESS: That's what I was trying to match up. I
21 don't know -- I know why that wasn't in my letter to Mr.
22 Sheheen because the loan number in the top right-hand corner
23 is the former loan number.

24 Q. Oh, the former loan number. Okay.

25 A. The loan number at the bottom is what the new loan

1 number would be.

2 Q. I see.

3 A. So this document, as I look at it, is a refinance of
4 that former loan because, and you can read it in the
5 additional terms, that we modified the loan to lower the
6 rate.

7 MR. ELLISON: Judge, let me try to help you for a
8 second.

9 THE COURT: I got it. He's saying they gave it a new
10 loan number because they lowered the rate.

11 MR. ELLISON: Right.

12 Q. But the dates of the guarantees that you attached -- I'm
13 assuming you did it now based on this conversation.

14 A. Right.

15 Q. The dates of the guarantees that are attached to your
16 letter match the dates of the guarantee in that note which
17 forms loan 70-087735.7, that promissory note.

18 A. Some of the dates match up, yes, but the documents that
19 were produced to you, the name does not say -- the names
20 don't match up.

21 Q. We're going to get there in just a moment, okay, I'm
22 just about there, but the name of the debtor whose loans are
23 being guaranteed by Dr. Dyce and Dr. Puchalski in this
24 guarantee doesn't match the name that is contained on the
25 promissory note.

1 A. From this promissory note to those documents that were
2 produced to you I do not see where they match up.

3 Q. The names -- and it's two different entities, as far as
4 you can tell, based on looking at the promissory note and the
5 guarantees.

6 A. Yes.

7 Q. Right. Okay. And we're about to be there, okay, and
8 I'm just working with what the bank's produced.

9 A. Sure, I understand.

10 Q. Let's go to -- and I realize this gets confusing, but I
11 think we're about to clear up some of the confusion. Go to
12 Exhibit 309.4 -- sorry, wrong one, 309.79 through 309.86.

13 A. Okay.

14 Q. This is, again, a loan approval form, right?

15 A. Yes.

16 Q. This is the typical kind of form that you would submit
17 to obtain loan approval, right?

18 A. It's an underwriting document, yes.

19 Q. Okay. And, again, tax returns and credit reports on two
20 guarantors and a borrower, right?

21 A. That's correct.

22 Q. Okay. Now, let's go I think to the next page, I'm
23 sorry, go back, go back, go back, I think we're about to
24 clear it up. Let's blow up this paragraph right here. Can
25 you read the paragraph here, I think we're about to solve the

1 mystery, into the record, begins loan was previously, can you
2 read that into the record, please?

3 A. Sure. Loan was previously in the name of SCENT
4 Equipment Services, LP, however, this entity was dissolved at
5 the end of 2009 and was absorbed by SCENT Allergy and Sleep
6 Medicine, PA.

7 Q. Okay. And that's two different entities, right, as far
8 as you know.

9 A. I would read that to be two different entities, yes.

10 Q. Okay. Thank you. Now let's go to the next loan which
11 currently bears -- it's going to be all part of 310 now.
12 This loan is loan number 70-087736-5.

13 A. And we're at Exhibit 310?

14 Q. Yes.

15 A. Okay. I'm there.

16 Q. And we're going to pages 18 and 19. Are you with me?

17 A. I'm with you.

18 Q. Thank you. Okay. This is the second hard -- again, I
19 think it was in the hard file that was produced. This was
20 the second loan that was attached, and this document is a
21 copy of a promissory note, correct?

22 A. Correct.

23 Q. And if we go to the top, this is all -- the name of the
24 borrower here is also SCENT Allergy & Sleep Medicine, PA.

25 A. Correct.

1 Q. And this was also a renewal of a different note.

2 A. That's correct.

3 Q. Let's go to the bottom of the page to the security box.

4 A. Okay.

5 Q. This says that the security consists of a security
6 agreement bearing that date, guarantee is dated 3/19/2009,
7 9/1/2010 and I think it says 6/26/2013, do you see that, Mr.
8 Long?

9 A. Yes.

10 Q. As far as you know, Dr. Dyce never signed a guarantee on
11 September 1st, 2010 or on June 26th or 25th, whatever that
12 is, 2013, did he?

13 A. I can't answer that. I don't know that.

14 Q. But there would be one in the file, in the bank's files,
15 if he had, would there not?

16 A. It should be in the file, yes. If he had guaranteed it,
17 it should be in the file.

18 Q. And as far as you know, Dr. Dyce had already left SCENT
19 before September 1st, 2010, is that right?

20 A. I don't know.

21 Q. You don't know?

22 A. I don't know when he left.

23 Q. That's fine. Okay. And guarantee dated March 19, 2009,
24 there is a guarantee in your letter exchange with Mr.
25 Sheheen, if you go to page 4.

1 A. Okay.

2 Q. And whose debt was Dr. Dyce guaranteeing on that
3 guarantee?

4 A. And you're referring to page 4 of Exhibit 305?

5 Q. Yes.

6 A. That is Robert Puchalski and Orville Dyce guaranteeing
7 for SCENT Equipment Services, LP.

8 Q. Which is a different entity than the SCENT Allergy and
9 the promissory note that we just looked at, right?

10 A. That's correct.

11 Q. Now we're going to go to the SCENT Land loans. As far
12 as you know the bank has three loans out there with regard to
13 SCENT Land, is that right, as far as you know?

14 A. As far as I know, yes.

15 Q. And Loan 75-086869-5 is the Lugoff loan as far as you
16 know.

17 A. I don't know the exact numbers. If you showed me the
18 document, I could match that up I'm sure.

19 Q. I'll stay away from the loan number for the moment but
20 we spent a lot of time with that yesterday, right?

21 A. Okay.

22 Q. Strike that. Let's make the record clear. I like
23 trying to do that when I can.

24 A. The bank has a loan on the Lugoff office.

25 Q. Right, bank has a loan on the Lugoff property, right?

1 A. Correct.

2 Q. And under the terms of the loan approval Dr. Dyce's
3 guarantee wasn't required for that loan.

4 A. Well, let me explain that a little further. The
5 document that we reviewed yesterday said that he was not
6 considered as a guarantor for underwriting purposes, so I'm
7 not sure if that is important to you or not but that -- in
8 the bank's eyes Dr. Dyce was still a guarantor on the loan,
9 he was not considered for the underwriting purposes, we had
10 no information on him and -- for the underwriting purposes
11 and what that document indicated.

12 Q. Okay. So the loan approval memo that we went through
13 yesterday said that Dr. Dyce's guarantee was not being
14 required for that loan. We can go through it again.

15 A. Let's look back at it. I recall looking at that
16 yesterday, but I'm telling you my memory of what the
17 underwriting was of that particular request.

18 Q. That is Exhibit 283, 176 through 181.

19 A. That's exactly what it says, it says that Dr. Puchalski
20 will be the sole guarantor for this loan. His partner, Dr.
21 Dyce, will not be required for endorsement on this loan.

22 From my recollection of this, that is the underwriting of
23 this document. The bank was relying on Dr. Puchalski's
24 capacity to repay the debt and our relationship with him.

25 Q. Right, understood.

1 A. To my knowledge Dr. Dyce never requested to be released
2 from his guarantee.

3 Q. I understand that.

4 A. Okay.

5 Q. And I am mindful of Mr. Sheheen's objections earlier,
6 and I'm trying to stay away from that.

7 A. Okay.

8 Q. But it says here Dr. Dyce's guarantee was not being
9 required for this loan.

10 A. That's what this document says, yes.

11 Q. And what was being required was a pledge of marketable
12 securities.

13 A. That's correct.

14 Q. And it's fair to say from an underwriting standpoint
15 that the bank was using that pledge of securities as a
16 substitute for Dr. Dyce's -- Dr. Dyce's guarantee, is it not?

17 A. I can't answer that, and that's not clear to me from
18 this document either, whether it was a loan to value issue or
19 whether -- it could have been as a result of Dr. Dyce not
20 being on the loan, but for whatever reason the bank was
21 requiring additional collateral.

22 Q. Bank was requiring additional collateral.

23 A. Correct.

24 Q. For whatever reason it was.

25 A. Yes.

1 Q. And that additional collateral, that's never been
2 released, has it?

3 A. I don't know that.

4 Q. Do you know that it's been released?

5 A. I don't know.

6 Q. You don't know whether it has or hasn't?

7 A. I can't answer that. I don't know.

8 Q. That's fine. Okay. We talked yesterday that as a
9 matter of safe and sound banking principles the bank
10 routinely gets tax returns of borrowers and guarantors, does
11 it not?

12 A. That's correct, unless there's a reason for the
13 exception such as substantial deposits or something of that
14 nature where the bank decided not to require it, and in
15 certain instances the borrower may have not filed a return,
16 and so we would only go off of what the most current tax
17 return was at that time.

18 Q. And normally, matter of safe and sound banking
19 principles, the bank gets financial statements, right?

20 A. Correct.

21 MR. SHEHEEN: Morris, you keep blocking my view of the
22 witness.

23 MR. ELLISON: I need to be able to hear him too. If you
24 want to stand up by the witness, that's fine. I'm having
25 trouble hearing him.

1 MR. SHEHEEN: It's just every time I move, you move.

2 Q. So and the bank doesn't want to have exceptions, if it
3 can avoid them, on any of its loans, does it?

4 A. We would prefer not to have exceptions, yes.

5 Q. Let's look at Exhibit 306, pages 197 through 199.

6 A. For what it's worth, I can't hear you either. Tell me
7 that number again.

8 Q. Exhibit 306 pages 197 through 199. Mr. Long this is a
9 copy of a loan checklist that you got in connection with one
10 of these loans, is it not?

11 A. That's correct.

12 Q. Okay. And on the front page it notes that the bank
13 still needed to get credit reports for Dr. Puchalski and Dr.
14 Vidrine, is that right?

15 A. That's correct.

16 Q. And it's listed under that comment on the box that's
17 labeled exceptions.

18 A. Yes.

19 Q. And there was also a need, in order to avoid an
20 exception, to get the 2010 tax return for Robert Puchalski
21 and David M. Vidrine, do you see that?

22 A. Yes.

23 Q. There's no mention made of needing any credit reports
24 for Dr. Dyce, is there?

25 A. No.

1 Q. There is no mention here of needing Dr. Dyce's 2010 tax
2 return, is there?

3 A. Not on this document, no.

4 Q. Now, the only letter that I have seen in all the bank's
5 files requesting financial information from Dr. Dyce was a
6 copy of a letter that's at Exhibit 305, 17 through 22.

7 A. Okay. I don't know where it is in the book, but I can
8 see it.

9 Q. Let's get it in the book though. You're going to need
10 it.

11 A. You might have to show me this one. I can't find it.

12 Q. That's okay.

13 A. I can see it up there.

14 Q. My paralegal left it out of the book but it's in there.
15 This is a letter dated June 4th, 2013, do you see that?

16 A. Yes.

17 Q. And it was sent by, I assume that's a Ms., Ms. Vincent
18 from the bank?

19 A. That's correct.

20 Q. It's a letter to Dr. Dyce asking for a copy of his
21 financial statement and his personal tax return.

22 A. Yes.

23 Q. To the best of your knowledge if there was another
24 letter requesting financial information from Dr. Dyce, it
25 would be in the bank's files, right?

1 A. Again, typically it should be in the file. The bank
2 requests semiannual financial updates on their guarantors.

3 Q. And you had written up exceptions for not having -- or
4 possible exceptions that you wanted to avoid with regard to
5 Dr. Puchalski and Dr. Vidrine that we've gone through a few
6 minutes ago.

7 A. Just because a financial file is not in our financial
8 records doesn't mean that it is an exception, but again on
9 guarantors we want to have them.

10 Q. You want to have them in order to avoid the possibility
11 of an exception.

12 A. We want to avoid any examiner saying, why didn't you at
13 least request the financials.

14 Q. That's right, that's right, and again I'll represent
15 this is the only request that I've seen in the documents that
16 have been produced by the bank.

17 A. Okay. Again, I know you know this, but unfortunately a
18 lot of our information sometimes doesn't make it to the file,
19 and this can happen, we do make mistakes; but, yes, we try to
20 get everything that is a part of any particular loan into the
21 file or imaging system.

22 Q. And as far as you know the bank has never gotten any
23 financial information from Dr. Dyce since 2009, has it?

24 A. I'm not aware of whether he sent it in or not.

25 Q. But if you got it, it would be -- normal course, it

1 would be in the banks files, right?

2 A. It would be on our system, yes.

3 Q. And I don't want to go back through all the loan credit
4 approvals and that sort of thing, but every one of them notes
5 the most recent financial statements and tax returns that
6 you've gotten on the guarantors.

7 A. Yes, that would be normally what would be on our memos,
8 yes.

9 Q. Okay. So and if you had gotten one from, if the bank
10 had gotten one from Dr. Dyce since 2009, you would expect it
11 to be in the bank's files.

12 A. Yes.

13 Q. And if there had been requests other than the one in
14 June 2013, which came about two weeks after your letter to
15 Mr. Sheheen, you would expect that letter to be in the bank's
16 files as well.

17 A. It should be in the file, yes.

18 Q. Now, you did get copies of the tax returns from the
19 borrowers, right?

20 A. As far as I know.

21 Q. As far as you know, so let's talk about SCENT Land.

22 A. Okay.

23 Q. Okay. Let's look at Exhibit 311, page 334.

24 A. 324 or 34.

25 Q. 34, I hope.

1 A. I've got a 24 but not a 34.

2 Q. Let's try 24. That will work. That will work.

3 A. Okay. This is a tax return for SCENT Land Holdings II,
4 LLC.

5 Q. SCENT Land Holdings II?

6 A. Correct.

7 Q. And what's the time period for this tax return?

8 A. This is a tax return dated 2010.

9 Q. But the reporting period is September 1st, 2010 through
10 December 31st, 2010, do you see that?

11 A. That's correct.

12 Q. And that corresponds, without going back to it, to one
13 of those credit approval memos that we looked at earlier that
14 talked about SCENT Land II filing for that period, September
15 1, 2010 through December 31, 2010.

16 A. I believe that was the case.

17 Q. We can pull them up if you want. Do you see the tax ID
18 number that's being used?

19 A. Yes.

20 Q. And I'll pull them up if you want, but you got tax
21 returns for SCENT Land II, not SCENT Land, for 2011 and 2012,
22 did you not?

23 A. Say that again.

24 Q. As far as you know --

25 A. Yes.

1 Q. -- the bank got tax returns for SCENT Land Holdings II
2 for 2011 and 2012, did it not?

3 A. As far as I know.

4 Q. And it did not get tax returns for 2011 or 2012 for
5 SCENT Land, did it?

6 A. I believe that previous document said that SCENT Land
7 Holdings I was dissolved or absorbed by SCENT Land Holdings
8 II. That would be more of a question for Dr. Puchalski's
9 accountant. I believe that was information that we obtained
10 from his accountant.

11 MR. ELLISON: Okay. Your Honor, I didn't think we were
12 going to need this until very recently, so I've not had an
13 opportunity to provide this previously. We need to mark this
14 as Plaintiff's Exhibit 315.

15 (Plaintiff's Exhibit 315 marked for identification.)

16 Q. If you could look over that document please, Mr. Long.

17 A. Do you want me to review the entire document or just the
18 first page?

19 Q. Just familiarize yourself with the document. I'm going
20 to ask you a couple questions about it.

21 Have you had a chance to look at it, Mr. Long?

22 A. Just a moment, please.

23 Q. Sure.

24 MR. SHEHEEN: I'm sorry, I didn't understand why we
25 didn't get provided with the document.

1 MR. ELLISON: You've had this, but I didn't put it in
2 the books. I didn't think I was going to need it.

3 MR. SHEHEEN: You provided it to us?

4 MR. ELLISON: Yes, you had it.

5 MR. SHEHEEN: Did it have a Bates stamp number on it?

6 MR. ELLISON: No. This was in the first set of
7 documents -- actually, now that I'm thinking about it, this
8 was in the first set of documents that the bank produced back
9 in October, whenever. I don't know that we provided this to
10 you. I'm not sure that we have, but it was in the first set
11 of documents that was produced. I didn't think I was going
12 to need this until recently so you might want to -- you might
13 not have it.

14 MR. SHEHEEN: Okay.

15 MR. ELLISON: It was produced in response -- it was the
16 original production to the subpoena.

17 MR. SHEHEEN: Your Honor, I guess, you know, I'm pretty
18 easy on stuff, but we did send discovery requests that were
19 very broad, as did they, and I'm just wondering why it wasn't
20 provided to us and we never received it.

21 THE COURT: Probably because he didn't know it was going
22 to be relevant until this moment because it isn't in a
23 notebook, comes to my mind, but I'll let you speak to that.

24 MR. ELLISON: He got a copy of the subpoena. I didn't
25 realize I was going to need it. We went through this

1 yesterday. If he wanted copies of the documents that the
2 bank produced, he could have asked, it cost us a lot of money
3 to get them and, I mean, I don't know whether he asked for
4 the copies of the documents from the bank or not, you know,
5 but he's free to -- I don't know whether he's got this or not
6 is what I'm telling you.

7 Q. Ready, Mr. Long?

8 A. Yes.

9 Q. This document is an internal asset review that the bank
10 conducted, is it not?

11 A. That's correct, it's an internal asset analysis of the
12 relationship with Dr. Puchalski -- indicates Dr. Puchalski,
13 Dr. Vidrine and Dr. Dyce.

14 Q. And the date on this internal asset review is April
15 25th, 2012, is it not?

16 A. That's correct.

17 Q. And who is JO?

18 A. I believe that is James O'Neill, who's an internal
19 auditor.

20 Q. And it says at the top of the first page -- it lists the
21 various individuals and parties whose assets are being
22 reviewed in connection with the loan relationship; is that
23 correct?

24 A. That's correct.

25 Q. And says that as of April 25th, 2012 you had credit

1 reports for Dr. Puchalski and Dr. Vidrine, correct?

2 A. That's correct.

3 Q. Okay. The most recent one you had on Dr. Dyce was on
4 December 14, 2009, is that right?

5 A. That's correct.

6 Q. And it talks in here about, I think it's in here
7 somewhere, about the tax returns, but maybe it's not, but
8 this document essentially describes the relationship from the
9 bank's perspective involving the various SCENT entities and
10 the various doctors who either were or had been at the
11 practice, is that right?

12 A. That's correct.

13 Q. And if we look, there's an analysis of income, is there
14 not?

15 A. There appears to be -- this would be consistent with an
16 internal asset review just analyzing the tax returns and the
17 financial capacity of the guarantors to repay the debt.

18 Q. Let's look on page 3. There's a paragraph in the middle
19 that starts to talk about SCENT Land, do you see that?

20 A. On page 3?

21 Q. Yes. It's between the two tables?

22 A. Okay. Let me read that for a moment.

23 Okay what's the question?

24 Q. The question is is that paragraph a summary of the
25 analysis of the tax returns that had been provided on behalf

1 of SCENT Land to the bank?

2 A. That appears to be the analysis of Mr. O'Neill.

3 Q. And the analysis says essentially that you only had a
4 tax return for SCENT Land for the period until 5/9/2010, is
5 that right?

6 A. That's correct.

7 Q. I'm sorry?

8 A. Yes.

9 Q. We've looked at the return for SCENT Land II which
10 started on September 1st, right?

11 A. That's what that other document indicated, yes.

12 Q. Right, and if we go -- I'm not saying it's right or
13 whether it's wrong, but if we go to page 5, that document,
14 that page is a summary, is it not, of the guarantees that the
15 bank believed it had at the time from the three physicians,
16 is that right?

17 A. I can't answer that, I don't know that.

18 Q. Okay.

19 A. This is showing the outstanding loans, but I don't know
20 that it references -- if you point it out to me, I'll try to
21 answer it, but I don't notice that it references
22 specifically --

23 Q. You need to speak up a little bit. I can't hear you.

24 A. I don't recognize on this document, I see that it's a
25 summary of the outstanding debts, but I don't see where it

1 references any guarantees.

2 Q. There are various debts that are listed under each of
3 three physicians, are there not?

4 A. That's correct.

5 Q. And there are, hold on, six loans listed under Dr.
6 Puchalski's name, do you see that?

7 A. Yes.

8 Q. And there are seven loans listed under Dr. Vidrine, is
9 that right?

10 A. Correct.

11 Q. And the only two that are listed under Dr. Dyce's name
12 are two loans to SCENT Land, do you see that?

13 A. Yes.

14 Q. One for the Hartsville property, do you see that?

15 A. I do.

16 Q. And one for the Columbia property, do you see that?

17 A. Yes.

18 Q. And that's consistent with the idea at least that Dr.
19 Dyce had not guaranteed the Lugoff property loan; is that
20 correct?

21 A. Well, you can interpret that by looking at this but I
22 don't -- didn't we look at a document yesterday that had Dr.
23 Dyce guaranteeing the Lugoff property?

24 Q. No.

25 A. Okay.

1 Q. That's what we talked about with the loan credit memo
2 earlier where the bank said his guarantee wasn't going to be
3 required.

4 A. Okay.

5 Q. And so the question is these, the way it's listed here
6 on this document, I'm not saying it's right or wrong --

7 A. Sure.

8 Q. -- but it's consistent with Dr. Dyce not being a
9 guarantor or having any responsibility for the Lugoff loan,
10 is that right?

11 A. Again, going back to if Dr. Dyce had signed a guarantee
12 for the Lugoff purchase or the construction, then that
13 document should be in our file.

14 Q. Right.

15 A. It should have been produced.

16 Q. It's not been produced and the bank -- and I'm getting
17 in the weeds and I apologize a little bit. When SCENT
18 Land -- well, actually, SCENT Land didn't buy it, when Amy
19 Puchalski purchased, I think, the property that became the
20 Lugoff office building --

21 A. Yes.

22 Q. -- there were loans that were made, right?

23 A. Yes.

24 Q. And those loans were guaranteed by Dr. Puchalski and Dr.
25 Dyce, were they not?

1 A. Well --

2 Q. As far as you can recall?

3 A. As far as I recall that's the way it was set up.

4 Q. But those loans were paid off with the proceeds from the
5 construction loan that closed on May 5, 2010?

6 MR. SHEHEEN: I'm sorry, because I'm a little off -- let
7 me ask a question. Are you saying that there were, are you
8 recognizing there were guarantees by Dyce prior to the one
9 that you referenced.

10 MR. ELLISON: On Lugoff.

11 MR. SHEHEEN: On Lugoff.

12 MR. ELLISON: On Lugoff.

13 THE COURT: For the purchase price for lot 5 -- no,
14 wrong, I'm wrong.

15 MR. ELLISON: Not this.

16 THE COURT: Not that. For the Lugoff property.

17 MR. ELLISON: For the Lugoff, I believe there were.

18 MR. SHEHEEN: Right.

19 MR. ELLISON: I think there were. If there were,
20 they're in the banks files and we produced them.

21 MR. SHEHEEN: That's what I want to make sure we
22 understood because Mr. Long said he thought they were --

23 MR. ELLISON: Of the acquisition.

24 THE WITNESS: The document I'm looking at under 305, I
25 thought that's what we discussed yesterday, that was the --

1 it's a document signed by Robert Puchalski and Orville Dyce
2 for SCENT Land Holdings, and I'm sorry if I'm confused but
3 that was my understanding.

4 THE COURT: Hold on.

5 MR. ELLISON: I'm just about done.

6 THE COURT: Hold on.

7 THE WITNESS: I guess my point is that, yes, when an
8 auditor is looking at this document and trying to connect the
9 dots between the guarantors listed on our system, having had
10 several transactions since the original transaction, it might
11 not have picked it up, and that's why that number might not
12 have been listed on this particular internal asset review.

13 Q. I understand.

14 A. But if there was a guarantee executed, as I mentioned
15 before, and it was never released or never requested to be
16 released, then in the bank's eyes he's still a guarantor.

17 MR. ELLISON: Okay. I think I need to formally move to
18 introduce this document as an exhibit.

19 MR. SHEHEEN: I don't object to it.

20 THE COURT: Okay.

21 (Plaintiff's Exhibit 315 received into evidence.)

22 Q. Now, Mr. Long, I want to refer you to two of the
23 documents that Mr. Sheheen showed you earlier. One was a
24 copy of an email chain that took place in early March 2010.

25 This is Defendant's Exhibit 49, Your Honor.

1 A. I don't believe we looked at that, did we.

2 Q. You did.

3 A. Yesterday?

4 Q. Yesterday.

5 Actually, we may have only looked at this in connection
6 with Dr. Puchalski. We may not have looked at this with you,
7 so if you can look at it just a second.

8 A. Okay.

9 Q. Mr. Long, did Mr. Sheheen go over this with you
10 yesterday?

11 A. I don't believe so.

12 Q. Okay. That's fine. But we did go over Defendant's
13 Exhibit 239.

14 A. Yes.

15 Q. This is a copy of amended articles of organization for
16 SCENT Land. Let's look first at Defendant's Exhibit 239.
17 We're going to do all these together. We're just about done.
18 Now, you went through this with Mr. Sheheen yesterday. This
19 document, Defendant's Exhibit 239, is a copy of amended
20 articles of organization for SCENT Land, is that right, Mr.
21 Long?

22 A. Yes.

23 Q. And the date that those amended articles were prepared
24 was May 3rd, 2010, is that right?

25 A. They were executed on May 3rd, 2010.

1 Q. And they were filed on May 3rd, 2010, right?

2 A. Yes, that's correct.

3 Q. And we looked earlier at the loan approval memorandum
4 approving the loan to SCENT Land for the construction loan at
5 Lugoff in February 2010.

6 A. Can we go back to that document?

7 Q. Fine. It's not a memory test.

8 A. Well, we've talked about so many dates.

9 Q. I know, and that's why we're doing this. I want to put
10 dates in perspective right now.

11 A. Where was that document?

12 THE COURT: I've got a copy of it if it's helpful.

13 THE WITNESS: That would be helpful. Thank you.

14 Q. February 10th was the date of the application.

15 A. The loan approval underwriting document is dated
16 February 10, yes, 2010.

17 Q. So let's put the timing into context. On February 10,
18 2010, according to that document, Dr. Puchalski requested a
19 loan for SCENT Land, a construction loan, which did not
20 include Dr. Dyce's guarantee, is that right, according to
21 that document.

22 A. According to the document it was not considering Dr.
23 Dyce as a guarantor for underwriting purposes.

24 Q. And it says the date of that request is February 10th,
25 is that right?

1 A. That's the date of the underwriting document, yes. As
2 we discussed yesterday, the request may have been sooner, but
3 by the time it got to underwriting --

4 Q. But it wasn't later.

5 A. No, it would not have been later, not to my knowledge.

6 Q. Okay. And we went through the email yesterday that you
7 sent out on February 17 saying that the bank was ready to
8 close by noon that day.

9 A. I'm sorry, say that again.

10 Q. We went through the email yesterday that you sent at
11 9:30 in the morning, actually 9:34 because I happen to
12 remember that, saying the bank was ready to close and we'll
13 be ready to close by noon that day on February 17th.

14 A. Okay.

15 Q. Now you don't know these dates but they're already in
16 there. On March 3rd, 2010 Dr. Dyce (sic) purported to
17 terminate Dr. Dyce without cause, signs a resolution, says
18 that happens on March 10, 2010, okay, one week later. That
19 email chain that we looked at a few minutes ago --

20 A. Where is that chain again?

21 Q. Don't know if I left a copy with you, thought I did.

22 THE COURT: Are you talking about the February 17th?

23 MR. ELLISON: March, I'm talking about Defendant's
24 Exhibit 49, the email chain involving Mr. Lucas. If you
25 don't have it, I'll give you my copy.

1 THE WITNESS: No, where's the document that you were
2 referring to that I said it would close by 12?

3 Q. We can go back to that.

4 THE COURT: That's 37 (indicating).

5 THE WITNESS: Okay. Yes, I recall this now.

6 Q. So on February 17th bank's ready, willing and able to
7 close by noon that day, that's what it says, is that not
8 right, Mr. Long?

9 A. That's correct. I'm not sure, though, that this -- by
10 reading this, if that's specifically referring to that
11 closing, the land closing. This does not reference whether
12 there was another loan that it could have been, and I just --
13 I don't know that, I don't recall.

14 Q. You don't know one way or another.

15 A. I know we had lines of credit or a line of credit, and
16 I'm not sure if it was referring to that or the land loan.

17 Q. Right, okay, and we went through documents yesterday
18 that were provided by the bank, we don't know who --

19 A. Right.

20 Q. -- March 1st, 2010, that are inconsistent with the loan
21 approval, remember going through those yesterday?

22 A. Yes.

23 Q. Bank was ready, willing and able to close, however,
24 under the terms of the loan approval that you've just gone
25 through again, is that correct?

1 A. That's correct.

2 Q. Okay.

3 THE COURT: Hold on.

4 MR. ELLISON: Yes.

5 THE COURT: I want to establish, was it 2010, February
6 10, what we're talking about, are we talking about an LLC or
7 are we talking about this land transaction?

8 MR. ELLISON: We're talking the land transaction.

9 THE COURT: I want you to ask him that.

10 MR. ELLISON: Okay. That's fine.

11 Q. Mr. Long, going back to the loan approval memo that was
12 Plaintiff's Exhibit 283.176, it references a request as
13 having been made by February 10, 2010 for a loan to SCENT
14 Land that was not going to be guaranteed by Dr. Dyce; is that
15 correct?

16 A. It was saying that it was a loan to SCENT Land that Dr.
17 Dyce's financials were not being considered for underwriting
18 purposes.

19 Q. And that request --

20 A. I'm not trying to be so technical, I'm just --

21 Q. I know you're not. I know. I'm trying to respond to
22 the Judge's questions. You don't know exactly when it was
23 made, but it was made at least by February 10th, the request.

24 A. The request was made -- the date of this document is
25 February 10, yes.

1 THE COURT: And it was a request for?

2 Q. And it was a request for a loan to SCENT Land, correct?

3 A. That's correct. Now, I guess, again --

4 THE COURT: For?

5 MR. ELLISON: I'm getting there, Your Honor, but he was
6 answering and I wasn't going to interrupt.

7 THE WITNESS: This document, again, was prepared
8 February 10th. In all likelihood there was conversations
9 before that that Terryn Patterson would have had either with
10 me or Dr. Puchalski to get the terms of what we were looking
11 at and the details of the loan request.

12 Q. The control agreement that was signed that we looked at
13 earlier in connection with this loan is dated February 17th,
14 2010, is that right?

15 A. I believe that sounds familiar, but you'd have to show
16 it to me again.

17 MR. ELLISON: Your Honor, we can pull it back up if we
18 need to.

19 THE COURT: Let me tell you why, because obviously this
20 has to do with a discharge for cause, okay, and Mr. Long has
21 just -- I've been sitting here thinking that all this had to
22 do with the Lugoff construction loan. He's just thrown in,
23 no, maybe the LLC, none of this has anything to do with the
24 construction loan, this is all the LLC line of credit. They
25 had a line of credit that was expiring.

1 MR. SHEHEEN: Your Honor, in my direct I did ask him
2 questions. There were two problems that we had.

3 THE COURT: I know, I know, and I want to know what he's
4 talking about. I know you're assuming that it's the
5 construction loan. He's just told you I don't know if it's
6 the construction loan or if it's the LLC, and I want to know
7 what it is.

8 MR. ELLISON: I can deal with that Your Honor.

9 THE WITNESS: He's got to answer that, so give him the
10 documents because it's important, as I make a determination,
11 because there are two problems, there's an LLC that's coming
12 due and there's a construction loan. Both are problems.

13 MR. SHEHEEN: Yes, and just as I'm -- well, I'll ask him
14 on redirect.

15 THE COURT: Let's give him a minute. Give him the
16 documents, let him refresh his memory, and we're all going to
17 take a little break.

18 (Recess held.)

19 Q. Mr. Long --

20 A. Yes.

21 Q. -- let's go back to the credit memo which is Plaintiff's
22 Exhibit 283 on 176. Judge wants us to tie all this together
23 so let's do that.

24 A. Okay.

25 Q. If we look at page 2 which is 283.177, it describes what

1 the loan terms were supposed to be; is that correct?

2 A. This is a summary of loan terms.

3 Q. And this was a loan to be made to SCENT Land, was it
4 not?

5 A. That's correct.

6 Q. And it was a loan to be made to SCENT Land for the
7 construction of the office building in Lugoff, is that right?

8 A. Correct.

9 Q. And the terms also described obtaining a pledge of
10 marketable securities, does it not?

11 A. It has additional collateral as a brokerage account.

12 Q. Okay. So that's the loan that we're talking about in
13 the February -- in this exhibit that was approved at some
14 point but it was applied for before February 10th.

15 A. That's correct, the date of the memo is February 10th.

16 Q. Okay. And looking at the email which is Defendant's
17 Exhibit 37, you sent an email -- I was wrong, 9:31, not 9:34,
18 sorry -- the bank is agreeable to releasing Dr. Dyce as a
19 guarantor provided that you pledge \$300,000 as additional
20 collateral. I've spoken with Alan Thompson this morning, and
21 he should be calling you to discuss which account to pledge,
22 have instructed William Cox to proceed with the closing today
23 at 12:00, let him know if this time does not work for you.

24 Do you see that?

25 A. Yes.

1 Q. As best you can tell, this email talking about the
2 closing at noon on February 17th refers to the SCENT Land
3 loan for on the Lugoff property; is that correct?

4 A. I can't answer that.

5 Q. Do you have any reason to think otherwise?

6 MR. SHEHEEN: Your Honor, I object, that calls for
7 speculation, that's not a question.

8 MR. ELLISON: That's fine.

9 MR. SHEHEEN: He's asked and it was answered.

10 MR. ELLISON: That's fine.

11 THE COURT: And you're withdrawing that question. Ask
12 him another question.

13 Q. Was \$300,000 ever pledged as security for the line of
14 credit to SCENT as far as you know?

15 A. I can't recall.

16 Q. If it was, it would be contained in the loan files; is
17 that correct?

18 A. Correct.

19 MR. ELLISON: Judge, again, I'll represent there's no
20 such document in the loan files.

21 Q. Okay. And you testified earlier that Alan Thompson you
22 thought was the person with the brokerage company.

23 A. That's correct.

24 Q. Mr. Cox is a lawyer with the Savage Firm, is that right?

25 A. That's correct.

1 Q. Now, as a normal course on real estate loans such as
2 this the bank sends out closing instructions; is that
3 correct?

4 A. That's correct.

5 Q. And we looked at closing instructions that are dated May
6 4th, 2010, which was at Exhibit 283.273. Do you see that,
7 Mr. Long?

8 A. Yes.

9 Q. And those closing instructions reflect instructions to
10 close the loan that is summarized in the loan approval memo,
11 Plaintiff's Exhibit 283 at page 176.

12 A. That's correct.

13 Q. And if there were prior closing instructions to Mr. Cox,
14 you would expect that those would have been contained in the
15 bank's files, would you not?

16 A. Yes.

17 MR. ELLISON: Again, Your Honor, we've produced
18 everything; don't see them.

19 THE WITNESS: But, again, that goes back to why I'm
20 confused with -- do you want me to --

21 Q. Yes, go ahead.

22 A. -- with this email stating that we're closing today on
23 February 17th and these instructions are dated May the 4th.

24 Q. That's exactly where we're going, okay, because the loan
25 documents that were sent prepared by the bank, the draft loan

1 documents that were sent out on May 1st, I can give you the
2 document number again if you want, don't correspond with the
3 loan approval memo which is at 283.176, do they? We went
4 through all this yesterday.

5 A. Yes, but go back, tell me which document.

6 Q. The draft loan documents.

7 A. Yes, again, that -- and I'll repeat what I said
8 yesterday, those were draft loan documents. I'm not sure
9 where -- those were documents that may not have been reviewed
10 by me or the closing review function that Terryn sent as a
11 draft document to be reviewed.

12 Q. But as far as you know, if there are other draft loan
13 documents, those would be in the bank's files too, would they
14 not?

15 A. No, not necessarily.

16 Q. Okay. Not necessarily?

17 A. No.

18 Q. But you don't have any other draft loan documents that
19 were prepared other than the ones on March 1st prior to the
20 ones that are sent out in early May.

21 A. No, not that I'm aware of, but it is not uncommon at all
22 for draft documents not to be in our file because there are
23 often changes either recommended by the closing attorney or
24 the borrower himself who has questions or changes they want
25 made.

1 Q. And there are no closing instructions in the bank's
2 files, as far as you know, other than the ones dated in May.

3 A. Whatever was presented to you is what would have been in
4 our files as far as I know.

5 Q. Okay. Now, we've finished setting up the timing, and
6 I'm not suggesting that you've seen all these documents
7 before.

8 THE COURT: Are you going back?

9 MR. ELLISON: I'm going back.

10 Q. I handed you earlier an email exchange that took place
11 between March 3rd and March 8th, do you remember that,
12 involving Mr. Lucas?

13 A. Yes.

14 Q. Talking about construction on the building.

15 A. You must have taken it back but, yes, you showed it to
16 me.

17 Q. I think I did take it back actually, but here it is,
18 I've got it.

19 A. Okay.

20 Q. And this email exchange which is Defendant's Exhibit 49
21 took place basically between March 3rd and March 8th, is that
22 right?

23 A. Looks as though it begins on March the 3rd and this
24 correspondence ends on March the 8th.

25 Q. Okay. And we've looked at Plaintiff's Exhibit 20.01,

1 which was a copy of a resolution of all of the shareholders
2 of SCENT dated March 23rd, 2010, do you see that?

3 A. It's a written consent in lieu of the sole shareholder
4 entitled to vote for South Carolina ENT.

5 Q. And the date of that document is March 23rd, 2010?

6 A. That's correct.

7 Q. And we've gone through the closing instructions which
8 are Exhibit 283.273 which are dated May 4th, right?

9 A. Yes.

10 Q. And as far as you know there aren't any others that
11 you've seen or they ought to be in the bank's files.

12 A. They should be in the bank's file if there are any
13 others.

14 Q. And we have a copy of the amended articles of
15 organization dated May 3rd, 2010, do you see that, Mr. Long?

16 A. Yes.

17 Q. And it indicates that they were filed on May 3rd, 2010,
18 is that right?

19 A. That's correct.

20 Q. All right. So let's -- as far as you know the bank was
21 ready, willing and able to close based on that email and
22 based on that loan approval on the construction loan to SCENT
23 Land at least by February 17th, 2010, right?

24 A. No, I can't answer that. Again, that goes back to that
25 email saying closing on May 17th. That does not correspond

1 to this engagement letter saying May 4th.

2 Q. That doesn't correspond to the May 4th closing
3 instruction letter.

4 A. That's correct.

5 Q. Right.

6 A. There was a loan that was referenced in that email you
7 showed me that was apparently going to be closed at noon on
8 February 17th.

9 Q. And it references the pledge of securities.

10 A. That's correct.

11 Q. And the date of the control agreement that the bank got
12 pledging the securities was also February 17th, 2010, do you
13 remember that?

14 A. I do.

15 Q. Okay. So let's run through timing, okay? As of
16 February 17, 2010 do you have any reason to think -- or,
17 excuse me, it's your understanding that the application for
18 the loan without Dr. Dyce as a guarantor was made sometime
19 prior to February 10, 2013, is that right?

20 A. That's correct.

21 Q. And we have an email dated February 17, 2010 referring
22 to a loan which involved the pledge of securities.

23 A. That's correct.

24 Q. Right?

25 A. Yes.

1 Q. And it said -- who was the lawyer that was going to be
2 involved with that?

3 A. I think -- can I see the email again?

4 Q. Yes.

5 A. I believe it was William Cox.

6 Q. Right. It's William Cox, right?

7 A. Yes.

8 Q. And that's who eventually closes the loan.

9 A. As far as I know, yes.

10 Q. On March 10, 2010 Dr. Puchalski purports to terminate
11 Dr. Dyce, do you see that?

12 A. Yes.

13 Q. On March 23rd he signed a resolution as the sole
14 shareholder of SCENT, right?

15 A. Yes. That's what that document indicates.

16 Q. On March -- and you haven't seen this.

17 A. I still can't see it.

18 Q. But on March 17, 2010 Dr. Puchalski purported to issue a
19 mandatory two stage capital call for SCENT Land, okay? The
20 first loan closing instruction letter we have, the only one
21 we have, is on May -- I don't have it in front of me, it's
22 either May the 3rd or May the 4th, I think it's May the 4th,
23 2010, right?

24 A. That's what you presented in this file, yes.

25 Q. Nothing else has been produced as far as I know. Do you

1 know of any others?

2 A. I do not know of any others.

3 Q. Bank was ready, willing and able to close, presumably,
4 after the loan approval had been issued back in February,
5 correct?

6 A. That is correct. We follow our normal procedures of
7 having the title searched and making sure our documents were
8 perfected prior to closing.

9 Q. But the bank was ready to go as far as you know,
10 correct?

11 A. This approval memo indicates that the loan was approved
12 and ready to be closed.

13 Q. Do you know of any reason why the bank -- from the
14 bank's perspective, was there any reason to delay the
15 closing, from the bank's perspective?

16 A. I can't speak to the timing of it. Again, we would rely
17 on the attorney to tell us that, A, we have to make sure that
18 the title has been searched and that there are no
19 deficiencies or exceptions on the title that would cause us
20 concern, we have to make sure that the documents were going
21 to be executed correctly and legally, which we also relied on
22 the attorney to tell us if that's conforming with the
23 articles and other documents consistent with what the note
24 should read and how it should be signed.

25 Q. But according to what's been presented previously as of

1 the middle of March, 2010 Dr. Puchalski purports to be the
2 sole shareholder of SCENT, right?

3 A. That's what this document indicates, yes.

4 Q. And theoretically Dr. Dyce -- excuse me, Ms. Curly is no
5 longer a member of SCENT Land back in March 2010.

6 MR. SHEHEEN: Your Honor, I object, calls for
7 speculation.

8 MR. ELLISON: That's been their position.

9 MR. SHEHEEN: This witness --

10 THE COURT: He's concerned about this witness not
11 knowing that information.

12 Q. I understand, but the position of the defendants has
13 been that as of the middle of March Ms. Curly is no longer a
14 member of SCENT Land.

15 A. I don't know who that is.

16 Q. That's Dr. Dyce's wife.

17 MR. SHEHEEN: Your Honor, I believe our position is it's
18 the end of April that she was out, I'll go back and look to
19 see the timing, but that's why it's important to establish
20 these things. There are documents that say when she is no
21 longer a member.

22 THE COURT: We just looked at the resolution of SCENT
23 Land.

24 MR. ELLISON: Resolution of SCENT, that was a resolution
25 of SCENT, Your Honor.

1 THE COURT: That wouldn't have an effect on her.

2 MR. ELLISON: That's right.

3 THE COURT: But we've looked at the resolution of SCENT
4 Land. I know exactly what you're saying.

5 MR. SHEHEEN: Thank you.

6 THE COURT: Here's, as I understand it, here's the
7 concern, the concern is that this gentleman doesn't know
8 this, Mr. Long doesn't know all that, so you want him to know
9 it, and he doesn't know it, and you're doing it for me, and I
10 have got it.

11 MR. ELLISON: I want him to assume it.

12 THE COURT: A hypothetical.

13 MR. ELLISON: The question's pretty simple, Your Honor.
14 The question is, the bank is ready willing able to close
15 after the loan is approved.

16 THE COURT: We've already been there.

17 MR. SHEHEEN: Your Honor, his answer to that was with
18 conditions.

19 THE COURT: No.

20 MR. SHEHEEN: Yes, it was.

21 THE COURT: No.

22 MR. SHEHEEN: His answer was if the title was searched
23 and the formalities --

24 THE COURT: No, he said they were.

25 THE WITNESS: No.

1 THE COURT: He said they were, maybe he wants to change
2 that now, because I wrote it down, 2/17/2010, loan is
3 approved and ready to close from the bank's perspective.

4 MR. SHEHEEN: Right.

5 THE COURT: Bam, hello, thank you very much, I got it, I
6 wrote it down, he wants to change it, maybe you can, I don't
7 know, but that's what he said.

8 MR. ELLISON: Let me try it this way, Your Honor.

9 THE COURT: Now we're in the weeds. Let me get us out
10 of the weeds. When was Ms. Curly relieved from her position
11 in, as I understand it, SCENT Land Holdings, this gentleman
12 doesn't know that, he doesn't know that, you can show him a
13 document, whatever, whatever, move on to the next question,
14 thank you.

15 Q. Do you know of any reason why the bank did not send out
16 the loan closing instruction letter from February until May?

17 MR. SHEHEEN: I'm sorry, I didn't hear the last part.

18 THE COURT: From February until May do you know why he
19 didn't send out the loan closing instructions to Mr. Cox.

20 MR. SHEHEEN: Thank you. I apologize.

21 THE WITNESS: No, I don't know.

22 MR. ELLISON: Nothing further, Your Honor.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION BY MR. SHEHEEN:

25 Q. Mr. Long, I want you to look at the loan summary

1 memorandum, and maybe you could throw it up on the screen, do
2 you have it, 283.176, the loan summary memorandum that Mr.
3 Ellison was talking to you about a good bit. I think you
4 might have handed him your copy, truthfully.

5 THE WITNESS: I've got it, Your Honor.

6 THE COURT: Everybody's got one. Okay.

7 Q. Okay. I want you to look at the bottom entry. It says
8 comments relating to financial and credit summary, do you see
9 that?

10 A. Yes.

11 Q. What does that mean?

12 A. Those are just comments. It is a summary and an area
13 that we add any comments to the financial condition.

14 Q. Is that relating to guarantees that will be required?

15 A. No, that is -- does not -- again, I understand that it
16 says that Dr. Puchalski will be the sole guarantor for the
17 loan, but in many circumstances we use that as underwriting.

18 Q. I want you to look at that last sentence in the comments
19 there.

20 A. Yes.

21 Q. It says, Dr. Puchalski is pledging \$300 in additional
22 collateral --

23 THE COURT: 300,000.

24 Q. -- \$300,000, thank you, in additional collateral as a
25 substitute for Dr. Dyce's guarantee, do you see that?

1 A. Yes.

2 Q. If Dr. Dyce had as required by his shareholder agreement
3 signed a guarantee would the bank have required the \$300
4 collateral from Dr. Puchalski, 300,000?

5 A. This would indicate that we were requiring it as a
6 condition of the loan.

7 Q. Why? Read the last sentence for me. Tell me your
8 interpretation of that last sentence.

9 A. I mean, again, there could be multiple reasons, but
10 again that indicates that we were releasing it as a
11 substitute for -- in the pledge of \$300,000 of additional
12 collateral we would release Dr. Dyce's guarantee but, again,
13 that's also some language there that the bank would be
14 willing to move forward, not necessarily that we're releasing
15 the guarantee of Dr. Dyce but moving forward with the
16 underwriting and approval.

17 Q. If Dr. Dyce had signed a guarantee on this version of
18 the note, would the bank have required \$300,000 from Dr.
19 Puchalski?

20 A. I'm not the approval -- approving officer of this memo,
21 but this memo would indicate that that would be the case to
22 me.

23 Q. Okay. Does this document here, the loan summary
24 memorandum, have anything to do with corporate compliance
25 required by the bank for closing loans?

1 A. No.

2 Q. Okay. Does this document here have anything to do with
3 stating who has to sign a note or mortgage?

4 A. No.

5 Q. Does it have anything to do with who has to sign any HUD
6 closing statement?

7 A. No.

8 Q. What dictates that to the bank?

9 A. Obviously, as I said before, the closing attorney would
10 tell the bank, or we would rely on the closing attorney to
11 give us the correct signers to perfect our lien. The
12 articles of organization, the operating agreement or the
13 corporate resolution that we had would represent that to be
14 the case.

15 Q. I'm going to hand you -- well, you should have it up
16 there, Plaintiff's Exhibit 281.059 and Plaintiff's Exhibit
17 283.097.

18 MR. SHEHEEN: I'm just going to approach the witness, is
19 that okay, whenever I want to?

20 THE COURT: Yes.

21 MR. SHEHEEN: Thank you. And, Your Honor, these are the
22 corporate, we talked about them yesterday, but I want to go
23 back over them after the testimony that was requested.

24 Q. These are the bank authorization resolutions, is that
25 right?

1 A. Correct.

2 Q. Let's look at the one 281.059, what's it dated?

3 A. It is dated July 6, 2009.

4 Q. Okay. And who signed it?

5 A. Robert Puchalski and Orville Dyce.

6 Q. And I want you to read, going down midway, No. 4, where
7 it says who can do these things.

8 A. Correct, it says A & B, which would be Robert Puchalski
9 and Orville Dyce, can borrow money on behalf and in the name
10 of the limited liability company, sign, execute and deliver
11 promissory notes or other evidence of indebtedness.

12 Q. Based on this document signed by both of them what was
13 the bank's position on who had to sign the loan closing
14 documents? I'm not asking you about guarantees. I'm asking
15 you about loan closing documents.

16 A. Yes.

17 Q. Who had to sign them?

18 A. Robert Puchalski and Orville Dyce.

19 Q. Did you tell Robert Puchalski and SCENT that prior to
20 these loans closing?

21 A. Yes.

22 Q. And look at 283.097. This is the second authorization
23 resolution.

24 A. Yes.

25 Q. Do you see that?

1 A. Yes.

2 Q. When was this one done?

3 A. May 5th, 2010.

4 Q. Now that would have been -- do you recollect Mr. Ellison
5 showed you revised articles of incorporation --

6 A. Yes.

7 Q. -- in which Dr. Puchalski was then the only manager?

8 A. That's correct.

9 Q. Okay. And this occurred after that, didn't it?

10 A. Yes.

11 Q. And what does this one say? Who can sign, execute and
12 deliver promissory notes with the bank?

13 A. Robert Puchalski.

14 Q. Did this document allow Dr. Puchalski and SCENT to then
15 close the SCENT Land loan?

16 A. Yes. As far as the bank was concerned they had -- this
17 would have been the document that we would have required or
18 the attorney that helped us with the closing would also have
19 required to perfect our interest in the loan.

20 Q. Okay. I want you to look at --

21 THE COURT: SCENT Land Holdings to close.

22 MR. SHEHEEN: SCENT Land Holdings, yes, ma'am, I
23 apologize.

24 THE COURT: No, that's really for me.

25 MR. SHEHEEN: Yes, ma'am, thank you.

1 Q. I want you to look at Plaintiff's Exhibit 17.01. That
2 is SCENT Land Holdings articles of organization. You've
3 looked at it previously, the Judge is familiar with it, and
4 it's the one that listed Puchalski and Dyce as both having to
5 bind the company, do you recall that?

6 A. Yes.

7 Q. It's on the second page, 9A of it, looking at 17.

8 A. Yes.

9 Q. Do you recall that you were made aware of this sometime
10 after February 10th of 2010 or before?

11 A. That I was made aware of this document or --

12 Q. That they were both managers.

13 A. I'm sorry, repeat that, only the timing of the date.

14 Q. Are you aware of this document?

15 A. Of course. We reviewed it yesterday. I don't remember
16 it specifically.

17 Q. Is it the type of document the bank would normally have?

18 A. Yes.

19 Q. Would the bank normally seek information from either the
20 closing lawyer or the corporate lawyer about the structure of
21 the company and related to the articles of organization?

22 A. Yes.

23 Q. What is your belief as to what the bank knew while it
24 was trying to have these loans consummated?

25 A. Well, at the time, again, based on the previous

1 document, the bank was under the impression that both doctors
2 had to sign.

3 Q. And did you tell Dr. Puchalski and SCENT that?

4 A. Yes.

5 Q. All right.

6 A. That we needed information or documentation to prove
7 otherwise.

8 Q. And I want you to look at SCENT's Defense Exhibit 239,
9 which is the amended articles of organization on May 3rd of
10 SCENT Land.

11 A. Yes.

12 Q. Which Mr. Ellison asked you about, did this document
13 allow the bank to allow SCENT Land to close the loan with
14 just Dr. Puchalski to sign?

15 A. Yes.

16 Q. Okay. On your cross you were asked was the bank ready
17 to close the loan for SCENT Land, I believe, okay, and I
18 believe your testimony at least at one point was yes, or
19 something to that extent. Okay. If the bank was ready to
20 close the loan, what had to happen for the loan to close in
21 the bank's eyes?

22 A. Well, as you look at the engagement letter and through
23 the instructions, there were many requirements that the bank
24 must have to satisfy -- to satisfy its requirements to allow
25 the closing to continue and information that the attorney

1 must provide such as the title search, addressing any
2 exceptions in that title search and making sure that any
3 other collateral that had to be obtained, that those
4 documents were ready to be executed as well by any third
5 party.

6 Q. Okay. Did the bank -- for the loan to close did certain
7 people have to sign the closing documents?

8 A. Yes.

9 Q. And who were those people up until the time that
10 these -- that the bank resolution and the articles were
11 changed, who were those people?

12 A. Well, at the time, based on the documentation, it was
13 Dr. Puchalski and Dr. Dyce.

14 Q. And would the bank allow it to close without those two
15 signing it up until the point that these documents were
16 changed?

17 A. No.

18 Q. Okay. So the bank might have been ready to close, but
19 you weren't going to allow it to close unless the proper
20 people signed it, is that fair?

21 A. That's a possibility.

22 Q. Is that true or not? Who had to sign it?

23 A. At that point in time --

24 Q. Yes.

25 A. -- Dr. Dyce and Dr. Puchalski had to sign.

1 Q. And that was the bank's position?

2 A. Correct. There's also, just thinking while we're
3 waiting here, other information that could delay it is just
4 from the contractor. In this particular case you have a
5 construction loan. There might be information that we had to
6 have on the contractor himself regarding insurance. That has
7 the potential to delay things as well.

8 Q. Okay. Mr. Long, you were asked a little bit about the
9 line of credit. Just to refresh your recollection, the line
10 of credit line of credit was expiring, is that right, to your
11 recollection?

12 A. As far as I can remember, yes.

13 Q. Do you remember we talked about it yesterday it was
14 March 3rd?

15 A. That's right.

16 Q. And I think you testified that the line of credit had
17 been used, to your knowledge, to fund the construction, and
18 that's why they were trying to do the construction loan to
19 have another source.

20 A. I don't recall testifying to that effect, but I know we
21 had a line of credit outstanding that they had the discretion
22 of using it for their operating or -- it was intended for the
23 use of their operating, but it could have been for anything
24 else because it was their discretion.

25 Q. And do you remember that there was a closing scheduled

1 for March 3rd, the same day that the line of credit was
2 expiring?

3 A. I don't recall exactly.

4 Q. Okay.

5 A. That would be consistent, if the loan was maturing, we
6 would want it renewed at maturity or prior to maturity.

7 Q. Do you remember we talked about also yesterday that the
8 line of credit also -- the bank's position also was that the
9 line of credit needed to be signed -- renewed by Dyce and
10 Puchalski because of the way SCENT was structured?

11 A. That's correct. Unless we had documentation showing us
12 otherwise, that would have been a requirement of the bank.

13 Q. Okay. And so the bank didn't redo that line of credit,
14 renew that line of credit until you got documentation from
15 Puchalski -- from SCENT that only Puchalski had to sign, is
16 that right?

17 A. That's what I recall.

18 Q. You were asked a lot of questions about the guarantees
19 by the bank.

20 A. Yes.

21 MR. SHEHEEN: And, Judge, our position is that that's a
22 dispute between the bank and them as far as guarantees. Our
23 position on -- see what I'm trying to say?

24 THE COURT: I'm listening.

25 MR. SHEHEEN: Well, the guarantee is between those. The

1 guarantee is not with SCENT or SCENT Land. It's between
2 these two. Our position with the debt is that we were
3 induced to take on debt while we paid out huge sums of money
4 to Dr. Dyce while he was conspiring against the practice,
5 breaching his contract, and that's why we brought the debt
6 up, not because of some guarantee issue. I just want to make
7 that clear to the Court. Because the guarantees are between
8 the bank and Dyce. They're not between Dyce and Puchalski.

9 MR. ELLISON: Your Honor, are we arguing now or asking
10 questions on redirect?

11 MR. SHEHEEN: I'm trying actually --

12 THE COURT: He's trying to answer my frown is what he's
13 doing.

14 MR. SHEHEEN: Right. The guarantees aren't between --

15 THE COURT: I'm with you, but it is relevant on that
16 issue, and the reason that it's relevant on that issue in my
17 mind, as you get to watch the sausage being made, the reason
18 that I think it's relevant is this: There is a difference
19 between having to be responsible for debt, which your client
20 has expressed great concern about that for SCENT, in SCENT,
21 associated with SCENT, blah, blah, buying pieces of
22 equipment, all of it.

23 MR. SHEHEEN: Right.

24 THE COURT: And there is a difference between being
25 responsible for that to a bank by your lonesome, even if you

1 are a wealthy man, and being responsible for that with
2 another wealthy man or woman, so that's how I -- in other
3 words, that's how I've taken it, and in other words, that's
4 the reason that I have taken the guarantees as being
5 important is for that reason because if I am responsible
6 for -- and the information's not before me -- \$3 million
7 worth of debt, \$4 million worth of debt, don't even point to
8 yourself, you're running for governor, heaven only knows
9 what's going to happen to you over the next year, but be that
10 as it may, if you're responsible in your business for 3
11 million and you've got that guarantee, it's pretty nice to
12 have another rich man knocking down \$2 million a year in the
13 pocket that's responsible just like you are. There's a
14 difference, see what I'm saying?

15 MR. SHEHEEN: Yes.

16 THE COURT: That's the whole gambit because one of the
17 setoffs, one of the concerns, one of the reasons for
18 discharge as a matter of course, as I understand it, that goes
19 into the mix. The question is how realistic is it, and
20 that's why I allowed it.

21 MR. SHEHEEN: Thank you.

22 THE COURT: So our record's very clear. Yes. And with
23 that I've completely messed up your train of thought.

24 MR. SHEHEEN: I'm not going to spend a lot of time on
25 it.

1 THE COURT: Sure.

2 MR. SHEHEEN: Because it's not the core thrust of our
3 case.

4 THE COURT: I understand, and I sort of have that issue.

5 MR. SHEHEEN: Yes.

6 Q. But I will ask you this, let's look at 305.14. It
7 should be up there. Mr. Ellison showed it to you at one
8 point. Do you have it, Mr. Long? It was the guarantee
9 signed by Dyce, signed by Puchalski for SCENT Land. 305.14.
10 Okay. Let's look at 305.006 and then we'll look at 305 --
11 maybe that's just it. I was on the signature page. Is that
12 the same one?

13 A. That's a separate one.

14 Q. Tell me how many unlimited guarantees there are for
15 SCENT Land signed by Dyce and Puchalski.

16 THE COURT: There are like three or four. Let me tell
17 you why I don't see that as an issue: Because it doesn't
18 exist. It is not an entity that exists anymore. The bank is
19 aware of that. They made loans. They transferred -- they've
20 renewed loans to a whole brand new entity. Doesn't matter.

21 MR. SHEHEEN: That's not accurate and that hasn't been
22 established in evidence.

23 THE COURT: I thought I saw it.

24 MR. SHEHEEN: You saw some references to SCENT Land II,
25 but there is no SCENT Land II.

1 THE COURT: Okay. Well, then you need to keep trucking.
2 I'm sorry about that.

3 MR. SHEHEEN: And if you recall the testimony of Mr.
4 Long I believe was there was some accounting something or
5 other and you need to talk to the corporate accountant.

6 THE COURT: Yes, I do remember that.

7 Q. Okay. So do you know, let me ask you this way first of
8 all to address it, do you know if there was ever a SCENT Land
9 II legally created?

10 A. I don't know.

11 Q. Do you know if that was for tax purposes it was
12 referenced to as SCENT Land II?

13 A. That, as we've just looked at before, that was what it
14 would appear to me.

15 Q. If you could speak up just a little bit.

16 A. That's what it would appear to me, but again I think you
17 would need to talk with the practice's accountant.

18 Q. All right. How many unlimited guarantees are there
19 signed by Dyce and Puchalski for SCENT Land in front of you?

20 A. Of the ones that were part of the letter or that I'm
21 assuming were part of the letter that I addressed to you
22 there are -- there appear to be 5. If you want me to read
23 the dates, I can read the dates.

24 Q. What is that unlimited guarantee, and you can look at
25 section 4 of the guarantee, what does that mean, what is your

1 understanding of what it means?

2 A. I can read item 4 if you want me to.

3 Q. I don't really think I want you to. I think the Judge
4 can read it, unless the Judge wants you to read it.

5 A. Well, an unlimited guarantee in general means that it's
6 guaranteeing all debts outstanding, whatever balance they are
7 at that time and any fees that could arise from that, from
8 the collection of the debt, and it also indicates in Section
9 B that it's for any future renewals or extension of credit.

10 Q. Is that why the bank's position is that Dr. Dyce is
11 still a guarantor of the debts of SCENT Land?

12 A. Yes, that would be consistent, if we have not released a
13 guarantee or in this particular case not even been requested
14 to release a guarantee, the bank would still consider Dr.
15 Dyce a guarantor on the debt, on all debts to SCENT Land
16 Holdings.

17 Q. Just to get that timing in, we talked about the fact
18 that -- I believe your testimony was that it would be
19 consistent that there would have been a closing on March 3rd
20 because the LLC was expiring on March 3rd. Is that what you
21 said?

22 A. That's correct, we would -- the bank would prefer to
23 have all renewals executed at maturity or prior to maturity.

24 Q. And you're aware that also the new resolution was on
25 March 3rd allowing Dr. Puchalski to close or allowing Dr.

1 Puchalski to operate? Let's look at that date and make sure
2 we're right because I'm getting confused.

3 May 3rd, sorry. Okay. Beg the Court's indulgence one
4 moment.

5 THE COURT: Mm-hmm.

6 (Brief pause.)

7 MR. SHEHEEN: All right. Your Honor, let me try this
8 again.

9 Mr. Long, several things happened on March 3rd.

10 THE COURT: May 3rd or March 3rd?

11 MR. SHEHEEN: March 3rd.

12 Q. We know the line of credit was expiring, right?

13 A. Yes.

14 Q. And there's evidence in the record that there was a
15 closing attempted March 3rd, and you said that's consistent
16 with the line of credit expiring, is that right?

17 A. I don't recall that exactly. Are you referring to the
18 email?

19 Q. No. Let me ask you this, would it be consistent to have
20 a closing on March the 3rd if the line of credit was
21 expiring?

22 A. Yes, that would certainly be a possibility.

23 Q. Okay. Because the goal was to use the construction loan
24 to begin to pay --

25 MR. ELLISON: Your Honor, now he's asking the witness to

1 speculate. He's leading him. He's basically testifying.

2 THE COURT: And he was doing a fairly good job until you
3 stopped him.

4 MR. ELLISON: I thought he did too.

5 (Discussion held off the record.)

6 Q. While we're waiting for these documents to talk about
7 March 3rd let me ask you this, you were shown some closing
8 documents yesterday by Mr. Ellison, do you remember that?

9 A. Yes.

10 Q. And they had both names on them, do you remember that?

11 A. Yes.

12 Q. Do you remember when that was?

13 A. We can look back, I don't remember the exact timing on
14 it.

15 Q. Do you have them up there?

16 A. I'm sure I do.

17 MR. SHEHEEN: Maybe Mr. Ellison knows the document
18 numbers. That would save us some time.

19 MR. ELLISON: I think it's 301. The draft loan
20 documents? That's 301.

21 THE COURT: 301 are the draft documents.

22 THE WITNESS: Yes, the draft documents had both names on
23 the draft documents.

24 Q. And when were those, there was an email in front, if I
25 recall, Mr. Ellison referenced?

1 A. Yes, and that was sent on March the 1st.

2 MR. SHEHEEN: Your Honor, if you'd look at Defendant's
3 Exhibit 35 -- if it's too cumbersome, let me know.

4 THE COURT: Here it is. I've got it right here. All
5 right. Go ahead.

6 Q. I'm going to show you this, Mr. Long. Read that to
7 yourself, please.

8 A. Okay.

9 Q. All right. Who's that -- are you in that email?

10 A. No, I don't believe -- yes, I am, I'm copied on that
11 email.

12 Q. Okay. You're copied on that email, and who's it from?

13 A. It is from Robert Puchalski to William Cox, myself
14 and --

15 Q. He's apologizing to you, isn't he?

16 A. Yes.

17 Q. What's he apologizing about?

18 A. He states that he realizes this is the fourth scheduled
19 closing and it reflects poorly on us, referring to himself
20 and his firm.

21 Q. Okay. And read the part below from Theresa. Do you
22 know who Theresa is, Theresa Williams?

23 A. Yes, I believe she is Dr. Puchalski's assistant or
24 office manager.

25 Q. From this email does it appear there was a closing

1 supposed to occur March 3rd?

2 A. Yes, it states that -- this is from Theresa Williams to
3 Mr. Cox and myself and several others copied and states that
4 we have just received word that neither Dr. Dyce nor his wife
5 will be at the closing today, and I assume that would mean
6 that the closing would have been on March 3rd since the date
7 of the email is March 3rd.

8 Q. Okay. And what date was the line of credit expiring?

9 A. March the 3rd.

10 Q. Okay. And are you aware that on March 3rd that there
11 was a resolution passed by SCENT terminating Dr. Dyce's
12 employment without cause?

13 A. I do not know that. I don't know if I've seen
14 documentation to that effect.

15 Q. If this closing had occurred for SCENT Land, could that
16 money have been used to pay --

17 MR. ELLISON: Your Honor, you said to object, he's doing
18 it again.

19 THE COURT: Go ahead, ask the question.

20 MR. SHEHEEN: He can answer yes or no.

21 MR. ELLISON: That's the definition generally of a
22 leading question.

23 MR. SHEHEEN: Yes, it is, I'm not asking him -- I'm
24 asking could the money from SCENT -- could the money from
25 this closing have been used to pay off the line of credit.

1 THE COURT: Don't answer yet. All right. The objection
2 is?

3 MR. ELLISON: I'll let that one go.

4 THE COURT: Answer the question, could it have been
5 used.

6 THE WITNESS: Yes, the -- if this were a construction
7 loan closing and funds were used from a line of credit to
8 fund the construction, the bank would likely have agreed to
9 allow that to take place.

10 MR. SHEHEEN: Nothing further, Your Honor.

11 THE COURT: Okay. Recross.

12 MR. ELLISON: Very, very little bit, Your Honor. I want
13 to correct what might be a misimpression.

14 RE-CROSS-EXAMINATION BY MR. ELLISON:

15 Q. Mr. Sheheen on redirect spent some time talking about
16 Exhibit 281.59, I think, which is one of the corporate
17 resolutions of SCENT Land.

18 A. That's correct.

19 Q. What's the date on that document?

20 A. July 6, 2009.

21 Q. Okay. And I think he called up another one, and that
22 one I think was dated in September 2009. Do you remember
23 that?

24 MR. SHEHEEN: I'm sorry, just for clarification --

25 MR. ELLISON: These are the authorizing resolutions.

1 MR. SHEHEEN: The bank's authorizing resolutions?

2 MR. ELLISON: Yes, the form bank resolutions.

3 MR. SHEHEEN: Okay. Thank you. Sorry.

4 THE WITNESS: This was May.

5 Q. May 2009?

6 A. May 2010.

7 Q. Okay. That's fine. The May 2010 resolution was only
8 signed by Dr. Puchalski.

9 A. That's correct.

10 Q. But the bank form resolution, 281.59, is signed by both
11 Dr. Dyce and Dr. Puchalski.

12 A. That's correct.

13 Q. Now, we can call it up on the screen if we need to.

14 SCENT Land was formed in September 2008, as far as you know
15 or --

16 A. I don't know.

17 Q. Okay. Let's call it up. Can we pull up the articles,
18 Ms. Baker?

19 This is Exhibit 17.01.

20 A. I can't see it.

21 Q. And these are the original -- sorry (indicating).

22 Exhibit 17.01 is a copy of the original filed articles
23 of organization of SCENT Land, do you see that?

24 A. Yes.

25 Q. Now, the bank's files do have a copy of an unsigned 2008

1 operating agreement for SCENT Land, not signed, it's
2 unsigned, it's Exhibit 286 I think .15. This is in the
3 bank's files -- sorry, 286.01, that is in the bank's files,
4 unsigned copy of the operating agreement purporting to be
5 dated as of August 2008, which is around the same time as the
6 articles of organization were filed. That is in the bank's
7 files, okay, we can get the specific page if we need to
8 but -- well, let's get the specific page. We'll just go to
9 the signature block. There is a provision that reflects
10 that, Your Honor, if you looked at the unsigned draft,
11 286.29, reflecting that Dr. Puchalski and Dr. Dyce were
12 supposed -- under this operating agreement were supposed to
13 be the managers of this company.

14 MR. SHEHEEN: Your Honor, I'm going to object to that.
15 It's an unsigned draft operating agreement, it doesn't mean
16 anything, so I'm going to object to the relevance.

17 MR. ELLISON: It's the only one that's in the bank's
18 files.

19 THE COURT: Okay. Thank you. Overruled, you can
20 proceed.

21 MR. ELLISON: Thank you, Your Honor.

22 Q. This document was to be dated in '08. Then we have the
23 '09 resolutions in May, I believe it was, and July. Remember
24 that, Mr. Long?

25 A. Yes.

1 Q. What's not in the bank's files is a copy of the actual
2 operating agreement of SCENT Land that's dated in September
3 2009. That I believe is Exhibit 16.

4 THE COURT: It is, yes.

5 Q. And under this one Dr. Puchalski is the sole -- and this
6 one's signed. This is not in the bank's files. Have you
7 ever seen this before, Mr. Long?

8 A. I don't recall.

9 Q. But that one is dated after those resolutions that we
10 talked about, is that right?

11 A. Tell me the date again on this.

12 Q. This is dated September 30th, 2009.

13 A. Okay.

14 Q. And the resolutions that Mr. Sheheen was referring you
15 to are dated in May 2009 and July 2009.

16 A. No, I believe one of them was May 2010.

17 Q. There's another one May 2010, but I'm not worried about
18 that one.

19 THE COURT: Right, it's the '09.

20 Q. The signed ones other than May 2010, those that were
21 signed by Dr. Dyce and Dr. Puchalski are dated before the
22 date of the signed operating agreement, is that right?

23 A. That's what this would indicate.

24 Q. Hold on.

25 A. I've not seen this document. I don't recall it anyway.

1 MR. SHEHEEN: Your Honor, if the argument's going to be
2 that somehow the operating agreement changed the articles of
3 incorporation, I'm going to object.

4 THE COURT: As I understand the relevancy, again, the
5 argument that's being made, they didn't have the articles of
6 incorporation, all they had was an unsigned operating
7 agreement, that's all that they had.

8 MR. ELLISON: That's right.

9 THE COURT: They didn't have the articles of
10 incorporation, and all they had was an unsigned operating
11 agreement.

12 MR. SHEHEEN: I think I asked if they were aware of the
13 articles of incorporation.

14 THE COURT: And he didn't know.

15 MR. SHEHEEN: No, I think he said yes.

16 THE COURT: I don't know. I'll have to check the record
17 for that. I thought he was pretty vague on dates.

18 Q. Are you aware of the contents of the original articles
19 of organization of SCENT Land?

20 A. Am I aware of the contents?

21 Q. Before today.

22 A. I don't recall. I think what I think I responded
23 earlier was that we would have also relied on the attorney,
24 but personally I don't recall seeing the document myself, and
25 I think I did say, yes, it should be in our file if we

1 obtained it.

2 Q. But generally speaking the bank would issue closing
3 instructions, right?

4 A. Yes.

5 Q. And generally speaking under those closing instructions
6 the bank would be relying on the attorney for all these
7 issues, is that right?

8 A. For many of these issues, yes, we'd be relying on the
9 attorney but the attorney --

10 Q. Whatever the attorney needs to do the attorney's going
11 to do, but the bank is relying on the attorney to deal with
12 all this, is that right, under the closing instructions?

13 MR. SHEHEEN: Your Honor, these are clearly leading
14 questions. I object.

15 THE WITNESS: We're relying on the attorney to advise us
16 but we're also -- the bank has requirements of the attorney
17 as well.

18 Q. You're relying on the attorney, generally speaking, to
19 ensure that the loan is properly authorized, is that right?

20 A. That's correct.

21 Q. And the closing attorney under the closing instructions
22 here was Mr. Cox with the Savage Firm, right?

23 A. That's what I recall, yes.

24 MR. ELLISON: That's it.

25 THE COURT: All right. If you'd call your next witness

1 please.

2 MR. SHEHEEN: Your Honor, we would call Kim Koumas to
3 the stand.

4 KIMBERLY KOUMAS,
5 being first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. SHEHEEN:

7 Q. Ms. Koumas, I think you might have already stated your
8 name for the record, but can you do it again?

9 A. Kimberly Koumas.

10 Q. Thank you. And could you spell the last name for the
11 court reporter?

12 A. K-O-U-M-A-S.

13 Q. And where do you work?

14 A. South Carolina ENT Allergy & Sleep Medicine.

15 Q. How long have you worked there?

16 A. Going on six years, July will be six years.

17 Q. And what do you do for -- I'm going to call it SCENT,
18 okay?

19 A. Okay.

20 Q. What do you do for SCENT?

21 A. I'm the business office director. I'm over the surgery
22 schedulers, the billing department and the front desk and
23 handle the contracting and credentialing.

24 Q. Do you handle reimbursements?

25 A. Yes.

1 Q. Do you do work with coding and billing?

2 A. Yes.

3 Q. And do you do work with insurance agreements between
4 SCENT and insurance companies?

5 A. Yes.

6 Q. What's it like working with Dr. Puchalski?

7 A. It's good, he's a great businessman, he's very loyal and
8 compassionate and very hard working.

9 Q. How do you describe your own work?

10 A. My own work? I'm the same. I'm just saying, I'm just
11 very -- perfectionist, try to do the right thing at all
12 times, make sure we get everything done.

13 Q. Okay. Have you worked with other doctors at SCENT?

14 A. Yes.

15 Q. Tell me -- did you work with Dr. Dyce?

16 A. Yes.

17 Q. How was that relationship?

18 A. It was good.

19 Q. And did you work with Dr. Gunnlaugsson?

20 A. Yes.

21 Q. How was that relationship?

22 A. It was good.

23 Q. Who did you see more or work with more when you were --
24 when those three were there, which one of them, Dr. Dyce, Dr.
25 Gunnlaugsson or Dr. Puchalski?

1 A. Oh, Dr. Puchalski, definitely.

2 Q. And why would that be?

3 A. Oh, because we had the managing relationship, and the
4 managing parts of my job had to be discussed with him and
5 we'd go over things.

6 Q. Did Dr. Dyce do any of the business management to your
7 knowledge?

8 A. No, not that I know of.

9 Q. Did he ever express any interest to you in doing more of
10 the business management of the practice?

11 A. No, sir.

12 Q. Did Dr. Dyce ever ask you questions about the business
13 management of the practice?

14 A. Ask me questions about -- I didn't hear the last part.

15 THE COURT: I had trouble too.

16 Q. I'm sorry. Did Dr. Dyce ever ask you any questions
17 about the business management of the practice?

18 A. No.

19 Q. Did Dr. Dyce ever ask you for documents relating to the
20 business management of the practice?

21 A. Yes.

22 Q. How many times?

23 A. Once.

24 Q. Tell the Judge about that. About when was it?

25 A. It was early March, I'm not sure of the exact date, he

1 asked me to --

2 Q. I'm sorry, in what year?

3 A. Oh, 2010, early March 2010. He asked me to give him a
4 copy of all of the contracts, insurance contracts that he had
5 signed on the down low.

6 Q. What does that mean?

7 THE COURT: On the what now?

8 THE WITNESS: Down low.

9 THE COURT: Down low, okay.

10 Q. What did you interpret he meant by on the down low?

11 A. Confidential.

12 Q. Had he ever asked you to do anything for him
13 confidentially before?

14 A. No.

15 Q. What were these insurance contracts?

16 A. They were insurance contracts between South Carolina ENT
17 and the insurance companies that specifically addressed our
18 negotiation rates, reimbursement rates.

19 Q. I'm going to ask you about them, but let me pause for
20 just one minute. How do you know it was in March of 2010?

21 A. Because at the end of March at the Carolina Cup he
22 apologized to me.

23 Q. All right. Let's tell the Judge what these
24 agreements -- she's heard some about these agreements
25 previously, but tell her what the purpose of the agreements

1 is for SCENT.

2 A. Purpose of the insurance contracts?

3 Q. Yes, ma'am.

4 A. To negotiate the reimbursement rates from the insurance
5 companies.

6 Q. Are those important to SCENT?

7 A. Very.

8 Q. Why?

9 A. Because that's how we make our living. That's how we
10 negotiate the contracts and that's how we can, you know,
11 charge what we need to charge and make sure that we have
12 the -- our budget, keep our budget for the year.

13 Q. Who does that negotiation with the insurance companies?

14 A. Dr. Puchalski.

15 Q. Are there any specifics to these insurance contracts
16 relating to regions?

17 A. Yes.

18 Q. Describe that to the Judge.

19 A. They would be in South Carolina only.

20 Q. Would they be of any use if a doctor was going to go --

21 MR. ELLISON: Your Honor, I've let a lot of it go, but
22 now he's leading.

23 MR. SHEHEEN: Would they be of any use if a doctor would
24 use them in another state, how is that leading, doesn't call
25 for a conclusion.

1 THE COURT: I'll allow it, if you know.

2 THE WITNESS: No.

3 Q. You might have already answered this. What states were
4 these negotiated rates for?

5 A. South Carolina.

6 Q. Did you give him these contracts?

7 A. Yes.

8 Q. Did you tell anyone later that you had given him the
9 contracts?

10 A. Yes.

11 Q. And who did you tell?

12 A. I told Theresa Williams, my boss.

13 Q. Why did you tell her?

14 A. Because at first when he said on the down low, I thought
15 he meant confidentially among staff, which management does
16 have some confidentiality when it comes to staff, but when I
17 realized it would probably be for the management, then I felt
18 like I had done something wrong, so I wanted to go ahead and
19 let that be known of what I did.

20 Q. Did you have any experience similar to that with Dr.
21 Gunnlaugsson?

22 A. He never -- well, he asked me for -- for some training
23 in the billing department.

24 Q. Tell the Judge about when you think that occurred.

25 A. Early January, I think January 7th, 2010, I remember it

1 because it was a day when Dr. Gunnlaugsson was -- had his
2 admin time, and he was never in the Lugoff office during his
3 admin time because his office was in the Richland, the
4 Northeast office, so it was very surprising to even see him
5 that day. He came into the billing department and he asked
6 if he could -- if he could just kind of learn about the
7 processes. He spent about an hour and a half in the billing
8 department with each of the employees wanting to know
9 specifically how their job worked and how the process worked.

10 Q. Had Dr. Gunnlaugsson ever been to the billing department
11 and asked that before?

12 A. No.

13 Q. Had any other doctor ever done that?

14 A. No.

15 Q. Did you consider that to be usual or unusual?

16 A. Unusual.

17 Q. What would he learn from that?

18 A. How to make his own billing department run.

19 Q. Would he learn anything about SCENT's information or
20 processes?

21 A. Yes, because every billing department is specialized.
22 You bring your skill and your knowledge in to make sure that
23 it is run efficiently, and so it's very unique. Make sure
24 that you're always following the rules and things like that,
25 but there's motivational skills and practices that we put in

1 place to make sure that, you know, we get things in a timely
2 manner, so I feel like it's unique.

3 Q. You stated earlier that part of your duties is to manage
4 billing, is that right?

5 A. Yes, sir.

6 Q. Describe to the Judge -- well, how many locations are
7 there for SCENT currently?

8 A. Four.

9 Q. And at the time that Dr. Dyce and Dr. Gunnlaugsson were
10 still there how many were there?

11 A. Four.

12 Q. And where is the billing done for all those offices?

13 A. Lugoff.

14 Q. Is that where you're at?

15 A. Yes, sir.

16 Q. Were you there when they were operating out of the West
17 Wateree's -- Judge, I don't know what we've been calling this
18 but the old building or the rental building?

19 A. Yes.

20 Q. Was the billing done out of that facility similarly to
21 how it is done now for all the satellites?

22 A. Yes.

23 Q. If the Lugoff office had closed, what would have been
24 the effect on billing?

25 A. We could not bill for any of the locations.

1 MR. SHEHEEN: Beg the Court's indulgence.

2 THE COURT: All right.

3 Q. Just to be clear so I don't leave any confusion, are the
4 sites different now than the sites were when Dyce and
5 Gunnlaugsson were there?

6 A. Yes.

7 Q. And I guess just so the Judge will get a feel, tell us
8 where the sites are now.

9 A. The sites are now in Irmo, Richland Northeast, Richland
10 Medical Park and Lugoff.

11 Q. Where were the sites previously?

12 A. Cheraw, Hartsville, Lugoff and Providence Northeast.

13 MR. SHEHEEN: That's all, Your Honor.

14 THE COURT: Cross-examination.

15 MS. BAKER: One moment.

16 MR. ELLISON: Can we go outside for just one second,
17 Judge.

18 THE COURT: Yes.

19 (Recess held.)

20 MS. BAKER: May it please the Court, Your Honor.

21 THE COURT: Yes.

22 CROSS-EXAMINATION BY MS. BAKER:

23 Q. Ms. Koumas, how are you doing?

24 A. Good.

25 Q. My name is Jana Baker, and I'm here representing the

1 identification.)

2 MR. SHEHEEN: Your Honor, I would call Austin Sheheen to
3 the stand.

4 THE COURT: All right.

5 AUSTIN M. SHEHEEN, JR.,
6 being first duly sworn, testified as follows:

7 THE COURT: Thank you. Your witness.

8 MR. SHEHEEN: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. SHEHEEN:

10 Q. Mr. Sheheen, we have the same last name.

11 A. Yes, we do.

12 Q. Are we related?

13 A. Yes, we are.

14 Q. Does that in any way affect your testimony?

15 A. No, it doesn't.

16 Q. Are you the accountant for SCENT?

17 A. Yes.

18 Q. Were you the accountant long before I became involved in
19 this case?

20 A. Yes.

21 MR. SHEHEEN: Your Honor, I know you don't need this,
22 but I just always do this, so I apologize.

23 THE COURT: No.

24 Q. Does me being the attorney in this particular case
25 change in any way how you view the evidence?

1 A. No.

2 Q. And you are my uncle, is that right?

3 A. Yes.

4 Q. My father's oldest brother.

5 A. Yes.

6 Q. Tell the Judge a little bit about yourself.

7 A. Born and raised in Camden, went to grade school and high
8 school here, went to the University of South Carolina,
9 graduated with a degree in accounting, went in the Air Force,
10 served three years on flight status, came back and opened my
11 practice in 1959, been here ever since.

12 Q. And when you started your practice, how many people were
13 there?

14 A. How many people were with me?

15 Q. Yes, sir.

16 A. I was alone.

17 Q. How many people were in your practice?

18 A. Just me.

19 Q. And how big is -- do you still work at the practice?

20 A. Yes, I do.

21 Q. And how many people are there now?

22 A. Well, there are 18 CPA's and 14 other people, so there
23 are 32 people in the firm.

24 Q. And I know you have a little bit of trouble hearing, is
25 that right?

1 A. Yes.

2 Q. If you don't hear me --

3 A. I can hear you as long as I look at you.

4 Q. Okay. Tell the Judge a little bit about your education.

5 A. I have a degree in accounting from the University of
6 South Carolina, and I have taken all of the necessary
7 continuing professional education courses for all the years
8 I've been in practice and belong to -- did belong to the
9 forensic division of the AICPA.

10 Q. And did you study forensic accounting in some of the
11 these classes as part of that?

12 A. Yes, I did.

13 Q. Have you been the officer of any associations related to
14 your business?

15 A. Yes, I have.

16 Q. Could you describe them to the Judge briefly?

17 A. Well, I have served as the president of the South
18 Carolina Association of CPA's, I've served as chairman of the
19 South Carolina Board of Accountancy, and I have served as a
20 member of the American Institute of CPA Council, and I
21 presently serve as the investigative review committee chair
22 for the State Board of Accountancy.

23 Q. Describe to the Judge what your practice consists of,
24 what you do.

25 A. We have a small town multifaceted practice where about a

1 third of our practice is tax, about a third of our practice
2 is audit and about a third of our practice is management and
3 other types of services.

4 Q. Do you act as accountant for businesses?

5 A. Yes, I do.

6 Q. And over your career how many businesses would you
7 estimate you've been the accountant for?

8 A. It would be a pure guess but would be hundreds.

9 Q. Have you ever done accounting or financial work for
10 medical practices?

11 A. Yes.

12 Q. How many years have you been involved with medical
13 practices?

14 A. 30 or 40.

15 MR. SHEHEEN: Your Honor, obviously Mr. Sheheen is a
16 fact witness, but he also has areas that he has expertise in,
17 and I'm going to move to ask you to recognize Mr. Sheheen as
18 an expert witness in financial analysis and forensic
19 accounting.

20 THE COURT: Is there any voir dire?

21 MR. CLEVELAND: No, Your Honor, and no objection.

22 THE COURT: Very well. So qualified.

23 MR. SHEHEEN: Thank you, Your Honor.

24 Q. Mr. Sheheen, have you been the corporate CPA and
25 accountant for South Carolina ENT Allergy & Sleep Medicine?

1 A. Yes.

2 Q. And have you conducted that -- played that same role for
3 the landholding company?

4 A. Yes.

5 Q. I want you to tell the Judge, just generally -- well, I
6 guess we should do it this way first, how long,
7 approximately, have you done that?

8 A. Since SCENT came to Camden and opened their corporate
9 history and practice I've been the corporate accountant.

10 Q. Any idea when that was?

11 A. It was in early 2004, '05, '06, in that area.

12 Q. And who did you deal with originally?

13 A. Dr. Puchalski.

14 Q. Do you remember how many people he had working with him?

15 A. No, I don't.

16 Q. Was it a large practice?

17 A. No, it was not, when it first started it was not.

18 Q. And tell the Judge just generally what that relationship
19 has been like.

20 A. Well, it's been very good for me and my firm. It's been
21 a situation in which we prepared financial statements and
22 prepared tax returns and served as advisors to them in the
23 financial and tax area.

24 Q. Has it been -- do you have any stake, personal stake or
25 financial stake in the outcome of this case?

1 A. No, I do not.

2 Q. What's it been like working with Dr. Puchalski?

3 A. Very pleasant. He is a very good businessman in
4 addition to being a doctor, and it's unusual to find both in
5 the same person.

6 Q. And do you know who the managing shareholder at SCENT
7 has been?

8 A. Yes, Dr. Puchalski since inception to my knowledge.

9 Q. And who do you normally deal with or communicate with at
10 SCENT about financial matters?

11 A. Dr. Puchalski.

12 Q. Do you ever talk to any other people at SCENT?

13 A. Yes, we talked to some of his clerical and bookkeeping
14 people when we were working on various statements on their
15 behalf.

16 Q. Do you recall when Dr. Dyce was at SCENT?

17 A. Yes, I do.

18 Q. Did you have any interactions with him?

19 A. Yes, I did.

20 Q. Did he ever show any interest in the business side or
21 managing the practice to your recollection?

22 A. No, he did not.

23 Q. Could you evaluate how Dr. Puchalski has been as a
24 business manager?

25 A. In my opinion he's been a very good and successful

1 business manager.

2 Q. In your observations whose interest did he act in in
3 that role?

4 A. Say that again.

5 Q. In your observations whose interests did he act in in
6 that role?

7 A. SCENT's interest always.

8 MR. CLEVELAND: Objection. I believe this calls for an
9 opinion outside the area in which he was qualified as an
10 expert, and I object to it on the grounds of relevance and
11 the witness is not qualified to address what he thinks about
12 that is not relevant in this case.

13 THE COURT: Okay.

14 MR. SHEHEEN: Your Honor, actually it's a factual
15 question that I'm asking which is what he observed and whose
16 interest was Dr. Puchalski acting in. I think it's actually
17 a factual question. I can phrase it as an opinion if that
18 would be more appropriate, but actually was just trying to
19 ask as a factual question what did he observe, whose interest
20 was he normally acting in.

21 THE COURT: Okay. That's such a multifaceted question.
22 If you're asking -- I'll sustain it because of the breadth of
23 it, just because of the breadth of it, but from a financial
24 perspective, I mean, it's just a broad -- whose interest.

25 MR. SHEHEEN: I get what you're saying. Thank you.

1 Q. Mr. Sheheen, let me rephrase that question. You're the
2 corporate accountant and CPA, is that right?

3 A. Yes.

4 Q. And have you observed the financial doings of the
5 practice?

6 A. Yes.

7 Q. Have you observed Dr. Puchalski's interactions
8 financially with the practice?

9 A. Yes.

10 Q. After observing those over these years has Dr.
11 Puchalski -- whose financial interests has Dr. Puchalski
12 acted in during that time?

13 A. In my relationship with him he has acted in SCENT's best
14 interests.

15 Q. Thank you. Describe to the Judge the growth of SCENT
16 over the course that you've been involved with it.

17 A. Started out as a very new small practice, it grew over a
18 period of years until it reached a volume of \$11 million at
19 its highest point, and now it's somewhat less than that over
20 the last few years.

21 Q. Were there any problems, growing pains, anything like
22 that?

23 A. Yes, always growing pains when businesses are growing.

24 Q. Could you discuss cash flow with the Judge and how that
25 related to the business operations?

1 A. That's the number one problem that all businesses have,
2 SCENT had the same thing. Maintaining cash flow is vital to
3 the success of the operation.

4 Q. During the time that you worked with SCENT did you also
5 do personal tax returns for any of the doctors?

6 A. Yes, I did.

7 Q. Who?

8 A. Dr. Puchalski, Dr. Dyce, Dr. Vidrine.

9 Q. During the time that you did tax returns for SCENT and
10 these doctors who did you know as shareholders of the
11 company, of SCENT?

12 A. Dr. Puchalski, Dr. Dyce and Dr. Vidrine. Earlier they
13 came in in different time periods, but ultimately all of them
14 were shareholders.

15 Q. We'll talk about that a little more in detail as we move
16 forward. Do you recall the years you did Dr. Dyce's tax
17 return?

18 A. I did them for some years. I don't know if I did them
19 for all the years.

20 Q. I want you to turn to Exhibit A, or excuse me, SCENT
21 Defense Exhibit 3 which is behind Tab A. Did you prepare
22 that -- well, what is this first of all?

23 A. It's a copy of Dr. and Mrs. Dyce 2007 income tax return.

24 Q. Did you prepare that?

25 A. Yes, I did.

1 Q. Would you have had conversations with Dr. Dyce and his
2 wife about it?

3 A. Yes, I did.

4 Q. Tell the Judge about those conversations, what you would
5 go over and what you all would discuss.

6 A. They would come to my office, provide me what
7 information I needed, go over the results of the tax return,
8 take them with them, sign the documents necessary, return
9 them to our office, and the process would be completed.

10 Q. Would you discuss the contents of the return?

11 A. Yes.

12 Q. In the 2007 return was he considered to be an employee
13 or a shareholder?

14 A. He was considered an employee.

15 Q. Did you discuss that with him?

16 A. Yes.

17 Q. And what was his response, if anything?

18 A. There was no objection to the tax return that I could
19 recall.

20 Q. And did Dr. Dyce sign this tax return?

21 A. They signed the authorizations for us to file them and,
22 yes, he and Mrs. Curly signed them for us to file.

23 Q. Okay. I want to you look at Plaintiff's Exhibit 313,
24 which is behind E in the book, and there's two pages to it.

25 A. I don't see 313.

1 Q. Look behind E.

2 A. Behind E.

3 Q. Yes, sir, Tab E.

4 A. All right. I have it now.

5 Q. What are these two pages?

6 A. They are 1099's that were given to Dr. Dyce in the
7 year -- for the year 2007.

8 Q. Do you know why they were given to Dr. Dyce, why 1099's
9 were given to him?

10 A. Yes, they were issued by my office when we were doing
11 the tax work. We determined that Dr. Dyce had compensation
12 that he owed tax on that was not included in his W-2 form.
13 We did not do the W-2 form, so we had no knowledge of that
14 until we did the tax return. We then consequently looked for
15 a way to require the taxpayer to report his income and the
16 corporation to deduct it, and our only avenue at that point
17 was the 1099 in our opinion.

18 MR. SHEHEEN: Judge, as we go through this if you have
19 any questions about anything, I want you to interrupt.

20 THE COURT: Okay.

21 Q. Do you know what that income was from, why it wasn't
22 recorded on W-2?

23 A. I don't know why it wasn't included in the W-2 because
24 we did not do that payroll, but the income was from
25 compensation he received from SCENT.

1 Q. Okay. Let's look at Defendant's Exhibit 14 which is Tab

2 B.

3 A. I have it.

4 Q. Thank you. What is this?

5 A. This is a copy of Dr. Dyce and Ms. Curly's 2008 income
6 tax return.

7 Q. Okay. Tell the Judge, did you meet with Dr. Dyce and
8 Ms. Curley about this return.

9 A. Yes, I did.

10 Q. And just tell the Judge what would have happened.

11 A. We would go over the return, go over SCENT's returns,
12 indicate the sources of income and deductions on the personal
13 return, answer any questions that they might have and let
14 them leave with the satisfaction that they were comfortable
15 with their return.

16 Q. Okay. In this return was he treated as a shareholder?

17 A. Yes.

18 Q. Okay. Was he treated as a shareholder for the whole
19 year?

20 A. No.

21 Q. Explain to the Judge why not.

22 A. Because he came into the practice as a shareholder
23 during the year, consequently he was an employee
24 nonshareholder for a portion of the year and an employee
25 shareholder for the remainder of the year.

1 Q. Did you explain that to Dr. Dyce?

2 A. Yes.

3 Q. What did he say?

4 A. There was no adverse reaction. I don't remember exactly
5 what he said, but we went over the return together, the three
6 of us.

7 Q. Let's talk about how he received this income for the
8 2008 return, okay? Would he have received a -- first of all
9 I want to make sure I use the terms right. Is there a
10 difference between disbursements and income?

11 A. Yes.

12 Q. Could you explain that to me?

13 A. Well, compensation is income, regardless of its form.
14 Distributions are not income necessarily. They can be
15 distributed from other resources, loans received by the
16 company, capital contributing to the company, earnings from
17 the company, so there's a definite difference between the
18 two.

19 Q. Okay. Did Dr. Dyce receive a W-2 in 2008?

20 A. Yes, he did.

21 Q. And do you recall what -- was that all the income he had
22 in that year from SCENT?

23 A. No, he had a substantial amount of additional income as
24 a shareholder.

25 Q. Okay. And how was that income categorized for tax

1 purposes?

2 A. As income shown on the K-1 that he received from SCENT.

3 Q. Why did you classify it that way?

4 A. When we did the return, and I indicated originally to
5 Dr. Puchalski that we were treading on dangerous territory
6 issuing 1099's, but there was no other vehicle to give for
7 Dr. Dyce to be able to report his income correctly, and then
8 when I started -- when I worked on the return, I did have a
9 vehicle, I had a K-1 because he was a partner for part of the
10 year, so I made the decision to put all of his income on the
11 K-1 rather than issue the 1099, and that was a judgment that
12 I made in preparing the tax return. My main concern was that
13 each doctor reported what he got for income tax purposes, so
14 I had to make sure that however it got to them, what vehicle
15 was used, it correctly stated their income for tax purposes.

16 Q. All right. If Dr. Puchalski thought that some of Dr.
17 Dyce's income was reported on 1099's, do you know why he --
18 for 2008, do you know why he would have thought that?

19 MR. CLEVELAND: Objection.

20 THE COURT: Sustained.

21 MR. CLEVELAND: If he's asking whether they had a
22 conversation I would withdraw it.

23 THE COURT: I understand, sustained.

24 Q. Did you ever have any conversations with Dr. Puchalski
25 about using 1099 income -- using a 1099 to report Dyce's

1 income in 2008?

2 A. Yes.

3 Q. Okay.

4 A. In the beginning it was my thought that that's what we
5 would have to do. In the end, as I prepared the return and
6 had the K-1 vehicle to get it to his tax return, I come to
7 the same results. Never in my furthest possible situation
8 could I have imagined we would be arguing today about when
9 somebody became a partner. Had I had that information back
10 then, I would have elected not to put it all on the K-1. The
11 net results would be for tax purposes that it was the same
12 number that would have been arrived at regardless of how I
13 got it there.

14 Q. And have you reviewed the plaintiff's expert's
15 calculations of what has been called variously the buy-in
16 formula, timing mechanism and several other things, have you
17 reviewed them?

18 A. Yes, I have.

19 Q. And are you going to have some opinions later I don't
20 want to get to it yet --

21 A. Yes, I do.

22 Q. Okay. Let me finish -- some opinions as to when Dr.
23 Dyce became a shareholder?

24 A. Yes, I will.

25 Q. I want you to turn to Tab C, which is Plaintiff's

1 Exhibit 253.006. What is that document?

2 A. That's a copy of the 2008 corporate income tax return
3 for South Carolina Ear, Nose, Throat and Facial Plastic
4 Surgery.

5 Q. Did you prepare that document, you and your firm?

6 A. Yes, I did.

7 Q. Look at page -- and I'm just going to use the -- down on
8 the bottom do you see where it says 253 point something? Go
9 to .16.

10 A. Okay. I have it.

11 Q. What I'm asking is what was Dr. Puchalski's reported
12 income for 2008.

13 A. 2,167,330.

14 Q. Explain to the Court why you -- well, is he listed as a
15 60 percent shareholder in this return?

16 A. Yes, he is.

17 Q. Explain to the Judge why you did that.

18 A. Dr. Dyce came in during that year, so he was not a
19 shareholder for the whole year, so I took the actual receipts
20 of compensation by each doctor, took 100 percent as a figure
21 of the total, took the amount that each received and it came
22 to 60/40, and that's the way I showed it on the return. In
23 addition to that, coming in in the middle of a year you
24 wouldn't be 50/50 anyway except from the beginning of the
25 time that you came in.

1 Q. Did you explain that to Dr. Dyce when you met with him?

2 A. Yes, I did.

3 Q. And did he object or have any response?

4 A. No, he did not.

5 Q. Look at Dr. Dyce's reported income. Is it in this
6 document as well?

7 A. Yes, I did prepare this 2008 return.

8 Q. Is it on 253.18 of this document?

9 A. Yes, I have it.

10 Q. You're looking at it?

11 A. Yes.

12 Q. What was his?

13 A. His income was \$1,444,886.

14 Q. Did you explain that to Dr. Dyce?

15 A. Yes.

16 Q. All right. Let's look at Tab D, Defendant's Exhibit
17 241.

18 A. Tab what?

19 Q. I'm sorry, D?

20 A. I have it.

21 Q. Do you recognize this document?

22 A. Yes, I do.

23 MR. SHEHEEN: And, Your Honor, maybe I should, as I move
24 forward -- I think the other ones are already in. This one
25 we haven't moved into evidence, but I don't know if there's

1 objection.

2 MR. CLEVELAND: No objection.

3 THE COURT: Very well.

4 (Defendant's Exhibit 241 received into evidence.)

5 Q. All right. You recognize this document. What is it?

6 A. This is the final document that we used for the tax
7 return. We have to go through a process to reach the final
8 numbers for the tax return, and this shows that this was our
9 final document for the tax return.

10 Q. On the second page do you see where the K-1
11 distributions are listed for Dr. Dyce and Puchalski?

12 A. Yes, I do.

13 Q. Why is it different between the two of them?

14 A. Well, because Dr. Dyce was not a shareholder for the
15 whole year, Dr. Dyce was (sic) -- Dr. Puchalski was, and also
16 Dr. Puchalski had a substantial balance in his previously
17 taxed income account when Dr. Dyce came on board of somewhere
18 close to over a half million dollars that he had already paid
19 tax on and would have to draw out in time when the company
20 could pay him, so when he made draws against his previously
21 taxed income, they were shown as distributions against that.

22 Q. All right. Let's pause for a minute there, and I just
23 want you to explain to the Court -- I don't want you to get
24 into the buy-in or the buy-out or the buy-of. I want you to
25 just explain to the Court what those accounts are you're

1 talking about and how they exist in the business.

2 A. In an S Corp. when a shareholder has income and reports
3 it for tax purposes, it's then placed in his capital account
4 and whatever portion of it he draws out then comes out of his
5 capital account like a partner in a partnership, so if they
6 have a dollar that they earned and it went in the capital
7 account, they reported the tax of a dollar, taxable income,
8 and they took out 50 cents, they still had 50 cents of what
9 used to be called previously taxed income by the IRS.

10 Q. Did Dr. Puchalski in 2008 have a substantial capital --
11 what you call capital account?

12 A. At the beginning of 2007 Dr. Puchalski had somewhere
13 between 5 and \$600,000 in income that had been previously
14 taxed and had not been drawn. I don't have the number of
15 what it was in 2008, but those numbers are in our records if
16 we have to provide them.

17 Q. All right. Did you prepare a tax return for Dr. Dyce
18 and his spouse in 2009?

19 A. Yes, I prepared a return in draft form. Dr. Dyce and
20 his wife chose not to use my return, and they had their
21 return prepared by another preparer.

22 Q. Did you meet with them to discuss --

23 A. Yes, I did.

24 Q. Did you meet with them to discuss the 2009 return?

25 A. Yes, I did.

1 Q. And tell the Judge what the conversation was about.

2 A. Well, it was basically about some checks that he did not
3 think he had received and wanted us to verify that by getting
4 copies of the checks, front and back, from the bank to send
5 him, which we did, and about the fact that he was not a 50
6 percent shareholder, he was just a 33 percent shareholder.

7 Q. Okay. He requested some checks, is that what you said?

8 A. He requested copies of the checks that he did not
9 remember receiving that were part of the distributions in our
10 records, and we actually got copies of those checks for him,
11 front and back from the bank and sent to him.

12 Q. Was he saying that he didn't receive those checks?

13 A. He did not remember receiving them.

14 Q. And had he in fact received them?

15 A. Yes, he had.

16 Q. Did he ask you for any other information?

17 A. Not that I recall.

18 Q. If he had, would you have provided it to him?

19 A. Yes, I would.

20 Q. Did he pay you for the work you'd done?

21 A. For 2009 he did not pay me for the work I did.

22 Q. Did you send a bill?

23 A. Yes, I did.

24 Q. And what was his response?

25 A. Well, he wrote me a letter, very kind letter, saying

1 that he didn't think I represented him properly, consequently
2 he didn't think he should pay the bill, and I dropped the
3 matter at that point -- at the point in time.

4 Q. What is an administrative change letter?

5 A. It's a letter that is filed with the Internal Revenue
6 Service differing with the facts that are presented and
7 presenting your facts that you think override what you are
8 differing with.

9 Q. In 2009 did Dr. Dyce file an administrative change
10 letter?

11 A. Yes, he did.

12 Q. And explain to the Judge what that was related to.

13 A. It was related to the fact that he was not a 50 percent
14 shareholder, as our returns indicated, but that he was a 33
15 and a third percent shareholder so that he could report the
16 income that he reported as only a third rather than a half.

17 Q. To your knowledge is there un -- is there income out
18 there that's unreported for tax purposes because of Dr.
19 Dyce's administrative change?

20 A. If he did not amend his return to correct it to what was
21 reality, then yes, it's unreported income because he only
22 reported, on the letter that I received, a third of being a
23 partner when he actually received the income of being a
24 partner 50 percent.

25 MR. SHEHEEN: Okay. Beg the Court's indulgence one

1 moment.

2 THE COURT: Yes.

3 MR. SHEHEEN: Thank you, Your Honor.

4 Q. I want to move into a discussion about -- a general
5 discussion, and we'll look at the charts that you prepared
6 and the charts that the plaintiff's expert prepared in a
7 minute, but let's just talk about a general discussion of how
8 Dr. Dyce became a shareholder, okay? All right. I want you
9 to -- well, first of all let me ask you this, did you have
10 any discussions with Dr. Dyce's attorneys about him becoming
11 a shareholder?

12 A. I had a discussion with his attorney in Pennsylvania
13 about him becoming a shareholder.

14 Q. Do you remember what that gentleman's name was?

15 A. I think his name was Bruce Armon.

16 Q. How many conversations do you think you had with Mr.
17 Armon?

18 A. One or two, no more than two.

19 Q. And I want you to look right now at Tab F which is
20 Plaintiff's Exhibit 125, and it's Defendant's 255, Your
21 Honor, if that matters.

22 THE COURT: I have it.

23 Q. Tell the Judge what this letter is.

24 A. It's a letter I wrote to Dr. Puchalski and Dr. Dyce
25 trying to explain how the formula for a buy-in would work

1 after I had had my discussion with the attorney in
2 Pennsylvania.

3 Q. What did the attorney, Mr. Armon, tell you about how it
4 should work?

5 A. Well, we discussed the formation of how Dr. Dyce could
6 pay for his practice purchase price to the effect that his
7 suggestion was that Dr. Dyce receive phantom income for his
8 sweat equity until he had met a purchase price level that
9 they agreed on would complete his buy-in and so that process
10 was not exactly what I recommended in my letter but it was a
11 deviation from what my letter recommended.

12 Q. What was your letter trying to recommend?

13 A. My letter assumed a purchase price being paid at the
14 time of entry which didn't have phantom income which would
15 mean that he was a partner, an owner from the day he came in
16 if he had paid the purchase price.

17 Q. And when you say phantom income, what do you mean by
18 that?

19 A. Means that Dr. Puchalski treated him like a partner for
20 compensation purposes but didn't make him a partner until he
21 completed his buy-in, and that is because he gave him credit
22 for the earnings that he allowed him that he didn't get but
23 were kept by Dr. Puchalski.

24 Q. Let's just briefly turn and then we'll turn back to this
25 one, but turn to Tab V, which is Defendant's Exhibit 255.

1 A. You said E?

2 Q. V like Vincent.

3 A. Okay. I have that.

4 Q. All right. What's the date on this letter?

5 A. April the 30th, 2007.

6 Q. And what was the date on the previous letter?

7 A. Same day, I think.

8 Q. Okay.

9 A. Yes.

10 Q. And are these letters similar?

11 A. Yes, they're the same except addressed to different
12 parties.

13 Q. Who's this one addressed to, when I say this one, I mean
14 255.

15 A. This one goes to an attorney, Dana Morris, who was
16 representing Dr. Puchalski at that time, and to the attorney
17 in Pennsylvania, Bruce Armon, who was representing Dr. Dyce.

18 Q. Okay. Did you have discussions with Dr. Dyce and Dr.
19 Puchalski about this process?

20 A. Yes, I did.

21 Q. And what types of questions would they ask you that they
22 would be considering?

23 A. There was never any indication of disagreement. I
24 judged the two men to be very close friends and very good
25 partners, and the discussions were generally along

1 informational answers to financial matters that I was dealing
2 with on their behalf.

3 Q. And who ultimately decided what the process was going to
4 be?

5 A. Dr. Puchalski and Dr. Dyce. One of the points that
6 differed greatly with my proposal was that I wanted the stock
7 value low for a reason -- two reasons. One, the license fees
8 on corporations are based on the size of his capital stock,
9 so that was one reason, but the main reason was the stock was
10 a piece of paper that represented ownership, and the real
11 value of the company was in the formula that they had laid
12 out for value and how it was determined and so forth, so I
13 felt that the stock price should be low, it was just an
14 indication of ownership, and the real value was in the
15 formula that determined the company's value, but that was not
16 the path that was ultimately chosen. The stock value which I
17 had suggested as \$1,000 was later increased substantially.

18 Q. And how did the -- did you address capital accounts in
19 this letter or cash? There's two letters we've been looking
20 at, so let's go back to tab --

21 A. Yes, I have indicated that when somebody would come in,
22 that the receivables and cash would not belong to the
23 entering partner, it would belong to the partner at that date
24 of entry that was there before them, and that was the formula
25 that I laid out, the cash and the receivables, etc., and took

1 out of it the complexity of determining a value by putting it
2 in a formula based on gross receipts and a percentage of
3 gross receipts and then to add back the cash and receivables.
4 It was pretty simple to prevent from having to worry about
5 fair market value of equipment, depreciated value of
6 equipment, all the tangibles and intangibles that cloud
7 buy-in formulas, so I tried to make it a simple formula after
8 discussing it with Dr. Dyce's attorney and except for the
9 fact that phantom income was used rather than a purchase
10 price, I think they pretty much followed my formula.

11 Q. Let's look at F, Exhibit F, so we're all looking at the
12 same one. Are you there?

13 A. F?

14 Q. Yes, sir, it's behind tab F, behind 125, Plaintiff's
15 Exhibit 125.

16 A. Yes, I have it.

17 Q. Just point to the Judge in that letter, tell her where
18 you're addressing those things.

19 A. I said my consideration of a method included several
20 options. They were based on gross receipts, net receipts,
21 underlying asset values and what assets might be transferred
22 and those which would not be transferred. In my
23 calculations, in my considerations, I made the following
24 assumptions: At the time of buy-in all cash in the practice
25 would belong to the current owner and not transferred to a

1 new group. Two, all the receivables for services provided
2 prior to admission of new owners would belong to previous
3 owners and kept in a separate account. Proceeds may be
4 loaned to the new group to prevent a disruption of operation
5 from lack of cash. All collections from services provided
6 from date of the new group will flow directly into the
7 corporate account belonging to the new group in their
8 percentage of ownership.

9 Q. You mentioned that instead of a buy-in in a lump sum
10 like you discussed they used what you call a phantom income
11 process. Who received the tax benefit from that arrangement?

12 A. Dr. Dyce.

13 Q. Explain that to the Judge.

14 A. The phantom income that Dr. Dyce was receiving he did
15 not have to pay tax on. Dr. Puchalski, who was receiving the
16 actual receipts, was paying tax on it but credited Dr. Dyce
17 with those amounts.

18 Q. To try to balance that out what did the parties end up
19 doing?

20 A. Would you repeat that?

21 Q. To balance that tax issue out what did the parties end
22 up doing?

23 A. They did what they called a gross-up to let Dr.
24 Puchalski be equal to where he would have been if he had
25 received a buy-in in the beginning and didn't have to pay the

1 tax for Dr. Dyce.

2 Q. Who got the benefit of not having to pay interest on a
3 loan to buy in?

4 A. Dr. Dyce.

5 Q. Explain that to the Judge.

6 A. Had he borrowed the money, if he didn't have it, he
7 would have had to pay interest. He didn't pay interest to
8 Dr. Puchalski. The phantom income was credited without
9 interest.

10 Q. Without interest, it was credited without interest?

11 A. Without interest.

12 Q. Okay. So who suffered the opportunity loss on the
13 money?

14 A. Well, Dr. Puchalski suffered an opportunity loss if
15 there was one because he didn't have the proceeds. He was
16 collecting them in smaller amounts along the way.

17 Q. I want to you turn to Tab U, and it's Defendant's
18 Exhibit 254.

19 A. Tab U.

20 Q. Yes, sir, Tab U?

21 A. My Exhibit is 255 under Tab U.

22 MR. SHEHEEN: May I approach the witness, Your Honor?

23 THE COURT: Yes.

24 Q. Are you looking at Exhibit 254 now?

25 A. Yes.

1 MR. SHEHEEN: Your Honor, I believe I need to move,
2 although it's been disclosed, I don't believe it's been moved
3 into evidence, so I'll move it into evidence, unless there's
4 an objection, which I'll lay a foundation and all that stuff.

5 MR. CLEVELAND: No objection, Your Honor.

6 (Defendant's Exhibit 254 received into evidence.)

7 MR. SHEHEEN: Thank you.

8 Q. What is this?

9 A. This is an effort to gross up what Dr. Dyce and Dr.
10 Puchalski paid in taxes for Dr. Dyce so that they should come
11 out -- he should come out equal without having suffered any
12 diminution of what he received.

13 Q. And who was asking you to help him with that?

14 A. Dr. Puchalski.

15 Q. And when was he asking you?

16 A. It was in June of 2008.

17 Q. Let's talk a little bit about the debt of SCENT. Turn
18 to Tab G, please. Tell the Judge what these two charts show?

19 A. Ask me that again, please.

20 Q. Tell the Judge what these two charts show.

21 A. They show the debt that SCENT had at different time
22 frames during 2005 through 2012, '13.

23 Q. Can you just describe to the Judge the ebb and flow?

24 A. Yes. It started out with very low debt in '07,
25 increased in '08, went to its top limits in '09 and '10,

1 started back down in '10, '11 and '12.

2 Q. All right. I want you to assume, assume, Mr. Sheheen,
3 that in February of 2010 that you, as the corporate
4 accountant and the management of SCENT, had learned that Dr.
5 Gunnlaugsson was adverse to the company, okay?

6 A. All right.

7 Q. I want you to assume that.

8 And, Your Honor that's about the time that the affidavit
9 that Dyce and Gunnlaugsson were exchanging and the numerous
10 phone calls and all that was going on.

11 Assume that in February of that year you, as the
12 corporate accountant, learned that Gunnlaugsson was adverse
13 to the company. Would you have had any advice for SCENT and
14 SCENT Land regarding debt?

15 MR. CLEVELAND: Objection. I believe that that
16 hypothetical is so devoid of any facts that are supported by
17 the evidence in this case and is so broad that it's -- it
18 can't be answered and is of no help and no relevance.

19 MR. SHEHEEN: Your Honor, it is undisputed that
20 unbeknownst to the management of SCENT that Dr. Gunnlaugsson
21 was preparing affidavits with his lawyer, that he had
22 information contained in those affidavits that the only
23 person that he could get them from would be Dr. Dyce, that he
24 was exchanging those with Dr. Dyce, that there were multiple,
25 multiple -- remember the charts -- conversations back and

1 forth, dozens of conversations spiking in frequency during
2 that time, and we all know what happened, you heard testimony
3 today about Dr. Gunnlaugsson coming in and learning the
4 billing practices of SCENT about 30 days before that. There
5 is lots of evidence in the record that Dr. Gunnlaugsson was
6 adverse to the company and that Dr. Dyce knew it.

7 MR. CLEVELAND: Brief response, if I might, an
8 additional ground for my objection is this witness has not
9 been qualified in any area that would make it appropriate,
10 he's not been qualified as a consigliere or as a lawyer or
11 anybody else that would be seeking --

12 MR. SHEHEEN: I asked him as an accountant, in his role
13 as an accountant and financial advisor of the practice, what
14 would he advise him about debt, that's what he does.

15 THE COURT: What would he advise him about?

16 MR. SHEHEEN: About debt.

17 THE COURT: About debt.

18 MR. SHEHEEN: Your Honor, that's why I asked -- he can't
19 make a determination about what Gunnlaugsson and Dyce were
20 doing, I understand that, that's why I asked him to assume
21 that fact. Assuming that fact, what would his advice have
22 been to the company about debt and how to handle it.

23 THE COURT: I'll note your exception for the record.
24 I'll allow it.

25 MR. SHEHEEN: Thank you.

1 Q. As a hypothetical I'm going to ask you what your opinion
2 is that you as an accountant and financial advisor would have
3 advised him.

4 A. Had I known adversity was on the horizon and down the
5 road, I would have suggested to them that they try to live
6 off of their wages, pay down their debt and prepare for that
7 adversity that was coming, and I think that's what you tell
8 anybody that's facing something adverse down the road. I did
9 not know it, consequently, I never made those kind of
10 recommendations.

11 Q. And when did the debt -- look at the two charts here.

12 THE COURT: I'm going to stop for just a second. I'm
13 taking that -- that testimony is really given almost in
14 generic terms as an accountant representing any firm with a
15 continuing relationship, what would you do if there was
16 adversity and you knew of it, what would you suggest them to
17 do in terms of debt. I know you tied it specifically to
18 assume it with particular individuals, but additionally I
19 take that as being an expert opinion, what would you do if
20 you knew and perceived as an accountant that there was
21 adversity what would you advise your client to do with
22 regards to debt, that's really more helpful to me, I think,
23 rather than get into --

24 MR. SHEHEEN: Factual determinations that you have to
25 make.

1 THE COURT: I was going to say, who shot Cock Robin, but
2 yes.

3 MR. SHEHEEN: Thank you.

4 Q. Let's just look at the debt charts. We'll leave them in
5 a minute but just explain to the Judge, she can read it, but
6 just help us, when does debt peak?

7 A. It peaked in 2010.

8 Q. Okay. All right. We're going to talk about AR,
9 accounts receivable. Let me ask you this first of all, did
10 the plaintiff's expert -- and, Your Honor when I am referring
11 to the expert I'm not talking about Professor McWilliams, I'm
12 talking about the financial expert in the case -- did he ever
13 ask you what the customary corporate accounting method for
14 valuing AR would be in your opinion?

15 A. Yes.

16 Q. What did he ask you?

17 A. He asked me in numerous occasions --

18 Q. Who asked you?

19 A. Dr. Puchalski.

20 Q. That's not what I'm asking you. I'm sorry. Did the
21 expert for the plaintiff --

22 A. No, I'm sorry.

23 Q. -- for Dr. Dyce.

24 A. I misunderstood you. No, he never has talked to me
25 about any of this.

1 Q. Okay. As the corporate accountant what is your opinion
2 as to what the customary corporate accounting method for AR
3 should be?

4 A. My opinion is they have value --

5 MR. CLEVELAND: Objection.

6 MR. SHEHEEN: I'll withdraw that.

7 MR. CLEVELAND: Thank you.

8 Q. Turn with me to Defendant's Exhibit 214, and that's at
9 Tab H.

10 MR. CLEVELAND: Your Honor I hate to do this. Can I
11 just take a two-minute break?

12 THE COURT: Sure.

13 (Recess held.)

14 Q. We were looking at Defendant's Exhibit 214. That's
15 behind Tab H. Are you there?

16 A. Yes, I am.

17 Q. What does that represent?

18 A. That represents the accounts receivable that were on the
19 books at SCENT on 60 days out from the date of May 9th.

20 Q. Do you find anything important about 60 days?

21 A. Yes. It's been my experience with other medical
22 practices and with this one that AR up to 60 days has
23 substantial value, even up to 100 percent value. It's also
24 been my experience that after 60 days the diminution, the
25 deterioration goes so fast that the medical practices that I

1 have experience with, they put them in collection after that,
2 and if they collect anything, they report it as income but
3 they don't carry them as good accounts receivable.

4 Q. Just to make sure we understand the dates this was run
5 for, can you look up in the top left-hand corner to tell when
6 the date it was run was?

7 A. Yes, it was run on May the 9th, 2010.

8 Q. And are you aware that Dr. Dyce departed on May the 9th?

9 A. Yes, I am.

10 THE COURT: Maybe I've got the wrong one because mine is
11 saying July the 2nd.

12 MR. SHEHEEN: Can I approach?

13 THE COURT: Yes.

14 MR. SHEHEEN: Thank you.

15 THE WITNESS: The July 2nd date is the date they ran it
16 when we requested the 60-day AR.

17 THE COURT: Did you all see that date? It's little.
18 Can you all see it?

19 MR. CLEVELAND: I see an April date.

20 THE COURT: Vincent, can you show Will real quick?

21 MR. SHEHEEN: Sure.

22 THE COURT: Can you see it? Be sure you've got the same
23 one I have. I found July. You found April. I ultimately
24 found, it says primary 3/10/10 through 5/9/10. Can you see
25 it? Have you got it?

1 MR. CLEVELAND: I do.

2 THE COURT: All right.

3 MR. SHEHEEN: And Your Honor, this is already into
4 evidence, so I'm not going to move it in.

5 THE COURT: Okay.

6 MR. SHEHEEN: We also have a 90 day that was provided a
7 while ago, but we haven't introduced it into evidence. May I
8 approach, Your Honor?

9 THE COURT: You may.

10 Q. I'm going to hand you what's been marked as Plaintiff's
11 Exhibit 95. Oh, this is already in evidence.

12 Mr. Sheheen, look at this one carefully. What does this
13 purport to be?

14 A. It indicates that the AR --

15 MR. CLEVELAND: I'm going to object, Your Honor. This
16 is the last page of a -- both of these are the last page of a
17 several-inch thick report that we need, and this is not the
18 best evidence of what these reports are, and so I would
19 object unless they're going to offer the full reports.

20 MR. SHEHEEN: Your Honor, he can offer the full reports
21 if he wants.

22 MR. CLEVELAND: We've never been provided the full
23 report on the 60 day. I do have the one on the 90 day, but I
24 don't have the 60 day which is what I contend -- hear him
25 saying is the primary piece of evidence.

1 THE COURT: Okay.

2 MR. SHEHEEN: Your Honor, they're already in evidence.
3 They were agreed to be in evidence and they're in evidence.

4 MR. CLEVELAND: What we agreed to was that they are
5 authentic.

6 MR. SHEHEEN: Well, now --

7 MR. CLEVELAND: That is what we agreed to, and we agreed
8 that we could preserve other objections as to the
9 admissibility. I don't have any problem with the
10 authenticity, but I do believe that the last page of a report
11 on an important issue --

12 THE COURT: I'm confident that -- because here's the
13 rule, the rule is that if this serves as some sort of
14 conclusion or summary, if you will, you're entitled to have
15 the underlying report, which will be the remainder of the
16 report they've admitted. And I'm confident that while they
17 may talk about this one, that they'll get you the rest of the
18 report.

19 MR. CLEVELAND: Thank you, Your Honor.

20 THE COURT: Just so I'm clear, you have it as to your
21 exhibit which is 95001, but you need it for Exhibit 214.

22 MR. CLEVELAND: That's right.

23 THE COURT: Okay. You'll get it. Just before
24 cross-examination if you can get him the full report.
25 Because this is not your report. This is their report.

1 THE WITNESS: (Nodding.) We don't deal with AR on a
2 cash basis practice until you get into a case like this where
3 you have to use it.

4 THE COURT: Yes.

5 MR. SHEHEEN: Your Honor, I just want to make sure I
6 understand what he's saying.

7 Are you saying you have more pages for Plaintiff's
8 Exhibit 95 but you didn't put them in evidence?

9 THE COURT: Do what?

10 MR. SHEHEEN: So I understand what we're trying to do
11 because it gets a little confusing, I'm asking if -- they put
12 in Plaintiff's Exhibit 95. That's the 90-day AR. What I'm
13 asking is are they saying that they have a bunch of other
14 pages with that that weren't put into evidence?

15 MR. CLEVELAND: Yes, I do have that. I think that's
16 what I said.

17 THE COURT: That's exactly what he's saying. If you
18 want that, you can have it.

19 MR. SHEHEEN: I just want to look at it to make sure we
20 get the right thing.

21 THE COURT: They'll get you a copy of it. I'll get you
22 a copy of it.

23 Q. All right. Is there anything that you noticed between
24 the 90-day AR and the 60-day AR that you believe are relevant
25 to what AR is appropriate to use in this case?

1 A. My earlier statement said that I thought 60 days was the
2 appropriate corporate method, and this shows that from 60
3 days to 90 days there was an extremely big amount of
4 deterioration in the value of AR because it went from 246 to
5 864 in that 30 days past 60 days.

6 Q. And why is that relevant in your mind?

7 A. Because it's relevant to valuing the AR's in any kind of
8 formula that you're going to use AR in.

9 Q. There has been an assertion that a \$1.8 million AR
10 should be used. What's your opinion of that?

11 A. My opinion is it's the wrong amount to use.

12 Q. Why?

13 A. Because it tracks a much longer period, and 60 days in
14 my opinion is a good number, current number, a collectible
15 number, after that very doubtful.

16 THE COURT: That's not your position.

17 MR. SHEHEEN: If I'm wrong, that's fine.

18 THE COURT: Well, I don't think.

19 MR. SHEHEEN: I think it is.

20 THE COURT: Well, just I was reading the opening
21 statements and the value of, as I understand the opening
22 statements, the value of the interest is 1.8. No? Yes?

23 MR. CLEVELAND: The accounts receivable as shown on the
24 month-in, month-out reports is 1.8.

25 THE COURT: What I cared about is what you claimed.

1 MR. CLEVELAND: And our claim is we used the 1.8 that
2 Mr. Sheheen is talking about in the formula for the buyout.

3 THE COURT: Okay. It's just coincidental that it's the
4 same number. I understand.

5 Q. Okay. I have some more general questions for you about
6 your interactions with the people at SCENT and SCENT Land.

7 Would you ever meet with Dr. Gunnlaugsson, Dr. Dyce, Dr.
8 Vidrine or Dr. Puchalski together?

9 A. Together?

10 Q. Yes.

11 A. I have met with them together, not all four of them
12 frequently, very infrequently with all four of them.

13 Q. Did you ever meet with Dr. Dyce and Dr. Puchalski
14 together?

15 A. Very often.

16 Q. Okay. And what would be the purposes of these meetings?

17 A. For us to discuss the financial reports that I had
18 prepared, for us to discuss tax matters, for us to discuss
19 write-offs that they might be entitled to if they made
20 expenditures, various and sundry responses by me to any
21 questions regarding financial statements and tax returns that
22 I prepared. It was a kind of monthly meeting that I was
23 expected to attend with them and answer their questions and
24 present any findings that we had.

25 Q. Did Dr. Dyce ever ask you questions in those meetings?

1 A. Yes.

2 Q. And did you -- did he ever ask you for information?

3 A. Yes.

4 Q. Did you provide it to him?

5 A. Yes.

6 Q. Did he ever ask you for information and you didn't
7 provide it to him in those meetings?

8 A. No, not that I can recall.

9 Q. Were you aware that at some point Dr. Dyce was secretly
10 tape-recording your conversations with him?

11 A. No, I did not know that.

12 Q. Did he ever tell you that he was recording your
13 conversations?

14 A. No, he did not.

15 Q. Were you surprised to learn that?

16 A. Very much.

17 Q. And how did that make you feel?

18 MR. CLEVELAND: Objection.

19 THE COURT: Sustained.

20 Q. Did you believe that was appropriate?

21 A. No.

22 Q. I want to talk with you about business expenses or
23 personal expenses or expenses, okay?

24 A. All right.

25 Q. Was part of your job to determine what expenses were

1 personal, what were business?

2 A. Yes.

3 Q. Who asked you in the firm to do that?

4 A. Dr. Puchalski. When I first started to work for Dr.
5 Puchalski, he made credit card charges on the business credit
6 card that had personal expenditures in it. As I uncovered
7 those and inquired about them, he would tell me if they were
8 personal or not, and he would tell me to take them out and
9 charge them to him, and that's what I did.

10 Q. In your experience for 40-plus years have you ever run
11 into that situation before?

12 A. Yes, many times.

13 Q. Is that fairly common?

14 A. I don't know if it's fairly common, but it's oftentimes
15 involved in businesses that we deal with.

16 Q. And what did Dr. Puchalski ask you to do regarding that?

17 A. Always take anything that was not deductible by the
18 business and charge it to him personally.

19 Q. And did you do that?

20 A. I always did.

21 Q. What would his responses be when you would talk to him
22 about that?

23 A. He told me to do it right, and I did it that way, and I
24 think everybody that was involved in the practice at that
25 time knew that we looked for personal expenditures on credit

1 card accounts. That's where they'd generally occur. We
2 often had to ask his department of recordkeeping to supply
3 information to us in the way of invoices to determine that.

4 Q. To your knowledge as the accountant and financial
5 advisor for SCENT did Dr. Puchalski ever take money that was
6 not rightfully his from the practice?

7 A. No. I have no knowledge of that at all.

8 Q. There's been a lot made about Amy Puchalski receiving
9 some funds directly from SCENT. Are you aware that Amy
10 Puchalski would sometimes receive a written check from SCENT?

11 A. Yes, I am.

12 Q. Generally what would those be for?

13 A. They would be distributions due to Dr. Puchalski or
14 reimbursement of expenses that she paid in behalf of SCENT.

15 Q. Let's treat those separately, okay. Let's first of all
16 talk about the ones you said would have been distributions
17 for Dr. Puchalski. Do you know why that was done?

18 A. It's my impression that it was for convenience, from
19 what I've been told, because Dr. Puchalski just let her get
20 the check and take it to the bank. Would be the same as if
21 they wrote it to him and he got it to her and she took it to
22 the bank. They were all charged to him as a part of his
23 distribution.

24 Q. Was that Dr. Puchalski's money?

25 A. Yes, it was.

1 Q. Was there anything wrong with his wife receiving it on
2 his behalf?

3 A. Nothing at all.

4 Q. Did it make any difference for tax purposes?

5 A. None at all.

6 Q. Did it make any difference for disbursement purposes?

7 A. None at all.

8 Q. Did it make any difference at all?

9 A. None at all.

10 Q. Were you aware of it?

11 A. Yes, I was aware of it.

12 Q. Then we also -- you also said that there were some
13 moneys that she would have received, I believe you said as
14 reimbursements for business expenses.

15 A. She would pay for things that SCENT or Dr. Puchalski
16 would later advise us that they were deductible business
17 expenses being reimbursed to her.

18 Q. And how would you treat those?

19 A. I would treat them as a deduction on the corporate
20 return and I would expense them.

21 Q. Are you aware that there was --

22 I'm going to shift gears a little bit, Your Honor, very
23 briefly.

24 Are you aware that there was a company called Somnus?

25 A. Yes, I'm aware of it.

1 Q. And you're aware that Dr. Puchalski was paid a fee from
2 Somnus back in the late 2000's?

3 A. Yes, I am.

4 Q. What was that fee for?

5 A. It was for his management of the Somnus sleep lab.

6 Q. Have you -- do you do financial advising and accountancy
7 work for other medical groups that have a manager?

8 A. Yes, I do.

9 Q. And are you familiar with fees paid to the managers of
10 these types of groups?

11 A. Yes, I am.

12 Q. Do you do the accountancy work for them?

13 A. Yes, I do.

14 Q. And you advise them on their finances?

15 A. Yes.

16 Q. As an expert in this field do you have an opinion about
17 the amount -- I might not have established the amount yet.
18 Tell us the amount he was paid.

19 A. On the Plaintiff's exhibit they indicate \$12,000 for a
20 time period that the exhibit was for for management fees, and
21 I considered those management fees very reasonable,
22 particularly since I have firms now paying management fees
23 greater than that.

24 Q. Okay. All right. As part of your preparations today
25 did you prepare accountings of SCENT Land Holdings?

1 A. Yes, I did.

2 Q. I want you to turn to Tabs I and J. It's Defendant's
3 Exhibit 242 and Defendant's Exhibit 243.

4 A. I have it.

5 Q. What years do these two exhibits cover?

6 A. 2009, 2010 through May the 9th.

7 Q. Is May the 9th the date that Dr. Dyce departed from
8 SCENT?

9 A. Yes, it was, I'm told.

10 Q. And is this document prepared every year?

11 A. Every month and every year.

12 Q. And is this a yearly version?

13 A. This is the yearly version.

14 Q. And if the Court wants a monthly version, could you
15 provide it?

16 A. Yes, we have one made every month.

17 Q. And were these available to SCENT?

18 A. They were provided to SCENT.

19 Q. Or SCENT Land, I should say.

20 A. They were provided.

21 Q. Okay. And did Dr. Dyce have access to these?

22 A. Yes, he did.

23 Q. Would you or someone from your office review these at
24 meetings with Dr. Dyce and Dr. Puchalski?

25 A. Yes.

1 Q. Did Dr. Dyce have the opportunity to ask questions?

2 A. Yes.

3 Q. Did you open up your office to Dr. Dyce's lawyers?

4 A. Yes, I did.

5 Q. How many days did they spend there?

6 A. Several days, and the experts for the plaintiff spent a
7 whole day there, so maybe three days total.

8 Q. And how many documents did they receive or copy, do you
9 know?

10 A. They asked me to copy 7,000 documents, which I did.

11 Q. Did you provide those to them?

12 A. I provided them to the expert witnesses for the
13 plaintiff.

14 Q. Did they pay you for that?

15 A. Yes.

16 Q. For the copies or for the work?

17 A. They paid me for the copies.

18 Q. Do you know how much that was?

19 A. It was approximately \$1400, as I recall.

20 Q. Did they pay it timely?

21 A. No.

22 Q. Tell the Judge what happened.

23 A. I billed them in February.

24 MR. CLEVELAND: I'm going to object to this, Your Honor.

25 I don't know the relevance of this, what it's being offered

1 for, other than character impeachment.

2 MR. SHEHEEN: There's been a lot of allegations that
3 information wasn't provided forever, and I'm trying to show
4 you that he did, we did, and the result was he got an unpaid
5 bill for a long time because there's been allegations that
6 information was not provided. That's not what happened.
7 Information was provided.

8 THE COURT: Okay. I just, I don't know the relevance
9 that it has.

10 MR. SHEHEEN: We'll move on.

11 THE COURT: Okay. I just don't know what relevance it
12 has.

13 MR. SHEHEEN: There's been a lot of allegations that
14 SCENT and its employees acted in bad faith in providing
15 information.

16 THE COURT: But that's not Mr. Sheheen.

17 MR. SHEHEEN: He's the corporate accountant.

18 THE COURT: He's not SCENT.

19 MR. SHEHEEN: He is the corporate accountant for SCENT.
20 He's the one who provides information from SCENT.

21 THE COURT: I know that, but I've got some concerns
22 maybe, not from him, maybe from the -- AR comes to mind
23 but --

24 MR. SHEHEEN: Okay.

25 THE COURT: -- but if you think that's an allegation and

1 you think there's a connection, I won't keep you from going
2 into that connection.

3 MR. SHEHEEN: I'll move on.

4 THE COURT: All right. He's the corporate accountant
5 for a lot of people.

6 MR. SHEHEEN: He is.

7 THE COURT: Okay.

8 Q. We were talking about Tab I -- excuse me, Tab J, Tab I
9 and Tab J. Tab J the same thing as Tab I except for the year
10 2010.

11 A. Yes.

12 Q. Let's look at Tab K, okay?

13 A. All right.

14 Q. Is this an accounting of the activity in SCENT from 2007
15 through May of 2010?

16 MR. CLEVELAND: I'm sorry, Vincent, you're looking at K?

17 MR. SHEHEEN: Yes.

18 MR. CLEVELAND: Mine says as of December 2007.

19 MR. SHEHEEN: I'm sorry, what did I say? December 2007
20 through May 2010.

21 MR. CLEVELAND: I thought an as of date was the latest
22 date. Am I misreading it?

23 MR. SHEHEEN: You've just got to keep turning the page
24 and it will say as of, as of, as of.

25 MR. CLEVELAND: Thank you.

1 Q. Let's ask him. What is this?

2 A. It's the accounting for the years 2007 through May of
3 2010.

4 Q. Okay. Did you do it?

5 A. Yes.

6 Q. And was this available to the practice?

7 A. Yes, it was provided to them.

8 Q. Would you review it with Dr. Dyce and Dr. Puchalski?

9 A. Yes.

10 Q. Did Dr. Dyce have an opportunity to ask you questions
11 about it?

12 A. Yes.

13 Q. And did they accurately reflect SCENT's books during
14 this time period?

15 A. Yes, they did.

16 Q. Turn to page 2 of the May 10th balance sheet.

17 A. Which tab?

18 Q. We're still behind Tab K.

19 A. Okay.

20 Q. I want you to look at the May 10th balance sheet.

21 A. All right.

22 MR. SHEHEEN: I think the Court understands why it may
23 be relevant.

24 THE WITNESS: I have it.

25 Q. What's the amount of the total liabilities of the

1 practice at that point?

2 A. Total liabilities, both current and long-term, were
3 \$1,547,000.

4 Q. Let's turn back real quickly to J, Tab J which is
5 SCENT's Defendant's Exhibit 243. Are you there?

6 A. I have it.

7 Q. Is there anything notable on SCENT Land's balance sheets
8 on May 9th, 2010?

9 A. The most notable thing is their cash deficit on the
10 balance sheet of \$145,000.

11 MR. SHEHEEN: Okay. Beg the Court's indulgence.

12 THE COURT: Okay.

13 MR. SHEHEEN: Your Honor, would this be an appropriate
14 time for us all to take a short five-minute break?

15 THE COURT: Sure, absolutely, we will take what's known
16 in Beaufort County as a comfort break, ten minutes.

17 And I must admonish you, I know you know, you cannot
18 discuss your testimony with anyone during the break.

19 (Recess held.)

20 MR. SHEHEEN: Thank you, Your Honor. Thank you for the
21 break.

22 THE COURT: Absolutely.

23 MR. SHEHEEN: And, Your Honor, I want to make sure you
24 understand our position as I get into these charts we
25 prepared. Because the other side went through the purchase

1 price buyout, purchase price calculation in the agreement,
2 I'm going to go through one that he prepared as well. I want
3 the Court to understand that our position is that Dr. Dyce
4 breached this contract in multiple and substantial ways.
5 We've been through some of those: He repudiated it, with the
6 covenant not to compete, the letter from his lawyer saying
7 he's not going to abide by it, conspired with Dr.
8 Gunnlaugsson, exchanged information with Dr. Gunnlaugsson in
9 such a manner that by the time this ended up all falling
10 apart we didn't have obligations to him because he had
11 repudiated and breached the contract in material and
12 significant ways. I just want the Court to understand that
13 is our first position. We're also going through the
14 contract, though, in case the Court says I'm going to enforce
15 the buyout provision.

16 THE COURT: I understand. But because in addition to
17 that, in addition to everything that you just said, you also
18 maintain that there's a setoff.

19 MR. SHEHEEN: We do, and we have counterclaims that
20 consummate those to some extent.

21 THE COURT: Yes.

22 MR. SHEHEEN: Just as a preview, I'm not going to ask
23 him -- this witness is not going to testify about what were
24 the loss profits as a result of civil conspiracy or the
25 breach of fiduciary duty and all those things. We went

1 through that with Dr. Gunnlaugsson's testimony. I'm going to
2 focus him in on contractual violations and amounts. That
3 doesn't mean we're not still claiming these things, just with
4 him this seemed to be the appropriate role to take.

5 THE COURT: Got it.

6 Q. Let's look at Defendant's Exhibit -- before we do that,
7 I'm sorry, before we do that I need to make sure that there's
8 no exhibits that we need to admit that we didn't already have
9 in. I would move into evidence the exhibits which were
10 Exhibits 244, 243, 242, these were the financial reports
11 prepared by Mr. Sheheen.

12 MR. CLEVELAND: No objection.

13 THE COURT: Very well.

14 (Defendant's Exhibits 242-244 received into evidence.)

15 Q. And I also want to go back very briefly before we get
16 into the reports that you did or analysis that you did, I
17 want to look at the AR 60 day, this was behind Tab H, very
18 briefly. Are you there?

19 A. Yes, I have it.

20 Q. I just want to you read where it -- after it says
21 selection, can you see that? It's very small.

22 A. Whole thing's very small.

23 MR. CLEVELAND: Your Honor, I have a much more legible
24 copy that I'd be happy to share, didn't realize earlier,
25 actually Mr. Livingston had it, that we'd be happy to share

1 if it would be helpful.

2 THE COURT: You know, that would be civility at its
3 utmost. Mr. Cleveland, you are such a gentleman. Thank you.

4 MR. CLEVELAND: Could we get a few copies made in the
5 clerk's office?

6 THE COURT: Absolutely. It would be wonderful. I would
7 make copies if I had a copy machine that I saw. If we could
8 get copies, that would be brilliant.

9 Q. Can you read this one, Mr. Sheheen?

10 A. Yes, I can read it.

11 Q. Go ahead and read it.

12 A. It says at the top of the report, procedures by patient
13 by service day, and it lists the charge, the payment, the
14 insurance payment, the adjustments and write-offs, and then
15 it gives a balance of the AR 60-day receivables.

16 Q. I want you to go back up to the top where it says the
17 word selection, do you see that?

18 A. Selection.

19 Q. What's it say after that?

20 A. Corporation A, provider A1, rendering provider, all
21 office, all facility, all payer, all plans, etc.

22 Q. All CPT category, all CPT code, all that, is that right?

23 A. Yes.

24 Q. And in fact, just to make sure the record's correct, the
25 first two, I think you said A1, do they say all?

1 A. Yes, it said all, provider all.

2 MR. SHEHEEN: Here's our better copies.

3 THE COURT: That says all modifier, what does that mean?

4 MR. SHEHEEN: Your Honor, I'll represent to the Court,
5 if I may, so you heard that this was pulled off of an AllMeds
6 system and apparently, and I don't know because I'm not a
7 medical person, but apparently there are a bunch of different
8 reports you can pull off, and this is all these reports
9 combined into one document, all provider, all rendering
10 provider, so this is all the ways that they categorize it so
11 they captured everybody. That's my understanding. Is that
12 what you were asking about?

13 THE COURT: Well, it seems it's pretty limited.

14 MR. SHEHEEN: I'm sorry?

15 THE COURT: It says comprehensive audiometric threshold
16 evaluation and speech and then tympanometry. They've got
17 lots of other stuff like plastic surgery and --

18 MR. SHEHEEN: So that was what the other 100 and
19 whatever pages are. Are you with me? Remember how this was
20 the last page, the summary at the bottom.

21 THE COURT: Okay.

22 MR. SHEHEEN: And so we've emailed all that to them on
23 this particular exhibit because it was requested.

24 THE COURT: So that's all the other stuff.

25 MR. SHEHEEN: That's my understanding, and I think

1 that's true with the 90 days.

2 THE COURT: And this is the grand total.

3 MR. SHEHEEN: My understanding is they got the 90 day
4 one in that meeting we talked about earlier where their
5 expert went up and I allowed them to meet with our folks and
6 get what they wanted and he requested the 90 day and he got
7 all the backup documents.

8 THE COURT: Okay.

9 MR. SHEHEEN: Does that help?

10 THE COURT: Yes, that's very helpful. And when it says
11 all modifiers, what does that mean, I guess I want to know,
12 because they had modifiers, remember the charts we were
13 looking at, you know the offsets.

14 MR. SHEHEEN: My understanding is that that means all of
15 them and that's why --

16 THE COURT: Everything's included?

17 MR. SHEHEEN: Yes.

18 THE COURT: This is the raw number so to speak.

19 MR. SHEHEEN: I don't know what that means.

20 THE COURT: In other words before they start deducting
21 for this and deducting for Medicaid and deducting for
22 insurance and deducting for -- I sort of jumped in there, but
23 I hope you all don't mind because it doesn't make any sense
24 to me. I've got to do something with this, and I need to
25 know what I'm looking at.

1 MR. CLEVELAND: We appreciate it. It's why we gave you
2 a legible copy.

3 MR. SHEHEEN: What the all means is all types of
4 services.

5 THE COURT: Right.

6 MR. SHEHEEN: That's what the all means.

7 THE COURT: Right.

8 MR. SHEHEEN: Okay.

9 THE COURT: But see, I saw that chart -- here's what I
10 just need to know -- I saw that chart, and that chart said
11 like -- and I bet Mr. Sheheen knows this -- but that chart
12 said that we're taking out for Medicaid and we're taking out
13 because this one we have to adjust because the insurance
14 company's going to pay us anyway, so we're going to take that
15 amount out. So what I need to know is what number am I
16 looking at, am I looking at a total gross number or am I
17 looking at a number, you know, that has those initial
18 deductions, like Medicaid isn't going to pay us but 10 cents
19 for this procedure, so we've got 10 cents, we don't have \$14,
20 for example. Medicare's going to pay \$35, even though the
21 amount is \$135, so we just put \$35 because we know we're not
22 going to get the \$135, so we're taking out \$100. Are these
23 real AR's?

24 MR. SHEHEEN: I'm not sure what you mean by real, but I
25 believe this is the total charges.

1 THE COURT: Total charges meaning this is 135, knowing
2 that Medicare is going to give them 35, or is this 135, do
3 you say what I'm saying?

4 MR. SHEHEEN: 135, doesn't matter if Medicare is going
5 to give them 5 or 10 or 15.

6 THE COURT: This is the 135, irrespective of what
7 Medicare is going to pay.

8 MR. SHEHEEN: That's my understanding.

9 THE COURT: That's what I wanted to know, where it says
10 all modifiers, I didn't know what that means.

11 MR. SHEHEEN: That actually is referring to all types of
12 services.

13 THE COURT: Got it.

14 MR. SHEHEEN: Okay. Thanks. That's why I went back to
15 it to make sure we're all on the same page. We can fight
16 about what you should use.

17 THE COURT: I just want to know what it is. I just want
18 to understand what I'm looking at.

19 MR. CLEVELAND: And all I'm standing up for is to, when
20 Mr. Sheheen said he wants to make sure we're all on the same
21 page, I'm not sure I'm on that page, I just don't want to sit
22 here and have anybody think I agree with what he said, I
23 don't agree with what he said, but I don't think now is the
24 time for me to argue that.

25 THE COURT: I understand, but you hear where I am right

1 now.

2 MR. CLEVELAND: I am. I think those are exactly the
3 right questions. I don't agree with Mr. Sheheen's answers,
4 but it's not for me --

5 THE COURT: That's not for this moment.

6 MR. CLEVELAND: That's right.

7 THE COURT: That's for sometime in the future perhaps.

8 MR. CLEVELAND: That's right.

9 THE COURT: Great.

10 MR. SHEHEEN: There have obviously -- if there have been
11 payments made, then that -- you know, they're not AR anymore,
12 right?

13 THE COURT: Yes.

14 MR. SHEHEEN: Okay.

15 THE COURT: But are they deducts?

16 MR. SHEHEEN: If they were paid -- say there's \$200 owed
17 and \$100 was paid at 15 days -- on the same page right now --
18 let's look at this document, Your Honor, just to make sure
19 I'm on the right page, the 60-day AR we're on, if you look at
20 the grand total, I think that's the easiest way to look at
21 it, there's an 805 figure, do you see that?

22 THE COURT: Yes.

23 MR. SHEHEEN: That's the total charges.

24 THE COURT: Okay.

25 MR. SHEHEEN: Then there's 21,515.19.

1 THE COURT: Co-pays.

2 MR. SHEHEEN: That's what the patients pay in. Then
3 there's a 195,705.

4 THE COURT: 196.

5 MR. SHEHEEN: Excuse me, 196, that's what the insurance
6 paid. Then there's a 340,305.

7 THE COURT: Yes.

8 MR. SHEHEEN: That's what I think you might have been
9 asking, that's the adjustments and write-offs, and then
10 there's the balance.

11 THE COURT: Got it.

12 Q. Okay. All right. Mr. Sheheen, let's look at 245,
13 Exhibit 245. It's behind Tab L.

14 THE COURT: After all that we're leaving this?

15 MR. CLEVELAND: I think I may have brought this on. I
16 apologize. I appreciated Mr. Sheheen's advising the Court
17 the answers to your questions, but I must object if that's
18 being offered in lieu of testimony from the witness on those
19 things.

20 THE COURT: No, no, no he just identified it and said
21 that's your 60-day report. It's not his report.

22 MR. CLEVELAND: But the witness was explaining what the
23 report was when you asked some questions, and Mr. Sheheen
24 took over answering those questions, and we haven't heard
25 from the witness.

1 MR. SHEHEEN: I'll go through it with him. Fine.

2 MR. CLEVELAND: I think it's important we hear his sworn
3 testimony on this.

4 Q. Let's look at the AR, 60-day AR report. It was the nice
5 copy.

6 A. I have that nice copy.

7 Q. All right. Do you see down at the bottom it says grand
8 total?

9 A. Yes.

10 Q. Do you see there's a figure that says eight thousand,
11 five hundred, thirty-five, nine -- 349.16 (sic)?

12 A. Yes.

13 Q. What's it say at the top how that's described?

14 A. Charges.

15 Q. What's your understanding of what that means?

16 A. Patient charges.

17 Q. Next to that is a figure that says 21,515.19. Do you
18 see that?

19 A. Yes.

20 Q. What's the description on that?

21 A. Says patient payment.

22 Q. What's your understanding of what that means?

23 A. It's what the patient paid himself and not any third
24 party.

25 Q. All right. Then the next figure is \$196,705.50, do you

1 see that?

2 A. Yes.

3 Q. What's that described as?

4 A. Insurance payment.

5 Q. What's your understanding of what that means?

6 A. That that's third-party payment by insurance companies.

7 Q. What's the next figure?

8 A. Adjustments and write-offs.

9 Q. What's that figure?

10 A. \$340,305.

11 Q. And then there's -- what is that described as, I'm
12 sorry?

13 A. Adjustments and write-offs.

14 Q. And then what was the balance?

15 A. Then the AR balance is 246,823.

16 Q. These numbers were created by who?

17 A. By SCENT.

18 Q. Provided to you by who?

19 A. By SCENT.

20 Q. Is that typically how you do it with businesses that you
21 operate?

22 A. Yes. We do not prepare their source documents. We
23 receive their source documents to prepare financial
24 statements.

25 Q. Thank you. Let's look at Exhibit 245, Defendant's

1 Exhibit 245. Did you prepare this document?

2 A. I prepared a portion of this document.

3 Q. What portion -- well, what portion are you referring to
4 that you did prepare?

5 A. The right-hand column.

6 Q. That you did prepare or didn't prepare?

7 A. I did prepare the right-hand column.

8 Q. Let's look at this document. On the right-hand column
9 it says SHG, is that right?

10 A. Yes.

11 Q. And then on the left-hand column what does it say?

12 A. Says Plaintiff's Exhibit No. 296.2.

13 Q. Did you put these together?

14 A. Yes.

15 Q. All right. And you put them all on this one document,
16 is that right?

17 A. Yes, to show the comparison.

18 MR. SHEHEEN: Okay. We're going to come back to that
19 one, Your Honor. I want to go to Tab M first.

20 Q. Let's look at Tab M, Exhibit 246.

21 A. I have it.

22 Q. Did you prepare this document as well?

23 A. The right-hand column.

24 Q. And on the left hand column did you put Plaintiff's
25 Exhibit 296.1?

1 A. Yes.

2 Q. And what does this document show?

3 A. It shows the funding of Dr. Dyce's buy-in.

4 Q. Is there dates that you extrapolated that funding?

5 A. Yes. The left-hand column that the plaintiff presented
6 indicates a formula, the bi-week sweep and other personal
7 expenses, and then they split the number in two, and then
8 they show the charges for the buy-in, and then they show that
9 Dr. Puchalski received excess distributions over the buy-in
10 price.

11 Q. That's what the Plaintiff's Exhibit shows?

12 A. Yes.

13 Q. Walk the Judge through what you did and tell her why you
14 did it.

15 A. First line I had no problems with.

16 MR. SHEHEEN: I'm sorry. Do you understand how he put
17 them next to each other?

18 Okay. Thank you.

19 THE WITNESS: The first line and the second line I have
20 no problems with. The third line which they have as other
21 personal expenditures, we charged those to Dr. Puchalski's
22 capital account, and they were not excess distributions, they
23 were charged to him when he got them, so we took those out.

24 Q. Let's stop one minute there. We discussed earlier the
25 capital account, but I want to make sure that --

1 A. Capital account is what he had in the company that he
2 had already paid tax on, had not drawn out.

3 Q. Okay.

4 A. So we took those out, and then that changed the numbers
5 before we did the division by two, which is the two people
6 that are in it, and they wound up with 955 retained by
7 Puchalski, and we did 907, and it's because we took the 95
8 out. We took one half of the distributions to be applied to
9 Dr. Dyce's buy-in, which was the 907, and we subtracted from
10 that the damages that we understand were applicable in this
11 particular matter.

12 Q. All right. I want to hold on one minute. Where are you
13 at?

14 A. Below the 907,105.

15 Q. This is the buy-in, so this is as Dr. Dyce is coming in,
16 is that right?

17 A. Right.

18 Q. So you carried the 907 down. I see that.

19 A. Now, his buy-in price was \$750,000.

20 Q. They had it as 800. What's going on there?

21 A. Well, 800 included a \$50,000 payment for stock, and when
22 we had to gross it up for taxes, we didn't feel that Dr.
23 Puchalski should get the gross-up on the stock cost, should
24 get the gross-up on the income that he had to report from Dr.
25 Dyce, so we reduced it back to 750, which did not include the

1 stock price.

2 Q. Okay.

3 A. Then we grossed it up and that number was \$241,000.

4 Q. All right. Let me stop you there for a minute. What
5 rate did you use for the gross-up?

6 A. 1.4, .40 in tax rate, which was the federal rate plus
7 the state rate.

8 Q. And what rate did the plaintiff's expert use?

9 A. .33, if I recall correctly.

10 Q. Why is there a difference?

11 A. They did not use the state rate, they just used the
12 federal rate.

13 Q. Do you know why?

14 A. No, I don't.

15 Q. All right. And then what came next?

16 A. Then the formula also accounts for the accounts
17 receivable as part of the purchase price, the cash as part of
18 the purchase price, and we added what he owed or agreed to
19 pay for the stock, which meant that his total buy-in with my
20 computation was 1.6 million and on the plaintiff's
21 computation 800,000.

22 Q. Okay. And should you have -- they did gross up the
23 800,000 to some extent, didn't they?

24 A. They grossed up 750.

25 Q. I'm sorry, not you, they, did they gross up the 800,000

1 on their exhibit, do you recall?

2 A. They didn't use any gross-up.

3 Q. What was the .33?

4 A. That was the tax rate on a separate schedule that they
5 did gross up but not on this one.

6 Q. Okay. And what's your conclusion based on this?

7 A. Well, my conclusion was that giving Dr. Dyce credit for
8 907,000 and charging him 1.606, he was short on February 1,
9 '08, which was the Plaintiff's exhibit February 1, '08,
10 699,000 from having funded his buy-in.

11 Q. I want you to turn to N which is Exhibit 247.

12 A. Which tab?

13 Q. N like name.

14 A. I have it.

15 Q. What is this?

16 A. This is moving forward from February of '08 to July
17 16th, '08, which as we understand the date he became a
18 shareholder.

19 Q. Why do you understand that's the date he became a
20 shareholder?

21 A. Because that's the date we were informed he became a
22 shareholder by Dr. Puchalski. That's the date he got a stock
23 certificate showing he was a shareholder, and that's also the
24 date that the distributions became equal from that point on.

25 Q. And what does this chart show?

1 A. It shows that if he was short 699 on the 1st of
2 February, that the distributions from February 1 to June 16
3 total 1.86 million, half of that was due to Dr. Dyce, 938,
4 but he actually drew 617 of those distributions, so it left
5 him with an additional credit toward his buy-in of 320 and
6 left us being underfunded on July 16th \$378,000 on the
7 buy-in.

8 MR. SHEHEEN: Your Honor, first of all I want to move,
9 before I forget, Defendant's Exhibit 246 and 247 into
10 evidence.

11 MR. CLEVELAND: No objection, Your Honor.

12 THE COURT: Okay.

13 (Defendant's Exhibits 246-247 received into evidence.)

14 Q. Let's look at 246 again. That's under M, and just so
15 the Court will understand, do M and N do the same thing
16 except for for a longer period of time?

17 A. Yes.

18 Q. And we're in 246 now, okay, M. Did the plaintiff's
19 expert account for the cash in the bank that was Dr.
20 Puchalski's?

21 A. No.

22 Q. Did he account for the AR that was incurred prior to the
23 process?

24 A. No.

25 Q. Were those in your letter of 2007?

1 A. Yes.

2 MR. CLEVELAND: Objection, and I know he testified about
3 the letter, but he also testified that the letter was not
4 what they agreed to, and so to the extent that that question
5 suggests otherwise, I object to it.

6 THE COURT: Okay.

7 Q. Mr. Sheheen, I notice next to the AR provision it says
8 estimated. Can you tell the Court why?

9 A. Well, we could not get the AR on that date, and the AR
10 we used in the other side of the formula of the 246 we felt
11 was the fairest number we could estimate on this side of the
12 formula, so it's the same number in both calculations.

13 Q. When you say the other side of the formula you mean
14 the --

15 A. The buyout.

16 Q. Do you know why they were not able to go back and
17 recreate AR as of that date?

18 A. No, I don't.

19 Q. Okay.

20 A. I asked for it and was told they could not prepare it,
21 could not get it for some reason.

22 Q. Did the business grow a lot larger between the time of
23 2007 and 2010?

24 A. Yes, it grew very quickly and very fast and very large.

25 Q. And would that mean the outstanding AR in 2010 was more

1 likely to be bigger than in 2007?

2 A. Well, that's speculation, but more likely, yes.

3 Q. Okay. Based on your observations of the business and
4 your expertise in the field would that -- is it your opinion
5 that that would be likely?

6 A. Likely, yes.

7 Q. But yet you used the figure here -- you thought this was
8 the correct figure, the most appropriate figure to use, is
9 that right?

10 A. I didn't have a figure. I had to use a figure, and I
11 thought this was the fairest process.

12 Q. Okay. Let's look at N again. You have a, I'll call it
13 a debt, I don't know what the right word is, but the 378,000,
14 what would you call that?

15 A. I'd call it an underfunded amount for the buy-in based
16 on the formula.

17 Q. Okay. Do you know if that money was ever realized by
18 Dr. Puchalski?

19 A. To my knowledge it was not realized. To my knowledge
20 Dr. Puchalski made a decision to close the matter with some
21 consideration given to Dr. Dyce.

22 MR. CLEVELAND: Objection. If he had a conversation --
23 or I think there needs to be a foundation.

24 THE COURT: State of mind is your objection?

25 MR. CLEVELAND: Yes.

1 THE COURT: Sustained.

2 Q. Do you know by observation or did you participate in
3 making a decision about how to treat that?

4 A. No, I did not make a participation in that decision.

5 Q. Did you give any advice about that?

6 A. No.

7 Q. Okay. On his tax returns was that money ever realized
8 by Dr. Puchalski?

9 A. No.

10 MR. SHEHEEN: Beg the Court's indulgence.

11 Q. Let's look at Tab L, Exhibit 245. Could you tell the
12 Court what this is?

13 A. This is the exhibit which shows what plaintiff feels is
14 the purchase price for Dr. Dyce's interest when he left the
15 practice.

16 Q. And is that on the left-hand side?

17 A. Yes, that's 296.2.

18 Q. And then on the right-hand side did you do calculations?

19 A. Yes, that's the calculation that I did.

20 Q. Okay. And at the bottom did you make some assumptions?

21 A. Yes, I make some assumptions.

22 Q. So I will walk you through it so we can make sure the
23 Court understands what is being assumed for expert purposes.
24 First of all, tell us in the top half of the document what
25 you did.

1 A. Well, we took out of the plaintiff's side 33,000 for
2 cash value of life insurance.

3 Q. Wait a minute. Walk through it slowly with me.

4 A. Beg your pardon?

5 Q. Do it slow. Point to me where you're at.

6 A. Okay. We start off, top lines we're the same, down
7 through subtotal A we're the same, under B for accounts
8 receivable plaintiff has 1.8 million, and I use the 246,000
9 which was the 60-day AR that we had before.

10 Q. Let's pause here since we've had a lot of discussion
11 about this, and you tell me why you believe 246 is the
12 appropriate figure versus the 1.8 million.

13 A. Because they ran the AR for me on the 60-day AR, and
14 that was the number that 60 days that I felt had value, and
15 after that I felt the value was greatly diminished.

16 Q. Why do you believe 1.8 is not the appropriate one to
17 use?

18 A. Well, it just was so large compared to collections or
19 other charges that I felt that it was an accumulation of AR
20 and not appropriate to this particular formula.

21 Q. I'm just going to, I think, read this, Your Honor, be
22 easier if I do that. Are you familiar with Section 4.5, or
23 at least have you reviewed Section 4.5?

24 A. I have seen it, yes.

25 Q. The buyout agreement.

1 A. Yes.

2 Q. Of the shareholder agreement. And it says in there, one
3 third of the sums of the accounts receivable of the
4 corporation booked in accordance with the corporation's
5 normal accounting methods. Are you familiar with that?

6 A. Well, I read it in that section of the agreement that
7 you're quoting from.

8 Q. As the corporate accountant, what do you think is the
9 accounts receivable booked in accordance with the
10 corporation's normal accounting methods?

11 A. The 246,823.

12 Q. Let's look at the next line.

13 A. The next line is cash, and that is the correct amount.
14 We verified what the plaintiff had on his exhibit. The next
15 line is the cash value of life insurance, and we took that
16 out because we reviewed the policies, and the surrender value
17 on the life insurance at the time would have made it zero in
18 cash value, so we took it out of the formula completely.

19 Q. Is that what was referred to as a cash equivalent by the
20 plaintiff's expert?

21 A. Well, it was cash. Cash value of life insurance is
22 cash, but if you can't get it, there is no equivalent, and
23 the policies specifically, the one on Dr. Dyce and the one on
24 Dr. Puchalski have penalty clauses in them for the first ten
25 years of redemption, and in the second year of the redemption

1 the penalties were greater than the cash value, so I took it
2 out completely.

3 Q. Did you review those policies to make sure that was
4 correct?

5 A. I reviewed both policies, yes.

6 Q. What about the next line?

7 A. The next line was the receivable that the plaintiff
8 included as a cash item from SCENT Land. We did not treat it
9 as a cash item. We didn't feel that there was any
10 opportunity in the near term for SCENT Land to give the money
11 back to SCENT. It's booked on their balance sheet as a
12 payable, but they had just gotten the money to save the
13 construction project, and we didn't think that it could come
14 back quick enough to be considered a cash equivalent.

15 Q. Did it ultimately get paid back?

16 A. I'm not sure, but I'd have to look and see. It probably
17 did.

18 Q. Does that make a difference in your opinion?

19 A. No, no.

20 Q. In your experience, in your practice, in your knowledge,
21 when are those types of transactions considered a cash
22 equivalent?

23 A. When they can be converted to cash in a reasonably short
24 period of time.

25 Q. Okay. And after you reviewed -- you're familiar with

1 what was occurring in this case, is that right?

2 A. Yes.

3 Q. What was your opinion as to whether that should be
4 counted?

5 A. That it should not be treated as a cash equivalent.

6 Q. Was it reflected as a cash equivalent or cash in the
7 books of SCENT?

8 A. No.

9 Q. Okay.

10 A. It was a receivable in the books of SCENT and a payable
11 in the books of the landholdings.

12 Q. Okay.

13 A. And it was reflected in both places.

14 Q. Okay. All right. Let's go to the next line, and tell
15 us why there's a difference?

16 A. Then we divide by three, which is the formula, it says
17 you divide it by three, and that gives us a subtotal, and
18 then the subtotal of A and B is the purchase price, and that
19 number we started to reduce.

20 Q. Now I'm going to ask some hypotheticals so you don't
21 testify about things you're not qualified to testify about.

22 A. I'm sorry.

23 Q. So we're now down to the 50 percent adjustment, is that
24 right?

25 A. Yes.

1 Q. Were you asked to assume that Dr. Dyce was terminated
2 for cause under this contract such that there would be a 50
3 percent adjustment?

4 A. Yes, I was asked to assume that he was terminated for
5 cause, and the section that you refer to required a 50
6 percent adjustment.

7 Q. All right. And you ran that number, is that right?

8 A. Yes.

9 Q. You did that number though?

10 A. Yes, it's one half of the number above it.

11 Q. Okay. And then were you asked to assume that there were
12 counterclaims that would further reduce Dr. Dyce's buyout?

13 A. I was.

14 Q. All right. Were you asked in the next line to assume
15 that there was a violation of the covenant not to compete --

16 A. Yes, I did.

17 Q. -- with a liquidated damage provision of \$750,000?

18 A. Yes, stated in the agreement.

19 Q. And under section 3.11 of that agreement were you asked
20 to assume that interest applied?

21 A. Yes, at the prime rate, and the prime rate was 3.25
22 percent.

23 Q. And did you run that calculation there?

24 A. Yes.

25 Q. Okay. Were you next asked to assume that there was a

1 violation of Section 4.2D that resulted in two more
2 reductions?

3 A. Yes. One of them was the loss of call pay, and that
4 figure is indicated, and the other one was a 30 percent
5 reduction in wages, and that figure is there, so his wages
6 were 331,416 during that period, and 30 percent of that is
7 the 99,000.

8 MR. SHEHEEN: Just for the Court's purposes, that was
9 the employment, you were asked to assume that under the
10 employment agreement, is that right?

11 THE COURT: Under the employment agreement or
12 shareholder agreement?

13 MR. SHEHEEN: Employment.

14 THE COURT: Okay. Yes.

15 MR. SHEHEEN: That 4.2D is referenced in the employment
16 agreement.

17 THE COURT: Okay.

18 Q. Were you next asked to assume that Dr. Dyce breached his
19 obligations of loyalty under the shareholder agreement by not
20 letting SCENT know that Dr. Gunnlaugsson was adverse to the
21 company in February?

22 A. I was asked to assume that.

23 Q. And were you asked to assume that Dr. Gunnlaugsson would
24 have been fired if SCENT had known that?

25 A. Yes.

1 Q. And there was testimony to that in Puchalski's
2 testimony, I believe. And did you calculate what Dr.
3 Gunnlaugsson's compensation, benefits and all that stuff was?

4 A. Yes, Dr. Gunnlaugsson's compensation was 367, and his
5 call pay was 24,000.

6 Q. And so what was the total of the counterclaim damages
7 against?

8 A. 1,361,000.

9 Q. So then what would that leave being owed by Dyce towards
10 SCENT?

11 A. It left Dr. Dyce in the whole 655,000 rather than being
12 owed 1.8 million.

13 MR. SHEHEEN: Your Honor, I'd ask that Defendant's
14 Exhibit 245 be introduced into evidence.

15 MR. CLEVELAND: No objection.

16 THE COURT: Very well.

17 (Defendant's Exhibit 245 received into evidence.)

18 MR. SHEHEEN: Beg the Court's indulgence one minute.

19 Q. Would you turn with me, please, to Tab O? Are you
20 there?

21 A. Yes, I have it.

22 Q. This is, for the record, Defendant's Exhibit 247, I
23 believe -- wait a minute, no, 248.

24 THE COURT: 248, yes, got it.

25 Q. Did you prepare this document?

1 A. Yes.

2 Q. All right. This one's a little bit more -- got more
3 numbers on it, so could you explain to the Judge what you
4 did?

5 A. Yes. The Plaintiff's Exhibit 296, Dyce and Puchalski
6 are the first column and the third column. In my exhibit
7 Dyce and Puchalski are the second column and the fourth
8 column.

9 Q. So there's four columns on this, is that right?

10 A. Four columns.

11 Q. Up at the top it says Plaintiff's Exhibit SHG,
12 Plaintiff's Exhibit and SHG.

13 A. Yes.

14 Q. And SHG is Sheheen, Hancock & Godwin?

15 A. Yes.

16 Q. Okay. Continue.

17 A. In the Plaintiff's exhibit on February 1 until December
18 the 31st, '08 they contend that Dr. Dyce got \$1,269,932, and
19 they contend that Dr. Puchalski got 1,280,432. That
20 difference they explained in their exhibit was a timing
21 difference in the second item of the biweekly distribution of
22 which was made -- later made whole so that they would have
23 been the same if the timing difference had not been there.

24 Q. Let me interrupt you and talk generally for a minute.

25 In 2008 did Dr. Puchalski receive more distributions than Dr.

1 Dyce?

2 A. Yes.

3 Q. Why?

4 A. For two reasons, he was a partner for the whole year,
5 and he had previously taxed income sitting in the corporation
6 that he had not drawn out.

7 Q. Okay. Did he receive -- from the period of February 1st
8 to mid July -- well, I better say July 16, did he receive --
9 did Dr. Puchalski receive more distributions than Dr. Dyce?

10 A. Yes, he did.

11 Q. Okay. Why?

12 A. For the same reason, he was a shareholder the whole
13 year, and Dr. Dyce wasn't, and he had previously taxed income
14 that had not been drawn out.

15 Q. Let's look real quick, and we'll come back to this one,
16 but I think it's good to let the Court look at the numbers
17 too. Look at Tab WW, Defendant's Exhibit 256.

18 A. I have it.

19 Q. Okay. Tell the Judge what this is.

20 A. This is an exhibit that shows the distributions to Dr.
21 Dyce and Dr. Puchalski beginning February 1, '08 and ending
22 July 16th, '08.

23 Q. And are there -- can you point to some distributions
24 where Dr. Puchalski would have received distributions and Dr.
25 Dyce did not?

1 A. Yes. In this case Dr. Dyce received 617,000, and Dr.
2 Puchalski received 1,259,000.

3 Q. And to your understanding or in your opinion, based on
4 the numbers that you have looked at, was Dr. Dyce a
5 shareholder during this period of time?

6 A. No, he was not.

7 Q. Let's look back at Tab O, Exhibit 248, which we were
8 discussing a few moments ago.

9 And, Judge, if I lose you in any of this, please, if I'm
10 moving too fast or too slow, let me know.

11 Okay. Exhibit 248, you were describing to us what it
12 did, talked about the four headings, and you talked about
13 what the plaintiffs exhibits showed. Tell us what you were
14 showing here.

15 A. Well, I had no problem with what the plaintiff showed
16 down through the total at the top, and my exhibits show the
17 same thing. Then the plaintiff charged Dr. Puchalski with
18 excess distributions, and he listed those, and I relieved all
19 of those and only left the 2250 that they had on Dyce's side
20 and the 3250 on Puchalski's side in determining excess
21 distributions.

22 Q. Why?

23 A. Well, because all of the distributions in Dr.
24 Puchalski's column that they charged him with as excess
25 distributions were charged to his capital account, and they

1 weren't excess. They just went against what he already was
2 owed by the company.

3 Q. Had he paid taxes on that money already?

4 A. Yes.

5 Q. Do you know why they were included in the Plaintiff's
6 Exhibit?

7 A. No.

8 Q. All right. Where are you now in the document?

9 A. Well, in the summary down on the bottom --

10 Q. What's it say?

11 A. -- it shows that the plaintiff says that Dr. Dyce was
12 owed \$436,000, and my exhibit shows Dr. Dyce was owed \$5,655.

13 Q. Why was he owed \$5,655?

14 A. Because that was the difference in the distributions and
15 the items removed from the distributions in the calculation.

16 Q. Why didn't he get that \$5,655?

17 A. Why didn't he get it?

18 Q. Yes, sir.

19 A. I have no idea. I don't even know if they knew it.

20 Q. Did you know it?

21 A. Beg your pardon?

22 Q. When you did the tax returns did you catch it?

23 A. Well, we have the ending balances for each partner at
24 the end of the year, yes, and those were never totally equal
25 because they didn't start out equal and because they weren't

1 in at the same time, but we have a calculation showing the
2 credits and the debits to each person's capital account for
3 all of the years that they were together.

4 Q. Okay. Did Dr. Puchalski receive any moneys that he was
5 not entitled to during this period of time?

6 A. No.

7 Q. And is the \$5,655 in favor of Dr. Puchalski or Dr. Dyce?

8 A. It's in favor of Dr. Dyce.

9 Q. Okay.

10 A. In a later calculation we show another period and a
11 reverse of that in favor of Dr. Puchalski.

12 Q. Why did that happen?

13 A. Because Dr. Dyce overdrew in the other statement that
14 you haven't referred to yet.

15 Q. Okay. Let's look at P -- Your Honor, I'd move into
16 evidence Exhibit 248.

17 MR. CLEVELAND: No objection.

18 THE COURT: Okay.

19 (Defendant's Exhibit 248 received into evidence.)

20 Q. Let's look at P.

21 A. Which one?

22 Q. P. It's Exhibit 249.

23 A. Okay.

24 Q. It's entitled summary of 2009 excess distributions?

25 A. Yes, it is.

1 Q. The last one we looked at, what year was that?

2 A. 2008.

3 Q. Okay. Is this a similar document?

4 A. Exactly the same.

5 Q. What's the difference?

6 A. In this instance Dr. Puchalski was owed \$9,597 by my
7 calculation.

8 Q. All right. Let's walk through the differences in the
9 document as we go down, okay?

10 A. All right. Up top there are no differences, we agree
11 with the plaintiff, but down under the charges the plaintiff
12 had personal expenditures and distributions that they
13 considered excess. One of those was a \$50,000 check that
14 they charged Dr. Puchalski with receiving but in fact Dr.
15 Dyce received it, he endorsed it and gave it to Dr. Puchalski
16 in payment of the purchase of his stock.

17 Q. Have you seen that check?

18 A. I have seen that check and I have furnished a copy of it
19 to Dr. Dyce when he asked me to get it and send it to him.

20 Q. Was that one of the checks he was claiming he hadn't
21 received?

22 A. Yes.

23 Q. And what did it actually show?

24 A. It showed that he received it, endorsed it and said pay
25 over to Dr. Puchalski.

1 Q. Was there anything wrong with that?

2 A. Not at all. Dr. Puchalski reported the sale of stock on
3 his personal tax return for \$100,000 with no basis in that
4 stock, and that was the two 50's that he received from Dr.
5 Dyce.

6 Q. There were other charges here or other numbers here.

7 A. Yes. All of the others I indicated with asterisks by
8 them were charged to Dr. Puchalski's capital account.

9 Q. Why did you charge a political contribution to Dr.
10 Puchalski's capital account?

11 A. Well, it shouldn't have been charged to his capital
12 account. It should have been deducted on the corporate
13 return. It was deducted on the corporate return as a
14 nondeductible expense on the corporate return because
15 political contributions are not deductible, but the plaintiff
16 included it on the schedule as a distribution to Dr.
17 Puchalski when in fact it was made by SCENT as a political
18 contribution and shown on the return but not deducted, it was
19 a nondeductible expense.

20 Q. How about these other things, look at the KCMC Sleep
21 Lab, are you familiar with that, \$2050?

22 A. I'm not familiar with the reason that it's \$2050, but
23 I'm familiar with the fact that we charged it to his capital
24 account and I am -- I have been informed that it was a
25 nominee type income when it was paid to SCENT and it had to

1 be redirected to him because it did not belong to SCENT.

2 Q. To your knowledge did the doctors receive money for
3 certain relationships with hospitals --

4 A. Yes.

5 Q. -- and those checks would sometimes go to SCENT instead
6 of the doctor directly, is that right?

7 A. Yes, there was nominee income from time to time, just as
8 it was on all the call pay. All the call pay was paid to the
9 doctors, endorsed and given to SCENT and paid back out to
10 them, and it had to be treated as nominee income or the
11 doctors would have paid tax on it twice.

12 Q. Can you explain to us what nominee income means?

13 A. Means you receive income on behalf of somebody else.

14 Q. Okay. All right, and then it says unidentified
15 beginning balance. What does that mean?

16 A. Well, that was -- the plaintiff saw some numbers and
17 couldn't determine what they were, so we didn't tamper with
18 those.

19 Q. Okay. And what did you find in this, what were the
20 remaining calculations?

21 A. Well, the calculation now shows on my side that Dr.
22 Puchalski was short \$9500 instead of Dr. Dyce being favorable
23 for \$49,000.

24 Q. All right. The only other thing I want to ask you about
25 this is there's an asterisk at the top next to the

1 152,249.97, do you see that?

2 A. Yes. That was the variance due to the timing of the
3 payment, and I think the plaintiff agreed and put it in his
4 calculation, and we agreed that -- it was later made up. It
5 was just a timing difference.

6 Q. Explain what you mean by that.

7 A. Means that he didn't get it at the time he was supposed
8 to. When they determined that it was not paid timely, they
9 paid it later.

10 Q. And who's he?

11 A. SCENT.

12 Q. Okay. But who was supposed to get -- you said somebody
13 wasn't paid it timely. Who?

14 A. Dr. Puchalski got \$10,000 less than Dr. Dyce but later
15 was paid that.

16 Q. Gotcha. Okay. Thank you. Now, on this one you have
17 Dr. Puchalski with a \$9,597.76 figure. What does that mean?

18 A. That means that it's in his favor just as the 5500 on
19 the previous schedule was in Dr. Dyce's favor.

20 Q. Does that mean there were some small errors going on, or
21 what does it mean?

22 A. It just meant there was things classified by the
23 plaintiff that are different than we classified them.

24 MR. SHEHEEN: Okay. I see. Okay. Your Honor, I'd move
25 that Exhibit.

1 THE COURT: 249?

2 MR. SHEHEEN: Yes, ma'am, 249 into evidence.

3 MR. CLEVELAND: No objection.

4 THE COURT: Very well.

5 (Defendant's Exhibit 249 received into evidence.)

6 Q. Let's look at Q. This is Defendant's Exhibit 250 and
7 could you read -- it's titled summary of disbursements for
8 the benefit of Amy Puchalski.

9 A. Yes.

10 Q. Why did you do this form or what did you do?

11 A. This is what the plaintiff prepared, and we went through
12 it to see if our view was the same as the plaintiff's.

13 Q. In your opinion --

14 A. In my opinion none of these should have been charged as
15 disbursements for Amy Puchalski because all of those that
16 were not expensed were charged to Dr. Puchalski's capital
17 account. There were three of those that were expensed. The
18 AT&T was expensed on the corporate books because during the
19 time period Dr. Puchalski's cell phone was broke, and he
20 borrowed his wife's, and the company paid the bill for those
21 three months, so we treated that as an expense on the
22 corporate books.

23 Q. Is there anything wrong with that?

24 A. Nothing wrong with it. There's another major item on
25 here that I think is misclassified that we found when we went

1 through. There was a check charged to Dr. Puchalski or to
2 Amy Puchalski, and it's marked in the Plaintiff's Exhibit 310
3 Ocean Oaks for \$10,000 paid to Nelson Mullins. Nelson
4 Mullins did no work on Ocean Oaks and it was really a legal
5 expense paid on behalf of the corporation to Nelson
6 Mullins --

7 MR. CLEVELAND: I object -- just a minute, Mr.
8 Sheheen -- I object to his testifying without laying any
9 foundation as to how he knows this information and where he
10 got this, and so I would object to this.

11 THE COURT: I understand. Very well.

12 MR. SHEHEEN: They testified about it, their expert did.

13 THE COURT: Just because I'm the fact finder --

14 MR. SHEHEEN: Help you out?

15 THE COURT: Because I bet you dollars to donuts he had a
16 reason for doing that, Mr. Sheheen.

17 MR. SHEHEEN: Mr. Sheheen.

18 THE COURT: Mr. Sheheen, when he looked at it, he had a
19 reason for it.

20 MR. SHEHEEN: Let's talk about that.

21 THE COURT: That really is what Mr. Cleveland is saying.
22 Then he'll know.

23 MR. CLEVELAND: My concern is it's one thing to talk
24 about from an accounting perspective. He's now talking about
25 the history of the transaction as if he has firsthand

1 knowledge about it, and I would think before he does that
2 he's got to lay some foundation.

3 THE COURT: That's right. I agree with that. I agree.
4 I don't disagree with that at all. That's why I'm stopping
5 and saying go give me the foundation because I've got to make
6 the finding of fact.

7 MR. SHEHEEN: And I'm happy to do that. I just want to
8 remark that opposing side's expert testified about each of
9 these items and made judgments about what they were.

10 THE COURT: I understand.

11 MR. SHEHEEN: And decided that for whatever reason they
12 weren't business expenses or whatever the --

13 THE COURT: I understand that completely.

14 MR. SHEHEEN: Okay.

15 THE COURT: And as I understand it Mr. Sheheen, who is
16 the accountant for the corporation, says no, and there's a
17 reason for it.

18 Q. As an expert and based on your interactions what do you
19 know about the \$10,000 and how do you know it?

20 A. I don't know for a fact anything other than I was told
21 Nelson Mullins never did any work for Amy Puchalski on 310
22 Ocean Oaks.

23 MR. CLEVELAND: Objection. I object.

24 THE COURT: I will take it not for the truth of the
25 matter asserted, simply what he was told and why he did what

1 he did with it.

2 MR. CLEVELAND: I apologize for raising my voice, but
3 the witness wouldn't stop.

4 THE COURT: That's all right. No problem.

5 MR. SHEHEEN: That's why I asked him in his opinion
6 because he can testify --

7 THE COURT: I understand that, doesn't go to the truth
8 of the matter asserted, he was told something, and that's the
9 reason he did what he did.

10 THE WITNESS: We did not reclassify it. I was just
11 pointing out that it was charged to Dr. Puchalski's draw, it
12 should not have been something paid on behalf of Amy
13 Puchalski.

14 Q. All right. Did it get charged to Dr. Puchalski anyway?

15 A. Yes.

16 Q. All right. Was that part of his draw or capital account
17 or what?

18 A. Yes, it was charged as a distribution against his
19 capital account.

20 Q. So you counted that as income to him?

21 A. Yes.

22 Q. Regardless of whether it actually went to him or not,
23 you counted it as income to him, is that right?

24 A. Yes.

25 Q. Is there anything wrong with him getting that \$10,000

1 even if he didn't get it?

2 A. Not that I know of.

3 Q. Okay. And how about the \$24,443?

4 A. That was paid to Amy Puchalski, it was listed on the
5 payments to Amy Puchalski on the lists that you have of all
6 the payments made to her, and I don't know what it was for,
7 but I do know it was charged to Dr. Puchalski's draw.

8 Q. Was that appropriate?

9 A. It was appropriate.

10 Q. And how about the \$7,500?

11 A. Charged to Dr. Puchalski's draw.

12 Q. And was that -- was he entitled to that?

13 A. Yes.

14 Q. And how about the \$4,250?

15 A. Those were charged to his draw and are shown on
16 Plaintiff's Exhibit 296.3.

17 Q. Okay. So why are they -- why is -- in your opinion why
18 is the plaintiff claiming that these are somehow improper?

19 MR. CLEVELAND: Objection.

20 THE COURT: Sustained.

21 THE WITNESS: I have no opinion.

22 Q. Okay.

23 A. I don't know why except that --

24 THE COURT: You don't have to worry about that. He's
25 going to ask you another question. Hold up.

1 Q. Is there anything wrong with these payments?

2 A. No.

3 Q. Was Dr. Puchalski entitled to these moneys?

4 A. Yes.

5 Q. Thank you.

6 MR. SHEHEEN: I would move into evidence, Your Honor,
7 Defendant's Exhibit 250.

8 MR. CLEVELAND: No objection.

9 THE COURT: All right.

10 (Defendant's Exhibit 250 received into evidence.)

11 (Discussion held off the record.)

12 Q. Let's look at Tab R, please, Mr. Sheheen. Are you there
13 with me? Defendant's Exhibit 251.

14 A. I have it.

15 Q. Okay. That's entitled at the top, schedule of amounts
16 paid to Amy Puchalski. Do you see that?

17 A. Yes.

18 Q. All right. What is this?

19 A. It's a listing beginning in May of 2007 to August of
20 2009 of all the disbursements that were made in Amy
21 Puchalski's name by SCENT.

22 Q. Who put that together?

23 A. The plaintiff.

24 Q. And what's the total?

25 A. \$2,308,128.

1 Q. And what is the timeframe that these run from?

2 A. May of '07 to August of '09.

3 Q. Do you know why those dates were picked? Do you know if
4 there were any payments to Amy Puchalski before that?

5 A. I do not have any knowledge.

6 Q. Okay. Do you know if there were any made after that?

7 A. I have no knowledge of that.

8 Q. Who were these moneys owed to?

9 A. They would pull those out of the ledger, the general
10 ledger that they either got from SCENT or from my office. We
11 had the general ledger.

12 Q. Who were these moneys owed to?

13 A. They were owed to Dr. Puchalski.

14 Q. And how do you know that?

15 A. Because they were just a part of his distribution and
16 they were checks made out to his wife.

17 Q. Have you looked at the ledger?

18 A. Yes.

19 Q. And reviewed it?

20 A. Yes.

21 Q. And is that your conclusion?

22 A. Yes, except for what we show that was expensed.

23 Q. Let's hold on to that for just a minute. Is there
24 anything wrong with Amy Puchalski receiving these moneys?

25 A. No. Lot of them were marked payroll for Dr. Puchalski

1 when they were issued.

2 Q. Did Amy Puchalski get anything that Dr. Puchalski wasn't
3 entitled to?

4 A. No.

5 Q. Did Dr. Puchalski get anything he wasn't entitled to?

6 A. No.

7 Q. Were they paying checks double, once to Amy Puchalski
8 and once to Dr. Puchalski?

9 A. Yes, some checks were made out to both, made out to Dr.
10 Puchalski or Amy.

11 Q. Okay. Why was Dr. Puchalski owed these moneys?

12 A. Why would he what?

13 Q. Why was he owed these moneys, Dr. Puchalski?

14 A. They were part of his wages, they were part of his
15 distributions, they were part of a multitude of things that
16 went on in the company, but they were charged to him and to
17 nobody else, and he lost that value out of the company's
18 capital base that he had when they were charged out.

19 Q. Would any of them be from the capital account?

20 A. Well, a lot of them would be because they weren't -- the
21 payroll would not be, but all the others would be.

22 Q. Okay. And who paid the taxes on them?

23 A. Dr. Puchalski.

24 Q. Let's look at the stars you have.

25 A. I've got a charge to capital account distribution

1 account, and that's 2,288,985 of that total, and we expensed
2 on the corporate return \$19,143 that went to Amy for
3 reimbursements of what she paid in behalf of the corporation.

4 Q. All right. Let's look at the expense reimbursements,
5 okay, and we'll just go through them one by one.

6 A. Okay.

7 Q. And I'll just guide you if I can have a little leeway.
8 The first one is meals and entertainment, do you see that?

9 A. Yes.

10 Q. Is that an appropriate reimbursement?

11 A. Yes, if she submitted something to verify that the
12 company owed her, which was what they did all the time, they
13 put invoices in for what was owed.

14 Q. Did you all have a practice of that with them?

15 A. No, we didn't set that up. They did. We told them they
16 had to have backup for it, so at the end of the year when we
17 called for backup, when we expensed these, we asked for
18 backup and we got backup.

19 Q. So if it's on here, that means that you were satisfied
20 it was appropriate?

21 A. Yes.

22 Q. The next one is -- strike that. You wouldn't know
23 exactly what it was spent on and where it was.

24 A. No.

25 Q. The next one was another meals and entertainment.

1 A. Meals and entertainment and automobile expense is most
2 of them.

3 Q. Tell me about automobile expense.

4 A. That was an expense the company was supposed to pay on
5 behalf of Dr. Puchalski which Dr. Puchalski paid and he
6 reimbursed his wife because it was on a credit card.

7 Q. And what do you mean on a credit card, like a joint
8 credit card?

9 A. Personal credit card.

10 Q. Okay.

11 A. He reimbursed her for expense she paid in behalf of the
12 company's policy on automobile use.

13 Q. To your knowledge did the company pay part of the
14 automobile use?

15 A. Yes, I think they did.

16 Q. Is that appropriate?

17 A. Yes.

18 Q. Is there a rule about how you handle that?

19 A. Oh, yes, there are several rules. It has to be business
20 use, it has to be reimbursement plan or actual expense, it
21 has to be depreciated or taken on mileage. There are all
22 kind of rules affecting an automobile in any business.

23 Q. Would you have applied those rules to your work for
24 SCENT?

25 A. They set their own rules. We did not participate in it,

1 but we explained to them what their options were.

2 Q. Okay. And while we're talking about these expenses, did
3 you ever find expenses that were billed as company expenses
4 by SCENT that you determined should not be?

5 A. Yes. In the beginning of the company's history I would
6 go through all the credit cards and find something paid with
7 a company credit card that was not, and I would go over it
8 with Dr. Puchalski, take it out and charge it to him. So I
9 never found an expense that was personal that I left in the
10 company's expense. I always took it out.

11 Q. Was that part of your tasks and services?

12 A. Yes, part of my expectations from the client.

13 Q. Okay. And did the client comply with whatever you
14 recommended?

15 A. Every time he obeyed whatever we suggested had to be
16 done.

17 MR. SHEHEEN: Your Honor, I'm done with that. If I
18 could put into evidence before we break.

19 THE COURT: 251. Any objection?

20 MR. CLEVELAND: No, Your Honor.

21 THE COURT: Very well.

22 (Defendant's Exhibit 251 received into evidence.)

23 (Discussion held off the record.)

24 THE COURT: I know I don't need to because I know you've
25 testified many times, but I have to admonish you, you cannot

1 talk about your testimony with anyone. You can talk about
2 baseball or anything else but not about this case.

3 (Trial of the case adjourned for the day at 5:00 p.m.)

4 (Trial of the case resumed on 4/2/14 at 10:00 a.m.)

5 THE COURT: All right, yes.

6 MR. SHEHEEN: Thank you, Your Honor.

7 Q. Mr. Sheheen, let's turn, we were going through
8 yesterday, you'll recall, some exhibits that you had
9 prepared; is that correct?

10 A. Yes.

11 Q. Okay. Let's turn to the exhibit behind Tab S which is
12 Defendant's Exhibit 252. Are you there?

13 A. Yes.

14 Q. Okay. Did you prepare this exhibit?

15 A. Yes, I prepared the right-hand column.

16 Q. And again, just for ease, on the left-hand column is the
17 numbers from the Plaintiff's exhibit that you've put on
18 there.

19 A. Yes.

20 Q. And under SHG is your calculations?

21 A. Yes.

22 Q. Tell the Judge what you did and where your numbers
23 differed and why.

24 A. They originally had a purchase price of 1.8 million for
25 Dr. Dyce's interest, and they added some excess distributions

1 and put the distributions subsequent to May the 9th after he
2 left and put a value for Somnus and came up with the ultimate
3 price.

4 Q. Why didn't you include distributions after Dr. Dyce
5 left?

6 A. Well, because I did not determine in my opinion that he
7 was entitled to anything after he left the practice.

8 Q. Okay.

9 A. So what I did was I began with my negative purchase
10 price of the calculation prior to this calculation, which
11 took the plus and the minus, the excess distributions, one to
12 Dr. Dyce and one to Dr. Puchalski, and I limited the value of
13 Somnus to \$100 rather than their value because the Somnus
14 departure agreement says you get \$100 if you leave.

15 Q. I don't know if the Judge has seen that, so I'm going to
16 provide you with a copy. I don't think it's in evidence yet.
17 I'm going to hand you what's been marked as Defendant's
18 Exhibit 257 and I'm just going to show you my copy if that's
19 okay.

20 THE COURT: I'll just glance at it and hand it right
21 back.

22 Q. Turn to page 1 of 5 of the operating agreement.

23 A. Yes, sir.

24 Q. And look at the bottom there where it says issuance and
25 redemption of membership interests.

1 A. Yes, sir.

2 Q. Do you see that?

3 A. I do.

4 Q. Read the second sentence very slowly to the Court.

5 A. It says the membership interest shall be issued for a
6 \$100 capital contribution, and once a member is no longer a
7 shareholder of SCENT, such membership interest shall be
8 redeemed for \$100 by the company.

9 Q. Do you have any record of Dr. Dyce ever paying the \$100
10 capital contribution into SCENT?

11 A. No, I don't.

12 MR. SHEHEEN: Your Honor, I'd move Defendant's Exhibit
13 257 into evidence.

14 MR. CLEVELAND: No objection.

15 THE COURT: Very well.

16 (Defendant's Exhibit 257 received into evidence.)

17 Q. Do you know why plaintiff's expert used \$55,114 there
18 instead of the 100?

19 A. Yes.

20 Q. Tell the Court why that number is there in your opinion.

21 A. It was a \$12,000 management fee paid to Dr. Puchalski,
22 which they didn't agree with, and the half of the cash
23 balance in the bank on that particular date made the 55,000
24 that they used in their schedule.

25 Q. And you've already addressed the \$12,000 payment, is

1 that right?

2 A. Yes.

3 Q. And now just mention again why you think the \$100 is the
4 appropriate number.

5 A. Because that's what the operating agreement states, if
6 you depart you get 100, if you come in you pay 100.

7 Q. Very briefly, let's go back up to where it said excess
8 distributions 5/9/10. I want to make sure the Court
9 understands your numbers there versus what their numbers
10 were.

11 A. Their excess distributions we went over yesterday, and
12 my excess distributions were on the two schedules that I
13 presented, one for 8 and one for 9, which showed in one
14 instance one doctor had a small excess and another instance a
15 different doctor had a small excess.

16 Q. Did you evaluate each distribution that was discussed in
17 plaintiff's experts exhibits, did you examine them?

18 A. Yes, I did.

19 Q. Did you find any that were improper for Dr. Puchalski or
20 his wife to receive?

21 A. I did not.

22 Q. And what was your conclusion on this chart here?

23 A. That the buyout agreement for Dr. Dyce was short by an
24 amount of 658,000 that he would have owed Dr. Puchalski
25 instead of Dr. Puchalski -- or owed SCENT rather than SCENT

1 owing him.

2 MR. SHEHEEN: Okay. Your Honor, I would move Exhibit
3 252 into evidence. That's the chart we were just discussing.

4 THE COURT: Any objection?

5 MR. CLEVELAND: No, Your Honor.

6 THE COURT: Very well.

7 (Defendant's Exhibit 252 received into evidence.)

8 Q. Mr. Sheheen, turn with me to the next page to Tab T.

9 Did you prepare this exhibit?

10 A. I did.

11 Q. Could you briefly describe to the Judge what it is? And
12 then we'll go through the numbers.

13 A. When Dr. Dyce left on May 9th of 2010, I listed the
14 outstanding debt that was owed by the corporation on the day
15 that he left, and that list is what that debt is.

16 Q. All right. Now, is this debt of SCENT or SCENT Land?

17 A. This is the debt of SCENT.

18 Q. Could you go through each one of these?

19 A. I took them off of the balance sheet that I had prepared
20 on that date for SCENT, so to get to the balance sheet I had
21 to have these numbers to start with. In that sense I went
22 through each one of them.

23 Q. And what are these different debts for within the
24 practice? Are these practice expenses, practice assets, what
25 are they?

1 A. They are practice debt. Some of them represent assets
2 that they owed for, some of them represent other things, the
3 line of credit, insurance carriers, they have no assets
4 behind them, but they're a debt that the company owed on that
5 day.

6 Q. And in your role as SCENT's financial adviser and
7 accountant do you advise them on debt?

8 A. Generally speaking, I was made aware of debt that they
9 were going to create because we had to use the numbers in the
10 financial statement preparation, but I did not have a policy
11 of advising them on what debt to incur and when to incur it.

12 Q. And previously you talked about the distributions that
13 are paid to doctors and when those are paid and how they are
14 paid. Do you know if those distributions -- well, let me
15 look at this. Let me show you a provision of the shareholder
16 agreement that's been previously introduced as Plaintiff's
17 Exhibit 7.

18 So that would be in your book, Your Honor, the original
19 book that you had, Plaintiff's Exhibit 7 in that book Mr.
20 Cleveland gave you.

21 THE COURT: Yes.

22 Q. I just want you to read very slowly into the record what
23 the agreement said about distributions 3.14A, 3.14A, and give
24 the Court a minute to get there. 3.14A.

25 A. The paragraph is entitled distributions, each year all

1 compensation including bonuses --

2 Q. You can just start with A. It will save us a little
3 time.

4 A. Section A, every two weeks the physician shall receive a
5 distribution in such amount as recommended by the managing
6 shareholder based on available cash flow from time to time
7 and approved by the majority of the shareholders called the
8 biweekly distribution.

9 Q. All right. What helps to determine in the practice --
10 I'll leave that so you can look at it -- what helps to
11 determine in the practice the available cash flow?

12 A. The cash on hand and the needs that the company will
13 have for cash as it projects it's incoming cash and it's
14 necessary outflow.

15 Q. And how does debt tie into what cash is available?

16 A. Debt has fixed asset -- I mean liability payments which
17 take up cash flow, so it plays a part in deciding how much of
18 the current cash you might declare for distributions.

19 Q. Can you in your experience, and given what you've done
20 in the past and your relationships with companies, can
21 companies use more cash to pay down debt, or can they make
22 more distributions, how do they make those decisions?

23 A. I think they make it on the basis of the timing of the
24 decision. Sometimes they will pay down debt, sometimes they
25 will pay distributions, depending upon the greatest need at

1 the moment for the cash.

2 Q. Okay. And we looked previously through a chart that you
3 have prepared that showed how the debt spiked up or grew up
4 in 2010. Do you recall that?

5 A. Yes, that it peaked in 2010.

6 Q. Do you recall if there were big distributions being paid
7 out during those periods of time?

8 A. Yes, there were.

9 Q. So was the debt increasing while distributions were
10 being paid out to Dr. Dyce and Dr. Puchalski?

11 A. Yes.

12 Q. As their financial adviser if in February of 2010 you
13 had known that Dr. Gunnlaugsson was adverse to the company,
14 how would you have advised them in relation to debt and
15 disbursements?

16 MR. CLEVELAND: Objection, Your Honor. I think it's
17 speculative, it's not relevant.

18 MR. SHEHEEN: It's very relevant.

19 MR. CLEVELAND: I feel like the lawyer in front of Judge
20 Baker who couldn't figure out the right ground.

21 MR. SHEHEEN: Just say I don't like it.

22 THE COURT: Actually, I think I was going to say we've
23 already been there, we've already plowed this field, I do
24 believe. I think that we've dealt with the issue, and as I
25 recall, there was an objection, and he was testifying as an

1 expert, and it really is in a general sense, and I think that
2 while you've asked him with regards to Dr. Gunnlaugsson, I
3 think it's a general observation for any accountant in his
4 opinion based upon his position as an accountant and a
5 financial expert, not only for this practice but any practice
6 because as I recall his answer yesterday, he was -- it was
7 when there is trouble on the horizon I think is how he
8 couched his answer.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: I advise my clients that they need to pay
11 down debt, no matter what that trouble is on the horizon.

12 THE WITNESS: Yes.

13 THE COURT: So that makes him.

14 MR. SHEHEEN: We've been there.

15 THE COURT: I think so.

16 MR. SHEHEEN: Thank you, Your Honor.

17 THE COURT: I let you see the sausage being made.

18 MR. SHEHEEN: Thank you.

19 THE COURT: So I don't want to put him in a position of
20 making a judgment with regards to this particular person, but
21 that's his advice in general.

22 MR. SHEHEEN: Beg the Court's indulgence one minute.

23 THE COURT: Indeed.

24 Q. Mr. Sheheen, I don't know if you performed these
25 calculations or not, if not you just tell us, if -- assume

1 that SCENT had used the excess distributions from February of
2 this year forward, of 2010 forward, to pay down debt instead
3 of paying distributions, do you know how much of that debt
4 would have been paid down?

5 A. I performed a calculation that showed the wages and the
6 other distributions during that period of time, and the wages
7 during that period of time minus the total would be
8 approximately, as I recall, \$700,000 could have been paid
9 toward debt if they did not take distributions, had only
10 taken salary.

11 Q. Okay. I think we've been through Exhibit U, we've been
12 through Exhibit V, I want you to turn to -- excuse me, I
13 shouldn't say exhibit, Tab W. For the record, I was
14 referring to tabs not exhibits. Tab W which is Defendant's
15 Exhibit 256.

16 And I'm back in the book we started out with this
17 morning, Your Honor, I apologize?

18 THE COURT: Don't.

19 Q. W. To refresh the Court's recollection and my
20 recollection, what was this sheet showing?

21 A. This was a schedule that showed the distributions paid
22 to Dr. Dyce and Dr. Puchalski from February 1, 2008 to July
23 the 16th, 2008.

24 Q. Okay. And what was your testimony or what is your
25 testimony about whether these were equal or whether they were

1 different?

2 A. They were different. They were unequal.

3 Q. And could you go through here and just show some of the
4 ones that are larger than are unequal?

5 A. A lot of them are equal and a lot of them are not equal,
6 there's a 42,000 that went to Dr. Puchalski that didn't go to
7 Dr. Dyce.

8 Q. Could you just walk us through those?

9 A. Beg your pardon?

10 Q. When you're talking about it if you could just point to
11 us approximately how far down the page you are.

12 A. Okay. On February the 5th there was a \$42,000
13 distribution to Amy Puchalski on behalf of Dr. Puchalski
14 which represented two 21,000's that Dr. Dyce had gotten, and
15 you can see there's a little timing difference in when each
16 doctor got them. Same thing is true of some of the 50,000
17 ones, but some of the ones that were not equal, Internal
18 Revenue Service, there was a \$50,000 one on May the 5th.

19 Q. Let's stop there because I want us to understand how
20 that's a distribution to Dr. Puchalski if it says Internal
21 Revenue Service. Could you explain that to us?

22 A. The company would issue a check in his behalf to the
23 Internal Revenue Service to make payments on his estimated
24 taxes, and then we would charge that to him as a
25 distribution.

1 Q. All right. Is that appropriate?

2 A. Yes.

3 Q. Okay. Continue.

4 A. Two checks that were paid out for the lake lot which are
5 right below that, one check for the lake lot was -- there was
6 not a corresponding check made to Dr. Dyce. That was charged
7 to Dr. Puchalski.

8 Q. What's that date there?

9 A. That date is May 5th.

10 Q. Okay. Anything wrong with that being done that way?

11 A. No, there's nothing wrong with it.

12 Q. Okay.

13 A. On June 2nd there was \$241,000 paid to the internal
14 revenue in behalf of Dr. Puchalski. Dr. Dyce did not get a
15 corresponding distribution. On the second page of the
16 exhibit there is a \$100,000 paid to Dr. Puchalski on July
17 8th. Dr. Dyce did not get that.

18 Q. All right. Let's look at that one for a minute, okay?

19 A. Yes.

20 Q. What was that one titled?

21 A. Sweep plus wire fee.

22 Q. Do you know what they were referring to when they called
23 them sweeps?

24 A. Yes, they were referring to a distribution, and they
25 called them a lot of different things, one of them was sweep,

1 one of them was K-1, so there was no consistency in what they
2 called them.

3 Q. Did that affect your treatment of them?

4 A. No.

5 Q. Did that affect who was entitled to receive them?

6 A. No. And then the last big one that Dr. Dyce did not
7 share in was a payment on July 15th of 111,000 which was sent
8 to the internal revenue, and we charged that to Dr.
9 Puchalski's distribution, so those numbers indicate that
10 during this period Dr. Dyce got 617,000 and Dr. Puchalski got
11 1,259,000.

12 Q. At the end of the year, this was 2008, would these
13 figures be reflected on the respective tax returns of Dr.
14 Dyce and Dr. Puchalski?

15 A. No, not on the tax return, they would be reflected as
16 distributions on the corporate tax return. On the personal
17 tax returns of Puchalski and Dyce the income would be
18 reflected that was generated by the company during the year
19 and what percentage of it belonged to them.

20 Q. And would the fact that different distributions amounts
21 have occurred show in the tax returns that there were
22 different levels of income between the two?

23 A. Yes.

24 Q. And how did you reflect that?

25 A. I reflected their share of the earnings on the return

1 and reflected their distributions in the computation of the
2 capital account balances.

3 Q. And would you have explained that to the doctors when
4 you met with them?

5 A. Yes, I would.

6 Q. And we've talked previously about you meeting with Dr.
7 Dyce and his wife. Did you have similar meetings with Dr.
8 Puchalski and his wife?

9 A. No.. I had similar meetings with Dr. Puchalski but not
10 with Mrs. Puchalski. She generally did not participate in
11 the tax return preparation.

12 MR. SHEHEEN: Okay. And, Your Honor, I can't remember
13 if I left you a copy of the Somnus things that I showed you.
14 If not I'll just give it to you, the Somnus -- just to make
15 sure you have one of everything.

16 THE COURT: Okay. That would be great because I do not
17 remember seeing that.

18 MR. SHEHEEN: Previously you didn't have that. This was
19 the thing talking about the \$100.

20 THE COURT: I know exactly what you're talking about.

21 MR. SHEHEEN: Beg the Court's indulgence one moment.

22 THE COURT: Sure.

23 MR. SHEHEEN: Your Honor, I think I already moved into
24 evidence 256 yesterday, but just out of an abundance of
25 caution, let me just go ahead and move it in today.

1 MR. CLEVELAND: 256?

2 MR. SHEHEEN: Yes, the one we were just going through.

3 MR. CLEVELAND: No objection.

4 THE COURT: Very well.

5 (Defendant's Exhibit 256 received into evidence.)

6 MR. SHEHEEN: I believe everything that's in this book
7 should be in evidence at this point.

8 Q. Mr. Sheheen, when you started your testimony you
9 described your experience and what you do in your practice.
10 Could you remind us of that, what you do in your practice?

11 A. We represent various companies and individuals for tax
12 work, financial statement preparation and general management
13 services.

14 Q. Do you advise companies about general management
15 services?

16 A. Yes.

17 Q. How long have you been doing that?

18 A. Since I've been in practice.

19 Q. And how many years is that?

20 A. 55.

21 Q. I don't think I ever asked that. Okay. And you
22 continue to do that?

23 A. Yes.

24 Q. And could you estimate for the Court how many businesses
25 you think you have given general management services

1 advisement to?

2 A. I couldn't estimate, but there were hundreds over the
3 time that I've been practicing.

4 Q. Were you aware that SCENT Land Holdings and SCENT were
5 having issues relating to the Lugoff construction in 2010?

6 A. Only when the instance of not having the money to pay
7 the contractor surfaced I was made aware of that, but I had
8 no other prior information that there was any difficulty.

9 Q. And when you became aware of that, what was the concern?

10 A. Well, the concern was that they had to make a payment to
11 the contractor, I think to prevent a lien from being filed,
12 and they had to close a loan, and that loan couldn't be
13 closed because both parties were not willing to sign it,
14 subsequently this transfer of funds took place from one
15 company to the other to prevent that from happening.

16 Q. All right. Let's talk about that transfer of funds.
17 You were aware of that?

18 A. After the fact.

19 Q. Okay. And what occurred, to your knowledge, and what
20 you reviewed?

21 A. Well, it is my understanding that SCENT Land advanced --
22 SCENT ENT, SCENT, advanced to SCENT Land Holdings the
23 necessary funds to make the payment to the contractor.

24 Q. Was there anything improper from a financial or a
25 management standpoint in doing that?

1 A. None at all.

2 Q. Do you monitor the cash flow on the financials?

3 A. Only on a monthly basis when I prepare the financial
4 statements.

5 Q. And you do that every month?

6 A. Beg your pardon?

7 Q. Do you do that every month?

8 A. Yes.

9 Q. And do you recall if there were cash flow issues at that
10 time because of what you just discussed?

11 A. Yes.

12 Q. Could you describe to the Court generally what that was?

13 A. That SCENT Land did not have the money, perhaps at that
14 moment was even overdrawn. SCENT --

15 MR. CLEVELAND: I'm going to object. Your Honor, I
16 think he said he didn't know about this contemporaneously and
17 he heard about it later, and he's now testifying as a fact
18 witness about what happened, and I object to that.

19 THE COURT: Let me tell you what I heard, my
20 understanding is he's talking about the monthly financial
21 statements. What he's talking about he learned later was
22 that the loan didn't go through because, as he understood,
23 both parties were not willing to sign the documentation for
24 the loan to go through. He learned about that later. Now
25 he's shifted, as I understand it, and is now talking about

1 the monthly financial statements and the condition of the
2 monthly financial statements which would have been February
3 and March, April in 2010. That's where I think we are. Am I
4 wrong?

5 MR. SHEHEEN: That's where we are, yes, ma'am.

6 MR. CLEVELAND: But if that's where we are --

7 THE COURT: Yes, that's my understanding.

8 MR. CLEVELAND: -- I would object to these broad
9 descriptions of what happened without telling us where and
10 when he was when he observed what he observed, who was
11 talking, the kinds of things that --

12 THE COURT: Let me tell you what I'm understanding where
13 he is, and then you all correct me if I'm wrong. My
14 understanding is that Mr. Sheheen took their records and he
15 did monthly financial statements, that was part of his
16 duties, and that the question is during this period of time,
17 early 2010, as I understand his testimony, what was their
18 cash flow situation in early 2010, and what he is saying is
19 that based upon the financial statements that I was preparing
20 they were in a cash flow crunch. That's what I'm hearing.
21 And I don't think he's talking about -- I know what you're
22 saying -- I don't think he's talking about their situation
23 with the bank. What he's talking about at this moment, as I
24 understand it, is just the condition of the financial
25 statements that he's preparing on a monthly basis going, gee,

1 where's the cash, the cash flow is crunchy.

2 Am I right, are you telling me that?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Okay. So let me just tell you, here's Mr.
5 Cleveland's concern is that he wants to be concerned that
6 your testimony is limited to the work you're doing rather
7 than what you might be hearing about a dispute with the bank
8 or whatever because that's hearsay, and then we've got to
9 establish -- he's correct, I would need to know how you
10 learned that because there are hearsay rules that would come
11 into play. So if we morph into what's going on with the bank
12 and what's going on, whose not signing or who is signing what
13 or what they're signing or what they're looking at, it's
14 important that I know the information from whom that came
15 because there are rules of evidence that have interplay with
16 that. But my understanding is at this point what you're
17 talking about is your work on those financial statements, and
18 in the back of my head I'm hearing you have conversations
19 going, I don't like the cash flow situation. But what I'm
20 hearing you testify about is what you're doing as their
21 accountant preparing those monthly financial statements, yes?

22 MR. SHEHEEN: Yes, ma'am.

23 THE COURT: Okay. So but Mr. Cleveland needs to know,
24 and I need to know because I have to rule on it, if you begin
25 to talk about that dispute that you learned about, I need to

1 know how you learned it because that gets to be important,
2 okay? Yes.

3 Q. Just to set the stage a little bit -- which you did
4 well -- you were preparing monthly financial statements.

5 A. Yes.

6 Q. You were generally aware there was a problem with the
7 building and closing on it.

8 A. Yes.

9 Q. In those financial statements that spring, February,
10 March, April, did you have any concerns?

11 THE COURT: Have you got the dates? 2010.

12 MR. SHEHEEN: I'm sorry, 2010.

13 THE COURT: Okay.

14 Q. Do you recall if you had any concerns about the cash
15 flow in February, March 2010?

16 A. I can't recall whether I did or did not at this point.

17 Q. During that time did you observe -- and I'm just asking
18 what you observed -- would you interact with Dr. Puchalski?

19 A. Yes, I did.

20 MR. CLEVELAND: I object. I thought he testified that
21 he didn't recall from that specific time period, and now it
22 sounds like Mr. Sheheen is trying to lead him back through
23 what he said he couldn't recall.

24 THE COURT: Maybe.

25 MR. SHEHEEN: That's not what I'm doing, but if I was I

1 could do it.

2 THE COURT: He may be doing that. He's just asking did
3 you observe -- we're talking about February, March -- here's
4 all we've got at this point, did you observe Dr. Puchalski in
5 February and March of 2010, and I can't wait for the answer,
6 and I think it's okay.

7 MR. CLEVELAND: Thank you.

8 THE COURT: Did you observe him? Did you look at him?

9 Q. Did you observe or interact with Dr. Puchalski during
10 that period of time?

11 A. Yes.

12 Q. How about, had you interacted with Dr. Puchalski
13 regularly during your work for SCENT?

14 A. Every month.

15 Q. All right.

16 A. I was required to attend the board meetings, I was
17 required to present the financial statements in detail at
18 every board meeting. To that extent I interacted with all of
19 the shareholders and their office manager.

20 Q. Did you, during that time, and I'm not just talking
21 about the spring of 2010, I'm talking about during the entire
22 time you interacted and worked with him, would he ever seek
23 your advice?

24 THE COURT: He being?

25 Q. He being Dr. Puchalski. I'm sorry, did Dr. Puchalski

1 ever seek your advice?

2 A. Yes, he did.

3 Q. Did he ever discuss with you decisions that he might
4 would make?

5 A. He discussed them with me in the board meetings as he
6 did with the other members in attendance.

7 Q. Of the decisions that you are personally aware of, and I
8 know you can't recall them all, in your opinion, as someone
9 who has advised businesses about management, general
10 management matters for 40-something years, did Dr. Puchalski
11 act in the best interests of SCENT -- strike that. That's
12 leading. Whose best interest did Dr. Puchalski act in?

13 MR. CLEVELAND: I object to this, this kind of character
14 question --

15 MR. SHEHEEN: It's an opinion question.

16 MR. CLEVELAND: -- on the grounds of relevance, grounds
17 he's not qualified. He's a financial and accounting expert.

18 THE COURT: I understand. Let me tell you what I'm
19 taking his answer to be, as an accountant, as an accountant
20 who has been qualified as an expert in financial analysis,
21 and I'm taking this opinion with regards to this particular
22 manager, and in his relationship with this particular manager
23 and his decisions based on his observation and his expertise,
24 I'm taking it limited to those boarders. Very well, yes. Do
25 you want to ask his opinion, does he have an opinion?

1 Q. Do you have an opinion about from the things, the
2 interactions that you observed with Dr. Puchalski and the
3 decisions that you observed him make in your opinion whose
4 interests did he act in?

5 THE COURT: Okay. Now with regards to your objection.

6 MR. SHEHEEN: I can re-ask it.

7 THE COURT: You first asked him did he have one and then
8 you morphed it.

9 Q. Do you have an opinion -- I'll withdraw that question --
10 do you have an opinion about Dr. Puchalski's management in
11 relation to decisions that he made that you observed or were
12 aware of?

13 THE COURT: Why that's a yes or no.

14 THE WITNESS: Yes, I do.

15 Q. What is that opinion?

16 MR. CLEVELAND: I object. He's not qualified.

17 THE COURT: Sustained.

18 MR. CLEVELAND: Thank you.

19 Q. In your areas of expertise, of the decisions that he
20 made, do you have an opinion as to whose interests he acted
21 in?

22 THE COURT: That's a yes or no.

23 THE WITNESS: Yes, I do.

24 MR. SHEHEEN: Your Honor, do you want me to not ask what
25 his opinion is?

1 THE COURT: Come here.

2 (Judge and attorneys confer.)

3 Q. Mr. Sheheen, based on your experience and your expertise
4 do you have an opinion within a reasonable degree of
5 certainty in your area of expertise as to whether Dr.
6 Puchalski acted in the best interests of SCENT?

7 A. Yes, I do.

8 Q. And in that area of expertise within a degree of
9 reasonable certainty what is your opinion?

10 A. That he always acted in the best interests of SCENT.

11 MR. SHEHEEN: Thank you. Nothing further.

12 THE COURT: Cross-examination.

13 MR. CLEVELAND: Thank you, Your Honor. Would you give
14 me just two minutes to assemble.

15 THE COURT: Of course, Mr. Cleveland, take the time that
16 you need to get yourself prepared, absolutely.

17 (Recess held.)

18 THE COURT: Your witness, Mr. Cleveland.

19 MR. CLEVELAND: May it please the Court.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION BY MR. CLEVELAND:

22 Q. Good morning, Mr. Sheheen. If you cannot hear me, would
23 you ask me to pipe up?

24 A. Yes, sir, I will.

25 Q. And I'll try to be louder and slower to deal with the

1 acoustics in the room.

2 I'd like to talk with you a minute about some general
3 accounting principles.

4 A. Yes, sir.

5 Q. Particularly as they relate to how businesses report
6 their financial condition.

7 A. All right, sir.

8 Q. Would you agree with me that accounting is about the
9 process of both recording and presenting financial
10 information?

11 A. Yes, sir.

12 Q. Is that a sort of -- I know it does other things, but is
13 that a general overview of what accounting does?

14 A. Yes, it is.

15 Q. Now, when employees work for a company and they get
16 paid, isn't it true that the employer is required to report
17 those payments using a form W-2 that's sent to the Internal
18 Revenue Service?

19 A. Yes.

20 Q. And isn't it true that one of the reasons that our tax
21 system works in this country is because it's not voluntary?

22 A. Correct.

23 Q. And what that means, does it not, is that employees
24 don't have the luxury of deciding whether or not to pay their
25 taxes in the first instance because the employer is required

1 by law to withhold taxes that the employer is required to
2 remit to the government?

3 A. Yes, on compensation.

4 Q. Yes, sir. Now, in striking that bargain with the
5 employers the government allows the owners to receive their
6 money before the taxes are taken out, do they not?

7 A. Correct.

8 Q. Sir?

9 A. Beg your pardon?

10 Q. The laws allow employers to pay their taxes on April
11 15th every year, plus whatever estimated payments they may
12 have to make, but their weekly compensation is not
13 necessarily required to be withheld, is it?

14 A. Unless they have compensation treated as wages, and then
15 they're required to withhold them, but otherwise no.

16 Q. And when companies hire contractors to do work, they are
17 required to report those payments to the contractors using a
18 form 1099.

19 A. Correct.

20 Q. And employers are not required to withhold taxes from
21 the payments they make to contractors, are they?

22 A. No, sir.

23 Q. Now, isn't it true that it is improper to issue 1099's
24 to one's employees?

25 A. It is not suggested by IRS that that can be allowed. It

1 is often allowed because it's the only way to get the revenue
2 to the shareholder or the employee or the owner, whatever the
3 situation is.

4 Q. Let me see if I understood what you just said. You
5 said -- you used a number of passive verbs throughout that
6 first part. You said that the IRS suggests that it's not
7 allowed. Does that mean it's against the law to do that?

8 A. No, it's not against the law.

9 Q. Let me ask it this: Are you allowed to issue 1099's
10 under the governing rules and regulations in this country to
11 employees?

12 A. You are not allowed under the rules to do so. You're
13 supposed to put it on a W-2 form. There is a matter of
14 simple practice that happens every day that employees receive
15 1099's, which is not the preferred way.

16 Q. And it's against the rules.

17 A. And it's against the rules.

18 Q. But you don't -- it sounds like you're telling me every
19 day you violate those rules.

20 A. That I violate them?

21 Q. Yes, sir. Is that true?

22 A. No, I don't. The company violates them. I require the
23 company to issue the 1099 in the place of not issuing
24 anything so the employee shareholder would have to report his
25 income to the Internal Revenue Service. Without that the IRS

1 would not know that he had the income.

2 Q. Well, if it's an employee, why would you not be able to
3 issue a W-2?

4 A. The W-2's had been issued by the time we started to work
5 on the tax return. We do not prepare the W-2's for SCENT.
6 We do not do their payroll tax work at all.

7 Q. I'm not sure what you're telling me. I was asking you a
8 general question. Let me ask it again. Why is it that a
9 company would not be able to issue a W-2 with respect to
10 compensation it pays its employees?

11 A. There would be no reason that it could not do so.

12 Q. Okay. Now, you're familiar with how Subchapter S
13 corporations work?

14 A. Yes.

15 Q. And isn't it true that in a Subchapter S corporation
16 it's required that shareholders be compensated in proportion
17 to their ownership interest in the company?

18 A. Yes.

19 Q. And that means, does it not, that if two individuals are
20 each 50 percent shareholders in a company, they are entitled
21 to receive equal distributions?

22 A. Yes, with exceptions.

23 Q. And isn't it true that the mechanism by which a company
24 reports the distributions that it makes to its owners, its
25 shareholders, is by issuing K-1 reports.

1 A. Yes.

2 Q. Is it proper for nonowners of a Subchapter S
3 corporation, that is to say those that are just employees, to
4 receive K-1 reports with regard to the moneys they receive
5 from the company?

6 A. No.

7 Q. And I think you answered this, and if I've asked it
8 twice, I apologize, but isn't it true that someone who is a
9 50 percent shareholder in a corporation, a Subchapter S
10 corporation, is entitled to receive 50 percent of the moneys
11 distributed to the shareholders?

12 A. If he was 50 percent for the entire period of reporting.

13 Q. If he were 50 percent for a period less than the entire
14 reporting, would he be entitled to 50 percent of the
15 distributions made during the time that he was a 50 percent
16 shareholder?

17 A. Yes.

18 Q. Now, at any time have you ever seen any document, other
19 than one you might have prepared, that suggests that Dr. Dyce
20 and Dr. Puchalski entered into any agreement that Dr. Dyce
21 would be anything less than a 50 percent shareholder in
22 SCENT?

23 A. No.

24 MR. CLEVELAND: Do you have a copy of the old book, the
25 first book? What I need is Plaintiff's Exhibit 2.

1 THE COURT: I've got it. We'll share.

2 Q. Mr. Sheheen, would you look at page 3 of Exhibit 2?

3 A. Yes, sir.

4 Q. Have you ever seen -- this is a contract --

5 A. No, sir, I have never seen it.

6 Q. What it is is an agreement between Dr. Dyce and Dr.
7 Puchalski back in 2005 when SCENT first hired Dr. Dyce to
8 come work as an employee physician.

9 A. Yes, sir.

10 Q. Now, I'd like you to turn to page 3.

11 A. I have it.

12 Q. And I'd like you to read what it says under contract
13 term and just read that entire paragraph over and stop at B,
14 if you would.

15 THE COURT: To himself or do you want it out loud?

16 MR. CLEVELAND: I'd like you to hear it just to refresh
17 your recollection.

18 THE COURT: Sure, of course.

19 THE WITNESS: Item A says, contract term, as previously
20 mentioned this agreement shall be for a period of two years.
21 At least three months before the completion of the term of
22 this agreement Kershaw ENT shall notify the physician in
23 writing whether the physician shall become an equal
24 shareholder of Kershaw ENT effective the day after the
25 completion of the term of this agreement or sooner if agreed

1 to by the parties.

2 Q. Want to read the rest of the paragraph if you would?

3 A. Kershaw ENT notice to physician shall include the cost
4 and the terms of the physician's purchase of shares of
5 Kershaw ENT. The physician shall be able to purchase the
6 shares of stock of the corporation at the fair market value
7 of the underlying assets, accounts receivable and reimburse
8 an equal portion of the expenses incurred for advertising by
9 Kershaw ENT from March 1, 2005 until the physician becomes a
10 shareholder. The parties contemplate the physician shall be
11 an equal shareholder of the corporation though Kershaw ENT
12 currently employs one other physician with a similar
13 contract. The parties have determined as of January 1, 2005
14 the un-depreciated value of the equipment of Kershaw ENT is
15 approximately \$800,000.

16 Q. It's clear from what you just read, is it not, that the
17 agreement between Dr. Dyce and Dr. Puchalski was that within
18 two years, that is to say the end of February 2007, Dr. Dyce
19 was contemplated or intended to be an equal shareholder in
20 that company upon his buy-in?

21 MR. SHEHEEN: Your Honor, I'm going to object. He's
22 asking him to interpret a legal contract. I think it's
23 inappropriate.

24 THE COURT: What about that?

25 MR. CLEVELAND: I think it's an unambiguous statement.

1 I'm just trying to move him forward. I'll ask him just to
2 assume that.

3 THE COURT: Okay, go ahead, just ask him to assume that.

4 THE WITNESS: I've never seen the document. My
5 indication of when they became shareholders or didn't or
6 whether documents were amended or changed later was simply
7 what I was told.

8 Q. I understand, but I want you to assume that back in 2005
9 that the contract that the parties entered into for Dr.
10 Dyce's employment contemplated that he would be a
11 shareholder, an equal shareholder in two years, that is to
12 say by the end of February 2007 and that the buy-in would be
13 of the fair market value of the assets, want you to assume
14 that.

15 A. I would assume that that is correct based on what I just
16 read.

17 Q. Thank you. And when it refers to the fair market value
18 of the assets, it specifies an agreed upon amount for the
19 value of the equipment, does it not?

20 A. Yes.

21 Q. And that's \$800,000.

22 A. Yes.

23 Q. You told us yesterday that you think the fair market
24 value of the accounts receivable in May of 2010 is some
25 \$200,000.

1 A. Yes.

2 Q. And do you have an opinion as to whether it would have
3 been less in 2005?

4 A. Yes, my opinion would be that it might be less in 2005.

5 Q. Do you have an opinion as to how much less it would have
6 been?

7 A. No, I don't.

8 Q. So if you add on the accounts receivable to the value of
9 the equipment, for the benefit of being conservative let's
10 assume it's \$200,000. I won't ask you to haircut that. That
11 comes to a million dollars, does it not?

12 A. Yes, sir.

13 Q. The other major asset would be the cash.

14 A. Yes.

15 Q. And let's assume that's \$500,000. I don't know what it
16 was in 2005. It got to be about 500 later, didn't it?

17 A. Yes.

18 Q. So that's a million five, right?

19 A. Yes, sir.

20 Q. If the fair market value of the practice is a million
21 five, what would be the buy-in price if you were just buying
22 the assets if you wanted half of that company?

23 A. \$750,000.

24 Q. \$750,000, and that would take care and be an appropriate
25 consideration for all of the assets and for half of the

1 company.

2 A. Yes.

3 Q. Now let's go forward to February of 2007. Mr. Sheheen,
4 I've displayed on the screen Plaintiff's Exhibit 5 which is a
5 document that I love to call a buy-in sheet, and others take
6 issue with that name. Are you familiar with this sheet at
7 all?

8 A. No, sir, I've never seen it.

9 Q. Never seen it?

10 A. Never seen it.

11 Q. Okay. I want you to assume, Mr. Sheheen, that in March
12 of 2007 Dr. Dyce and Dr. Puchalski agreed that rather than
13 Dr. Dyce paying a lump sum cash payment for one half of the
14 company that he would continue to work and not be compensated
15 as a shareholder but rather have all the money that he would
16 have received as a shareholder go to Dr. Dyce until he had
17 paid for his buy-in to the company.

18 A. To go to Dr. Puchalski.

19 Q. I'm sorry, yes, to Dr. Puchalski.

20 A. Yes, I assume that.

21 Q. That's consistent with your understanding of what they
22 did, is it not?

23 A. What actually happened.

24 Q. And what actually happened.

25 A. Yes, sir, that was my understanding of what actually

1 happened.

2 Q. Were you aware that Dr. Puchalski and his staff created
3 buy-in sheets such as Plaintiff's Exhibit 5?

4 A. No.

5 Q. I want you to assume that they did, and I want to you
6 assume that as money was credited to Dr. Dyce's buy-in, it
7 would be recorded on this Plaintiff's Exhibit 5 and updated
8 as money was credited.

9 A. All right, I'll assume that.

10 Q. And I want you to assume that by February 1st, 2007 Dr.
11 Dyce had been credited with all the money that Dr. Puchalski
12 agreed would constitute his buy-in. I want you to assume
13 that.

14 MR. SHEHEEN: Your Honor, I'm a little bit confused
15 because of the years. Are we in 2007 or 2008?

16 MR. CLEVELAND: We're in 2008. I apologize.

17 MR. SHEHEEN: Okay. Thank you.

18 Q. Let me start all over, Mr. Sheheen. I'm sorry. I want
19 you to assume that between March 7th, 2007 and February 1st,
20 2008, during that period of time I want you to assume that
21 Dr. Dyce was credited with all of the money that Dr.
22 Puchalski agreed would constitute his complete buy-in to be a
23 50 percent shareholder.

24 A. All right. I'll assume that.

25 Q. And I want you to just know of a couple of things that

1 may be relevant to what I've asked you to assume, all right?

2 A. Yes, sir.

3 Q. I want you to assume that this buy-in sheet that's shown
4 on the screen, Plaintiff's Exhibit 5, was prepared under the
5 supervision of Dr. Puchalski and with his approval.

6 A. I assume that.

7 Q. And I want you to assume that the things that were
8 recorded here were all done with his consent and approval.

9 A. Yes.

10 Q. I want you to look now and see that up at the -- where
11 it lists the last sweep to be recorded on this document, it
12 says final, do you see that?

13 A. Yes.

14 Q. Mr. Sheheen, I want you to assume, and I can show it to
15 you, that the general ledger reflects and records that on
16 January the 28th, I'm sorry, February the 1st, 2008 that the
17 \$178,000 was the final sweep. In fact, rather than ask you
18 to assume, if you'll look at the book I gave you that says
19 Volume II, Selected Exhibits, would you turn to Exhibit 248,
20 there should be a tab that allows you to do that, and I have
21 in there the portions of the general ledger. Is that the
22 general ledger that SCENT created?

23 A. Yes.

24 Q. And you've dealt with that every month.

25 A. Every month.

1 Q. If you'll look at the bottom left, you'll see bold
2 numbers there and its exhibit number and then a dot and a
3 number. That's the exhibit number and the page number for
4 that particular page. Would you turn to page 258 of Exhibit
5 248?

6 A. I have it.

7 Q. You'll see that there's some sort of what was supposed
8 to have been highlighting, really turns out to be --

9 A. We're on page 258?

10 Q. Yes, sir, right smack dab in the middle of the page.

11 A. All right, sir.

12 Q. Under the date February 1st, 2008, Check 2412, see it's
13 kind of grayed out there a little bit?

14 A. I see it.

15 Q. If you look over, it shows the \$178,000 equal to what we
16 were -- \$178,000.

17 A. Yes, sir.

18 Q. And do you see in the middle of the general ledger it
19 says final sweep?

20 A. Yes, sir.

21 Q. I want you to assume that the reason that the word final
22 was put in the general ledger and also recorded on the buy-in
23 sheets was because it indicated it was the final payment to
24 be made under the process of the buy-in by Dr. Dyce of his
25 interest in SCENT.

1 A. Yes, I assume that.

2 Q. Now, with that assumption do you agree with me that
3 following February 1st, 2008 until the end of the year as a
4 50 percent shareholder in SCENT Dr. Dyce would have been --
5 was entitled to receive 50 percent of the K-1 distributions?

6 A. If he was determined to be a shareholder on that day.

7 Q. And you know for a fact that he didn't receive 50
8 percent of the distributions given to the shareholders, don't
9 you?

10 A. I do know that for a fact.

11 Q. And under the assumption that I've asked you to make
12 based on the documents you've seen would you agree that the
13 items of K-1 distributions that Mr. Livingston put in his
14 report as being excess distributions to Dr. Puchalski was
15 correct?

16 A. No, I would not.

17 Q. Why would you not?

18 A. Because Dr. Puchalski had a huge paid-in capital account
19 that he had already paid taxes on that he was entitled to
20 receive and should have swept out before Dr. Dyce became a
21 partner but he could not sweep it out because the company did
22 not have the money to do so, so he was not entitled to equal
23 distributions while Dr. Puchalski was getting out of the
24 company what he already had in the company and paid tax on.

25 Q. Let's talk about that for a minute. When I buy an

1 interest in a corporation, I'm entitled or that represents an
2 interest in the assets that the company owns, does it not?

3 A. Yes, it represents access to what the company owns,
4 unless there's some extenuating circumstance that does not
5 grant access.

6 Q. Right, but if I were to buy a 50 percent -- let's assume
7 that my partner, Mr. Ellison, owns a business, owns all of
8 it, and I buy a 50-percent interest in the company, and I pay
9 him the amount that he asks for that, and then he gives me
10 shares in the company or otherwise memorializes our agreement
11 that I'm a 50-percent shareholder, and thereafter as
12 distributions of profits are made I get 50 percent and he
13 gets 50 percent, if that happens, isn't it true that the cash
14 in the bank accounts of the company belong to the company,
15 not to Mr. Ellison?

16 A. Yes, that's true. All the assets belong to the company.

17 Q. Exactly, and so if the company at the time that I buy in
18 has cash in the bank, I'm entitled if it's distributed
19 thereafter to get half of it, aren't I?

20 A. I don't agree with that.

21 Q. Let's go back over it. You acknowledged a second ago
22 that once the company's owner sells a percentage of the
23 company to a new owner so the two of them now own the
24 company, they both have an interest in the assets of that
25 company, as you put it well I thought, access to those

1 assets, right?

2 A. Yes.

3 Q. But you also agreed with me that the old owner and the
4 new owner don't own those assets, do they?

5 A. They don't own them, the company owns them, but there
6 could be some liabilities for those assets. The problem we
7 have in this instance, Mr. Cleveland, is that they didn't
8 start the year together, so they couldn't end the year
9 together, and that was the purpose of all of the reasons that
10 the distributions were different. I don't know how you would
11 expect me to have protected each one of their interests other
12 than let them report exactly what they got for income tax
13 purposes, and that's what my presumption of requirement was,
14 and that's what I did because at the time there was no
15 controversy.

16 Q. I'm going to ask you about what you did in a minute, but
17 right now I'm just trying to get some general principles
18 established. And the principle that I believe is true, hope
19 you agree with me, is that when the owners of a company sell
20 a percentage, particularly of a Subchapter S company, and
21 they sell a percentage of the company based on what they
22 consider to be the value of the assets of the company to a
23 new person, that doesn't -- that thereafter the distributions
24 that are made by the company have to be proportionate to the
25 ownership interest in the company.

1 A. Should be proportionate, not have to be proportionate.

2 Q. Should be proportionate.

3 A. Should be proportionate.

4 Q. Right. And each of the shareholders going forward has a
5 right to be -- to receive distributions in accordance with
6 their percentage of ownership in the company.

7 A. Yes.

8 Q. And so I've asked you to assume that Dr. Dyce, as of
9 February 1st, 2008, was a 50-percent owner in that company.

10 A. I assume that.

11 Q. You know what assumptions are.

12 A. I assume that he was a 50 percent owner on February 1.

13 Q. Thank you. Now, when we went over how \$750,000 might
14 have been calculated, it includes the fair value of the
15 accounts receivable, right?

16 A. Based on the document I read, yes, it included the
17 assets that he was buying in.

18 Q. And it included a \$500,000 cash in the bank value too,
19 didn't it?

20 A. I don't know what the cash was.

21 Q. I know that, but I asked you to assume.

22 A. In assuming that that was there, yes.

23 Q. All right. And so if Dr. Dyce, excuse me, if Dr.
24 Puchalski determined the value of the company was 700 -- that
25 the value of half of the company was \$750,000, and he says to

1 Dr. Dyce, you pay me that plus a little bump for the tax
2 differential, and you're in as a shareholder, wouldn't you
3 agree with me that once he's in, he's entitled to 50 percent
4 of all the distributions that are made by the company going
5 forward?

6 A. I would agree with that with the exception that if Dr.
7 Puchalski had a huge balance in the company, that balance was
8 his to claim at some point, which is what he did.

9 Q. I asked you to assume that he sold that balance because
10 that was figured into the value of the company.

11 A. Not what the company owed him was figured in it, just
12 the cash was figured in it.

13 Q. When you say what the company owed him.

14 A. He had a previously taxed income account of more than a
15 half a million dollars sitting in the company.

16 Q. That's a function of being the sole shareholder. That's
17 true of any single shareholder of a Subchapter S corporation
18 that receives money, once they receive it the single
19 shareholder is obligated to pay the taxes, right?

20 A. Once they don't receive it he's obligated to pay the
21 taxes.

22 Q. Either way, you're right, I agree with you.

23 A. That's correct.

24 Q. Either way he's obligated to pay the taxes.

25 A. Right.

1 Q. And if he leaves it in the bank account with the taxes
2 having been paid, it's an asset of the company, is it not?

3 A. I don't see it that way, no, it's not an asset of the
4 company to the extent that the company hadn't satisfied his
5 right to withdraw. Should he have taken that money the day
6 before Dr. Dyce came in, it wouldn't be in the bank. He had
7 the right to take it.

8 Q. He also had the right to sell the value of it to Dr.
9 Dyce, did he not?

10 A. Yes, he has the right to have a formula to sell the
11 interest in the company, no doubt about that.

12 Q. And he has a right to sell that asset?

13 A. He has a right to sell that asset.

14 Q. Actually, he doesn't. He has a right to sell an
15 interest in the company that has that asset.

16 A. Yes.

17 Q. Isn't that a better way to say it?

18 A. Yes.

19 Q. Now, I want you to assume that that's what he did.

20 A. All right.

21 Q. All right?

22 A. Mm-hmm.

23 Q. So wouldn't you agree under those assumptions as of
24 February 1st, 2008 going forward to the end of the year Dr.
25 Dyce had the right to receive the same amount of

1 distributions that Dr. Puchalski received?

2 A. With no extenuating circumstances, yes.

3 Q. And he didn't receive those, did he?

4 A. No.

5 Q. And with the assumptions that I've asked you to assume
6 wouldn't you agree that the items that Mr. Livingston
7 reported as K-1 distributions that were excess and that Dr.
8 Puchalski got and Dr. Dyce didn't get that they were
9 accurate?

10 A. That was Mr. Livingston's decision and his
11 interpretation. It was not mine because of what I told you
12 about the previously taxed income.

13 Q. I didn't ask you that. I asked you if the numbers on
14 the page were accurately taken from the general ledger of the
15 company.

16 A. I understand what you're telling me.

17 Q. I'd like to have an answer. Were the numbers on Mr.
18 Livingston's reports accurately taken from the general ledger
19 of the company?

20 A. Yes.

21 Q. And isn't it true that all of the things that he
22 ascribed as excess distributions were items that were in the
23 K-1 distribution account for Dr. Puchalski?

24 A. Yes.

25 Q. And month-in and month-out you met with Dr. Puchalski

1 and his staff, or somebody from your staff met with him, and
2 approved what was in the K-1 distribution account and what
3 was in the expense accounts.

4 A. No, we never approved or disapproved anything. We
5 reported to them what they did and we reported to them the
6 correct treatments, but we didn't approve anything.

7 Q. All right. Well, with regard to placing the items in
8 the K-1 distribution account, Mr. Livingston did not do that,
9 did he?

10 A. No.

11 Q. That was done by Dr. Puchalski and his staff?

12 A. Yes.

13 Q. And so all of the K-1 distributions that add up for Dr.
14 Puchalski set a number that Dr. Dyce is entitled to have the
15 same amount, is he not?

16 A. That's your opinion, not mine.

17 Q. Under the assumptions that I've asked you to assume
18 wouldn't that be true?

19 A. Yes.

20 Q. Let's see what that means in terms of money. Would you
21 turn to Tab L in Vincent's exhibit book?

22 A. L?

23 MR. CLEVELAND: Yes, sir.

24 This is Defendant's Exhibit 245, Your Honor.

25 THE COURT: Okay.

1 THE WITNESS: I have it.

2 MR. CLEVELAND: That's not what I want to look at.

3 Would you turn to Tab O, please?

4 THE COURT: He wants you to go to O now.

5 THE WITNESS: I have it.

6 Q. Are you at Defendant's Exhibit 248?

7 A. Yes, sir.

8 Q. This is a recapitulation of the distributions made by
9 SCENT between February 1st, '08 and the end of the year, is
10 it not?

11 A. Yes, sir.

12 Q. Under the assumptions that I've asked you to make Dr.
13 Dyce was entitled to receive the same amount of distributions
14 as Dr. Puchalski during this period of time, was he not?

15 A. Yes.

16 Q. And if that's the case, would you agree that he has been
17 shortchanged by the tune of \$872,992?

18 A. Yes, without any other circumstances.

19 THE COURT: Say that number one more time, I'm so sorry,
20 872,992?

21 MR. CLEVELAND: 872,992 and 16 cents.

22 THE COURT: Got it. I see it. Okay.

23 Q. Now --

24 A. Can I make a statement now, Mr. Cleveland --

25 Q. No, sir.

1 A. -- in response to all this?

2 Q. No, sir.

3 A. All right, sir.

4 Q. I'm sure Mr. Sheheen, the other Mr. Sheheen, will give
5 you an opportunity to comment.

6 Mr. Sheheen, I'd like to ask you about the steps that
7 you took with regard to this general ledger, and if you'll
8 look at the general ledger, Exhibit 248, that we were just
9 looking at a minute ago. It has these foldout pages. It's
10 Volume II.

11 THE COURT: Which number is it?

12 MR. CLEVELAND: It's Plaintiff's Exhibit 248.

13 THE COURT: Okay.

14 THE WITNESS: Did you say 240 or 248?

15 Q. 249 is actually what I want to look at.

16 A. 249?

17 Q. 249. This is the SCENT general ledger that ended
18 December 31st, 2007. I'd like you to turn to page 45.

19 A. I don't have a page 45.

20 Q. It has the highlighting on the bottom.

21 A. I have a page --

22 THE COURT: I think you're there. Right there.

23 THE WITNESS: I've got it. It's highlighted on the
24 bottom, the page number is 46, but on the left-hand side it
25 says 45.

1 Q. Yes, that's I think done to make all this -- I don't
2 know why it was done.

3 THE COURT: It's called lots of preparation.

4 Q. Yes. From your knowledge of dealing with the company on
5 a month-in/month-out basis do you agree that the March the
6 8th, 2007 was the first time there was a distribution account
7 for Dr. Dyce in this company?

8 A. Yes.

9 Q. And you agree with me, do you not, that it's only
10 appropriate to have distribution accounts for shareholders in
11 a Subchapter S company?

12 A. Yes.

13 Q. So all other things being equal and there being no
14 extenuating circumstances, this establishment of this
15 distribution account would indicate that Dr. Dyce was a
16 shareholder as of March the 8th, 2007?

17 A. Yes.

18 MR. SHEHEEN: Your Honor, I object to the question
19 because I don't understand what he means when he says all
20 other things being equal. That to me means we're assuming
21 facts not in evidence, and he can't answer that question
22 appropriately, so I would object.

23 MR. CLEVELAND: Let me ask it a different way so I can
24 be real clear what I'm asking. I'll withdraw the question.

25 THE COURT: Okay.

1 Q. Mr. Sheheen, assuming that there was, that you knew of
2 no facts that would make you question this entry that we see
3 here on page 45 of Exhibit 249, assuming that, would the
4 presence of the K-1 distribution account in SCENT's general
5 ledger by itself suggest to you that Dr. Dyce had become a
6 shareholder on then or before then?

7 A. Mr. Cleveland, as I indicated earlier, they
8 misclassified everything K-1, everything that was distributed
9 over there they called K-1, so we repeatedly informed them
10 that those were the wrong descriptions to apply. Assuming
11 that I didn't know that, yes, I would say that this indicated
12 that he would become a partner on that date. Unfortunately,
13 I knew that they were doing the book work incorrectly all
14 along, and I told them that on many times.

15 Q. So were they kind of slack in that regard?

16 A. Sir?

17 Q. Were they kind of slack in that regard?

18 A. Yes.

19 Q. Now, I've put on the screen Plaintiff's Exhibit 303,
20 page 1, which is in evidence, Your Honor, and it's not in any
21 of the books.

22 THE COURT: You saw me jumping, didn't you? Thank you.

23 MR. CLEVELAND: I can find a copy.

24 THE COURT: No, I can read that far.

25 Q. Mr. Sheheen, did you sign this affidavit in the

1 Gunnlaugsson case?

2 A. Apparently I did, I don't remember it.

3 Q. All right. I'm just going to read it to you, and you
4 read along, all right?

5 A. I can't see it from the side clearly.

6 Q. That's why I offered to let me read it and you follow
7 along.

8 A. Yes, I'll follow.

9 Q. I, Austin M. Sheheen, Jr. --

10 MR. SHEHEEN: Your Honor, could I just provide him a
11 copy of it so he can look at it?

12 MR. CLEVELAND: Sure. I've searched for it. I just
13 don't have it.

14 MR. SHEHEEN: I'd like for him to have it.

15 MR. CLEVELAND: I'm delighted.

16 Q. I, Austin M. Sheheen, Jr., after first being duly sworn,
17 depose and say my name is Austin Sheheen and I am a certified
18 public accountant and senior partner with the firm Sheheen,
19 Hancock & Godwin, LP, in Camden, South Carolina. My firm is
20 in the business of providing professional certified public
21 accounting services. My firm is agent of South Carolina ENT
22 Allergy & Sleep Medicine, PA, (SCENT). My firm has been
23 engaged to provide bookkeeping and other professional
24 accounting services to SCENT for a number of years. On a
25 monthly basis my firm gathers all of the financial entries

1 made by SCENT personnel, reviews and classifies that
2 information and posts it into SCENT's general ledger system.

3 Now, I read that paragraph 5 as saying your firm
4 classifies and posts the information into their system.

5 A. Yes.

6 Q. Is that what it says?

7 A. Yes.

8 Q. Is it true? Was it true when you said it?

9 A. Yes.

10 Q. Paragraph 6: During the course of our monthly reviews
11 of SCENT's financial entries we consult with company
12 personnel to make sure we understand the nature of the
13 revenues and expenses being reported and make any adjustments
14 necessary to ensure that revenue and expenses are properly
15 classified and reported.

16 A. Yes.

17 Q. That's the effort you make to make sure that everything
18 that shows up in the K-1 distributions account belongs there,
19 right?

20 A. Yes, but maybe not titled that.

21 Q. No. 7, my firm also prepares financial statements for
22 SCENT on a monthly basis and reviews those statements with
23 company officials. We also prepare SCENT's year end tax
24 returns. The efforts the company -- does that mean SCENT?

25 A. Yes.

1 Q. Company's talking about SCENT, right?

2 A. Yes.

3 Q. The efforts the company takes to produce accurate
4 financial information for financial accounting purposes
5 through the bookkeeping and accounting services obtained from
6 our firm and the close working relationships of our staff
7 working with the company's staff exceeds that of 95 percent
8 of the clients we serve.

9 A. That's correct.

10 Q. Based on our experience of providing bookkeeping and
11 financial services to SCENT and our knowledge of SCENT's
12 financials we are not aware of any material errors in the
13 company's financial records or financial statements.

14 A. That is correct, and I stand by that affidavit.

15 Q. Isn't it a material error to classify somebody who's not
16 a shareholder as a shareholder?

17 A. We didn't classify him in the final analysis as a
18 shareholder or not a shareholder unless they were or were
19 not. The company made a lot of errors in their inhouse
20 accounting work that we had to correct in our work. My tax
21 returns very clearly reflect what our opinion was of the
22 financial records that we handled.

23 Q. My question is from March of 2007 through the end of the
24 year you were aware of the fact that they had set up a
25 distribution account for Dr. Dyce as a shareholder, were you

1 not?

2 A. Yes, I was aware that they called it K-1 distribution.

3 Q. And you knew that was wrong.

4 A. I knew it was wrong.

5 Q. And believed it was wrong.

6 A. And I believed it was wrong.

7 Q. And at the end of the year you took steps to correct
8 them?

9 A. I did correct it.

10 Q. And you did that by taking -- let's go to, if you can
11 pull up Exhibit 248.

12 THE COURT: Plaintiff or defendant?

13 Q. Plaintiff's Exhibit 248 and go forward to the end of the
14 year, December 2007. I keep saying 248, but it's 249 is the
15 2007. I'm sorry. 249. There you go, yes, perfect. Thank
16 you.

17 I have on the screen Exhibit 249, page 45, and it's in
18 your book with the foldout pages?

19 A. I have it.

20 Q. And Mr. Sheheen, if you'll look where I'm pointing, does
21 this reflect, this is Dr. Dyce's -- I'm sorry, let's go
22 forward. Go to page 246, please. The right exhibit, the
23 next page in this exhibit, using the exhibit number on the
24 left. There you go. At the end of the year did you do
25 something about this \$100,000 that was showing up in Dr.

1 Dyce's K-1 distribution account?

2 A. I'm not familiar with it at this moment, but at the time
3 I had to be familiar with it in preparing the work.

4 Q. I'm sorry?

5 A. I had to be familiar with it at the time I was doing the
6 work, but I don't have a recollection of it now.

7 Q. That's fair. Let me ask you to turn to Tab E of Mr.
8 Sheheen's book.

9 A. E?

10 Q. Yes, sir. And it's Plaintiff's Exhibit 313, pages 1 and
11 2.

12 A. I have it.

13 Q. What is that?

14 A. That's the 1099 issued by SCENT to Dr. Dyce.

15 Q. And what was the effect of issuing this 1099?

16 A. He had to report it and pay tax on it.

17 Q. And --

18 A. The company deducted it as an expense.

19 Q. As an expense?

20 A. Yes.

21 Q. And so did you move that amount of money out of Dr.
22 Dyce's distribution account and place it into another
23 account?

24 A. I'm sure we had to do that to be able to issue the 1099
25 if it was in the distribution account.

1 Q. All right. Isn't it true that sometime during the year
2 of 2007 you became aware that there was a distribution
3 account, and that was a mistake because your understanding
4 was that Dr. Dyce had not yet become a shareholder.

5 A. Yes.

6 Q. And so you took steps to make sure that the company
7 accurately reported that at the end of the year that, no, Dr.
8 Dyce was not a shareholder but rather he was getting it as
9 compensation?

10 A. Correct.

11 Q. And why didn't you issue a W-2?

12 A. Because the W-2 to him had already been issued by
13 another firm that prepared their payroll.

14 Q. At any rate, you issued the 1099 and corrected that
15 error.

16 A. Yes, sir.

17 Q. Now, let's go forward to February 1st, 2008. In the
18 ensuing months Dr. Dyce is shown as having a distribution
19 accountant, right?

20 A. Yes, sir.

21 Q. And receiving distributions.

22 A. Yes, sir.

23 Q. And you were aware of the situation.

24 A. Yes, sir.

25 Q. And you prepared K-1's at the end of the year for all

1 the money that Dr. Dyce got through his distribution account.

2 A. I did.

3 Q. And that's because you understood, contrary to what was
4 going on in 2007, you understood that from February 1st, 2008
5 to the end of the year he was a shareholder.

6 A. No, sir, I did not understand that.

7 Q. Well, did you take any steps to make a correction in the
8 distribution account or how it was reported?

9 A. I needed a vehicle in 2007 because the overriding rule
10 is that --

11 Q. My question --

12 MR. SHEHEEN: Your Honor, he gets to answer the
13 question.

14 MR. CLEVELAND: I'd like a yes or no first.

15 MR. SHEHEEN: He gets to answer.

16 THE COURT: Yes, and he will, but if you can respond yes
17 or no and then explain your answer, that's fine.

18 THE WITNESS: All right.

19 THE COURT: To explain it, but the question was posed as
20 a yes or no. If you can, answer it yes or no and then
21 explain.

22 THE WITNESS: If I cannot answer it yes or no, may I
23 explain?

24 THE COURT: Indeed.

25 THE WITNESS: Okay.

1 Q. Did you take any steps at the end of 2008 to correct the
2 reporting of distributions made to Dr. Dyce because you
3 thought he was not a shareholder?

4 A. Yes, I put it on his K-1. He was a shareholder at the
5 end of '08. He had received compensation before he was a
6 shareholder and after. I needed a vehicle to make sure he
7 reported his correct income. I could have issued another
8 1099. I chose not to. I put it all on his K-1. The net
9 effect was if he'd paid tax on what he got, would have been
10 the same as if I'd issued a 1099 and a K-1.

11 Q. Isn't it true that the reporting that you approved was
12 consistent with Dr. Dyce's contention that he has been a
13 shareholder, an equal shareholder -- let me back up. Let me
14 start over.

15 Isn't it true that the way you reported and prepared the
16 tax returns was consistent with Dr. Dyce's contention that
17 he's been a shareholder in SCENT since February 1st, 2008?

18 MR. SHEHEEN: Your Honor, objection.

19 THE WITNESS: No, the K-1 indicated 60/40 ownership
20 during the year.

21 MR. CLEVELAND: I know it did.

22 MR. SHEHEEN: Your Honor, I'm going to object to that
23 question because nobody's contending, that I understand right
24 now, that in January of 2010 he was a shareholder.

25 THE COURT: You said 2010. You mean 2008?

1 MR. SHEHEEN: 2008. Yet that has not been included in
2 the question at all.

3 THE COURT: I believe that was just the answer.

4 MR. SHEHEEN: I was objecting to the question.

5 THE COURT: It was a 60/40 is what he said. He didn't
6 include him as an equal but he included him as a shareholder.

7 THE WITNESS: My concern, Mr. Cleveland, with that
8 reporting was that the primary overriding factor in any tax
9 preparation is the correct reporting of the income to the
10 participant for tax purposes. In this situation I needed the
11 vehicle, just like I did in '07, to report what Dr. Dyce got
12 and what Dr. Puchalski got. I used those K-1's to do it. In
13 retrospect, had I known we'd be here today arguing about when
14 somebody became a partner, I would have issued the 1099. I
15 did not then.

16 Q. But you didn't know anything about the buy-in sheets,
17 did you?

18 A. I didn't know when the buy-in was completed, no.

19 Q. That makes a difference as to how you should treat Dr.
20 Dyce, doesn't it?

21 A. Yes, because I was told when that was completed.

22 Q. By?

23 A. By Dr. Puchalski.

24 Q. When?

25 A. I don't know the date, but I was told that it happened

1 in July of 2008, but I don't know when I was told that except
2 when I was preparing statements and was told when he became a
3 member.

4 Q. Did the K-1 that you provided and prepared for Dr. Dyce
5 in 2008 include distributions that he received between
6 February 1st and July 10th?

7 A. Yes.

8 Q. All right.

9 A. It included --

10 Q. Just a minute, just a minute, the K-1 is consistent with
11 his contention that he was a shareholder beginning February
12 1st, 2008, is it not?

13 A. No.

14 MR. SHEHEEN: Your Honor, this is my objection because
15 the K-1 also included January income, which nobody is
16 contending he was a shareholder.

17 THE WITNESS: Mr. Cleveland, the K-1 has two numbers.
18 It has a number that he reported for tax purposes, and on the
19 right-hand side of the K-1 it has his distributions. Those
20 two numbers are not the same, and the distributions are not
21 treated as taxable income.

22 MR. CLEVELAND: Let's go to slide 73, please.

23 THE WITNESS: Mr. Cleveland, I was supposed to leave at
24 about 10 minutes 'til because of a prearranged problem I
25 discussed with the Judge yesterday, and I would like

1 permission from the Judge that I may leave and return later.

2 MR. CLEVELAND: I heard Mr. Sheheen say that. I wasn't
3 part of the discussions.

4 THE COURT: I know.

5 MR. CLEVELAND: That's all right.

6 THE COURT: We're just going to do lunch at 12:00 today
7 instead of at 1, that's the effect.

8 MR. CLEVELAND: Suits me to take a break right now.
9 Tell me what you'd like me to do.

10 THE COURT: Yes. In fact, to be quite frank with you,
11 given the testimony, I would like a minute to digest. I've
12 got three exhibits that I would like to put together, so it
13 comes at a great time for me just because there are three
14 documents that I want look at. Let me see you all a minute.

15 (Lunch recess held.)

16 Q. Good afternoon, Mr. Sheheen. We were talking before we
17 broke about the distributions that were being made to Dr.
18 Dyce in February 2008.

19 A. All right, sir.

20 Q. Do you recall that?

21 A. Yes, sir.

22 Q. And I put on the board a slide that has excerpts from
23 the general ledger, has all of them for Dr. Dyce, I believe,
24 that was my effort, from March 8, 2007 through February 1st,
25 2008.

1 That's not what we want.

2 THE COURT: That's a different time period, yes.

3 MR. CLEVELAND: Let's go to slide 31, please.

4 Q. All right. I'm showing you Exhibit 248, page 253, which
5 is in your book. Let me know when you're ready.

6 A. What was the number of 248?

7 Q. That's the exhibit number and the page number is 253.

8 A. 253.

9 Q. Yes.

10 A. All right, sir.

11 Q. I want you to assume that what you're looking at is
12 SCENT's general ledger. You perceive it as such, do you not?

13 A. Yes, sir.

14 Q. And does it appear that beginning in January of 2008 Dr.
15 Dyce's distribution account was zeroed out so that it had no
16 balance at the beginning of the year?

17 A. Yes, sir.

18 Q. And does it appear that the first distribution that went
19 to Dr. Dyce was on February 1st, 2008 in the amount of
20 \$10,000?

21 A. Yes, sir.

22 Q. All right. And do you see and do you agree from your
23 recollection that in February, March and April for the first
24 time Dr. Dyce started receiving a 50 percent share of the
25 sweeps that were being distributed to Dr. Puchalski and Dr.

1 Dyce?

2 A. Yes.

3 Q. And that was different from the way he had been treated
4 prior to February 1st, 2008, was it not?

5 A. Yes.

6 Q. And if we continue on and look at the next page, 254,
7 those two pages capture all the distributions that were made
8 to Dr. Dyce between February 1st, 2008 and December 31st,
9 2008, do they not?

10 A. Yes, I have it.

11 Q. And do you agree with me?

12 A. That these distributions were made?

13 Q. Yes, and those are the distributions.

14 A. Yes, I agree they were made.

15 Q. And all of those were treated as K-1 distributions.

16 A. They were labeled as K-1 distributions.

17 Q. And a K-1 was issued to cover this amount of money and
18 more.

19 A. Yes.

20 Q. Isn't that true?

21 A. Correct.

22 Q. And the amount that Dr. Dyce actually received was
23 \$1,284,192.50 as shown as the last number, right?

24 A. That's what it shows, yes, sir.

25 Q. Now, if we go to Tab C of Mr. Sheheen's exhibit book, we

1 will see Plaintiff's Exhibit 253, and if you turn to page 15
2 of that exhibit, which is the second page in the book --
3 third page in the book.

4 A. Are we in this book (indicating).

5 Q. Yes, sir, and we're looking at Tab C.

6 A. C. All right, sir, I have it.

7 Q. Are you looking at page 253.15?

8 A. Yes, sir.

9 Q. And did the tax return report that there were
10 distributions in the amount of \$3,678,213?

11 A. Correct.

12 Q. Now, would you look at Tab D which is the next -- it's
13 the balance sheet for 2008.

14 A. I have it.

15 Q. And would you turn to the second page of that?

16 A. I have it.

17 Q. And right in the middle of the page it shows an amount
18 for a K-1 distribution to Dr. Dyce of \$1,284,192.53.

19 A. I'm not with you. Where are you?

20 Q. Do you see the term equity?

21 A. On the 2008 tax return?

22 Q. No, sir. We're looking at Tab D now. I'm sorry.

23 A. D.

24 Q. Yes, sir.

25 A. Okay. I'm there now.

1 Q. If you look at the second page of Tab D.

2 A. I'm there now.

3 Q. And if you look in the middle of the page for the total
4 amount of the, not the total amount but the K-1 distribution
5 to Dr. Dyce?

6 A. I see that.

7 Q. And is that the same figure that we see on the general
8 ledger?

9 A. No. It's a different figure.

10 Q. What figure are you looking at?

11 A. I'm looking at the 1,340,871.

12 Q. Come up four lines if you would.

13 A. All right, 1,284,192.

14 Q. Is that the same figure that we see as the ending
15 balance of Dr. Dyce's K-1 distribution account for SCENT in
16 2008?

17 A. No. There are other items in this K-1 account.

18 Q. I know that. I'm asking you about this number. Is this
19 number, 1,284,000, the same number that appears in the --

20 A. Yes, it's the same number.

21 Q. -- balance sheet?

22 And it reflects the same distributions, does it not?

23 A. It does, prior to my adjustments, which were facts and
24 circumstance adjustments, yes.

25 Q. We'll get to those in a minute.

1 A. All right, sir. Yes, sir.

2 Q. Here's my point. Let's see if we disagree. I thought
3 you disagreed with this. Maybe you don't.

4 A. All right, sir.

5 Q. My point is don't you agree that the K-1 distributions
6 that were reported for Dr. Dyce and which were included on
7 his K-1 include the distributions he received between
8 February 1st, 2008 and July of 2008?

9 A. It did.

10 Q. I was hoping we would agree on that. Thank you. Now,
11 let's see what you did about that -- well, let's first of
12 all, I need to do this, would you go to slide 47, please.

13 Excuse me, Your Honor.

14 Mr. Sheheen --

15 A. Yes, sir.

16 Q. -- when asked about the distributions that Dr. Dyce
17 received between February 2008 and July 2008, Dr. Puchalski
18 testified under oath, as I've shown on the board, he said,
19 because he reached a milestone in the process to becoming an
20 owner of South Carolina ENT, and those wages were W-2 wages,
21 they were not anything but that. That's what he testified to
22 under oath. Would you agree with me that that's false?

23 A. I wouldn't agree that it's true or false. I would say
24 that he used language that didn't clarify and if the word
25 compensation would have been used instead of wages, then it

1 would have been a correct statement.

2 Q. It's not a correct statement, is it?

3 A. No.

4 Q. It's untrue, isn't it?

5 A. It's not correct. I don't know if it's untrue, but it's
6 not correct in my opinion.

7 Q. Did he state the truth when he made that statement?

8 A. Beg your pardon?

9 Q. Did he state the truth when he made that statement?

10 A. I think he thought he spoke the truth. I think he used
11 his terminology --

12 Q. I didn't ask you to delve into his mindset.

13 MR. SHEHEEN: Your Honor, objection. He asked him three
14 times, three different ways, to give an answer. He gave an
15 answer that he sees fit.

16 THE COURT: Sustained.

17 Q. Mr. Sheheen, when asked about the distributions that
18 you've told us were reported as K-1 distributions, Dr.
19 Puchalski stated all of his income was W-2 income in February
20 and March of 2008. He was receiving a bimonthly distribution
21 on top of his salary and then also pay for a call amount, but
22 all of those were W-2 wages. You will agree with me that's
23 incorrect.

24 A. I will agree that's incorrect.

25 Q. Thank you. Do you have any explanation? He said he

1 would defer to you on this.

2 A. The explanation is that his inhouse bookkeeping was very
3 sloppy from the people that made the entries, and that was
4 the things that we had to apply fact and circumstance test to
5 rather than assumption test, and that's why my numbers do not
6 equal your expert's numbers. I applied a facts and
7 circumstance test because my overriding concern is that
8 everybody pay the correct tax that they owe based on their
9 wages reported -- based on their compensation reported to the
10 IRS.

11 Q. All right. Let's go to slide 76, please. Now, that's a
12 little harder to read, but this is taken from the balance
13 sheet which we were just looking at and is under Tab D, and I
14 think you'd agree with me that the K-1 distribution to Dr.
15 Dyce in the top row is 1,284,000.

16 A. Yes, sir.

17 Q. And we've been through the general ledger and you've
18 agreed with me, have you not, that that represents
19 distributions that he got in February, March, April and
20 later?

21 A. Yes, sir.

22 Q. There are also some other items that he got
23 distributions with respect to, did he not?

24 A. Yes, sir.

25 Q. And the total distributions that he received in 2008

1 were \$1,340,871.70.

2 A. Correct.

3 Q. Is that right?

4 A. Yes, sir.

5 Q. Now, if we go to the total, we looked at this number
6 earlier in Tab C, which is the tax return, and the company
7 reported having made distributions of \$3,678,000, did it not?

8 A. Yes, sir.

9 Q. All right. But let's look at the tax return which is
10 Exhibit C and look at what you've reported as distributions
11 for Dr. Dyce. What's that number?

12 A. 2008?

13 Q. Yes, sir.

14 A. \$1,471,285.

15 Q. Do I have it correctly on our screen there where I'm
16 showing the red dot?

17 A. Yes, sir.

18 Q. And you reported that Dr. Dyce was a 40 percent
19 shareholder.

20 A. Yes, sir.

21 Q. That's the number you used on the tax return.

22 A. Yes, sir.

23 Q. And 40 percent -- or a million 471 is 40 percent of the
24 total, is it not?

25 A. Yes, sir.

1 Q. But Dr. Dyce didn't receive 1,471,000, did he?

2 A. Yes, he did.

3 Q. Explain that to me, since the balance sheet shows that
4 he only received 1,340,000.

5 A. I can't tell you that from this report because I don't
6 have my tax return work papers, but I can provide that to you
7 as to how that distribution amount was arrived at.

8 Q. Well, you just stated under oath that he received
9 1,471,000. What was that statement based on?

10 A. Based on the balance sheet that we looked at, but the
11 tax return has adjustments.

12 Q. You're talking about the balance sheet in the tax
13 return?

14 A. No, the balance sheet that -- in this particular
15 instance, just as the income was 1,444,000, it was reduced by
16 two items, which the tax return amount would be a great deal
17 less, and so that's why I'm saying I applied a facts and
18 circumstance test and not any other test. I can't tell you
19 why 1,471,285 is on this K-1 until I look at the tax return
20 work papers.

21 Q. Let's look at the K-1 for Dr. Puchalski, which is part
22 of Tab C, Plaintiff's Exhibit 253.

23 A. 253?

24 Q. Yes, sir, at page 16.

25 A. I have it.

1 Q. Now, what does the K-1 and the tax return report as the
2 total distributions received by Dr. Puchalski?

3 A. 2,206,000.

4 Q. That's the number that I have on the right side of this
5 slide you're looking at, correct?

6 A. Correct.

7 Q. Now, if we look back at the balance sheet.

8 A. Look back at what?

9 Q. At the balance sheet.

10 A. Yes, sir.

11 Q. Which is Tab C, isn't this balance sheet part of your
12 work papers?

13 A. Which tab are we under.

14 Q. C.

15 A. Yes, sir.

16 Q. Is this part of your work papers?

17 A. Yes, sir, they are. They are not part of the tax return
18 work paper -- yes, they are. We've got it marked file for
19 tax return, so they're part of my tax return work papers.

20 Q. You have it marked as what?

21 A. I have it marked on the bottom of the front page, file
22 and use for tax return. Do you see that?

23 Q. Yes, sir. What does that mean?

24 A. That means that that's where we've finished all of our
25 adjustments to prepare the tax return.

1 Q. All right. Well, this final work paper shows Dr.
2 Puchalski receiving how much money?

3 A. 2,206,000.

4 Q. No, sir. You're looking at the tax return.

5 A. Oh, yes. 2,337,000. Is that the number you're asking
6 me about? 2,337,000.

7 Q. Yes, sir. Yes, sir. And he received -- did he receive
8 \$2,337,000?

9 A. That's what my tax return information shows.

10 Q. But the tax return shows him only reporting \$2,206,000.

11 A. Correct, and I can't answer that question here today
12 because I don't have my detailed work papers, but I would
13 tell you that I would testify that I think my tax return is
14 correct. Distributions --

15 Q. Why do you think that?

16 A. Because distributions are not what you pay tax on,
17 earned income is what you pay tax on, and that's the
18 left-hand column of that K-1 statement that you're quoting
19 from and not the right-hand column. The right-hand column is
20 informational. The left-hand column is reportable income.

21 Q. The total amount of distributions is the same.

22 A. I understand what you're saying, and I can't explain
23 that.

24 Q. Do you agree with me that the total amount of
25 distributions on the balance sheet and on the tax return is

1 the same?

2 A. Yes.

3 Q. Could it be that what you did is decide that in order to
4 try and create an image or an illusion that Dr. Dyce was
5 receiving his percentage, his proportionate percentage of the
6 distributions, you made up the claim that he was a 40 percent
7 shareholder?

8 A. Absolutely not.

9 Q. Where'd the 40 percent come from?

10 A. Based on what he drew -- I mean, based upon what his
11 share of the earnings were compared to what Dr. Puchalski's
12 share of the earnings were. Those share of the earnings are
13 exactly what compensation they received in all forms. It
14 came to 40 percent. My understanding that he wasn't there
15 for a full year was another justification for it not being
16 50/50.

17 Q. I understand it not being 50/50. I'm not contending
18 that it should be 50/50 because there was a portion of the
19 year that he wasn't a shareholder, at least according to you
20 all's records. I'm not arguing about that.

21 A. There was no creation of an illusion, period.

22 Q. Well, you I think have testified you can't explain why
23 the balance sheet doesn't match with the tax return.

24 MR. SHEHEEN: Your Honor, I object.

25 THE WITNESS: I can't explain at this moment but I can

1 later.

2 MR. SHEHEEN: Your Honor, that is not what he testified
3 to. He said he could look at his work papers to explain it.
4 He just doesn't have them here.

5 THE COURT: And he just said that again.

6 Q. Mr. Sheheen, you can't explain today --

7 A. No.

8 Q. -- the difference, can you?

9 A. I cannot.

10 Q. And you may be mistaken.

11 A. I always may be mistaken.

12 Q. If what you did was to decide that it didn't make much
13 difference and it would make a better presentation in order
14 to qualify with Subchapter S regulations to call them 40 and
15 60 percent owners, would that have been the correct thing to
16 do?

17 A. Restate it please, sir.

18 Q. Yes, sir. If in fact you decided that in case anybody
19 looked at this, it might be more persuasive to have them be
20 claiming to be 40 and 60 percent owners, and therefore if you
21 over-reported income for Dr. Dyce and underreported for
22 Puchalski in order to fit the 40/60, would that have been the
23 proper thing to do?

24 MR. SHEHEEN: Your Honor, I object.

25 THE WITNESS: No, and I would not have done that.

1 THE COURT: Got to hold on just one second.

2 MR. SHEHEEN: Just going to object because there's
3 multiple questions within that question, so it's therefore
4 improper.

5 THE COURT: I'll sustain it as being multiple, but if
6 you can rephrase it, I think you can just ask the end.

7 MR. CLEVELAND: Thank you.

8 Q. Mr. Sheheen, we looked at the general ledger, right?

9 A. Yes, sir.

10 Q. The general ledger shows that Dr. Dyce received
11 \$1,284,000, right?

12 A. Yes, sir.

13 Q. And that number has not changed, has it?

14 A. No, sir.

15 Q. All right. And the other additions add up to about
16 something less than \$50,000.

17 A. Yes, sir.

18 Q. Yet the difference between what's reported on the books
19 and what's reported to the IRS is \$130,413.

20 A. Yes.

21 Q. And you have no explanation today as to why that
22 occurred.

23 A. That was not reported to the IRS. That was the
24 difference on the balance sheet. The tax return is what was
25 reported to the IRS, and the income that they paid tax on was

1 what was reported as income, not the distributions.

2 Q. You reported that Dr. Dyce received 1,471,285, correct?

3 A. As distributions but not taxable income.

4 Q. Well, right now the records of the company appear to say
5 that Dr. Dyce's distributions were only 1,340,871, correct?

6 A. I see that.

7 Q. Do you agree with that?

8 A. Yes, I see what you're telling me. I can't explain the
9 difference to you today.

10 Q. All right. Now, let me go back and ask my question.

11 The rule for Subchapter S companies --

12 Well, let's back up. A Subchapter S company is a
13 corporation, is it not?

14 A. Yes, sir.

15 Q. But it enjoys certain preferential treatment in the tax
16 code, does it not?

17 A. Correct.

18 Q. And the preferential treatment that it receives is that
19 the owners have the benefits of a corporation, limited
20 liability, the governance rules having to do with
21 corporations, whatever reasons somebody might want to have a
22 corporation rather than a partnership or something else, but
23 one of the requirements is that all of the owners, the
24 shareholders in the Subchapter S corporation, must receive
25 distributions in proportion to their ownership percentage.

1 A. Yes.

2 Q. In fact, the articles -- well, are you aware that the
3 articles of SCENT preclude and prevent having two classes of
4 stock?

5 A. If they're an S Corp., you can't have two classes of
6 stock.

7 Q. Okay. And if some shares were entitled to distributions
8 and other shares were not, would that be two classes of
9 stock?

10 A. Yes. I would think too, Mr. Cleveland, that whether
11 they were entitled or not would have to be stated in some
12 legal fashion. If it created an opportunity for them to be
13 disproportionate, that would create two classes of stock.
14 Because the facts and circumstances showed that they weren't
15 equal distributions does not necessarily mean it was two
16 classes of stock.

17 Q. Sure, sure, there might be circumstances exceptions.

18 A. Right.

19 Q. So my question to you is -- well, let me go a little
20 more into background. If the IRS were to look at a return
21 that shows one shareholder getting 36.45 percent of the
22 distributions and the other shareholder getting 63.55
23 percent, would you be concerned that they may say, why is the
24 stock divided according to these --

25 A. Absolutely I'd be concerned that they would say it, but

1 I would have the answer when they asked.

2 Q. And given that you would be concerned about reporting a
3 63.55 percent and a 36.45 percent split, one of the things
4 that you could do would be just to increase what you report
5 for one shareholder and decrease what you report for the
6 other, bring it in line with some rounder numbers; you could
7 do that, couldn't you?

8 A. You could do that, but that would be an erroneous
9 presentation for tax purposes. This was done on a facts and
10 circumstance test, and I didn't manipulate the numbers to
11 make them come out in anybody's favor or disfavor.

12 Q. But my question was it would be wrong to do that,
13 wouldn't it?

14 A. It would be wrong for me to manipulate the numbers.

15 Q. And if you manipulated the numbers, is there any defense
16 to having increased -- if it happened -- the amount reported
17 for Dr. Dyce -- let me back up.

18 Dr. Dyce had to pay taxes on distributions of
19 \$1,471,285, didn't he?

20 A. No. He paid taxes on a million 444, minus 107,000, a
21 million 330 something. Look at the K-1 on 2008 for Dr. Dyce.

22 Q. Right.

23 A. You will see item 1 on the tax return, 1,444,000, you
24 will see down on item 11, 100,000, and you will see on item
25 12, 7,000, both of those subtracted on his personal return

1 from the 1,444,000.

2 Q. And so the 1,444,000, is that the number he paid taxes
3 on?

4 A. That's the number that was put on his return. He paid
5 taxes on 107,000 less than that. Look at item 11 and item
6 12. Those two items were subtracted on his personal return.
7 The rules require us to report them on the K-1 like this, and
8 on the personal return they are adjusted based on the rules
9 of presentation.

10 Q. If whatever the number reported here is what he paid the
11 taxes on, as you've described.

12 A. He paid taxes on the number reported.

13 Q. And if in fact he didn't get all of that because the
14 return was modified to make a 40 percent, 60 percent
15 presentation, that would be wrong, wouldn't it?

16 A. Yes, if the return was modified to make it what you
17 wanted to show, it would be wrong.

18 Q. Now, do you know of any efforts that were made by the
19 company to adjust the distributions to take into account this
20 issue?

21 A. No.

22 Q. So is it your testimony that just through the normal
23 course of distributions, call pay, all of that, that it would
24 come out to be exactly 60/40 the way the report has it?

25 A. No. I just think perhaps I backed into the actual

1 factual circumstances and took the percentages and they came
2 out 60/40. I didn't put 60/40 without backing into it based
3 on what Dr. Dyce got and what Dr. Puchalski got.

4 Q. Okay. But you can't recall any of those circumstances,
5 can you?

6 A. Well, I can't recall the detail of those circumstances,
7 no.

8 Q. All right.

9 A. But I can provide that to you at a later date if that's
10 something you want.

11 Q. It is. I would love to see it.

12 A. Okay.

13 Q. Thank you. Mr. Sheheen, based on your knowledge, not
14 assumptions you've made or things anybody's asked you to base
15 an opinion on --

16 A. Yes.

17 Q. -- based on your knowledge do you have any recollection
18 of talking about the issue of whether Dr. Dyce was in fact a
19 shareholder during February, March, April and May of 2008?

20 A. No, sir, I don't recall any discussion about that. I
21 never concerned myself with when somebody was a shareholder
22 until I was told. They treated Dr. Dyce as a shareholder for
23 compensation purposes when he received the phantom
24 compensation, and I think that's why they labeled it K-1, but
25 I didn't know when he became a shareholder. I didn't have

1 the record of how much he had to pay. I didn't know about
2 that continuing calculation that you showed me as to when he
3 had paid until I was told that it was on July 16th, 2008.

4 Q. When were you told that?

5 A. I can't tell you that, but it would have to be then or
6 later.

7 Q. Well, the reason I asked, Mr. Sheheen, is that at the
8 end of the year of 2007 or at whatever time you were
9 preparing the 2007 tax return you found yourself confronted
10 with the fact that Dr. Dyce had been receiving call pay in a
11 distribution account during 2007.

12 A. I agree, yes, sir.

13 Q. And so that caused you to think, he's not a shareholder,
14 he shouldn't be reporting this as a K-1 distribution; that's
15 what you thought.

16 A. Yes, because I was told he was not a shareholder also.

17 Q. I understand. I understand. And do you recall what the
18 circumstances were how -- why you were told that he was not a
19 shareholder?

20 A. No, sir. I would have asked, because the thing showed
21 K-1 distributions, if he was a shareholder or he wasn't. I
22 did that every year with all the doctors because they called
23 everything K-1.

24 Q. Well, that's the reason for my asking you about this,
25 because in December you see that he's -- or whenever you were

1 preparing the tax return.

2 A. Right.

3 Q. You observe that he's been getting these K-1
4 distributions, and you've just testified you asked whether he
5 was a shareholder, and you were told no, correct?

6 A. Correct.

7 Q. And so you took steps to make sure they properly
8 reported that by issuing a 1099 to Dr. Dyce rather than a
9 K-1.

10 A. Yes, sir, that's correct.

11 Q. Here's my question, when we get to February and you're
12 having your monthly meetings with the folks over at SCENT and
13 are looking at the general ledger and you see that, lo and
14 behold, there's a new distribution account opened for Dr.
15 Dyce and he's getting big slugs of money, 21,000 here, 21,000
16 there, 75,000, you're seeing that, given what you had just
17 been through, certainly you asked, did you not?

18 A. I asked in the presence of both doctors everything I
19 asked about the meetings that we had was in the presence of
20 both doctors, and at the time neither doctor told me anything
21 different than I put on the tax return.

22 Q. Which is that he was a shareholder.

23 A. At the end of the year but not prior to July 16th.

24 Q. Well, you reported K-1 -- you gave him a K-1 that
25 included distributions from February.

1 A. Because he got them, because he got them.

2 Q. And that's representing that he's a shareholder back to
3 that date, is it not?

4 A. It represents, from looking at the K-1 only, that he's a
5 shareholder, but the facts and circumstances of what I was
6 dealing with was to report all his income on that K-1, which
7 I should not have done. That was my vehicle for getting it
8 to him. I should have done a 1099 and a K-1. I didn't do
9 that. They should have closed the books when he came in.
10 They didn't do that. There's a whole lot of things that take
11 place in these small corporations that are not following the
12 rules, and we have to deal with those facts and
13 circumstances, as accountants, when we come across them, and
14 that's what I did.

15 Q. Yes, sir, but this is the top five percent of all your
16 clients in terms of effectiveness and diligence and making
17 sure they report things properly, right?

18 A. And I made sure of that.

19 Q. Well --

20 A. That was the reason that I was willing to say they
21 furnished me all the information and that 95 percent of their
22 effort toward it was true.

23 Q. Are you stating today that you asked Dr. Puchalski and
24 Dr. Dyce together whether Dr. Dyce was a shareholder in the
25 spring of 2008?

1 A. I can't state that factually, but I can tell you I, in
2 their presence, I went over all these numbers together, and
3 there was never a question of whether the numbers were
4 correct or not.

5 Q. But the numbers are consistent with him being a
6 shareholder during that time, are they not?

7 A. Being treated as a shareholder for compensation
8 purposes, he was a phantom shareholder. It was a procedure
9 that his attorney suggested, and they adopted it, and I had
10 to treat it in such a fashion that the overriding point was
11 that each reported correctly what they got to the IRS over
12 and above all the rules of preparation, that rule supersedes
13 them all.

14 Q. And you met monthly with these folks during the spring
15 of 2008, correct?

16 Yes, sir.

17 Q. If Dr. Dyce was not a shareholder during that time, the
18 appropriate treatment from the company would be to pay him
19 W-2 wages and withhold the money, right?

20 A. And I told them that.

21 Q. You told them that?

22 A. Many times, not once, many times.

23 Q. I'm talking about in connection with Dr. Dyce.

24 A. Yes, I told both of them that everything they got from
25 the company, other than the distributions that were allowed

1 in an S corporation, needed to be on the W-2. Many, many,
2 many times I told them that.

3 Q. Over the years.

4 A. Over the years.

5 Q. My question is not that. My question is did you in the
6 spring of 2008 look at these two doctors and say, you're
7 wrongly reporting Dr. Dyce's compensation and you need to
8 start issuing W-2 money to him and withholding, did you say
9 that?

10 A. Well, I can't say whether I then said it, but I will
11 tell you I think I said it every time it was appropriate.

12 Q. Slide 26, please.

13 Mr. Sheheen, we've been talking about the buy-in
14 process. Now let's talk about the amount of money that would
15 have been due or is due to Dr. Dyce to pay for his shares of
16 stock, okay. Now, we looked earlier at Exhibit 2, which was
17 the employment contract from 2005, and it says that the
18 buy-in amount will be the fair market value of things that
19 include the accounts receivable, right?

20 A. Yes, sir.

21 Q. That's different from what their agreement in July 2008
22 says, isn't it?

23 A. I didn't read those agreements. I've never read those
24 agreements.

25 Q. Well, would you read the part that's above the red line?

1 A. The corporation or the remaining shareholders, as the
2 case may be --

3 Q. I'm sorry, sir. I just want you to read the part of the
4 formula that is the part that's emphasized in red.

5 A. The red.

6 Q. Yes, sir.

7 A. One third of the sum of the accounts receivable of the
8 corporation booked in accordance with the corporation's
9 normal accounting methods and the cash -- did you want me to
10 stop at the red line?

11 Q. Yes, sir. I want to talk with you about the accounts
12 receivable.

13 A. All right, sir.

14 Q. And that's different -- that's a very different standard
15 than the fair market value of the accounts receivable, is it
16 not?

17 A. Yes.

18 Q. I assume you have been asked to opine on the value of
19 business assets a lot in your career, have you not?

20 A. I have, yes, sir.

21 Q. And is it true that it's often the case that parties on
22 either side of the issue will each hire their own experts to
23 opine on value?

24 A. Yes, sir, I'm very familiar with that.

25 Q. And haven't you found it in your experience that the

1 experts on either side of an issue for some reason come to
2 very different opinions on value?

3 A. I have.

4 Q. And in this case the July 2008 shareholders agreement
5 doesn't provide for fair market value when describing the
6 purchase price, does it?

7 A. No, sir.

8 Q. It refers to a number that you can go look up, does it
9 not?

10 A. It has a formula for determining value.

11 Q. Right, and the formula is to go look at what the
12 company's books show the accounts receivable to be, does it
13 not?

14 A. And use one third of the sum, that's what this says.

15 Q. All right. And so with that in mind you have told us
16 that you think the 60-day AR report is the right place to
17 look, is that right?

18 A. Yes, sir.

19 Q. And have you done a careful review of the report?

20 A. I only have asked to be presented with the 60-day AR
21 balance. I have not looked at the accounts receivable
22 report. I had the one sheet that they ran showing the 60-day
23 AR, and that was in my opinion the best AR to use because it
24 reflected good AR, not all AR, which included bad AR.

25 Q. Whom did you ask to be provided with that report?

1 A. I asked Dr. Puchalski, our legal counsel or somebody
2 when I was computing and had to use the AR, I told them I had
3 no AR, I needed a 60-day AR, and Dr. Dyce's office produced
4 it, and I don't know whether they gave it to me or legal
5 counsel gave it to me.

6 Q. Had you ever seen -- what's the name of the report?
7 It's under Tab H in Mr. Sheheen's book, if that would be
8 helpful.

9 A. It says, procedures by patient by service date at the
10 top of the page.

11 Q. Where does it say anything about accounts receivable on
12 the report?

13 A. On the right-hand side it gives you the balance in the
14 accounts receivable under the grand total line of 246.

15 Q. I see the word balance. I just didn't see the word
16 accounts receivable anywhere. Do you?

17 A. I was furnished it as an AR report. I have never seen
18 the detailed AR report, so it may not be the accounts
19 receivable. It was given to me as the accounts receivable.

20 Q. Have you done any due diligence at all to determine that
21 that report is the appropriate report to use for this
22 purpose?

23 A. No, I have not.

24 Q. So you're not here today staking your reputation that
25 that report is a valid or even relevant report, are you?

1 A. No. I was furnished that report and I used that number.

2 Q. And if the report turns out to be grossly and hideously
3 inaccurate, that's not your fault, that's the company's
4 fault?

5 A. Correct.

6 Q. But I thought you said that you compared the 60-day
7 report with the 90-day report.

8 A. I did that. I was furnished the 90-day report after
9 these proceedings began.

10 Q. And did you have the full report?

11 A. No, just the one page.

12 Q. You've never seen these reports before?

13 A. Never.

14 Q. Now, are you -- were you here when Ms. Koumas testified?

15 A. Beg your pardon?

16 Q. Were you here when Ms. Koumas, the head of the billing
17 department, testified?

18 A. Yes, yesterday. I couldn't hear much of what she said,
19 but I was here.

20 Q. One thing she said, and I'll ask you to assume that what
21 I say is true, is that they have an active billing
22 department, that they work at it every day?

23 A. I would accept that.

24 Q. Have you observed that? Do you know that?

25 A. I've never observed their daily operations. My meetings

1 were with their board meetings and with the doctors when they
2 called me to come meet, but I've never been to their place of
3 business to observe their recordkeeping. My office sends
4 staff employees there every month to work with them.

5 Q. You've told me you've never seen these reports before.
6 Have you ever seen any aging reports before?

7 A. No.

8 Q. Have you ever been involved in evaluating the success or
9 failure of the company to collect its aged accounts?

10 A. No.

11 Q. And so if I were to ask you, as a general proposition,
12 how much does the company experience in its 30-day aged
13 category, would you have any idea?

14 A. No. I've never seen the 30-day AR. I've seen the 60
15 and the 90 in these one-page reports, but I've never seen the
16 30.

17 Q. Okay. So you have no independent knowledge whatsoever
18 by which to evaluate these reports?

19 A. Correct.

20 Q. Okay. Tell us what the report is. I heard you earlier
21 there's a 60-day report.

22 A. Yes.

23 Q. And I understand that to mean it's a report on activity
24 in the last 60 days.

25 A. Well, I took it to mean it was the accounts receivable

1 balance that were no older than 60 days.

2 Q. Let's look at the report, let's look at the 60-day
3 report, which is Defendant's Exhibit 214.

4 MR. SHEHEEN: That's correct, 214, Tab H.

5 Q. Let's be clear, is Defendant's Exhibit 214 the report
6 that you testified is the proper and accurate place to get
7 what the company has booked as accounts receivable for the
8 purposes of determining Dr. Dyce's buyout?

9 A. I was furnished that report, and I accepted it as a
10 correct accounts receivable balance that were no older than
11 60 days.

12 Q. Okay.

13 A. Yes.

14 Q. But is Exhibit 214 the report that you're talking about?
15 I want to make sure we're talking about the right exhibit.

16 A. 214, your exhibit?

17 Q. No, sir, defendant's exhibit.

18 A. What tab is it under?

19 Q. Under H.

20 A. Well, I'm looking at -- mine doesn't really have an
21 exhibit number on it.

22 THE COURT: No, that's right, you're correct, it is
23 behind H, behind the Tab H. I had to write Exhibit 214 on it
24 (indicating).

25 THE WITNESS: I have that. That's what I relied on.

1 THE COURT: Let me just for the record, let me just tell
2 you, it was behind H, but I had to write on it, happy to do
3 so, not fussing, I'm not fussing, but I wrote Exhibit 214, so
4 I think that's why it's a little confusing.

5 MR. CLEVELAND: It is. May I ask a few questions just
6 to clarify the record on this?

7 THE COURT: Sure.

8 Q. Mr. Sheheen, you remember yesterday we were looking at
9 Exhibit 214, and it was very hard to read, and so I had a
10 legible copy but it didn't have an exhibit number on it, do
11 you recall that?

12 A. Yes, sir.

13 Q. And so we went and had copies made and distributed them
14 to everybody, and so you probably have the more legible copy
15 in your book, in Mr. Sheheen's book on Tab H.

16 A. I have a more legible copy right here that you gave me
17 yesterday.

18 Q. Would you compare that with the obscure copy, and let's
19 just make sure that what I presented was in fact a correct
20 copy of the report that you're relying on and offering to the
21 Court.

22 A. Yes, sir, I see no difference.

23 THE COURT: Why don't you write it on there, that way
24 you'll know, just write 214, see what I'm saying, I think
25 that might be helpful.

1 MR. CLEVELAND: There might be a D in front of it for
2 defendant's.

3 THE COURT: They might want you to do -- and what
4 exhibit number was this one (indicating)?

5 MR. CLEVELAND: Mr. Ellison was using that, I think.

6 THE COURT: The 90 day, did we put a number on this one?
7 Let's put one on there for ID purposes.

8 MR. SHEHEEN: I think it's Plaintiff's Exhibit No. 95.

9 THE COURT: It is. Got it.

10 Q. Mr. Sheheen, I'd like you to look at Defendant's Exhibit
11 214, which is what you have described as having been
12 presented to you as the 60-day accounts receivable report.

13 A. Yes, sir.

14 Q. Now, do you see a number on there for charges?

15 A. Yes, sir.

16 Q. And are those all the charges that the company would
17 have made in the last two months before the date of the
18 report?

19 A. I don't know what they are, whether they were one month
20 or two months or what period, but I would assume that they
21 have to be 60-day charges if you're going to have a 60-day
22 receivable.

23 Q. All right. If the report is what it was represented to
24 you as being, would that be all the charges made by the
25 company in the 60 days before the end date of the report?

1 A. The balance would be the receivable represented to me.
2 I have no knowledge of how they accumulate these reports,
3 whether this is everything they do or whether there are other
4 parts of the practice that's not shown here. I was only
5 represented, when I asked, that this was the balance. That's
6 as much as I inquired.

7 Q. Yes, sir, but the balance is a function of, one, what
8 the charges are, and then two, what the write-offs are,
9 three, what the payments are.

10 A. To get to the balance.

11 Q. To get to the balance.

12 A. Yes.

13 Q. So --

14 A. And so I would assume they were all here, but I don't
15 know that.

16 Q. I understand, but if the report is what you think it
17 is --

18 A. Yes.

19 Q. -- they would all be there?

20 A. Yes.

21 Q. Isn't that true?

22 A. Correct.

23 Q. Okay. And then the payments, does that represent the
24 income that's been received by the practice during the last
25 60 days?

1 A. Should be, yes, sir.

2 Q. If the report is what you say it is.

3 A. If the report is what I thought.

4 Q. And then the payments, after the write-offs and
5 adjustments, would be the accounts receivable that are left.

6 A. Yes, sir.

7 Q. Okay. Now, what is the amount of the charges shown on
8 that report?

9 A. \$805,000.

10 Q. For a two-month period?

11 A. For whatever period this report is for, yes.

12 Q. Well --

13 A. And it says 60-day report.

14 Q. Now, do you know of your own knowledge whether that
15 makes any sense that they would report \$800,000 of charges
16 for a two-month period?

17 A. No, sir, I don't know that at this point. Their revenue
18 was up and down so much that I don't know the answer to that.

19 Q. Okay. Well, look at the payments. You said they
20 constituted all the income that should have come to the
21 company. What's the amount of that?

22 A. The income amount on here?

23 Q. Yes, sir.

24 A. Looks like the patients paid 21,000, and the insurance
25 companies paid 196,000, so that looks like about 215,000 for

1 the month, or the 60 days if this is for two months.

2 Q. Two months, so that report reflects that the company
3 received a grand total of \$216,000 for a 60-day period.

4 A. Yes, sir.

5 Q. Does that make any sense?

6 A. I don't know that that's right or wrong. I only used
7 the balance they gave me for AR, and I didn't try to
8 interpret any of the charges. We do that on a monthly basis,
9 so you could very easily look at this same time period with
10 my monthly statements and determine the exact income for that
11 period.

12 Q. Sure. You could look at the general ledger and do the
13 same thing, couldn't you?

14 A. Yes.

15 Q. We'll do that in just a second.

16 A. Okay.

17 Q. Do you think, from your knowledge of working with the
18 company, that the money it received in the course of a year
19 was closer to \$10 million or \$1 million?

20 A. Closer to \$10 million.

21 Q. So if you take \$200,000 that that report says they
22 received in a two-month period and multiply it by six, that
23 brings us to \$1.2 million.

24 A. Correct.

25 Q. That doesn't make any sense, does it?

1 A. Not on the basis of gross receipts.

2 Q. So would you think that maybe something's wrong with
3 that report?

4 A. Well, I don't know whether the report is right or wrong
5 and what it's used for and how it's derived. It was given to
6 me as the balance of the AR for 60 days, and that's what I
7 used.

8 Q. But you're an expert here to tell us the facts. If you
9 were presented with facts that indicated that report had no
10 relevance to anything that you've talked about, would you
11 ever be prepared to abandon it and say it's not reliable?

12 A. Yes. Anytime I found that it wasn't correct, I would
13 abandon it.

14 MR. SHEHEEN: Your Honor, I would like some
15 clarification as to what Mr. Cleveland is saying is
16 incorrect. Is he saying the AR figure is incorrect, or is he
17 just saying the other figures on here are incorrect?

18 MR. CLEVELAND: I'm saying the charges are incorrect,
19 I'm saying the payments are incorrect, I'm saying the
20 write-offs and the adjustments of charges and payments that
21 are incorrect has no relevance to anything, and the balance
22 has no relevance to anything.

23 MR. SHEHEEN: The balance is what the AR would be.

24 MR. CLEVELAND: I'm saying that has no relevance.

25 MR. SHEHEEN: You're saying that's incorrect?

1 MR. CLEVELAND: Yes, sure. Let me hand you -- what's
2 our next exhibit?

3 (Plaintiff's Exhibit 316 marked for identification.)

4 Q. Mr. Sheheen, do you recognize Exhibit 316?

5 A. Yes, sir.

6 Q. Is that part of the SCENT general ledger?

7 A. Yes, sir.

8 Q. What is the date range that Defendant's Exhibit 214
9 purports to be a report about?

10 A. 214 was what we just looked at.

11 Q. Yes, sir. What's the date range that that report
12 applies to?

13 A. It says that it was run from 3/10 to 5/9/10.

14 Q. So from March 9th --

15 A. March 9th to May 9th, 2010.

16 Q. And it shows the total payments or money received to be
17 \$216,000.

18 A. Yes, sir.

19 Q. All right. Now, the general ledger would be an accurate
20 and a reliable place to look to see how much money the
21 company received during that period of time, would it not?

22 A. Yes.

23 MR. SHEHEEN: Your Honor, I'm going to object to this
24 line of questioning because what Mr. Cleveland is doing,
25 although it's clever, is he is using the total amount of

1 charges, not accounts receivable but the total amounts of
2 charges, and if they've been paid and cleared off the books,
3 they're still going to be showing on the ledger, but they're
4 not going to be showing on an accounts receivable document
5 because they've been paid and cleared off the books, so
6 that's an unfair comparison to use total charges, many of
7 which will have been obviously paid and cleared off the
8 books, which is not accounts receivable, with an accounts
9 receivable document, which would not have things on it that
10 have been paid and cleared off.

11 THE COURT: Hold on.

12 MR. CLEVELAND: I'm happy to respond.

13 THE COURT: No, because I think it's fair
14 cross-examination, but if you want to go ahead.

15 MR. CLEVELAND: No, if you'll overrule it, I don't want
16 to say anything if you're inclined to.

17 THE COURT: I have some questions of my own about the
18 60-day report, so I think it's fair cross-examination. I'm
19 going to overrule it. I think it's fair cross-examination.

20 MR. CLEVELAND: Thank you, Your Honor.

21 Q. Mr. Sheheen, you told me earlier that the report you're
22 relying on should have all the receipts, excuse me, should
23 have all the charges made during the previous 60 days, right?

24 A. If it is an accounts receivable report for the two
25 months. I don't know what it is except the balance on it's

1 what they gave me as the accounts receivable balance.

2 Q. Yes, sir, but the balance is a function of the amount of
3 the charges less the payments, less the write-offs and
4 adjustments.

5 A. Correct.

6 Q. Correct, so if the charges have no relevance at all to
7 what the company really charged, then the rest of it has no
8 relevance either, wouldn't you agree?

9 A. It would seem that the report is not the correct report
10 for me to have if I was having to begin with what they
11 started with and what they collected and what they ended
12 with.

13 Q. That's what an AR report does.

14 A. Well, I didn't do this. I don't know about this. I can
15 only tell you that I used the AR balance that I was
16 furnished, and no other part of that report was used. In all
17 of my other work their actual general ledger is used which
18 shows the actual receipts and disbursements.

19 Q. Yes, sir, but you gave an opinion that this report
20 justifies reducing the accounts receivable that are shown on
21 the books from a million eight down to \$200,000.

22 A. I did.

23 Q. That's why I'm interested in it.

24 A. I did that because if this report correctly reflects a
25 60-day accounts receivable balance, it's my opinion that AR

1 after 60 days has little value, some maybe no value, and most
2 practices that I have that are medical practices values AR up
3 to 60 days at 100 percent but not what's been on the books
4 forever.

5 Q. You heard Ms. Koumas testify that she runs a payer aging
6 report as much as three times a week.

7 A. I didn't hear her, but I believe she said it.

8 Q. Assume that she said that. You've never seen that
9 report, have you?

10 A. No, sir.

11 Q. All right. Let's just take a minute to see whether
12 Defendant's Exhibit 214 is up to snuff in your opinion, okay?

13 A. Yes, sir.

14 Q. Let's look at Plaintiff's Exhibit 316.

15 A. I have it.

16 Q. And if you'll look down about two inches where it has
17 March the 6th, 2010.

18 A. Yes, sir, I have it.

19 Q. And what's the balance in the company's account on March
20 the 6th, 2010?

21 A. The balance in the company's cash account, that's what
22 this is showing, deposits and balance.

23 Q. Yes, sir.

24 A. March of 2010, looks like 1,675,000.

25 Q. All right. Let's write that down. 1,675,000. Now,

1 would you turn over to the last page of Plaintiff's Exhibit
2 316 and look at the second line down.

3 THE COURT: Go where now? I'm sorry.

4 MR. CLEVELAND: On the last page.

5 THE COURT: Okay.

6 Q. Well, let's look at the third line down, May 10th.

7 A. Third line from the top?

8 Q. Yes, sir. What is that.

9 THE COURT: That's the 12th.

10 MR. CLEVELAND: May 12.

11 THE COURT: Ends with May 13, May 12, so three lines up
12 is May the 13th.

13 Q. We can write them both down, but the balance in the
14 account on May the 7th, 2010 is what?

15 A. Well, I don't assume the balance in the account on the
16 right-hand side is the balance in the bank account because
17 it's not. That's an accumulated balance, that's accumulated
18 moneys, but that's not the billion balance. They've never
19 had \$3 million in their bank account.

20 Q. Yes, sir, but that's not the point. The point is that
21 this balance is the accumulated total of the money that's
22 coming in, is it not?

23 A. Correct.

24 Q. That's what we're interested in. That's what would be
25 shown on an AR report, right?

1 A. No.

2 Q. An AR report, I thought you told us, would show all the
3 payments made during the period being reported on.

4 A. Right, it would include accumulated from beginning of
5 this report to that is what they collected, but all of it
6 wasn't AR. Some of it came from the other internal
7 departments.

8 Q. I just want to look at what they collected.

9 A. That's what I'm saying. Some of what they collected
10 didn't come through AR, it came from the hearing division and
11 stuff like that.

12 Q. All right. Let's see what it is.

13 A. Okay.

14 Q. Let's see what they collected. What's the amount that
15 they collected that is most relevant to the end date of your
16 report?

17 A. The amount they collected, the cumulative total of
18 collections was a little over \$3 million.

19 Q. Be a little more specific. 3 million what?

20 A. What date do you want me to use?

21 Q. You tell me. The date that's most -- what we're trying
22 to do is compare what the general ledger shows as being the
23 payments received by the company during the time that the
24 60-day AR report was run. That's what we're trying to do.

25 A. Okay. So the AR report is from May -- from March of '10

1 to May of '10, so I need to go to March '10 and see that what
2 we had was a million six in that first number on the first
3 page.

4 Q. Is that the right number?

5 A. I beg your pardon?

6 Q. Is a million six the right number to be used?

7 A. That was what had been collected up until that date, a
8 million six.

9 Q. Is that the relevant time, date and number to use to
10 compare with the 60-day AR report?

11 A. Well, if this report was run based on March 10 through
12 May 9, then I should start on March 10 here and see what we
13 had at that point in the cumulative total so I can subtract
14 it from the cumulative total when we get to the other end.

15 Q. That's just what I want you to do.

16 A. Okay. March 10, it's not on the first page, so starting
17 on the second page, on March 10, the beginning cumulative
18 total was 1.833 million on March the 10th, beginning at March
19 10th.

20 Q. Thank you. And what is the end date that we should look
21 at?

22 A. Which would be May the 9th.

23 Q. Would you find that and tell us what the number is in
24 the balance as of that time?

25 A. May the 9th, it would be 3,471,000.

1 Q. All right. And I subtract those, and it looks like to
2 me it's \$1,608,000.

3 A. All right, sir. I'll accept that. I didn't subtract
4 them but -- it's hard for me to even see them.

5 Q. Well, if you take --

6 A. But I accept your subtraction.

7 Q. If you take 3.4 million and take away 1.8, it's about
8 1.6.

9 A. Correct.

10 Q. So that shows that during this period of time that your
11 Defendant's Exhibit 214 applies the company received over
12 \$1,600,000.

13 A. Correct.

14 Q. Which is an average of about \$800,000 a month, right?

15 A. Yes, sir.

16 Q. And if you multiply 800,000 times 12, that's 9.6
17 million.

18 A. Correct.

19 Q. That's more like what you know the company receives
20 every month.

21 A. Yes. I made financial statements that show that. I
22 prepared financial statements that shows the actual -- I
23 never used an AR report in any of my reporting.

24 Q. And do you agree with me that Defendant's Exhibit 214 is
25 not a reliable accounts receivable report based on the

1 information that we have developed so far?

2 A. I don't have an opinion on that. I don't have the facts
3 to support yes or no. As I indicated, I just got the number
4 provided to me when I needed it to put in the formula. I did
5 not do any work to determine it.

6 Q. Based on what you know today, do you still offer the
7 opinion that the Court should rely on the 60-day accounts
8 receivable, Defendant's Exhibit 214, in making its decision?

9 A. Only if it's a correct exhibit.

10 Q. That's not my question. The facts are what they are,
11 and based on what you know today, are you representing, as an
12 expert giving an opinion, that this Exhibit 214 should be
13 relied on by the Court for the purposes for which it was
14 offered?

15 A. I can't answer that question. I don't know the facts
16 that get you to 246 as opposed to what you might say the real
17 AR is if this is incorrect. If the real AR is not this, the
18 Court should not rely on this. I do not know what the real
19 AR is if this is incorrect.

20 MR. CLEVELAND: Let's look at slide 58, please. Excuse
21 me, Your Honor.

22 THE COURT: Okay.

23 Q. Would you look at Exhibit 250 in your book, Exhibit 250
24 in the book that's Plaintiff's Exhibits Volume II?

25 A. 260.

1 Q. Yes, please. 250, I'm sorry.

2 A. 250.

3 Q. Yes, sir, 250.

4 A. All right.

5 Q. There we go. Let's go to the next page, please. Mr.
6 Sheheen, can you see the -- you've got page 201 in your book?

7 A. I have it here.

8 Q. I'll represent to you that when Mr. Livingston went to
9 SCENT, he asked for the documents that showed how SCENT
10 booked its accounts receivables, and he was provided with the
11 set of documents that say 2009-2010 SCENT financials.

12 A. Yes, sir, I see that.

13 Q. I want you to further assume that yesterday when Ms.
14 Koumas testified she -- I want you to assume that she's the
15 one most knowledgeable about the billing activities and
16 collection activities at SCENT, and I want you to assume that
17 when she was asked to provide the most relevant documents as
18 to how SCENT booked its accounts receivable, she provided
19 these documents, and I want you to assume that when asked,
20 she said these were the best documents to use to determine
21 how the company books its accounts receivable. With those
22 assumptions I'd like you to look at -- let's look at page
23 007, please. This is the April 2009 data summary sheet.
24 Have you ever worked with these data summary sheets before?
25 A. Never have seen them before.

1 Q. Is this the first time you've seen them?

2 A. Yes.

3 THE COURT: That's April 2010.

4 MR. CLEVELAND: I'm sorry. We're showing on the screen
5 Exhibit 250.007, the April 2010 data summary sheet. Thank
6 you.

7 Q. Let's look at the charges. Do you see that?

8 A. Yes, sir.

9 Q. Do you have enough knowledge of reports to be able to
10 tell us whether this looks like it is conducting an accounts
11 receivable analysis?

12 A. It appears to be attempting to determine a collection
13 ratio and amount of accounts receivable, but I don't know
14 anything about the documents, since I have never seen it
15 before today.

16 Q. Yes, sir, I understand. What are the charges that are
17 shown on the Exhibit 250.007 that were charged by the company
18 in the preceding time period, month of April?

19 A. The charges were 1.8 million.

20 Q. Now, that's consistent with the general ledger that we
21 looked at.

22 A. Correct.

23 Q. Well, actually the general ledger shows receipts, not
24 charges, doesn't it?

25 A. Correct.

1 Q. Let's look at the receipts, the SCENT collections. How
2 much do they show?

3 A. 739,000.

4 Q. And what we looked at on the general ledger shows that
5 during the 60-day period that the general ledger applied to
6 it was about 1.6.

7 A. Correct.

8 Q. And so one month would be 800,000.

9 A. Correct.

10 Q. So this Exhibit 250.007 is consistent with the general
11 ledger.

12 A. Yes.

13 Q. Based on what you've seen wouldn't you find this more
14 reliable -- don't you find this more reliable than the 60-day
15 AR report you've been provided with?

16 A. Well, my question is why can't you just go and get the
17 accounts receivable balance instead of having to come up with
18 procedures to determine what it was?

19 MR. CLEVELAND: I don't know the answer to that.

20 THE WITNESS: It seems to me that the answer is we ought
21 to be able to just get it and it's factual. This is the
22 process to arrive at it, and it looks like the reasonable
23 process to arrive at it.

24 Q. That's a good answer but not an answer to my question.
25 My question is don't you, based on what you've seen today,

1 believe that Exhibit 250 is a more reliable document by which
2 to determine the way in which the company booked its accounts
3 receivables on a normal basis than Defendant's Exhibit 214?

4 A. Yes.

5 MR. CLEVELAND: Would you bear with me just a minute?

6 THE COURT: Yes.

7 Q. Thank you. Just a couple more questions, Mr. Sheheen.
8 I want to ask you about two quick things, Mr. Sheheen.

9 A. Yes.

10 Q. The first has to do with, if you'll look in the Tab L of
11 Mr. Sheheen's book.

12 A. Tab L?

13 Q. Yes.

14 A. All right, sir. I have it.

15 Q. Now, you have -- one of the things that the formula
16 provides for to pay Dr. Dyce for his shares is an amount of
17 money for the cash and cash equivalents.

18 A. Correct.

19 Q. And you have taken out \$726,950 because it's your
20 opinion that's not a cash equivalent.

21 A. Yes, sir.

22 Q. And I believe I heard you testify yesterday, tell me if
23 I got it right, that the cash equivalent is an item that
24 could be expected to produce cash in a reasonable period of
25 time.

1 A. I did.

2 Q. Okay. Now, I want you to assume that the calculation of
3 Dr. Dyce's purchase of the shares begins -- do you know the
4 relevant date for when we were cutting things off? Is it May
5 10th, May 9th?

6 A. For when what was cutting things off?

7 Q. Dr. Dyce is entitled to certain things such as accounts
8 receivable, such as cash as of a certain date.

9 A. When he left the company?

10 Q. Yes. And do you understand that to be May 9th?

11 A. Yes, sir, I do.

12 Q. Now, on May 9th SCENT had as a receivable on its books
13 \$726,000 that was owed to it by SCENT Land.

14 A. Yes, sir.

15 Q. And that money had been used to construct the Lugoff
16 building pending getting the money from the bank.

17 A. Yes, sir.

18 Q. Do you understand that?

19 A. Yes, sir.

20 Q. And so isn't it true that the issue of whether it is a
21 cash equivalent or not is whether SCENT had a reasonable
22 expectation of receiving that money within a reasonable
23 period of time.

24 A. Yes.

25 Q. If it did, then it should be included.

1 A. But we would only know that after the fact.

2 Q. Well, let's --

3 A. On the date of May 9th we did not know that.

4 Q. Let's talk about that.

5 A. Okay.

6 Q. You know it was in fact elected within four days?

7 A. I do not know when it happened.

8 Q. Does it make a difference to you?

9 A. Yes, if they got their money back in four days, I would
10 count it as a cash equivalent.

11 Q. All right. I want you to assume that the companies
12 SCENT Land and SCENT were both controlled by the same people.

13 A. I'll assume that.

14 Q. So it's a related party.

15 A. It is.

16 Q. I want you to assume the people that control SCENT also
17 control the actions of SCENT Land.

18 A. I agree.

19 Q. I want you to assume that the only reason the SCENT
20 money was used was because they hadn't closed the loan with
21 the bank to borrow a million seven to construct the Lugoff
22 building.

23 A. All right, sir.

24 Q. That's consistent with your recollection, is it not?

25 A. I'm not sure about the numbers, but it's consistent with

1 what I understood happened, that they used the money to
2 construct the Lugoff building.

3 Q. I want you to assume that the loan to extend \$1.7
4 million to SCENT Land was approved in mid February, 2010,
5 couple months before we're talking about, all right?

6 A. I'll assume that, based on what you're telling me.

7 Q. Yes, sir, and I want you to assume that the closing of
8 that loan occurred on May the 5th of 2010.

9 A. All right, sir.

10 Q. All right. So I want you to assume that SCENT Land,
11 controlled by SCENT people, has the wherewithal to draw down
12 a million seven to pay for the construction and to pay
13 back -- I want you to assume that the bank's officer's
14 testimony is that it would have been entirely appropriate to
15 use proceeds from that loan to repay the money spent by SCENT
16 on construction. Can you assume that?

17 A. I'll assume that.

18 Q. And I want you to assume that, in fact, within a week of
19 May 10th the \$726,000 was paid to SCENT.

20 A. All right, sir.

21 Q. Now, under those facts wouldn't you agree that this is a
22 cash equivalent?

23 A. Yes.

24 Q. Now let's talk about life insurance. You said that the
25 surrender value of the life insurance policy is cash.

1 A. Correct, right.

2 Q. Now, under the buyout formula it doesn't call for
3 splitting up cash equivalents. It calls for getting the
4 value of the cash equivalents, right?

5 A. I assume that's what it calls for, yes.

6 Q. And so the company had cash in the form of that life
7 insurance policy that could be surrendered that had a value
8 of \$33,000 --

9 A. Yes.

10 Q. -- did it not?

11 A. It did.

12 Q. And it would not have been required to cash in the
13 policy to give Dr. Dyce credit for that being part of the
14 company's assets, would it?

15 A. I don't know whether it would be required, but my
16 opinion was that if they had to get that cash, it had a zero
17 value because of the penalty.

18 Q. But if they didn't have to get it, all they had to do
19 was pay some value because of it, your opinion would be
20 different, wouldn't it?

21 A. Yes.

22 MR. CLEVELAND: Thank you.

23 THE COURT: All right. Yes. Redirect.

24 MR. SHEHEEN: Thank you, Your Honor.

25 REDIRECT EXAMINATION BY MR. SHEHEEN:

1 Q. Mr. Sheheen, let's talk about the AR, since there seems
2 to be a lot of discussion about that. What is an accounts
3 receivable?

4 A. Something owed to the company by a patient.

5 Q. All right. Let's take it outside of SCENT. Just
6 generally what is an account receivable?

7 A. Money owed to the company.

8 Q. When that has been paid, what do you call it, what is
9 it, what does the company have once it's been paid?

10 A. It has cash.

11 Q. Okay. Is that an accounts receivable anymore?

12 A. No.

13 Q. All right. Could we look at Exhibit 250.007? You
14 looked at this sheet earlier -- well, five minutes ago. Do
15 you remember that.

16 A. Yes, sir.

17 Q. Okay. Earlier I think you gave an opinion as to whether
18 you thought the appropriate AR was this total AR. What was
19 your opinion during direct? Is that the appropriate AR to
20 use?

21 A. Based on the assumptions that I was asked to accept,
22 then that would be the appropriate AR.

23 Q. That was in the cross with the assumptions.

24 A. Yes.

25 Q. I'm not asking you that. If that is the total AR going

1 back a year, okay, in your opinion would that be the
2 appropriate AR to use?

3 A. No.

4 Q. Okay. What would be the appropriate AR?

5 A. Whatever it was on that date.

6 Q. All right. And for how long a period of time?

7 A. 60 days.

8 Q. Okay. Let's look at this figure here. It says SCENT
9 charges. Do you see that?

10 A. Yes.

11 Q. And what is it?

12 A. 1.8 million.

13 Q. And you see what this total AR is?

14 A. Yes, 1.8 million.

15 Q. Are they pretty close?

16 A. Yes.

17 Q. If that was the AR that was used, what would that tell
18 you compared to the charges?

19 A. That they collected almost all of their AR.

20 Q. All right. Let's look at this figure here, open amount,
21 do you see that?

22 A. Yes, sir.

23 Q. What's your interpretation of what that might mean?

24 A. I have no idea what it may be.

25 Q. If that was the amount that hasn't been collected yet,

1 would that make sense?

2 A. Yes.

3 Q. And that's for one month, right?

4 A. Yes.

5 Q. If you double that, what would approximately you get?

6 A. 350.

7 Q. Okay. And let's look at the 60-day AR sheet that was
8 SCENT's Defendant's Exhibit 214. That's behind Tab H. Do
9 you see that?

10 A. Yes, sir.

11 Q. Okay. And what is -- I'm not talking about the total
12 charge, I'm not talking about the patient payment, I'm not
13 talking information, I'm talking about what is left owed.

14 A. This shows 246.

15 Q. What is the accounts receivable on that document?

16 A. 246,823.

17 Q. Okay. This is for two months?

18 A. Yes.

19 Q. And if you double that open amount right there, how much
20 do you get?

21 A. 350.

22 Q. Is that pretty -- it's not the same, but is that in the
23 same neighborhood in your opinion?

24 A. It's consistent.

25 Q. Okay. I want you to look -- are you aware that when Mr.

1 Livingston met with SCENT's employees, that he was also
2 provided a 90-day AR that he requested, were you aware of
3 that?

4 A. I was not aware of any of Mr. Livingston's arrangements
5 prior to the hearing.

6 Q. I want to you assume that he was provided a 90-day AR.

7 A. Yes, sir.

8 Q. And I want you to assume that he was provided the entire
9 backup for that, okay, all the sheets that you were asked
10 that you looked through, I want you to assume that, okay?

11 A. I have not seen those.

12 Q. Just assume it. I want you to assume.

13 A. Assume, okay.

14 Q. Now I want you to assume that when SCENT calculates AR
15 or runs a report on AR, that things that are no longer in
16 accounts receivable because they've been completely paid are
17 gone. Do you understand?

18 A. I understand.

19 Q. Okay. Look at Exhibit 214.

20 A. I have it.

21 Q. Yes, sir, do you have it in front of you?

22 A. 214-D.

23 Q. Yes, sir. I want you to assume that any charges that
24 have been completely paid or completely written off, don't
25 exist anymore for AR purposes, aren't reflected on this

1 sheet, assume that.

2 A. Yes, sir.

3 Q. Because if a charge has been completely paid, is it an
4 accounts receivable anymore?

5 A. No.

6 Q. All right. If a charge has been completely written off,
7 is it an accounts receivable anymore?

8 A. No.

9 Q. I want you to assume only accounts receivable are shown
10 on this page, all right, and I'm going to share with you and
11 I probably --

12 Your Honor, you asked us to send or they asked us to
13 send the backup documentation to this report yesterday you'll
14 recall that, and it was emailed to them. I don't know how
15 many copies we have? Just trying to think of the best way to
16 handle this exhibit.

17 THE COURT: I understand.

18 MR. SHEHEEN: Your Honor, I'll introduce these as
19 Exhibit --

20 MR. CLEVELAND: Your Honor, let's -- there are terrible
21 HIPAA problems with these reports.

22 MR. SHEHEEN: Yes, you're right.

23 MR. CLEVELAND: That's why I didn't introduce them.
24 They've got the names of all these patients, so I just raise
25 that. I'm not objecting to his using the document, but I

1 don't want to --

2 THE COURT: You have an obligation to protect the names.

3 MR. SHEHEEN: I should have raised that. I apologize.

4 THE COURT: And there's some Social Security numbers
5 floating through these documents too, not necessarily those,
6 but in some of the documents that it seems there is a
7 responsibility to protect those as well, but here's what I
8 think I'm comfortable doing, let's mark them for
9 identification purposes at this point only, and then let's
10 not put them in until we're finished with the trial portion,
11 and then we can put them in sealed. Does that make sense
12 what I'm saying? In other words, we'll use them for
13 identification purposes, cross-examination or direct, but
14 when they actually go in as an exhibit, then we'll put them
15 in under seal.

16 MR. SHEHEEN: Thank you, Your Honor.

17 (Defendant's Exhibit 258 marked for identification.)

18 Q. Just so we understand where we're at Mr. Sheheen, this
19 report here, the 60-day AR, the thing that says at the bottom
20 60-day AR, is a summary of the last page of this document,
21 this bulky document. If you look at the bottom line numbers
22 you'll see that. Do you see that?

23 A. Yes, on the last page.

24 Q. Mr. Sheheen, I want you to look at -- I want you to look
25 at this report, okay, and I want you to, let's look at --

1 let's just look at the front page. I think it will help us.
2 Do you see that there are balances outstanding for these
3 specific charges, the front page. We're looking at a name
4 that I'm not going to mention. Let's look the dates.

5 A. I have balances on the last column on the right-hand
6 side.

7 Q. Yes, sir. Let's look at 3/10, let's not mention the
8 names for the record, but look at the date 3/10/10, first
9 page.

10 A. I'm there.

11 Q. Is there a balance outstanding?

12 A. Yes.

13 Q. Do you see balances outstanding for all of these? And
14 we're going to come to some that don't, and I'm going to
15 discuss those as well so everybody understands. Do you see
16 balances outstanding as you go down this line?

17 A. Yes.

18 Q. All right. Let's look -- there are only a few, and the
19 Court can review this, you know, at leisure, but I'll
20 represent to you there are some where there's not a balance
21 outstanding. I'm going to show you one so we can discuss it
22 so that the Court can understand what this document shows,
23 and so you can understand this document. Let's look at a
24 date about five pages in, and it says 3/22/10, and there's a
25 gentleman's name after it, 3/22/10. Do you see that,

1 3/22/10?

2 A. No.

3 Q. Okay. It's under, it's on the fourth page and it says
4 99204.

5 THE COURT: What was the date again?

6 Q. 3/22/10. There's a little heading above it that says
7 99204 office visit, and then there's a date 3/22/10.

8 A. Are we on page 4?

9 Q. Yes, sir.

10 A. I don't have that. On mine I don't see a 322.

11 Q. Okay. Let me come look, make sure we have the same
12 copies. I beg your indulgence, Your Honor?

13 THE COURT: Okay.

14 MR. SHEHEEN: Okay. It's about all the way down on the
15 bottom. Your Honor, have you located it? 3/22/10. It's
16 really small print, and unfortunately, my version, when they
17 print out, they don't print out all the same, right there,
18 almost to the bottom, looks like 3/22/10, do you see that?

19 THE WITNESS: Yes, I see it.

20 MR. SHEHEEN: Hold on to that. Let me make sure the
21 Court has it. First name starts with a D.

22 THE WITNESS: It's the last item, Judge, on the bottom
23 of the page.

24 THE COURT: Got it.

25 Q. Do you see on that one, is there a balance owing?

1 A. Yes.

2 Q. Look at the last column.

3 A. No balance owed.

4 Q. No balance?

5 A. No balance owed.

6 Q. And that's different than the vast majority of these on
7 this report, is that right?

8 A. Yes.

9 Q. Okay. All right. Let's look at that same person's name
10 under the code 69200, which should be either on that page or
11 before it. Okay. Do you see that entry for 3/22/10?

12 A. I have 69200 on the second page and I see that same
13 party's name.

14 THE COURT: Were you able to find it?

15 MR. CLEVELAND: If you could tell me what page it is. I
16 apologize.

17 THE COURT: Second and third, the top of the second
18 page, the very top.

19 MR. CLEVELAND: Thank you.

20 THE COURT: Has canal somewhere in it on the very top of
21 page 2, and then look at the very bottom of page 3.

22 Q. Okay. Thank you, Your Honor. So is this the same
23 person?

24 A. Yes.

25 Q. All right. And in this entry for this person is there

1 still a balance owed, in other words, an accounts receivable?

2 A. Yes.

3 Q. In the previous entry for that person would you agree
4 that there is no longer an account receivable, at least for
5 that procedure that was done?

6 A. Yes.

7 Q. Because it was converted into cash or written off.

8 A. Yes, it shows no receivable.

9 Q. So assume that this document and the summary have all
10 outstanding balances for that 60 days, okay, reflected on it,
11 outstanding balances, would that be the account receivable
12 that you should use?

13 A. I assume it would be.

14 Q. Okay. If charges that had been paid or completely
15 written off were not included on it, would that affect the
16 calculations at all?

17 A. Charges that had not been paid are paid off.

18 Q. Let me rephrase. If there are charges that have been
19 completely paid.

20 A. Okay.

21 Q. Are they accounts receivable anymore?

22 A. No.

23 Q. Okay. If they're not in there, does that affect the
24 outcome?

25 A. Yes.

1 Q. Why?

2 A. Because they're not a part of AR. AR is only what's
3 still owed.

4 Q. If they're not in there, does it affect anything?

5 THE COURT: What's there? You mean the payments?

6 Q. If they're not in the document.

7 A. It wouldn't affect it because they've already been done.

8 Q. Okay. So if you look at the ledger, as you did with Mr.
9 Cleveland, would it have in the ledger charges that have been
10 completely paid off?

11 A. Not by individual but by totals, yes.

12 Q. Okay. And that is not AR, is it?

13 A. No.

14 Q. What is AR?

15 A. What's left not paid, still owed.

16 Q. Okay. I'm going to show you a document. I want you to
17 look at this document, okay? I want you to look -- it's
18 small. I'm sorry. I want you to look down about on the
19 right-hand -- do you see the right-hand column, do you see
20 where it says insurance, primary?

21 A. I do.

22 Q. What's the word below that, it's kind of in a black
23 highlighted looking thing, can you read it?

24 A. It says open claims only.

25 Q. I want you to assume that this is the parameters that

1 was used to search and create this AR. Do you understand?

2 A. Yes.

3 Q. Do you understand what open claims only would be? What
4 do you think it would be?

5 A. I think it would mean that that would be how much the
6 company claims people still owe them.

7 Q. Okay. Is that what AR is?

8 A. Yes.

9 Q. Is that consistent with what you have looked through for
10 Exhibit 214 and what's been offered for ID only Defendant's
11 Exhibit 258 right now?

12 A. The backup?

13 Q. Yes.

14 A. Yes.

15 Q. Do these appear to be the open accounts?

16 A. Yes.

17 Q. And is that what AR is?

18 A. Yes.

19 MR. SHEHEEN: Your Honor, I would offer into evidence
20 this parameters of the search as Defendant's Exhibit 259.

21 MR. CLEVELAND: No objection.

22 THE COURT: Very well.

23 (Defendant's Exhibit 259 marked for identification.)

24 (Defendant's Exhibit 259 received into evidence.)

25 Q. In your opinion what's the appropriate AR to use for the

1 calculations?

2 A. 246,000 that I used I thought was provided to me as the
3 correct AR, and if it is, that's what I would consider
4 appropriate.

5 Q. Okay. Do you believe that the open accounts equal the
6 AR, accounts that still have --

7 A. Claims.

8 Q. Say it again. I'm sorry?

9 A. The open claims?

10 Q. Yes, sir.

11 A. Yes.

12 Q. Is that what's appropriate to use for AR?

13 A. Yes.

14 Q. And if that is what Defendant's Exhibit 214 and 258
15 represent, is that the appropriate documents?

16 A. Yes.

17 Q. Okay. And the data summary sheet, which is up there,
18 does that represent open claims for 60 days?

19 A. I'm not sure what it represents.

20 Q. Okay.

21 A. I've never seen it before today, so I don't want to
22 interpret what it means spontaneously.

23 Q. Okay. Just a few more questions, please. In 2007 SCENT
24 didn't pay all of -- did SCENT pay all of Dyce's income on a
25 W-2?

1 A. No.

2 Q. Should it have?

3 A. Yes.

4 Q. What are some reasons that companies fail to do that
5 that you've bumped into?

6 A. Sloppy bookkeeping.

7 Q. Any other reasons?

8 A. Because they don't know that they're supposed to do it.

9 Q. Okay. Do companies use payroll services sometimes?

10 A. Yes.

11 Q. Is there ever any problems with the communications
12 between the company and the payroll service?

13 A. The company and payroll services should not have
14 problems with communication.

15 Q. I'm just looking for any other reason. You might not
16 know. I'm just interested.

17 Was Dyce an owner in 2008?

18 A. Say that again.

19 Q. Was Dyce an owner in 2008 to your knowledge?

20 A. Yes, he was.

21 Q. You've heard, I think both -- both sides agree, I
22 believe, that Dyce was not an owner in January of 2008. Have
23 you heard that?

24 A. Yes.

25 Q. Okay. Was there any way for you to create -- assume

1 that we agree to that. Was there any way for you to create a
2 tax return that had a 50-percent ownership of both of them
3 for the whole year?

4 A. No.

5 Q. What was the best evidence, Mr. Sheheen, in your
6 experience as a financial adviser and a CPA, of when someone
7 becomes a shareholder?

8 A. When they are given their ownership interest in legal
9 form. When I am informed that they are a partner. There are
10 times when they don't issue the legal form of ownership, but
11 there are times that they tell me he became a partner on a
12 certain date, and those are the informations that we use to
13 do our reporting, but we don't try to determine when people
14 are partners from any facts and circumstance test to apply to
15 it to see when they were. In my dealings in this particular
16 case both members dealt with me in group meetings and never
17 indicated that anything that I prepared was incorrect.

18 Q. If you could turn to, in the book that was given to you,
19 Plaintiff's Selected Exhibits, Volume II, where it said final
20 sweep, and then there was what has been called a buy-in sheet
21 where it said final sweep, do you remember looking at those?

22 A. Yes.

23 Q. You were given a bunch of assumptions about it. I want
24 you to assume that the parties were including some terms from
25 your letter of 2007. Do you remember that?

1 A. Yes, sir.

2 Q. Okay. And in that letter of 2007 were there two other
3 items that you had included that should be taken into
4 consideration for a buy-in?

5 A. Yes.

6 Q. What were they, do you recall?

7 MR. CLEVELAND: I'm going to object. What he
8 recommended is not relevant. He testified that they didn't
9 go by the letter, and what he might have wanted them to do
10 has no bearing on this.

11 MR. SHEHEEN: He gave a lot of testimony, but his
12 testimony, as I recollect it was that they used the phantom
13 income that the attorney decided that he made recommendations
14 he thought they should follow, ultimately they made their own
15 decision as to how they were going to do it.

16 THE COURT: That's what he testified. He's already done
17 that, and that's what I heard. I already heard it.

18 Q. My only question is assume that there were two other
19 elements as you laid out in your letter. Would that mean
20 that there were other things to be done after February?

21 A. Yes.

22 Q. Okay. Do you recall that the plaintiff's expert grossed
23 up the 750 to get into February?

24 A. Yes.

25 Q. And do you recall that he used only federal income taxes

1 to gross up?

2 A. I do.

3 Q. Okay. Do you think that was appropriate?

4 A. No.

5 Q. You were shown an agreement from 2007 -- no 2005 that
6 was signed. Do you recall that?

7 A. I was shown it today, I think.

8 Q. Yes, sir. Is it still up there?

9 A. Yes, I believe it might be.

10 Q. Do you recall that it had equipment valued at -- it was
11 Plaintiff's Exhibit 2. It was in that book.

12 THE COURT: That was that Exhibit 5, that first Exhibit
13 No. 5 in that book.

14 THE WITNESS: What was the question?

15 Q. Do you recall that there was a value placed on equipment
16 in that 2005 agreement?

17 A. Yes.

18 Q. Okay. And was it 800,000?

19 A. Yes.

20 Q. Based on your knowledge of the business, did they
21 purchase more equipment between 2005 and 2007?

22 A. Yes.

23 Q. Based on your knowledge of the business did they
24 increase gross revenue substantially between that time?

25 A. Yes.

1 Q. When you wrote your letter of 2007, did you take that
2 into consideration? You can look at it if you want. It's in
3 the book.

4 A. I don't think I took into consideration, when drafting
5 the letter, their growth in the business. I was providing
6 them with information as to how they could value the business
7 for someone coming in without having to depend on depreciated
8 assets, fair market values and those kind of things, except
9 for two items. I stated cash and receivables belonged to the
10 existing partner prior to the admission of a new one and that
11 anything after that date belongs to the group.

12 Q. Look at F. That's where your letter is on that book.
13 We'll do this very briefly.

14 A. F?

15 Q. Yes, sir.

16 A. I have it.

17 Q. Look on the second page. Did you take into
18 consideration the growth in the gross receipts when you were
19 trying to come up with what you recommended?

20 A. Yes.

21 Q. Okay. Had that changed substantially since 2005?

22 A. Yes.

23 Q. You were shown a chart up here by Mr. Cleveland that had
24 equal distributions in the spring of 2008 between Dyce and
25 Puchalski for some period of time, do you recall that?

1 A. Yes.

2 Q. Were there other distributions to Dr. Puchalski for
3 tax -- to pay tax bills and other things?

4 A. There was.

5 Q. So were there equal distributions in the spring of --

6 A. No.

7 Q. Do you recall when you actually completed the 2007 tax
8 return for Dyce and SCENT?

9 A. Yes.

10 Q. When do you think it was completed? It's behind Exhibit
11 A in that book.

12 A. A?

13 Q. Yes, sir, A. There's a copy of Dyce's.

14 A. They're dated July 15th, 2008.

15 Q. 2008?

16 A. Yes.

17 Q. Okay.

18 A. The returns were on extension, and they're dated
19 whenever I completed them.

20 MR. SHEHEEN: Beg the Court's indulgence one moment.

21 THE COURT: Okay.

22 Q. Do you recall if Dr. Dyce received a stock certificate
23 in this case?

24 A. I'm not aware of when and if he received it until this
25 trial began and I then observed it.

1 Q. Do you recall now when that was?

2 A. Yes, July 16th, 2008.

3 Q. I want to very briefly talk about the life insurance
4 that we talked about or that you were asked about. In Mr.
5 Livingston's testimony I believe he testified that a cash
6 equivalent was something that could be liquidated within 90
7 days. Is that a fair description?

8 A. It's fair, yes.

9 Q. Could that life insurance policy be liquidated in 90
10 days and have any value?

11 A. No.

12 Q. Do you think that life insurance policy should be used
13 for the --

14 A. No.

15 Q. Thank you. I want to talk to you, just one more
16 question, I believe, about the loan from SCENT for SCENT
17 Land. Do you know what I'm referring to?

18 A. Yes, sir.

19 Q. Were there any guarantees that -- do you know generally
20 what was going on during that period of time?

21 A. Yes. I knew that there was a problem.

22 Q. All right. Were there any guarantees that SCENT was
23 going to receive that money back from SCENT Land?

24 A. I don't know of any, there may have been, but there may
25 not have been.

1 Q. All right. Would that be an accounts receivable or
2 accounts payable?

3 A. It would be a note receivable or note payable.

4 Q. Okay.

5 A. There's a difference, accounts receivable and notes
6 payable.

7 Q. All right.

8 A. Notes receivable.

9 Q. Which one would it be?

10 A. It would be a note receivable on SCENT's book and note
11 payable on the land book.

12 Q. Okay. And could, if they were able to get that money
13 back, could SCENT have applied that to its debt?

14 A. They could get it back and apply it however they want
15 to, but I would assume, if they had to borrow it to give it
16 to them, they should pay it off when they got it.

17 Q. Okay. Do you believe it should be considered a cash
18 equivalent?

19 A. No. I didn't consider it that.

20 Q. Okay. Is it appropriate to count a loan receivable
21 without counting a loan payable in this formula?

22 A. The formula is what it is.

23 MR. CLEVELAND: I object. If he's asking --

24 THE COURT: Sustained. It's not informative.

25 MR. SHEHEEN: Fair enough. I think that was the answer

1 we were going to get too.

2 Q. Do you think it's appropriate to count this loan as a
3 cash equivalent?

4 A. No.

5 MR. SHEHEEN: Nothing further, Your Honor. Thank you.

6 THE COURT: Okay.

7 MR. CLEVELAND: Two quick things.

8 THE COURT: Wow, okay.

9 RECROSS-EXAMINATION BY MR. CLEVELAND:

10 Q. Mr. Sheheen, with regard to the \$726,000 that we've been
11 talking about as to whether it should be included in the
12 purchase price as a cash equivalent, do you understand that
13 that money was used to pay for construction?

14 A. I do.

15 Q. Do you agree with me that the money, as it came in,
16 would have been allocated to Dr. Dyce and to Dr. Puchalski on
17 a 50/50 basis?

18 A. If it came into SCENT?

19 Q. Yes.

20 A. No, he wasn't a partner at that time.

21 Q. In 2009.

22 A. In '09, yes. I agree that the income from the practice
23 would apply at 50/50 to each of them.

24 Q. And so if you don't include it in the purchase price,
25 what we will have is that half of that money will have been

1 reported as being Dr. Dyce's money, he would have had to pay
2 taxes on it, and he never saw the first penny of it, isn't
3 that right?

4 MR. SHEHEEN: Your Honor, that's not what's in the
5 formula either.

6 THE WITNESS: I disagree, sir. He would not have paid
7 taxes on anything other than the earnings of the company, not
8 the payables and receivables.

9 Q. I didn't ask that. The money that was paid for the
10 construction, that came out of the company's bank account,
11 didn't it?

12 A. I don't know where it came from.

13 Q. It was money they had earned.

14 A. It was money they acquired from wherever the sources
15 were. I don't know where it came from, but they had a line
16 of credit, and they may have gotten it from the line of
17 credit.

18 Q. Let me ask you about the 60-day AR. Would you look at
19 the 90-day AR?

20 A. Yes, sir.

21 Q. Would you look at it again?

22 A. Yes, sir.

23 Q. That's Plaintiff's Exhibit 95.001.

24 A. I have it.

25 Q. Do you have the 90-day AR?

1 A. Yes, sir.

2 Q. You compared this to the 60-day AR, did you not?

3 A. Yes, sir.

4 Q. And you prefer -- you like the 60-day better than this
5 one?

6 A. Yes, sir.

7 Q. Why is that?

8 A. Because this one shows a great deterioration in the AR,
9 if they are correct statements, between 60 and 90 days
10 meaning their collectability goes down substantially.

11 Q. That's what you testified to under oath?

12 A. I did.

13 Q. Based on your review of this document?

14 A. Yes.

15 Q. And so for how far back does this document -- what time
16 period does this document cover?

17 A. Which document?

18 Q. The 90-day AR.

19 A. I think it covers what was owed at the end of 90 days.

20 Q. And so there would have been a begin date and then an
21 end date for the services covered, right?

22 A. Yes.

23 Q. Read what the range is on this, if you would. It's just
24 above the script --

25 A. 3/8 to 5/9.

1 Q. How many days is that?

2 A. Beg your pardon?

3 Q. How many days is that?

4 A. Well, it's 60 days.

5 Q. 60 days?

6 A. Yes.

7 Q. This is another 60-day report, isn't it?

8 A. I don't know the answer to that, whether this is
9 mislabeled or whether the report was run for 60 or 90 days.

10 Q. Does it appear to be a 60-day report?

11 A. The statement says report selection ranges from 3/8 to
12 5/9, which is 60 days.

13 Q. And so if the report run date is accurate, we've got two
14 60-day reports, do we not?

15 A. Yes, if that report is 60 days, it conflicts with the
16 other 60-day report.

17 Q. And they're very different in what they say.

18 A. Yes, they are.

19 Q. And you have no idea why that is.

20 A. I have no idea.

21 MR. CLEVELAND: Thank you.

22 THE COURT: Okay.

23 (Witness excused.)

24 MR. SHEHEEN: Your Honor, I have one witness from the
25 bank that I would like to put up there, so I can get to the

1 find a way to go back through the data, the underlying data,
2 and actually give you what the actual AR was at the time.

3 Your Honor, Mr. Cleveland mentioned, this is more
4 argument really, but he mentioned someone mentioned the
5 balance sheets. You have Exhibit -- 244 is the balance
6 sheet. AR is zero. There's no -- zero AR. And that is, of
7 course, getting back to what it actually means to be booked
8 in accordance with the corporation's normal accounting
9 methods. There are balance sheets on the record, and they
10 show zero AR because that's how this company operated.

11 Your Honor, there was a question about providing this
12 report from the expert last week. We have received reports
13 from their expert, updated exhibits and reports from their
14 expert the day of the trial in the past, as we've moved
15 forward, as he crunched data and came up with different
16 conclusions based on what he heard.

17 Your Honor, the -- actually, in the letters that
18 Mr. Cleveland submitted to you, he talks about AllMeds and
19 trying to get more information from AllMeds. You just heard
20 an argument that the AllMeds stuff didn't matter, it had
21 nothing to do with it. But even in his letters, he's trying
22 to get a report from AllMeds.

23 Your Honor, in our response, which has been filed with
24 you to their motion, we attached a letter from AllMeds saying
25 that there was certain data that they could not recreate that

1 THE WITNESS: David Macy Vidrine, V-I-D-R-I-N-E.

2 THE COURT: Your witness.

3 DIRECT EXAMINATION BY MR. WRIGHT:

4 Q. Thank you, Judge.

5 Thank you, Dr. Vidrine. If you would, please tell the
6 Court a little bit about yourself.

7 A. I'm from Louisiana, born and raised, and was the oldest
8 of three children and first to go to college, first to be in
9 medicine. My father works for a natural gas company in the
10 Gulf of Mexico, and my mother works at a bank where she's a
11 teller. I'm married to my high school sweetheart, Marie, and
12 we've got five children, and we live in Columbia.

13 Q. Thank you, Dr. Vidrine. You said you went off to
14 college and med school. Where did you go to college, med
15 school, any training?

16 A. I went to college at Northeast Louisiana University and
17 then went to Louisiana State University's School of Medicine
18 in New Orleans. And then I did residency at University of
19 Alabama Hospitals in Birmingham, Alabama. And then I did a
20 pediatric otolaryngology fellowship at Boston Children's
21 Hospital.

22 Q. So did you specialize in pediatric ear, nose and throat?

23 A. I did a fellowship which specialized in pediatric
24 otolaryngology.

25 Q. How did you end up here in South Carolina, Dr. Vidrine?

1 A. My wife's sister was married or is married to a
2 gentleman from Savannah, and they lived in Savannah when we
3 were in Birmingham. So we traveled to visit them and kind of
4 got to know the coast. And then they moved to Beaufort,
5 which we enjoyed very much, and I did a rotation in
6 Charleston; so I was familiar with the Lowcountry from
7 those -- from those relationships.

8 And I was recruited out of fellowship by Dr. Puchalski
9 to come to Columbia, which was the closest available job to
10 the family in Beaufort.

11 Q. Great.

12 Now, we're going to refer to South Carolina Ear, Nose
13 and Throat, Allergy & Sleep Medicine as SCENT, as we've
14 continued to do throughout the course of this trial. When
15 did you join SCENT as an employee?

16 A. Third week of July 2007.

17 Q. Okay. And what did you find when you got here? Did you
18 like the practice?

19 A. I did. I did. I interviewed at several practices prior
20 to committing to SCENT, and one of the things I liked about
21 SCENT was the wide array of services they provided. Most
22 otolaryngology practices I looked at didn't have a complete
23 package, but SCENT did. They were on the forefront of
24 getting pay-for-call contracts from hospitals. They had a
25 robust allergy division, and they were cultivating a sleep

1 program as well.

2 Q. Is that what you meant when you said it's different from
3 the other practices?

4 A. Yes. Some practices had some of the those aspects, but
5 I did not find a practice that had all the aspects that SCENT
6 had.

7 Q. And you talked about ear, nose and throat and those
8 ancillary services. Is it Dr. Puchalski that built that
9 practice?

10 A. That was my understanding. He called me. He recruited
11 me. Dr. Gunnlaugsson also called me when I was in Boston.
12 And Dr. Puchalski, it's my understanding, when I was being
13 recruited, was the only owner and had cultivated those
14 ancillary services.

15 The way he did that was, I believe, negotiating with the
16 hospitals for the call contracts and going through a
17 fellowship track through the Otolaryngology Allergy Society
18 and getting fellowship status, and then also eventually
19 sitting for the boards and being the first otolaryngologist
20 in the State of South Carolina to be boarded in sleep and
21 otolaryngology.

22 Q. Did Dr. Puchalski support his positions and his
23 providers in obtaining additional certifications?

24 A. He did, and it started before I moved here. When I was
25 still a fellow in Massachusetts, he did -- flew me out to Las

1 Vegas to join Dr. Dyce, Dr. Gunnlaugsson and himself and
2 several staff members for an otolaryngology coding course.

3 And then once I arrived to South Carolina, he funded and
4 sent me to the required meetings to sit for the allergy
5 boards. You had to go to at least three meetings and
6 accumulate a certain number of CMEs, and then you had to go
7 and sit for the exam, all of which was funded by the
8 practice.

9 Q. And those additional certifications that you and the
10 other providers got at SCENT, did that allow you all to make
11 more money?

12 A. Yes, it expanded our services. It gave credibility to
13 our specialty, and it allowed us to bring in more revenue
14 because of that.

15 Q. And when you arrived in August of 2007, if you would for
16 the Court, please explain your interactions that you had with
17 Dr. Dyce and Dr. Gunnlaugsson.

18 A. When I arrived in 2007, I mostly had a relationship with
19 Dr. Puchalski just through correspondence and negotiations,
20 and I had a relationship with Dr. Gunnlaugsson because of a
21 few phone calls. We had mutual colleagues in Michigan. And
22 when I came down, the interaction was fantastic. It was a
23 vibrant practice. It was growing. Every doctor there was
24 happy. Every doctor there was busy, and the vision for the
25 practice was very positive. Great things were happening, and

1 we had great plans.

2 Q. And tell the Court a little bit about your relationship
3 both with Dr. Dyce and Dr. Vidrine and Dr. Gunnlaugsson and
4 Dr. Vidrine.

5 A. Well, Dr. Dyce lived in Hartsville when I moved to
6 Camden, and he practiced mostly in Hartsville, although I
7 know he did come to Lugoff sometimes. And he operated in
8 Kershaw some, but the majority of his practice was based out
9 of Hartsville, Cheraw, Carolina Pines.

10 My practice was split maybe 60/40 between Kershaw County
11 and northeast Columbia, and Dr. Gunnlaugsson was about
12 60 percent northeast Columbia and 40 percent Kershaw. So our
13 paths crossed more often than Dr. Dyce and me. So
14 Dr. Gunnlaugsson and I had a fairly good relationship.
15 Dr. Puchalski and I's relationship was more of an
16 employer/employee relationship.

17 Q. All right. Let's talk about that. As an employee, you
18 said you first came in August of 2007. Did you sign an
19 employment agreement with South Carolina ENT?

20 A. Yes.

21 Q. Okay. And at some point in time, did you ever sign a
22 shareholder-track agreement?

23 A. I did. After two years of employment, I was offered to
24 come on board and presented with a shareholder-track
25 employment agreement.

1 Q. Explain that to the Court. What does that mean?

2 A. What it means is that two years was a courting period,
3 as best I can describe it, see if I was a good fit for the
4 practice and if the practice was a good fit for me. And
5 apparently, I was a good fit for the practice because they
6 offered me in writing the opportunity to come on board
7 through an employment shareholder-track agreement.

8 And the way I understood that was I was going to be on
9 track to eventually become a full shareholder and owner of
10 the practice.

11 Q. Did you think that agreement, Dr. Vidrine, was fair?

12 A. I did. I reviewed it, and I thought it was fair
13 because, you know, after talking with Dr. Gunnlaugsson, it
14 seemed to be the same, the same path that he took and
15 Dr. Dyce took. And, frankly, I had -- there was an increase
16 in salary; so I thought that was extremely fair. And in
17 addition to that salary increase, we also received
18 pay-for-call, which was just an added bonus to a generous
19 salary.

20 Q. And as part of that agreement, Dr. Vidrine, did you sign
21 a noncompete?

22 A. I did.

23 Q. Okay. Did you think it was fair to have a noncompete in
24 your agreement?

25 A. I did. Based on other interviews, I thought it was

1 fair. Other practices and other colleagues who currently
2 practice otolaryngology, it seems to be kind of the norm for
3 those -- for doctors, and specifically for the doctors I know
4 who are ENT doctors.

5 Q. You said it's the norm. I want to talk more directly
6 towards your noncompete that you signed with SCENT. Why did
7 you sign that noncompete with SCENT?

8 A. Well, I signed it there -- it was in the contract, but
9 now, you know, just from -- I signed it so that the practice
10 would be protected. It was a protection provision for the
11 practice.

12 There was some risk in hiring me. There was some
13 expense in bringing me on. There was some effort in
14 introducing me to referring doctors, investing in money to
15 allow me to practice, investing in staff to assist me in my
16 practice.

17 And the noncompete clause, in my opinion, was a way to
18 protect the practice from me waking up one morning being
19 upset over something and saying, "I'm leaving, and I'm going
20 to stay right here and open up my own practice and syphon off
21 and take the business that was given to me by way of those
22 actions."

23 Q. Dr. Vidrine, did you understand that if you left the
24 practice that there would be a certain radius that you would
25 not be able to practice in?

1 A. I did. And there was a mileage radius in that contract.
2 I just don't remember the exact mile.

3 Q. Okay. Dr. Vidrine, in that employment agreement that
4 you signed with SCENT, what did the practice of medicine mean
5 to you?

6 A. It's my understanding the intent of that -- the language
7 in the covenant that references the practice of medicine, the
8 intent was to -- if in the event I would leave or try to
9 practice within that mileage, that language would prevent me
10 from practicing anything I was currently doing at SCENT or
11 could be doing at SCENT, so as not to directly compete with
12 the practice for a period of time.

13 Q. And for the benefit of the Court, what were those
14 particular duties that you were performing at SCENT or could
15 have performed at SCENT?

16 A. Any procedure or visit that encompassed otolaryngology,
17 allergy or sleep medicine.

18 Q. Would there be some procedures done in an emergency room
19 that would be in competition with South Carolina ENT?

20 A. Yes.

21 Q. Are there procedures in internal medicine or family
22 medicine that would be in competition with SCENT?

23 A. Yes.

24 Q. Dr. Vidrine, if Dr. Dyce was able to do a residency and
25 get privileges as an OB/GYN or as a cardiothoracic surgeon,

1 would that be in competition with the work that you did at
2 SCENT?

3 A. No.

4 Q. Why?

5 A. I can't think of any overlap between an orthopedic
6 surgeon and a cardiovascular surgeon with otolaryngology,
7 allergy or sleep medicine.

8 Q. Dr. Vidrine, would it violate, in your understanding, if
9 you turned around and left SCENT tomorrow, would it violate
10 the covenant if you were to go and practice in Florence?

11 A. No.

12 Q. Why?

13 A. Assuming Florence is greater than 15 or 20 miles, I'm
14 not sure what my covenant at the moment says, but assuming
15 that Florence is greater than that mileage, then it wouldn't
16 violate it because I would be practicing outside of that
17 radius, and it would have little to no impact on SCENT's
18 business.

19 Q. Would that be feasible for you to do, Dr. Vidrine?

20 A. Yes. I mean, I can drive an hour and sleep in a hotel
21 and take calls. Absolutely.

22 Q. Okay. Dr. Vidrine, you mentioned that you were on the
23 partnership track in the process of becoming a shareholder.
24 What was your understanding of that process as to when you
25 became a shareholder?

1 A. My understanding was that it was a process that really
2 didn't have a specific timeline, but certain factors had to
3 be met prior to becoming a shareholder. There was a level of
4 equity or sweat equity that had to be obtained. You had to
5 be invited and voted in to become a shareholder. You had to
6 sign and negotiate a shareholder agreement with the current
7 owner or owners, had to be issued stock certificate in the
8 company, and you also had to sign on to the debt of the
9 company prior to becoming an owner or shareholder.

10 Q. To your knowledge, was this a similar track that both
11 Dr. Dyce as well as Dr. Gunnlaugsson took becoming a
12 shareholder at SCENT?

13 A. Yes.

14 Q. And I believe you stated this: Was there any time
15 period in which this was to occur?

16 A. I don't recollect any time period stated in the
17 contract. It really depends -- it depended on the practice
18 revenue and the health of the practice. Obviously, if it's a
19 healthy practice with a lot of revenue, then that would
20 affect the timing versus an unhealthy practice without a lot
21 of revenue.

22 Q. Dr. Vidrine, do you know when Dr. Dyce became a
23 shareholder in the practice?

24 A. He became a shareholder summer of 2009.

25 Q. How do you know when he became a shareholder?

1 A. Well, sitting in this courtroom, I've seen a document, a
2 signed document in July of 2009 by Dr. Dyce and
3 Dr. Puchalski, a shareholders agreement. That's one of the
4 more concrete things.

5 Other issues or other items, every August the practice
6 has an anniversary party and an employee education day. And
7 I remember in August of 2009, during that education day and
8 anniversary party, Dr. Puchalski welcomed and congratulated
9 SCENT's newest owner, Dr. Dyce.

10 We used to go to the North Carolina/South Carolina
11 Otolaryngology Society meeting, and in 2009, summer, it was
12 held in Pinehurst, North Carolina. And at that meeting, we
13 had an owners versus employee golf match, and Dr. Dyce and
14 Dr. Puchalski were on the owners team, and Dr. Gunnlaugsson
15 and myself were on the employee team.

16 And then in September, Labor Day of 2009, we had a
17 corporate retreat at Kiawah Island, where we met to discuss
18 future plans, strategies for the practice. And, again, there
19 was celebration that Dr. Dyce was a new owner in the
20 practice. And we had a golf match at Kiawah, owners versus
21 nonowners, and Drs. Dyce and Puchalski were on the owners
22 team, and I was on the employee team.

23 And he also had revealed to the group at that meeting
24 that he had just purchased a house in Daniel Island, a
25 vacation home, after he became partner.

1 MR. WRIGHT: Your Honor, may I approach the witness
2 briefly.

3 THE COURT: You may.

4 Q. Dr. Vidrine, I'm showing you what I believe you
5 referenced earlier, this is Plaintiff's Exhibit No. 7, SCENT
6 Defendant's Exhibit No. 110. Will you please identify that
7 document for the Court.

8 A. Shareholders agreement by and among South Carolina ENT
9 Allergy & Sleep Medicine and its shareholders.

10 Q. May I have it back for just one moment.

11 And if you would, please read the first paragraph
12 underneath the shareholders agreement.

13 A. "This shareholders agreement, effective as of
14 July 16, 2008, is entered into by and among South Carolina
15 ENT Allergy & Sleep Medicine and each of the persons listed
16 on Schedule A hereto. Such persons and their respective
17 successors and assigns are herein referred to collectively as
18 shareholders and individually as a shareholder."

19 I just realized that I mentioned 2009. It's 2008.

20 Q. Thank you, Dr. Vidrine. I appreciate that.

21 A. Sorry. I was thinking of my timing when I started the
22 shareholder track, which is 2009. I apologize.

23 Q. Let's talk about that. When did you start the
24 shareholder track?

25 A. July or August 2009, two years after my arrival.

1 Q. Okay. And when did you become a shareholder,

2 Dr. Vidrine?

3 A. August of 2010.

4 Q. And if you would, please explain for the Court the
5 process of you becoming a shareholder in August of 2010.

6 A. Well, I was notified that my equity obligation had been
7 met. Dr. Puchalski and I had several meetings at the Huddle
8 House to discuss certain points in the shareholders contract,
9 specifically points that I had heard through Dr. Gunnlaugsson
10 about why there was disagreements during the fall of 2009.
11 So I specifically addressed issues that I was uncomfortable
12 with.

13 So we met at the Huddle House a few times and negotiated
14 the contract. And those ranged from car allowance, country
15 club dues, executive compensation. And then once those items
16 were satisfactorily resolved, then we executed a shareholders
17 contract, and I received stock certificates, and I signed on
18 to the debt of the practice.

19 Q. How were your negotiations with Dr. Puchalski?

20 A. They were very open and transparent and, you know --

21 Q. Did you have input in the negotiations?

22 A. I did. I did. Like I mentioned, there were some things
23 that I requested that, you know, I just thought was fair.
24 For example, what I had heard through Dr. Gunnlaugsson was
25 that Dr. Puchalski has a car allowance, and Dr. Dyce doesn't.

1 Dr. Puchalski's country club fees and Springdale Hall
2 memberships are all paid for through the practice. Dr. Dyce
3 gets a trip to New York annually on the practice's dime.

4 So those things I would never agree to. So we discussed
5 those, and those were -- those were fixed before we signed
6 anything.

7 And then there were some vacation days, how many
8 vacation days a year you get annually and then how much
9 executive compensation, which is basically how much pay
10 should someone receive.

11 Dr. Puchalski, for managing the practice, hiring,
12 firing, managing payroll, managing expenses and negotiating
13 contracts, and I didn't have a problem with that, because,
14 frankly, I was making a lot of money. And so I had no issue
15 with him making a little bit more money for doing those
16 things. So those were the things we talked about.

17 Q. Dr. Vidrine, did the practice provide you with any
18 information that you requested about the finances of the
19 practice?

20 A. They did, and they made Mr. Sheheen available if I had
21 any questions regarding the transactions or any previous
22 transactions or tax implications of becoming an owner. So I
23 had plenty of access to corporate accounting.

24 Q. Did you ever get an impression at all -- you said that
25 you all sat down at the Huddle House. Did you ever get the

1 impression at all that Dr. Puchalski was being secretive
2 about this process?

3 A. No.

4 Q. Dr. Vidrine, there's been some discussion throughout
5 this trial about what's, I think, been commonly referred to
6 as sweeps. Are you familiar with what that terminology is?

7 A. I am.

8 Q. As a shareholder, do you always get what has been
9 referred to as sweeps?

10 A. No. Sweeps are basically -- a sweep would be considered
11 a monthly distribution in excess of your salary or
12 pay-for-call, and sweeps are generally recommended by the
13 chairman based on the revenue of the practice for any given
14 month. So we have not always had a sweep every month.

15 And from the very beginning Dr. Puchalski has mentioned
16 to me and to others when we were together that we should
17 never rely on sweeps. We should never budget for sweeps
18 because they may not always be there.

19 So certain times of the year bring different expenses,
20 we pay property taxes in the beginning of the year. We have
21 equipment expenses. We have malpractice premiums. And
22 obviously, if there's an unexpected expense, we will not
23 sweep during that month, and so they're not guaranteed.

24 Q. And, in fact, they're not guaranteed underneath the
25 shareholders agreement, are they?

1 A. No. The current shareholders agreement requires a vote
2 and a majority vote to approve a sweep.

3 Q. All right. Dr. Vidrine, let's go back a little bit more
4 in time and talk about when you were initially hired by South
5 Carolina ENT. You and Dr. Gunnlaugsson were both employee
6 physicians together; is that right?

7 A. That's correct.

8 Q. And please tell the Court what sort of practice meetings
9 you all would attend.

10 A. When I arrived, we had monthly -- several practice
11 meetings, but one that was consistent was a monthly provider
12 meeting.

13 Q. Who all would attend those meetings?

14 A. The four doctors; Theresa Williams, who was the office
15 manager; Mr. Sheheen or a representative of his firm; any PA
16 or physician extenders; and any audiologists that were
17 employed with the practice at that point would meet for the
18 provider meeting.

19 Q. Did you stay at those provider meetings from beginning
20 to the very end?

21 A. Not at first. At first, as an employee, I stayed with
22 the physician extender and the audiologist, and then I would
23 leave. Once I became on the shareholder track, I stayed.
24 Dr. Gunnlaugsson stayed. Dr. Dyce stayed. Dr. Puchalski
25 stayed, and everyone else would leave after we discussed

1 general housekeeping for the practice.

2 When we were there, Dr. G and myself were
3 shareholder-track employees, and Dr. Dyce and Dr. Puchalski
4 were owners. And we would look at previous months' charges
5 and collections and that's it. And then we were excused, and
6 Dr. Puchalski and Dr. Dyce would stay. And Dr. Gunnlaugsson
7 and myself would leave and have various discussions outside.

8 But that was the nature of the meetings. Not until I
9 became a shareholder did I stay for an entire board meeting
10 now.

11 Q. Okay. For purposes of the record, Dr. Vidrine, I just
12 want to make sure that I'm clear, because I believe I've done
13 this as well. Dr. G who you're referring to, that's
14 Dr. Gunnlaugsson, correct?

15 A. Yes.

16 Q. Okay. Thank you.

17 Prior to you becoming a shareholder, even once you're on
18 the shareholder-track agreement, was there any confidential
19 information that was given out at these provider meetings?

20 A. Yes.

21 Q. Explain what sort of confidential information was given
22 out.

23 A. Well, just, you know, whether or not we received a
24 pay-for-call contract from a hospital, I think that's
25 confidential. Also, you know, like I mentioned, when we were

1 all four there, the charges and the collections for the prior
2 month were given out, which is confidential.

3 Q. At these same meetings in which both you and
4 Dr. Gunnlaugsson were serving as shareholder-track
5 physicians, was there any information that was provided
6 regarding the dispute between Dr. Dyce and Dr. Puchalski
7 about the shareholders agreement?

8 A. Not during that meeting.

9 Q. During any of those monthly provider meetings?

10 A. No. When I was there with Dr. Gunnlaugsson, Dr. Dyce
11 and Dr. Puchalski, together in a room, no information was
12 given about a shareholder disagreement or contract
13 negotiations between Dr. Dyce and Dr. Puchalski.

14 Q. Now, Dr. Vidrine, there's been some testimony in this
15 case about a syndication loan for HMA. Do you recall that?

16 A. I do.

17 Q. At these same provider meetings did you all have a
18 discussion about this syndication loan?

19 A. Yes, we did. That was Hartsville HMA Hospital at one
20 point was offering up shares to be purchased by -- I'm not
21 sure if it was just doctors, but you could purchase shares in
22 the hospital as a way to generate a dividend off of those
23 shares.

24 So as a practice that was integrated with that hospital,
25 we discussed about the opportunity to buy in to that hospital

1 on an individual level and on a corporate level. And the
2 discussions we had were, as a corporation, we thought it was
3 a good idea to invest in Hartsville HMA because of the
4 projected dividends. It would be a win-win for the practice.

5 And so during those meetings, we discussed financing
6 options, and there were two options: One was financing
7 through an institution, a lending institution, a bank, and
8 the other option was a personal loan from one of the
9 individuals within the practice.

10 And as I recall, the terms on a lending institution were
11 not as appealing as the terms that an individual could
12 provide from a margin account or personal loan. And so we
13 elected to go ahead and go with a personal loan from
14 Dr. Puchalski.

15 Q. At this particular meeting, were you offered an
16 opportunity to finance this syndication loan?

17 A. Yes. When Dr. Puchalski was explaining the options, he
18 offered any of us the opportunity to pony up the money to
19 lend to the practice so that we can invest in the hospital.
20 And, you know, he also said that, you know, there would be an
21 interest rate and a promissory note and a term. So we agreed
22 that we would try to pay it off as quickly as we could. But,
23 yes, all of us individually were offered the opportunity to
24 loan the money to the practice.

25 Q. And just so I'm clear, if I may use your parlance, were

1 Dr. Gunnlaugsson and Dr. Dyce offered the opportunity to pony
2 up the money for the syndication loan?

3 A. Yes.

4 Q. And they chose not to?

5 A. That's my understanding.

6 Q. Based upon the understanding from the meeting, I believe
7 you testified to this, but the understanding was it was going
8 to be a personal loan, not from a financial institution?

9 A. Right.

10 Q. Dr. Dyce -- you mentioned, I believe, early in your
11 testimony that you found Dr. Gunnlaugsson to be happy at the
12 practice when you first got there; is that right?

13 A. Yes, yes, he was extremely happy. He was much happier
14 than where he was in Tallahassee, by what he would tell me.
15 He was making more money. He wasn't working as hard, as far
16 as trauma goes, and he mentioned several times he thought
17 this was the best practice in the southeast because of our
18 call contracts, pay-for-call, allergy ancillaries and our
19 geographic footprint, so to speak, with our contracts that we
20 had with certain insurance companies because of that.

21 Q. Did this change?

22 A. It did. It changed probably in the fall of 2009. When
23 I was on my shareholder-track agreement, his attitude
24 changed.

25 Q. All right. Explain that for the Court.

1 A. Well, I think, you know, hindsight, I think this was a
2 time when there was some friction between the owners, but all
3 of us were a little bit frustrated. And there's a lot of
4 different reasons why, but, you know, what it came down to, a
5 car. Dr. Puchalski got a new car in the fall of 2009, and I
6 think that kind of rubbed some people the wrong way.

7 I was hearing from Dr. G some stories about what was
8 going on with Dr. Puchalski. You know, vacation time was
9 uneven, felt like he was out more than any other doctor, felt
10 like he wasn't working as hard as any other doctor.

11 Some people felt like his time -- trying to think of the
12 word, but protected time or, you know, management time when
13 he had to deal with finances and hiring and negotiations,
14 many of us, including myself, felt like our clinical time,
15 seeing 50 patients in a day or operating, was just as
16 important as him managing the practice.

17 So there was a lot of things going behind the scenes
18 that I think it was festering in the fall of 2009, this
19 animosity towards Dr. Puchalski.

20 Q. What else would Dr. Gunnlaugsson tell you?

21 A. Well, as the fall went on into winter, he started, you
22 know, just sharing with me things that I probably shouldn't
23 know. He started telling me about, "Did you know that
24 Dr. Puchalski had a car" --

25 MR. ELLISON: Excuse me, Your Honor. I mean, I've let

1 this go a lot, but this is just rank hearsay at this point.

2 And I would object to this whole line of questioning as to
3 what Dr. Gunnlaugsson said or didn't say.

4 MR. WRIGHT: Your Honor, if I may briefly respond, I'd
5 submit to the Court that this isn't offered for the truth of
6 the matter asserted, but instead to demonstrate
7 Dr. Gunnlaugsson's state of mind during this entire process.

8 THE COURT: Why do I care?

9 MR. WRIGHT: Because you heard testimony throughout this
10 trial, Your Honor, that there was a conspiracy between
11 Dr. Dyce and through Dr. Gunnlaugsson, in addition to the
12 conspiracy that there was some shareholder oppression that
13 was going on.

14 Many of these comments that Dr. Gunnlaugsson provided to
15 Dr. Vidrine in this situation alludes to -- albeit
16 circumstantial evidence, alludes to that conspiracy and the
17 shareholder oppression between them.

18 THE COURT: Sustained.

19 MR. ELLISON: Thank you.

20 Q. Dr. Vidrine, at any point in time, did you learn that
21 Dr. Gunnlaugsson was taking steps to open up his own
22 practice?

23 A. Yes.

24 Q. Explain those for the Court.

25 A. In that time period in the fall 2009, Dr. Gunnlaugsson

1 told me he was -- he told me Dr. Puchalski --

2 THE COURT: Sustained.

3 MR. WRIGHT: Thank you, Your Honor.

4 Q. And, again, Dr. Vidrine, I don't want you to tell me
5 exactly what he was telling you, but what did you learn that
6 Dr. Gunnlaugsson was doing?

7 MR. ELLISON: Your Honor, it's the same problem. I
8 mean, he's trying to elicit pure hearsay. I mean, that's
9 where this is all coming from and the entire line of
10 questioning. I mean, I've let it go a long time because
11 we're all trying to get out of here and finish by tomorrow,
12 but at some point this has got to stop.

13 THE COURT: The hearsay is -- I mean, is hearsay. He
14 can't tell me what Gunnlaugsson says unless it meets one of
15 the exceptions to hearsay.

16 MR. WRIGHT: Thank you, Your Honor.

17 THE COURT: If you want to just ask the question again,
18 let's see where we are.

19 Q. Dr. Vidrine, let me ask you this: Did you ever meet
20 Dr. Gunnlaugsson late one night at the sleep lab?

21 A. Yes.

22 Q. Okay.

23 A. I met him there.

24 Q. All right. And what were you all doing?

25 A. I met him there because he told me he was trying to

1 figure out --

2 Q. Again, I'm sorry, withdraw.

3 Again, Dr. Vidrine, I don't want you telling me what
4 Dr. Gunnlaugsson told you.

5 A. Okay.

6 Q. Okay? What I want to know is when you all were meeting
7 at the sleep lab that night --

8 A. Okay.

9 Q. -- what was he doing?

10 A. He was observing how the sleep lab was run and how it
11 was managed.

12 Q. Had he ever done that before?

13 A. No.

14 Q. What time, time frame, are we talking about when all
15 this occurred?

16 A. Fall, winter 2009.

17 Q. And what about the billing department?

18 A. He observed that as well.

19 Q. And what was he learning about the billing department?

20 A. How SCENT's billing department bills and collects money
21 and runs an office.

22 MR. ELLISON: Your Honor, how can he possibly know this
23 without it coming from hearsay? I mean, it's one thing to
24 observe him there. As to what he's observing, why he's doing
25 it, I mean, how can he possibly know that other than

1 something that Dr. Gunnlaugsson might have said?

2 THE COURT: Again, if it's relevant, he can testify to
3 what he saw. But in terms of the hearsay testimony, it's got
4 to meet one of the exceptions; so sustained.

5 MR. WRIGHT: Thank you, Your Honor.

6 Q. Dr. Vidrine, what did you see Dr. Gunnlaugsson doing in
7 the sleep lab that night?

8 A. I saw him observing the sleep studies being performed,
9 observing how they were booked and how they were scheduled
10 and how they were managed.

11 Q. Dr. Vidrine, is there any information that
12 Dr. Gunnlaugsson gave you that he could have gotten from
13 Dr. Dyce?

14 A. Yes.

15 Q. Like what?

16 A. Like details about a shareholder dispute between he and
17 Dr. Puchalski.

18 Q. Don't tell me what he said, but did Dr. Gunnlaugsson
19 ever discuss with you these contracts and shareholders
20 disagreements?

21 A. Yes. He would oftentimes tell me Dr. Dyce was standing
22 up for the practice, and there were disagreements. He would
23 often couch it with --

24 MR. ELLISON: Your Honor, same problem. I mean,
25 Dr. Gunnlaugsson's already testified. They've had a chance

1 to ask this. I mean, this is pure hearsay.

2 THE COURT: Sustained.

3 Q. Dr. Vidrine, this information that you're alluding to,
4 did that information come in the form of any of the provider
5 meetings that you all attended?

6 A. It was after the provider meetings in the parking lot.

7 Q. But the nature of the information that Dr. Gunnlaugsson
8 was sharing with you, was that obtained during any provider
9 meetings?

10 A. Not with all four doctors present.

11 Q. And the nature of the information from conversations
12 with Dr. Gunnlaugsson, would this be information that
13 Dr. Puchalski would have told you?

14 MR. ELLISON: Your Honor, same problem.

15 THE COURT: Sustained.

16 Q. Dr. Vidrine, the issues that you testified to earlier
17 about the car payments and the trips to New York on the
18 company dime, did any of that prove to be true?

19 A. Yes.

20 Q. Explain.

21 A. When Dr. Puchalski and I negotiated the contract, he did
22 have a car allowance that Dr. Dyce did not have, and it was
23 agreed to by Dr. Dyce. He did go to New York, but he also
24 mentioned to me when Dr. Puchalski and I were negotiating
25 that Dr. Dyce and Dr. Gunnlaugsson had similar -- they did

1 similar things.

2 MR. ELLISON: Your Honor, we're getting into hearsay
3 again.

4 THE COURT: Is there an exception? I don't even know
5 where it's coming from at this point, and it's hearsay, and I
6 don't -- it's sustained.

7 Q. Let me ask you this, Dr. Vidrine: How did you learn
8 that Dr. Dyce was terminated?

9 A. From Dr. Gunnlaugsson.

10 Q. Did you ever get notice from the company that Dr. Dyce
11 had been terminated?

12 A. I did, after I was told by Dr. Gunnlaugsson in a meeting
13 with Dr. Puchalski, Dr. Gunnlaugsson and an attorney.

14 Q. Were you surprised when Dr. Gunnlaugsson quit and sued
15 SCENT?

16 A. No.

17 Q. Why?

18 A. Because he told me he was learning how to manage a
19 practice and --

20 MR. ELLISON: Your Honor -- thank you.

21 THE COURT: Sustained.

22 MR. WRIGHT: Thank you, Your Honor.

23 Q. Did Dr. Gunnlaugsson -- Dr. Vidrine, as a present
24 shareholder, if you learned that an employee physician was
25 adverse to the company and conspiring with another

1 individual, would you vote to terminate?

2 MR. ELLISON: Judge?

3 THE COURT: Sustained.

4 MR. ELLISON: Thank you.

5 Q. Dr. Vidrine, when did you become a shareholder?

6 A. August 2010.

7 Q. Since you became a shareholder, is there information the
8 practice has shared with you that you didn't get as an
9 employee physician?

10 A. Yes.

11 Q. Like what?

12 A. Well, full financial records, insurance contracts.

13 Q. Would you get payor mixes?

14 A. Payor mixes.

15 Q. This financial information that you mentioned, when do
16 you review these?

17 A. On a monthly basis at a board meeting.

18 Q. And those are the provider meetings that you made
19 reference to earlier?

20 A. Yes. Now they're board meetings, since I became a
21 shareholder, once a month with the owners and the accountants
22 and corporate counsel and the office manager.

23 Q. Okay. Would you look at profit and loss statements?

24 A. Yes.

25 Q. Would you look at balance sheets?

1 A. Yes.

2 Q. And who would present this information to the board?

3 A. Mr. Sheheen.

4 Q. And how often, again, do you meet?

5 A. Once a month.

6 Q. And when you review these books of the practice, the
7 profit and loss statements and the balance sheets, do you
8 know if there is any item devoted on those sheets to accounts
9 receivable?

10 A. There's not.

11 MR. WRIGHT: Your Honor, may I approach the witness
12 briefly.

13 THE COURT: You may.

14 Q. Dr. Vidrine, I'm going to hand you what's been
15 previously introduced and discussed as SCENT Exhibit No. 244.

16 MR. WRIGHT: Your Honor, may I approach the bench?

17 THE COURT: Sure.

18 Q. Dr. Vidrine, do you recognize this document?

19 A. I do.

20 Q. Are these similar to the balance sheets that you would
21 review or that you do review at these monthly meetings?

22 A. Yes.

23 Q. Okay. Is there anything on this balance sheet that
24 lists accounts receivable?

25 A. No, sir.

1 Q. If you would, turn to Page 2. Let's just say Page 2 of
2 2 in the top right-hand corner. Do you see that,
3 Dr. Vidrine?

4 A. Yes.

5 Q. If you look down below, you see Monday, March 31st?

6 A. I do.

7 Q. 2010. What's the notation to the right there?

8 A. It says "Cash basis."

9 THE COURT: Wait a minute. Stop. Hold on one second
10 for me. This says, "As of December the 31st, 2007." Tell me
11 where you are, what page.

12 MR. WRIGHT: Your Honor, I'm on page --

13 THE COURT: 2008. You're on December 2009?

14 MR. WRIGHT: I'm on Page 2 of SCENT Exhibit 244.

15 THE COURT: Okay.

16 MR. WRIGHT: The second page over. Do you see 2 of 2 on
17 the top right-hand side?

18 THE COURT: Okay. Well, you said "As of December 2010."
19 This is December 31st, 2007.

20 MR. WRIGHT: That's correct, Your Honor.

21 THE COURT: Okay.

22 MR. WRIGHT: I apologize for misspeaking.

23 MR. ELLISON: What I've got, Page 2 of 2, is
24 March 31st, 2014.

25 THE COURT: I have that certainly on the bottom. It

1 says, "Monday, March the 31st, 2014, cash basis, 10:10 p.m.,
2 cash basis."

3 MR. ELLISON: Right.

4 MR. WRIGHT: Correct.

5 THE COURT: And on the front it says, "Balance sheet as
6 of December 31st, 2007."

7 MR. ELLISON: I understand, but he referred the witness
8 to the second page, Page 2 of 2. I'm trying to follow this.
9 This looks like something that's getting distributed in
10 March 2014, which is a few years after Dr. Dyce has been with
11 the practice, but I just want to make sure I'm following
12 this.

13 THE COURT: I'm with you.

14 MR. WRIGHT: Your Honor, if I may, this is an exhibit
15 that's already been admitted into evidence. It's a balance
16 sheet, year-end balance sheet, December 31st, 2007, 2008,
17 2009.

18 THE COURT: All right. Let me just get that exhibit and
19 just do a comparison, because I may be confused, and I may
20 need you to just clarify. This is the defendants --

21 MR. WRIGHT: Exhibit No. 244.

22 THE COURT: All right. Hold on.

23 Okay. Go ahead.

24 MR. WRIGHT: Thank you, Your Honor.

25 Q. Dr. Vidrine, we were looking at Page 2 of this Exhibit,

1 SCENT Defendant's Exhibit 244, the balance sheet as of
2 December 31st, 2007. And I asked you to take a look at the
3 last line on that page, beginning Monday, March 31st. Are
4 you with me?

5 A. Yes.

6 Q. What does it say in the notation to the right?

7 A. Cash basis.

8 Q. Okay. And if you would, flip to the following page.

9 And what is this document?

10 A. Profit and loss by class, January to December of 2007.

11 Q. This is the P&L statement from SCENT from the 2007
12 calendar year?

13 A. Yes.

14 Q. And if you'll take a look at the page numbering on the
15 top right-hand corner, if you would, flip to Page 4 of 4.

16 A. Okay.

17 Q. And at the bottom, again, you see a notation, "Monday,
18 March 31st, 2014." And then to the right-hand side, what's
19 that notation?

20 A. It says, "Cash basis."

21 Q. Dr. Vidrine, to your knowledge, are the balance sheets
22 and profit-loss statements part of the corporate books of
23 SCENT?

24 A. Yes.

25 Q. Is AR something, according to these documents, the

1 balance sheets and the profit and loss statements, something
2 that's booked in your normal accounting methods?

3 A. No.

4 MR. ELLISON: Your Honor, I'm glad he blurted out his
5 answer before I could talk. I mean, is he tendering him as
6 an expert accountant now? I mean, that question calls for an
7 expert opinion.

8 THE COURT: Are you asking -- let me ask you this
9 question: Are you asking him for normal accounting
10 procedures or the procedures as he understands they existed
11 in the practice?

12 MR. WRIGHT: I'm asking him, Your Honor, as a
13 shareholder in this practice --

14 THE COURT: But he wasn't in 2007.

15 MR. WRIGHT: Yes, Your Honor, that's correct. And my
16 previous questions prior to that were are these balance
17 sheets and are these profit and loss statement sheets the
18 same ones that you review at a monthly provider meeting now,
19 albeit with a different date.

20 THE COURT: Well, here's my concern, in 2007 he's not
21 even there, and you're showing him something in 2007 he
22 couldn't possibly know because he wasn't even -- he wasn't at
23 any meetings in 2007, as I understand. Well, I guess --
24 well, hold on a second.

25 He joins the practice the third week in July of 2007.

1 So you're asking him if four months later he has familiarity
2 with the balance sheet, and he's, at that point, an employee.
3 And if he went to a meeting, he left early on in the meeting.
4 You're going to have to lay a foundation with regards to
5 2007. See what I'm saying?

6 MR. WRIGHT: Yes, Your Honor, I do.

7 THE COURT: Okay.

8 Q. Dr. Vidrine, let me ask you this: You stated earlier
9 that you began attending these provider meetings; is that
10 correct?

11 A. Yes.

12 Q. And what would be some of the information that you would
13 review in those provider meetings?

14 THE COURT: Ask him when, because, as I understand it,
15 there's a dramatic -- I didn't just get in this case.
16 There's a dramatic difference between when you're a
17 shareholder and when you are an employee. So which one are
18 you interested in? When he is a shareholder after August of
19 2010, or when he is an employee before he has the shareholder
20 agreement? I mean, where are you?

21 MR. WRIGHT: Yes, Your Honor. I'm asking him as a
22 shareholder-track physician.

23 Q. Beginning in August of 2008, when you attended these
24 provider meetings, would you all review these statements?

25 MR. ELLISON: Your Honor, I have real problems, I mean,

1 with the dates going back and forth. First off, what his
2 testimony is, he's not on a shareholder track --

3 THE COURT: Until 2009 or '08.

4 MR. ELLISON: Right. Now, if I'm understanding this
5 testimony correctly right now, and maybe I missed it, is this
6 is the kind of information that he got at these provider
7 meetings before he was ever even a shareholder-track
8 physician. I mean, I think he's already said that.

9 But for him to then interpret this as an accountant,
10 he's trying to turn him into an expert witness, turn him into
11 a shareholder before he becomes a shareholder. It's one
12 thing to get this information before you're a shareholder,
13 but then to interpret it, that's a whole different line of
14 questioning. And he's not an expert, that I know of, as an
15 accountant.

16 MR. WRIGHT: Your Honor, briefly in response, I'm not
17 trying to qualify him as an expert witness. I was asking
18 him, as a shareholder of the practice, if he reviewed profit
19 and loss statements and balance sheets. I'll move past the
20 exhibit --

21 MR. ELLISON: But, Your Honor, he's not a shareholder.
22 If we're going to stay on this document, he's not a -- he
23 said he got this information, but he's not a shareholder in
24 March 2007, nor is he on a shareholder track. I mean, if
25 he's going -- he can't testify as a shareholder as to what

1 the documentation meant in December 2007 unless he's an
2 expert, and he's not an expert. I don't quite understand how
3 he's trying to deal with this.

4 MR. WRIGHT: And, Your Honor, the tail end there before
5 I was cut off, I was going to say I'll move past the exhibit
6 and ask him as a shareholder now the profit and loss
7 statements and balance sheets that he reviews.

8 THE COURT: Okay.

9 MR. WRIGHT: Because I understand the timing is an
10 issue.

11 THE COURT: It is.

12 MR. WRIGHT: Okay. Thank you, Your Honor.

13 Q. Dr. Vidrine, now, as a shareholder in the practice --
14 and when did you become a shareholder?

15 A. August 2010.

16 Q. Okay. As a shareholder in the practice as of
17 August 2010, do you review balance sheets of the practice?

18 A. Monthly for the last four years.

19 Q. Do you review profit and loss statements of the
20 practice?

21 A. Yes. With the corporate accountant.

22 Q. Okay. As a shareholder of the practice, are these the
23 normal corporate accounting methods?

24 A. Yes.

25 Q. Thank you, Dr. Vidrine.

1 THE COURT: What are "these"? I'm sorry. What are
2 "these"?

3 MR. WRIGHT: "These," the profit and loss statements and
4 the balance sheets.

5 THE COURT: That he's reviewing after August of 2010?

6 MR. WRIGHT: That's correct, Your Honor.

7 THE COURT: Okay. Do we have any after August of 2010?

8 MR. WRIGHT: No, Your Honor. These go up till
9 December 2009.

10 THE COURT: So you're not asking about this exhibit?

11 MR. WRIGHT: No, Your Honor. I'm sorry. I decided to
12 move past that exhibit because I understood the timing issue
13 that the Court had.

14 THE COURT: Okay.

15 MR. WRIGHT: So I'm asking him as a shareholder in
16 August 2010, moving past that particular point in time,
17 whether or not you've reviewed the balance sheets and the
18 profit and loss statements.

19 THE WITNESS: That's what I understood, yes.

20 Q. Thank you. Dr. Vidrine you mentioned earlier that some
21 of the confidential information that you now have access to
22 are the insurance contracts of the practice?

23 A. That's correct.

24 Q. All right. Are you familiar with the insurance
25 contracts that SCENT has with its various providers?

1 A. Not intimately familiar, but I know they're very
2 important to the practice. And I know that to get those
3 contracts, there's been a lot of hard work and negotiating to
4 get those.

5 Q. Let me ask you this: Why are they important to the
6 practice?

7 A. They're important to the practice because it outlines
8 how much you get paid for what procedures and what services
9 you render with each insurance company.

10 Q. What about SCENT's payor mix? That's how you all get
11 paid. Is that important information?

12 A. The payor mix is, yes. It defines what percentage of
13 patients you have are insured and what type of insurance they
14 have, whether it's private or Medicare or Tricare. And it
15 also tells you how much percentage of your patient population
16 is Medicaid and what percentage has no insurance.

17 Q. Now, would third parties -- would they know what SCENT's
18 payor mix would be?

19 A. No.

20 Q. Do you recall seeing the pro forma that Dr. Dyce had
21 with Carolina Pines Regional Medical Center?

22 A. I saw it in this courtroom, yes.

23 MR. WRIGHT: Your Honor, may I approach the witness?

24 THE COURT: You may.

25 MR. WRIGHT: And, Your Honor, may I approach the bench.

1 THE COURT: All right.

2 Q. Dr. Vidrine, do you recognize this document?

3 A. I do.

4 Q. What is this?

5 A. It's a pro forma for Carolina Pines Medical Center for
6 an ENT -- for ENT.

7 Q. And if you would, please take a look at the bottom.

8 There are a set of asterisks. This is actually the second
9 one down. There are three asterisks. Would you read that
10 for the Court. I understand it's difficult to read.

11 A. It says, "SCENT currently sees a very low percentage of
12 self-pay business."

13 Q. Would that be something, based upon your knowledge as a
14 shareholder of SCENT, that Carolina Pines would know without
15 someone telling them?

16 A. No.

17 Q. You can't do -- would you be able to do an Internet
18 search to determine what SCENT's payor mix is?

19 A. No.

20 MR. ELLISON: Your Honor, I mean, we've dealt with
21 hearsay. Now he's just leading him just unbelievably. I
22 mean, if he wants to ask him a direct question, that's fine,
23 but, you know, leading questions like that about whether you
24 can find something on the Internet is inappropriate.

25 THE COURT: Don't lead.

1 I'm looking for a date, an operative date for this
2 document, and I'm not finding one. It doesn't mean it's not
3 on here. It very likely is. It has Year 1, Year 2 and
4 Year 3, but I don't know what the operative time is.

5 MR. WRIGHT: That's correct, Your Honor. There is no
6 operative date that's on this particular document.

7 THE COURT: Okay.

8 Q. Dr. Vidrine, to your knowledge did Dr. Dyce in this case
9 testify that he took the insurance contracts from the
10 practice?

11 A. Yes.

12 Q. And this is -- or do you know, is this Dr. Dyce's pro
13 forma for Carolina Pines Regional Medical Center?

14 A. This appears to be a pro forma for Dr. Dyce prior to
15 being hired by Carolina Pines Medical Center.

16 Q. Tell me how you know that.

17 A. Well, his name's on the bottom here, first of all, it
18 says, "Hospital number based on Dyce ramp-up of April through
19 October 2009. Clinic salary dollars for first year include a
20 sign-on bonus." And it has his name on the piece of paper,
21 it has Carolina Pines on it. It has ENT and it's a pro
22 forma.

23 Q. Explain for the Court what is a pro forma.

24 A. A pro forma is a projection of how much money or revenue
25 a group or practice would be anticipated to make, given some

1 sort of volume or information about what they expect a doctor
2 to see or do during those upcoming years.

3 Q. Okay.

4 A. And that's usually based on historical data.

5 Q. Did Carolina Pines employ an ENT physician on staff
6 prior to Dr. Dyce?

7 A. Not to my knowledge.

8 Q. So you talked about historical data. Would Carolina
9 Pines have any other doctor to base this on?

10 MR. ELLISON: Your Honor, that calls for a speculative
11 answer.

12 THE COURT: I sustain the objection.

13 MR. ELLISON: Thank you.

14 Q. Dr. Vidrine, again for the Court, would you please
15 explain why the insurance contracts and the payor mixes are
16 important?

17 A. To our practice?

18 Q. Yes.

19 MR. ELLISON: Your Honor, we've been through this three
20 times now. I mean, if he has a different question, that's
21 fine. He's already asked and answered that question at least
22 three times.

23 MR. WRIGHT: I believe this is the second time I asked
24 it, and the reason why I wanted to set up this next question
25 is because I anticipate an objection from Mr. -- Morris based

1 upon what this question is going to be, trying to lay the
2 proper foundation. But if the Court already understands the
3 proper foundation, then I'll proceed.

4 THE COURT: I'll let him answer it again --

5 MR. WRIGHT: Okay.

6 THE COURT: -- to set up for the next question. You may
7 proceed. Why is it important?

8 THE WITNESS: It's important because it's like I said
9 before, the insurance contracts determine how much you get
10 paid for different services and different procedures within
11 your practice. So if a competitor has that information, then
12 it would allow them to undercut you.

13 So if I take \$10 for a procedure, and a competitor goes
14 to an insurance company and says, "We'll do the same
15 procedure for \$8," then potentially, the insurance company
16 can say, "You've got to go to this doctor to get your
17 procedure because it's \$8 instead of \$10."

18 And down the road, what we're seeing is that you could
19 potentially be disenrolled from an insurance company if your
20 rates are above your competitors.

21 Q. So would having this information of a competitor, would
22 it allow you as a shareholder in SCENT to negotiate better
23 rates?

24 A. Can you repeat the question?

25 Q. As a shareholder in SCENT, would having --

1 MR. ELLISON: Can you repeat it without leading, please.

2 Q. Would having insurance contracts and payor information
3 from other providers allow you to negotiate better rates?

4 MR. ELLISON: Your Honor, that is purely a leading
5 question.

6 MR. WRIGHT: Your Honor --

7 MR. ELLISON: He could ask him what it would allow you
8 to do. That's fine, but he's already drawing the conclusion
9 that he wants the witness to get to. We're on direct, and
10 it's an inappropriately phrased question.

11 MR. WRIGHT: Your Honor, I don't believe that implies
12 either a yes or a no -- it does imply another yes or a no
13 answer. It doesn't say absolutely yes or no. I believe
14 that's what a leading question is.

15 THE COURT: It is, but --

16 MR. WRIGHT: Yes, Your Honor.

17 THE COURT: He may answer it. He can answer it. Move
18 on to something else.

19 THE WITNESS: Sure if we know our competitors' rates, we
20 can come in and offer that same insurance company to do the
21 same services for cheaper and get the business and steal the
22 business from the competitor, if we knew their contracts.

23 Q. Thank you, Dr. Vidrine.

24 Did SCENT lose business after Dr. Dyce's departure?

25 A. Absolutely.

1 Q. Do you know how much business SCENT lost after Dyce's
2 departure?

3 A. We lost a significant amount of business in Hartsville
4 and Cheraw, specifically at least 480-something patients
5 requested record transfers to his practice, but we saw a
6 significant decline in business and revenue in Hartsville and
7 Cheraw when he opened up a practice in that market.

8 Q. Are you now responsible for debt as a shareholder when
9 you signed on as a shareholder in August of 2010?

10 A. I am, yes, partially responsible for the debt.

11 Q. Does Dr. Dyce practice in the same building that SCENT
12 used to?

13 A. Same exact building.

14 Q. Does Dr. Dyce practice in the same medical park that
15 SCENT used to in Cheraw?

16 A. Yes.

17 Q. Did SCENT close buildings in Hartsville and Cheraw?

18 A. After Dr. Dyce opened up the practice in Hartsville, we
19 saw a decline in revenue and a decline in patients, and we
20 had to close our office in Hartsville. We had to lay off
21 staff and store equipment that we were still paying for. And
22 then shortly after that, once he moved to Cheraw, we had to
23 close that office as well and pay to store the equipment that
24 was still being paid for as well.

25 Q. Have you looked at some of the procedures that Dr. Dyce

1 performed at Carolina Pines?

2 A. I saw a list at some point during the trial which listed
3 several codes for office visits and procedures.

4 Q. And what did those codes tell you?

5 A. It tells me, during the first ten months or the time
6 frame of those procedures, there was an incredible volume of
7 patients and procedures for a first-year practice, more
8 volume than I probably did when I came in 2007, getting
9 integrated into an established office setting. So there was
10 really no ramp-up. It was out-of-the-gate extreme volume,
11 and it was consistent throughout the year.

12 MR. WRIGHT: Your Honor, may I approach the witness?

13 THE COURT: You may.

14 MR. WRIGHT: And, Your Honor, may I approach the bench.

15 THE COURT: Yes. Thank you.

16 Q. Dr. Vidrine, do you recognize this document?

17 A. I've seen it in this trial, yes. It looks like a quote
18 to Dr. Dyce for an office practice start-up.

19 Q. Are you aware that Dr. Dyce testified under oath this
20 equipment was used to set up an operating room?

21 A. Yes, I'm aware of that.

22 Q. Let's review this quote for a minute, Dr. Vidrine. You
23 said it was used to set up an office practice?

24 MR. ELLISON: Your Honor, Dr. Dyce did not say that. I
25 mean, we can go pull the transcript. That is not what

1 Dr. Dyce said. I know where he's going. Dr. Dyce did not
2 prepare this. This equipment was never purchased by either
3 Dr. Dyce or by the hospital. I know where he's going and
4 that's why it matters with this inaccurate summary of what
5 Dr. Dyce did or did not say.

6 MR. WRIGHT: Your Honor, may I, briefly, in response?

7 THE COURT: Yes. Sure. Of course.

8 MR. WRIGHT: Your Honor, on Page 329 of the transcript,
9 Dr. Dyce said that this equipment was used to set up an
10 operating room or could be used to set up an operating room.

11 MR. ELLISON: Not this. Not this, not this equipment
12 (indicating).

13 THE COURT: Let me ask you this question: What exhibit
14 was this? I mean, is this an exhibit that is already in --

15 MR. WRIGHT: It is, Your Honor. It's Exhibit No. 231.

16 THE COURT: All right. Let's try to do that, because
17 this record is going to be a mess. So this is Exhibit --
18 this is, I guess, a Defendant's Exhibit?

19 MR. WRIGHT: Yes, ma'am, 231.

20 THE COURT: 231, all right. So we're referring to
21 Exhibit 231. And in the transcript, you said at page what
22 now?

23 MR. WRIGHT: 329, Your Honor.

24 THE COURT: From what, from which hearing?

25 MR. WRIGHT: This is, I believe, Volume 1, Your Honor.

1 It was Dr. Dyce's cross-examination by Vincent Sheheen.

2 THE COURT: You said Page 300 what now?

3 MR. WRIGHT: 329, Your Honor.

4 THE COURT: All right.

5 MR. ELLISON: 329?

6 THE COURT: That's what he said.

7 Okay. So this exhibit has been admitted into evidence.

8 It is Defendant's Exhibit 231, and I have the portion of the
9 testimony where it was referred to. And you can ask your
10 next question.

11 And then hold your answer so I can hear an objection.

12 MR. WRIGHT: Your Honor, just for clarification, I'm
13 asking the question that I just posed of him or asking --

14 THE COURT: Whatever you want. I mean, if you want to
15 ask it again, I need to hear it again.

16 MR. WRIGHT: Certainly.

17 THE COURT: The same question.

18 Q. Dr. Vidrine, the information that's on Exhibit 231,
19 STORZ equipment quote, does it have Dr. Dyce's name on it?

20 A. Yes, it has "Attention Dr. Dyce."

21 Q. What's the document date on Exhibit 231?

22 A. The document date is June 21st, 2010.

23 Q. Is this after Dr. Dyce's departure?

24 A. I have to look at the record. Did he depart in May of
25 2010?

1 THE COURT: He asks the question --

2 THE WITNESS: I don't know.

3 THE COURT: You actually don't.

4 THE WITNESS: Okay. I don't know.

5 Q. Dr. Vidrine, let me ask you this: The equipment that's
6 listed on this quote, SCENT Defendant's Exhibit 231, what is
7 this quote used for?

8 A. This equipment, in my opinion, just reading through it,
9 it says "Medical offices" on the top of one page, but it's
10 used in a medical office. There's equipment listed here,
11 like a refrigerator, a fax machine, EndoCaddy, couch, end
12 table, pictures, decorations, all those things, in my
13 opinion, would be used to set up a medical office.

14 And specifically, there's some equipment that would be
15 unique to an ENT medical office with some of the cameras here
16 and the printers and office cart.

17 Q. Dr. Vidrine, what is an EndoCaddy?

18 A. It's a device that we use in our medical office that you
19 drill into the wall of your office room to hold equipment, to
20 hold a camera.

21 Q. Would that EndoCaddy be found in an operating room?

22 A. Typically, no. In an operating room, they sterilize and
23 wrap the camera sterilely and store them in storage.

24 Q. These items on this quote, on SCENT Defendant's
25 Exhibit 231, would these items be needed to set up an

1 operating room?

2 A. No.

3 Q. And have you operated at Carolina Pines Hospital before?

4 A. Yes.

5 Q. Do you know if any of the items listed in this quote
6 were needed in an operating room there?

7 A. No. When I was there, the operating room was fully
8 stocked. We had everything we needed. And if we needed
9 equipment, we would request it through the OR manager, and
10 our name would not appear on any quotes if they got equipment
11 for us. We were out of the loop. We'd just request
12 equipment through the OR manager.

13 Q. Sorry. Explain that for the Court.

14 A. If there's a piece of equipment that I want to use for a
15 specific case, I don't go through the company myself and get
16 copied on quotes and what have you. I'm kind of out of that
17 loop. I would just request it to the OR manager, and they
18 would make that happen without me knowing or seeing quotes or
19 whatever. And it would be there for me if I needed it.

20 Q. Would your name show up on an equipment quote?

21 A. I've requested equipment before, and I've never had a
22 quote copied to me, and I can't tell you if my name's on it
23 or not, but I wouldn't expect it to be since the hospital
24 acquired it.

25 Q. Thank you, Dr. Vidrine.

1 Dr. Vidrine, which physician manages SCENT?

2 A. Dr. Puchalski.

3 Q. Are you okay with that?

4 A. Yes, I am. He does a great job at managing it, and he's
5 got a skill set that let's him do it very well.

6 Q. Does Dr. Puchalski, in your estimation, work hard?

7 A. He is one of the most hardest working individuals I
8 know.

9 Q. In your opinion, as a shareholder of SCENT, has
10 Dr. Puchalski always operated in the best interests of SCENT?

11 A. Yes.

12 Q. Do you think Dr. Dyce breached his contract with SCENT?

13 A. I do.

14 Q. Why?

15 A. Sitting here in this courtroom, number one, he set up a
16 competing practice within the covenant not to compete, and
17 allowed us --

18 MR. ELLISON: I don't think he's in a position -- I
19 mean, he's basing this off of testimony that he's hearing.

20 THE COURT: Sustained.

21 MR. ELLISON: Thank you.

22 Q. Dr. Vidrine, let me ask you this: As a shareholder of
23 SCENT, do you believe SCENT owes Dr. Dyce any money?

24 A. No.

25 Q. Why?

1 A. Because I think he breached his contract.

2 MR. WRIGHT: That's all the questions I have. Please
3 answer any questions opposing counsel may have.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION BY MR. ELLISON:

6 Q. Dr. Vidrine, you were talking a while through your
7 direct examination about the provider meetings that you
8 attended before you became a shareholder. Remember doing
9 that?

10 A. Yes, sir.

11 Q. And you testified that you would get information such as
12 Exhibit 244, which is not in the book, the balance sheet, you
13 would get these at the provider meetings?

14 A. You're talking about these here (indicating)?

15 Q. Yes. You'd get documents like that, with that kind of
16 information?

17 A. When?

18 Q. At the provider meetings.

19 A. What year? What day?

20 Q. Before you became a shareholder.

21 A. Yes.

22 Q. So you'd get balance sheets, you'd get income
23 statements, right?

24 A. I would get the balance sheet.

25 Q. Well, we can go through all of this. It also contains,

1 Dr. Vidrine, in addition to the balance sheets that you were
2 getting as a provider, before you became a shareholder, you
3 also got, if you look at -- it's the third page in, Page 1 of
4 4, profit and loss by class. It's not in the book.

5 THE COURT: I know it's not in the book.

6 MR. ELLISON: But it's what Mr. Wright just used.

7 THE COURT: Got it.

8 MR. ELLISON: Your Honor, just for the purpose of the
9 record, it's Defendant's Exhibit --

10 THE COURT: Yes, Defendant's Exhibit 244, third page in,
11 January through December 2007.

12 MR. ELLISON: Right.

13 THE COURT: Okay.

14 Q. See the third page in, Dr. Vidrine, talks about a profit
15 and loss by class; do you see that?

16 A. Page 1 of 4, but the third page of this?

17 Q. Yes, it's the third page in.

18 A. Yes, I see that.

19 Q. And this is the kind of information that you would get
20 at the provider meetings before you became a shareholder,
21 correct?

22 A. Whenever I started the employee-shareholder track, which
23 was in August of 2009, which is two years after I arrived to
24 the practice, I would stay with Dr. Gunnlaugsson, who was on
25 the track at that time, and Dr. Dyce and Dr. Puchalski, who

1 were owners at that time.

2 And during that meeting Mr. Sheheen would go over
3 reports. And these look familiar, and so did some reports
4 with a pie chart. So only after August of 2009, when I
5 became a shareholder-track agreement (sic), was I in these
6 meetings that had this information.

7 Q. So if you don't mind answering my question.

8 A. Okay.

9 Q. My question is, is the information that is contained in
10 Defendant's Exhibit 244 the kind of information that you
11 received at these provider meetings before you became a
12 shareholder in August, September 2010?

13 A. It started in August of 2009, yes.

14 Q. So I just want to be -- I have no problem with you
15 explaining your answer. I just want you to answer the
16 question though.

17 A. Okay. To the best of my knowledge, yes.

18 THE COURT: Stop. Because that's actually important for
19 me.

20 MR. ELLISON: Right.

21 THE COURT: He wasn't allowed that information until he
22 was told he was now on the track.

23 MR. ELLISON: On track, but before he became a
24 shareholder.

25 THE COURT: But before he became a shareholder.

1 MR. ELLISON: Right.

2 THE COURT: Right.

3 MR. ELLISON: Right.

4 THE COURT: That's right.

5 THE WITNESS: Yes.

6 Q. So you had access to this kind of information, right?

7 A. Yes, sir.

8 Q. You also had access to other financial information. You
9 talk about a pie chart, and I don't have the pie chart. I'm
10 sorry. But you had access to other financial information of
11 SCENT prior to becoming a shareholder in August,
12 September 2010; is that right?

13 A. Yes. It was presented at monthly meetings, yes.

14 Q. And not only were you present at these monthly meetings,
15 there are also staff members present at these monthly
16 meetings as well, correct?

17 A. Not for this portion.

18 Q. Was Theresa Williams there?

19 A. Yes.

20 Q. Were there -- I can't remember all the names because
21 it's been a year since we started the trial. Were there
22 other employees who were present?

23 A. Yes. The audiologist, the extenders, Theresa Williams,
24 the doctors and the accountant.

25 Q. And they were there when you all were going over this

1 information, right?

2 A. Not this information.

3 Q. They were there when you were going over some of the
4 financial information, were they not?

5 A. No. The extenders were there when we were going over
6 patient volumes, which had no financial information -- the
7 number of procedures we've done, how many hearing aids we've
8 sold, if we were going to start taking calls somewhere, if we
9 were going to open up a new practice -- but the extenders,
10 the PAs and the audiologists were not there for any financial
11 information.

12 Q. But all the doctors were there, right?

13 A. Doctors, the accountant and the office manager.

14 Q. Was Tammy Szymanski there on some occasions?

15 A. I don't recall.

16 Q. That's fine.

17 Was Kim Koumas there on some of these meetings?

18 A. I think so, yes.

19 Q. Were there some other employees that were also there
20 when this information was being discussed? On occasion; not
21 every time.

22 A. I don't think so, outside of the ones you just listed.

23 Q. Okay. That's fine.

24 Now, I want to talk -- well, let's go, I want to talk
25 about one specific provider meeting that you testified about

1 at some length at the deposition that you gave in the
2 Gunnlaugsson case. And I want to talk about the provider
3 meeting that you were at on April 20th, 2010. Do you
4 remember that?

5 A. Do I remember the meeting from April 2010?

6 Q. Yes.

7 A. Not specifically, unless you give me some context.

8 Q. Happy to do that. Happy to give you context. Let's set
9 the time up a little bit, okay? In April 2010 Dr. Dyce had
10 received notice of his termination. Do you remember that?

11 A. I was aware. I was made aware by Dr. Gunnlaugsson
12 before that date and then formally by Dr. Puchalski around
13 that date.

14 Q. I'm just trying to set up time right now.

15 A. I just don't know how to say I absolutely remember.

16 Q. I'm not trying to say where you got the information.

17 A. Okay.

18 Q. I'm just trying to set up the context for you.

19 A. Roughly around that time, I heard that Dr. Dyce was
20 leaving.

21 Q. And it's your understanding that Dr. Dyce received a
22 notice of -- I'm not asking when you knew about it.

23 A. Okay.

24 Q. But that in March 2010, Dr. Dyce had received a notice
25 of termination; is that your understanding?

1 A. Roughly.

2 Q. That's fine.

3 A. I don't know the details though.

4 Q. That's fine. And he left the practice in May 2010; is
5 that right?

6 A. I think my recollection is that.

7 Q. Okay. And Dr. Gunnlaugsson left the practice toward
8 the -- well, he gave notice that he was leaving the practice,
9 in his own inimitable way, toward the end of April 2010; is
10 that right?

11 A. I don't know exactly. I'd have to take your word for
12 that.

13 Q. There was a provider meeting on April 20th, 2010, that
14 you attended, that Dr. Gunnlaugsson attended and that
15 Dr. Puchalski attended, among others, where there was a
16 whiteboard. And on the whiteboard Dr. Puchalski put up a
17 figure of \$1.5 million. Do you remember it now?

18 A. I remember the whiteboard, I don't know the specific
19 number, but it was in that ballpark.

20 Q. In the ballpark of \$1.5 million. Okay.

21 And at that meeting -- let me rephrase it.

22 You testified at your deposition that at that meeting,
23 Dr. Puchalski put that figure, roughly \$1.5 million, on the
24 board and showed you ways that SCENT could afford to pay
25 Dr. Dyce \$1.5 million. Do you remember that?

1 A. I don't remember how he showed me.

2 Q. I'm not asking specifics, but he talked about it, right?

3 A. I remember that there was a meeting and that he put a
4 number in that range on a whiteboard.

5 Q. Right. And you talked about ways in which SCENT could
6 pay Dr. Dyce \$1.5 million or in that ballpark?

7 A. Yes. If I recall, I mean, again, I wasn't an owner
8 then, but I think the general discussion was if Dr. Dyce -- I
9 think those assumptions were based on the assumption that he
10 would not be in Hartsville or Cheraw. I think that's what
11 the assumptions were, but he did discuss that.

12 Q. But you talked about ways in which he could be paid
13 about \$1.5 million, right?

14 A. If he left his area.

15 Q. Right. And that figure is pretty close to the
16 \$1.8 million figure that Mr. Livingston said Dr. Dyce is owed
17 under the terms of the contract, is it not?

18 A. 1.5 and 1.8 million?

19 Q. Yes.

20 A. I mean, \$300,000, I guess if it's close, it's in the
21 ballpark, yes.

22 Q. It's a lot closer to 1.8 than it is to 0, isn't it?

23 A. I'll agree with that.

24 Q. Thank you.

25 And you testified at your prior deposition that at the

1 provider meetings that you attended, you also were given
2 access to the productivity reports of the individual
3 physicians as well as some of the extenders. Do you remember
4 testifying to that?

5 A. There were sheets that listed charges, and it was -- it
6 was separated by doctor, yes.

7 Q. And you had access to this information prior to
8 August 2010, did you not?

9 A. When I was at those meetings prior to August 2010, we
10 reviewed those chart sheets, yes.

11 Q. You also reviewed at these meetings updated buy-in
12 sheets from -- at the provider meetings that you attended
13 after you were on the shareholder track. Do you remember
14 doing that?

15 A. Yes.

16 Q. Now, do you remember the figure being put up, again,
17 around \$1.5 million, and a discussion about it being paid
18 over a five-year time period?

19 A. You're talking about the April 2010 meeting?

20 Q. Yes.

21 A. Yes.

22 Q. Now, let's fast forward a little bit to July-August
23 2010. I'm sorry. Not July-August, August-September 2010. I
24 apologize.

25 This is the time that you said you became a shareholder;

1 is that correct?

2 A. Yes, sir.

3 Q. Now, in addition to becoming a shareholder in SCENT, you
4 also became a member in SCENT Land, did you not?

5 A. Yes, sir.

6 Q. And at the time, there were various documents that were
7 executed for you to become a member in SCENT Land. Do you
8 remember that?

9 A. Yes.

10 Q. There was a new operating agreement. Do you remember
11 that?

12 A. I remember signing various documents.

13 Q. Let's take a look at Exhibit 113. Everything's by
14 number. Do you see this?

15 A. Yes.

16 Q. You're familiar with Exhibit 113, are you not?

17 A. Not intimately, but I see it's an operating agreement of
18 SCENT Land Holdings.

19 Q. That's your signature on the back, is it not, on
20 Page 113.37?

21 A. All right. I'm at Exhibit 113. And what page?

22 Q. 036. It's okay. We have time.

23 A. 36, 37, I signed there, yes.

24 Q. So you've seen this document before, right?

25 A. I saw it. 2010 was the last time I've seen it.

1 Q. Did you negotiate this document?

2 A. What do you mean by negotiate the document?

3 Q. Did you negotiate any terms, or were you just handed
4 this document and you just signed it?

5 A. I discussed the terms of the document with Dr. Puchalski
6 and Mr. Sheheen, but I don't think there was a lot of back
7 and forth.

8 Q. Okay.

9 MR. SHEHEEN: Your Honor, I don't mean to interrupt. I
10 apologize. So the record is really clear here, because
11 there's two Sheheens tangentially involved in the case, he's
12 been referring to Mr. Sheheen throughout his testimony. I
13 think it's important to state he's talking about the
14 accountant Austin Sheheen, not the lawyer Vincent Sheheen.
15 He's done it several times. Sorry to interrupt.

16 THE COURT: You know, it's pretty evident, but I don't
17 think there's been any reference to Attorney Sheheen in his
18 testimony at all.

19 MR. SHEHEEN: Thank you.

20 MR. ELLISON: Not that I've heard yet.

21 Q. So, Dr. Vidrine, if I heard you correctly a few minutes
22 ago, you really haven't paid much attention to this document
23 since 2010?

24 A. Right. I mean, I haven't referenced it much since 2010.

25 Q. And this was one of the documents that was executed for

1 you to become -- actually, it's probably the document that
2 you executed to become a member of SCENT Land. Would you
3 agree with that?

4 A. Yes, I would, unless there's another one I don't know
5 about, a different one or something like that.

6 Q. That's fine.

7 And you became an equal member in SCENT Land with
8 Amy Puchalski, did you not?

9 A. That was my understanding.

10 Q. And in order to do that, you had to buy-in in one way,
11 shape or form; is that right?

12 A. I don't think there was a buy-in that I had to borrow
13 money and give anyone.

14 Q. I'm not suggesting that.

15 A. Yes. I didn't write a check to anyone, if that's what
16 you're asking.

17 Q. No.

18 MR. WRIGHT: Your Honor, I'd just ask that he be allowed
19 to finish his answer before opposing counsel --

20 THE COURT: Okay.

21 Q. I'm not suggesting that you had to stroke a check.

22 A. Okay. Yes, I guess I don't know what you mean by
23 "buy-in," then.

24 Q. Well, Mrs. Puchalski in August 2010 had already invested
25 money in SCENT Land; is that right?

1 A. Yes.

2 Q. In one way, shape or form?

3 A. She'd been paying down notes which had equity and
4 interest.

5 Q. And there was value in SCENT Land in August 2010, was
6 there not?

7 A. Yes, sir.

8 Q. And you had to come up with a mechanism in order to make
9 it equal between you and Mrs. Puchalski; is that right?

10 A. Right. After speaking to Mr. Austin Sheheen, I think
11 there was a mechanism where all equity, or whatever had been
12 paid down, equity up to that point had to somehow be
13 attributed to Amy.

14 Q. Right.

15 A. And then from that point moving forward, the equity
16 would then be split between me and Amy.

17 Q. And in coming up with that number to calculate the
18 equity, you thought you were being treated fairly, did you
19 not?

20 A. I did.

21 Q. And the way you went about it, according to your
22 testimony in the Gunnlaugsson deposition -- we can pull it
23 out if you want -- was that the practice, not the practice,
24 SCENT Land went out and got appraisers and worked out the
25 numbers and came up with a number that represented the value

1 of SCENT Land in August 2010; is that right?

2 A. The value -- yes. I think there were appraisals of all
3 the holdings of SCENT Land Holdings in 2010.

4 Q. And you felt you were being treated fairly, or you felt
5 sufficiently comfortable that you were being treated fairly,
6 and you signed the operating agreement; is that right?

7 A. Yes, sir.

8 Q. Let's take a look at Section 2.2 on Page 5 of the
9 operating agreement. Could you read that paragraph into the
10 record for me, please.

11 A. "The members acknowledge and agree" --

12 Q. Please go slowly for the court reporter.

13 A. -- "that on" --

14 Q. Always have to be careful of the court reporter.

15 A. -- "August 31st, 2010, and in anticipation of admitting
16 Macy Vidrine as a member, Amy Puchalski was issued a
17 promissory note" --

18 Q. Slow down, please.

19 THE COURT: You've got to slow down.

20 Q. Slow down.

21 A. -- "secured by a mortgage in the principal amount of
22 \$1,201,059 to allow her to withdraw her existing equity in
23 the company over time in order to allow the members to
24 accumulate equity equally in the company as the company debt
25 is retired.

1 "Each member further agrees that each will equally
2 guarantee the company debt listed on Exhibit B attached
3 hereto and incorporated herein by reference."

4 Q. Okay. So the value that was set for the equity in SCENT
5 Land, according to this document, which you thought was fair,
6 was \$1.2 million in round numbers, right?

7 A. Yes, sir.

8 Q. And a mortgage was signed, was it not?

9 A. A promissory note was signed.

10 Q. Have you ever seen that promissory note?

11 A. I saw it in my deposition. Mr. Bland showed it to me.

12 Q. We can go to the deposition, but I'll represent to you
13 that the answer is no, you didn't see it at your deposition.
14 And I'll also -- hold on.

15 I'll also represent to you that no promissory note has
16 ever been produced in the four and a half years that this
17 litigation has been going on.

18 Go ahead. If you recall signing it, that's fine.

19 A. I just reviewed my deposition, and Mr. Bland referenced
20 the document that had my name on it and a payment schedule.

21 Q. We'll go there in a moment.

22 MR. WRIGHT: Your Honor, I'd ask that he please allow
23 him to finish his answer before counsel asks another
24 question.

25 THE WITNESS: Whether or not that's the promissory note,

1 I'm not sure. It had a schedule to be paid out over time.
2 My name was on it, Ms. Puchalski's name. So I don't know if
3 it's a promissory note, a loan, a mortgage, but it was an
4 agreement.

5 Q. Will you turn to Exhibit 187, Dr. Vidrine.

6 A. Yes, sir.

7 Q. That's the document that you were shown at your
8 deposition, isn't it?

9 A. As I recall, yes.

10 Q. I'm sorry?

11 A. As I recall, yes.

12 Q. Do you think that this is a promissory note?

13 A. I don't know what it is. It looks like it's a note with
14 how much is owed with an interest rate that's amortized over
15 a certain amount of period. So I don't know what you want to
16 call it, but it's a schedule payment for somebody.

17 Q. But you don't know what a promissory note is; is that
18 fair?

19 A. I mean, technically, no.

20 Q. To quote Dr. McCoy from Star Trek, which really dates
21 me, you're a doctor and not a banker, correct?

22 A. Correct. I don't know if this is a promissory note.

23 MR. ELLISON: Judge, I apologize. I'm sorry. I
24 couldn't resist that one.

25 Q. And the figure on the first line here in the

1 amortization schedule under Line 1 under "event," do you see
2 what that figure is for 9/1/2010, near the top of the page?

3 A. Yes. The amount?

4 Q. Yes.

5 A. Yes.

6 Q. And what's that amount?

7 A. \$1,201,059.

8 Q. Right. And that's the same number that's on the
9 operating agreement, right?

10 A. Yes.

11 Q. Now, in addition to that, let's go to Exhibit 195,
12 Plaintiff's 195. Do you see that?

13 A. Yes, sir.

14 Q. This purports to be a mortgage of real estate. Do you
15 see that?

16 A. Yes.

17 Q. And if we look in the first paragraph, about six lines
18 from the top, it refers to a promissory note in the sum of,
19 again, \$1,201,059. Do you see that?

20 A. Yes, sir.

21 Q. And this was a mortgage that was placed against all of
22 SCENT Land's property that it owned in August 2010, was it
23 not, Dr. Vidrine?

24 A. It says "mortgage" on it. I'm just looking for a date.
25 You said in what year? You said 2010's on there somewhere?

1 Q. Yes. Go to Page 7.

2 A. Okay.

3 Q. And that will help you.

4 A. I see "mortgage." I see Page 7.

5 Q. Do you see the date?

6 A. Yes. One says 2010, and another -- yes, 1st day of
7 September 2010.

8 Q. Right. And at that time, SCENT Land owned three pieces
9 of property, right, Dr. Vidrine?

10 A. At that time SCENT Land owned a lot in Richland County,
11 a building in Kershaw County and a building in whatever
12 county Hartsville is in.

13 Q. And I'm not asking you to read the legal descriptions,
14 but if you flip through the next couple of pages, you'll see
15 legal descriptions of three different properties. See it?

16 A. I see Parcel 1, Parcel 2. I don't see a Parcel 3, but I
17 see a Parcel 1 and 2.

18 Q. So as far as you know, have you ever seen any document
19 that says "promissory note" other -- or references to a
20 promissory note for \$1,201,000 in August-September 2010 other
21 than the three we've just gone through?

22 A. No, I don't see any other documents.

23 Q. Do you recall having seen any other documents?

24 A. No, I don't think so.

25 Q. That's fine.

1 All right. Now, let's talk about the SCENT Land tax
2 returns for just a moment, all right? Let's look at
3 Exhibit 241.

4 A. Okay.

5 MR. WRIGHT: Plaintiff's 241?

6 MR. ELLISON: Yes, Plaintiff's.

7 Q. Do you see that, Dr. Vidrine?

8 A. Yes, sir. I have it.

9 Q. And let's go specifically to Page 4. It says 241.004 on
10 the bottom.

11 A. 241.004.

12 Q. Right.

13 A. Yes, I have it.

14 Q. Is this a copy of the SCENT Land tax return for 2010, as
15 far as you know?

16 A. As far as I know.

17 Q. And it says up here that it's for a return -- looking at
18 the first line at the top of the page, it's for the period of
19 January 1st, 2010, through May 9, 2010. Do you see that?

20 A. Yes, sir.

21 Q. Now, there was another tax return filed, it's
22 Exhibit 311-A, Plaintiff's Exhibit 311-A.

23 I'm sorry. It's 321. I gave you the wrong number.
24 Plaintiff's 321. Do you see that, Dr. Vidrine?

25 A. Yes, sir.

1 Q. Plaintiff's Exhibit 321 says that it is a tax return for
2 SCENT Land Holdings II, LLC for 2010. Do you see that?

3 A. Yes, sir.

4 Q. And it shows that the only two members, looking at this,
5 the only two members of SCENT Land II are you and
6 Mrs. Puchalski.

7 A. Where's it show that, on the back pages or --

8 Q. No, if you go to Pages 12 and 13.

9 A. Okay.

10 Q. Those are what are called the K-1s.

11 A. 12 and 13. Yes, I see the Schedule B1 has my name and
12 her name.

13 Q. Well, that's another place it is.

14 A. Okay.

15 Q. But 12 and 13 are really where it's shown. See on
16 Page 12 where it lists Amy Puchalski as a 50 percent owner?
17 Page 12?

18 A. Yes. Okay.

19 Q. Do you see on Page 13 where you're listed as a
20 50 percent owner?

21 A. I do.

22 Q. And if we go back to the very first page, it says that
23 the time period for this tax return is from
24 September 1st, 2010, through December 31st, 2010. Do you see
25 that?

1 A. I see that, yes, sir.

2 Q. Now, September 1st, 2010, either September 1st or
3 August 31st, I'm not really sure, is the date that you became
4 a member of SCENT Land. Do you remember that?

5 A. I do.

6 Q. That's not SCENT Land II, is it?

7 A. I don't know.

8 Q. Well, go to Exhibit 318 --

9 MR. ELLISON: And, Vincent, Plaintiff's Exhibit 318, I
10 don't think you introduced this yet.

11 MR. SHEHEEN: Your Honor, we probably should have taken
12 this up in chambers. There are a few exhibits that were
13 provided to us by plaintiffs last week at some point. And
14 they asked us, and I don't necessarily have any objection to
15 them, but if they are things that we need to address, for
16 example, this whole line of questioning about whether this is
17 SCENT Land II, it was addressed in my discussion with the
18 banker, Walter Long. They raised some issues about it.

19 So I don't have an objection to these exhibits coming
20 in. I just want fair play. If there's some new issue
21 related to this and we need to call Mr. Sheheen to address, I
22 want to be able to do it. That's all I'm saying.

23 MR. ELLISON: This is not a new issue.

24 MR. WRIGHT: They're new exhibits, and I don't know --

25 MR. ELLISON: Okay. Then we'll withdraw 318, if that's

1 a problem, but that's fine.

2 MR. SHEHEEN: I'm not saying there's a problem. I'm
3 just saying if there's some new issue about these exhibits, I
4 want --

5 MR. ELLISON: It's not a new issue. That's fine.

6 MR. SHEHEEN: Because Austin's testified, and I guess he
7 didn't ask him this question.

8 THE COURT: Okay. You'll withdraw --

9 MR. ELLISON: I'll withdraw the reference to 318.

10 THE COURT: Okay.

11 Q. Dr. Vidrine, as far as you know, have you ever signed an
12 operating agreement for an entity called SCENT Land Holdings
13 II?

14 A. The only one I signed was the one you told me earlier,
15 and I forget what the SCENT Land Holdings said on there.

16 Q. And there was a tax return filed in 2011, which is
17 Exhibit 311-A, which we almost got to a few minutes ago. Do
18 you see that, 311-A?

19 A. I do. Yes, sir.

20 Q. And this purports to be a tax return for SCENT Land
21 Holdings II, LLC. Do you see that?

22 A. I do.

23 Q. And the only members of SCENT Land Holdings II, LLC are
24 shown in the document to be you and Mrs. Puchalski; is that
25 right?

1 A. I see that here at the end of this exhibit, our names.

2 Q. You don't have any idea, Dr. Vidrine, do you, why you
3 have two tax returns filed for SCENT Land Holdings in 2010
4 and then a second tax return but only for SCENT Land
5 Holdings II, LLC in 2011, do you?

6 MR. WRIGHT: Your Honor, objection. Calls for
7 speculation. With the colloquy we just had with the Court, I
8 don't think he's --

9 THE COURT: If he knows.

10 MR. ELLISON: If he knows.

11 THE WITNESS: I mean, I'm not an accountant, but I think
12 from the first half of the year in 2010, I wasn't an owner of
13 the land holdings. So they filed a prorated per calendar
14 month for that time. And then for the second half of the
15 year, they filed it with me on it. And then for 2011, they
16 filed the entire year with me and Amy on it.

17 That's the best I could tell, but Mr. Sheheen, Austin,
18 would be able to address that.

19 Q. But specifically what I was asking you is you don't know
20 why it goes -- I'm asking what you know, not what Austin
21 might or might not know.

22 A. Okay.

23 Q. You don't know why it goes SCENT Land Holdings to SCENT
24 Land Holdings II, do you?

25 A. I don't.

1 Q. And if you look, just to be crystal clear with it, in
2 the 2011 tax return at Page 311.347.

3 A. Again?

4 Q. Schedule L.

5 A. Yes, sir. I'm at schedule K, I'm sorry. Schedule L,
6 yes, I see it.

7 Q. See where it says N/P?

8 A. Yes.

9 Q. And there's a reference to Amy Puchalski?

10 A. Uh-huh.

11 Q. Do you see that? And that's for approximately the same
12 amount as we showed in the mortgage and in the SCENT Land
13 operating agreement. Do you remember that?

14 A. I do.

15 Q. And then there's a reference to a note payable for the
16 Hartsville property. Do you see that?

17 A. I do.

18 Q. And then there's a note payable for the Lugoff property.
19 Do you see that?

20 A. Yes, sir.

21 Q. And there's a reference to the note payable for the
22 Richland County property. Do you see that?

23 A. Yes, sir.

24 Q. And those are the properties that were owned by SCENT
25 Land, correct?

1 A. Yes, sir, except for the Amy Puchalski.

2 Q. I understand. I understand.

3 MR. ELLISON: One moment, please.

4 Q. Dr. Vidrine, we talked about the providers meeting in
5 April 2010. Do you remember that?

6 A. Yes, sir.

7 Q. And this litigation's been going on for a very long
8 time, has it not?

9 A. It has.

10 Q. And during the course of this litigation, Dr. Vidrine,
11 you've actually looked for a couple of other jobs, have you
12 not?

13 A. I inquired a few times when Dr. Gunnlaugsson and
14 Dr. Dyce left.

15 Q. Well, we have already introduced into evidence your
16 deposition, which is Exhibit 293.

17 A. Okay.

18 Q. And if you go specifically to Page 7, and this
19 deposition was taken -- if you go -- before you go to Page 7,
20 I'm sorry, in March of 2012, two and a half years ago. Do
21 you see that on the first page?

22 A. I do.

23 Q. And if you go to Page 7, Mr. Bland asked you about the
24 other jobs that you had applied for.

25 MR. WRIGHT: Your Honor, I'm going to object on the

1 grounds of trying to find the relevance of this line of
2 questioning.

3 MR. ELLISON: You will in a minute. This is one time
4 when I'm setting up a basis for a question.

5 MR. WRIGHT: As long as he sets a foundation for it --

6 MR. ELLISON: This is the foundation for another
7 question.

8 THE COURT: Okay.

9 Q. It talks about how you -- well, you answered in response
10 to a question from Mr. Bland that you had inquired about a
11 job with Charlotte ENT. Do you see that?

12 A. Uh-huh.

13 THE COURT: Is that "yes"?

14 Q. You need to do -- uh-huh, huh-uh, doesn't work. I'm
15 sorry. You need to say "yes" or "no" for the court reporter.

16 A. I apologize. Yes.

17 Q. And you inquired about a position at the University of
18 Alabama at Birmingham. Do you see that?

19 A. Yes.

20 Q. And you inquired about a couple of other positions. Do
21 you remember that?

22 A. Yes.

23 Q. One was at LSU?

24 A. Yes.

25 Q. And actually, you told Dr. Gunnlaugsson why you didn't

1 get involved with litigation with Dr. Puchalski and SCENT.

2 Do you remember telling him that, you testifying to that?

3 A. In my deposition, when he asked me to go work for him, I
4 told him I didn't have the money to fight lawyers to leave
5 the practice and go join him.

6 Q. Right. So let's go specifically to Page 119. You were
7 asked why you didn't leave. And looking at Lines 8 and 9,
8 what did you tell Dr. Gunnlaugsson?

9 A. I said, "I can't leave. I don't have the money to fight
10 a legal battle."

11 Q. Legal battle like one that's gone on four and a half
12 years between Dr. Dyce and Dr. Puchalski?

13 MR. WRIGHT: Objection to relevance.

14 THE WITNESS: No, a covenant battle. I'm sorry.

15 THE COURT: Stop. What?

16 MR. WRIGHT: Again, just a relevance objection.

17 THE COURT: Overruled. You may proceed.

18 THE WITNESS: Not a battle like Dr. Dyce and
19 Dr. Puchalski, because I wasn't a partner at that time, but
20 more of a, you know, violating a covenant that was in my
21 contract.

22 Q. But you would characterize a four-and-a-half-year-old
23 legal battle to get paid what you're allegedly owed under the
24 terms of a contract a long legal battle, would you not?

25 A. Yes. But it wasn't similar to my situation with this

1 statement.

2 Q. But would you characterize four and a half years of
3 litigation as a long legal battle?

4 A. Yes.

5 Q. And back in April 2010, at the provider meeting that you
6 and Dr. Gunnlaugsson and Dr. Puchalski attended,
7 Dr. Puchalski puts up on the whiteboard that "We can pay this
8 \$1.5 million that we owe to Dr. Dyce." Do you remember that?

9 A. I do.

10 MR. WRIGHT: Objection, Your Honor. Asked and answered.

11 THE COURT: Sustained.

12 Q. And we're four and a half years later, and that money
13 still hasn't been paid, has it?

14 A. No. That's what this case is about.

15 MR. ELLISON: Thank you, Your Honor. No further
16 questions.

17 THE COURT: Okay. Redirect.

18 MR. WRIGHT: Your Honor, a few questions on redirect.

19 THE COURT: Sure.

20 MR. WRIGHT: If the Court may please.

21 REDIRECT EXAMINATION BY MR. WRIGHT:

22 Q. Dr. Vidrine, you were just asked about the \$1.5 million
23 figure that was placed on that board; is that right?

24 A. Yes, I was.

25 Q. Okay. Did you know at that time that Dr. Dyce was going

1 to breach the contract?

2 A. No.

3 Q. Did you know at that time that Dr. Dyce had taken
4 insurance contracts from the practice?

5 A. I did not.

6 Q. Did you know at that time that Dr. Dyce was going to
7 remain in Hartsville and compete against you?

8 A. No. The assumption was that he would leave the area.
9 That would allow that payout.

10 Q. Dr. Vidrine, there's several questions that Mr. Ellison
11 asked you with regards to SCENT Land. When you signed on the
12 SCENT Land operating agreement in August 31st or
13 September 1st, 2010, was the Lugoff building completed?

14 A. Yes. We were in the building in August of 2010.

15 Q. At the time that Ms. Jamie Curley left SCENT Land, was
16 the Lugoff building completed?

17 A. I don't think so, but I'd have to look at the departure
18 date and the move-in date to be honestly accurate about that.

19 Q. Let me ask you this, Dr. Vidrine: Does a -- in your
20 experience as a shareholder, does a half-completed building
21 have the same value as a fully completed building?

22 A. No, for several reasons. One, there's no occupancy;
23 number two, there's no practice thriving in there; and number
24 three, there's no lease or contract with an entity for five,
25 ten, whatever it is. A leased medical office building has a

1 lot more value than an empty building.

2 Q. Dr. Vidrine, Mr. Ellison asked you what you talked about
3 in some of those provider meetings. And, again, for the
4 Court's understanding, this time frame is after you became a
5 shareholder-track physician in August of 2009; is that right?

6 A. Shareholder track started in August of 2009, yes.

7 Q. Now, during that period of time, you talked about some
8 of the provider meetings and what was discussed in those
9 meetings?

10 A. During that period of time, I was in those meetings and
11 was privy to what was discussed in those meetings, yes.

12 Q. At those meetings, did anyone there say anything about
13 shareholder disputes?

14 A. Never.

15 Q. Did anyone at those meetings ever say anything about
16 personal trips taken by Dr. Puchalski on the company dime to
17 New York?

18 A. Never.

19 Q. Did anyone at those meetings ever say anything about a
20 car allowance that Dr. Puchalski had?

21 A. No.

22 Q. During any of those meetings, did anyone ever say
23 anything about Dr. Puchalski paying out malpractice
24 settlements from the corporation's funds?

25 A. No, I didn't hear any of that information during those

1 meetings.

2 Q. Who would have known those things?

3 A. The only people that would have been privy to that
4 information were the owners at the time: Dr. Dyce and
5 Dr. Puchalski.

6 MR. WRIGHT: I beg the Court's indulgence for just one
7 moment.

8 THE COURT: Okay.

9 Q. Dr. Vidrine, how did you learn that information?

10 A. I heard it from Dr. Gunnlaugsson, he told me several
11 times.

12 MR. WRIGHT: Thank you.

13 THE COURT: Recross.

14 MR. ELLISON: Nothing.

15 THE COURT: Okay. You may come down.

16 Is this witness free to leave?

17 MR. SHEHEEN: Yes, Your Honor, but he's a principal, so
18 he's going to hang around. Thank you.

19 THE COURT: If he wishes to leave, wishes to stay --

20 MR. SHEHEEN: Thank you.

21 THE COURT: All right. Yes, call your next witness, I
22 would say.

23 MR. SHEHEEN: Your Honor, I believe that this is going
24 to be -- this is not our last witness. Our next witness is
25 going to be Mr. Quigley, who, according to your ruling or --

1 THE COURT: Mr. Quigley.

2 MR. SHEHEEN: -- statement that we need to have him be
3 able to -- or they stated they wanted to be able to meet with
4 him, debrief him, discuss his opinions and how he arrived at
5 them.

6 THE COURT: And you believe that would conclude the
7 witnesses on your behalf?

8 MR. SHEHEEN: I believe that that will conclude the
9 witnesses on our part.

10 THE COURT: Okay.

11 MR. SHEHEEN: Presuming that he proceeds to testify. I
12 don't ever want to say 100 percent. I'm telling you
13 90 percent.

14 THE COURT: I understand. This morning you gave me a
15 different number, but having regrouped, having now reached
16 this point, you now believe that Mr. Quigley would conclude
17 the witnesses that you would call; yes?

18 MR. SHEHEEN: Yes, ma'am. So my suggestion, if the
19 Court would entertain my suggestion, would be that you allow
20 us the time to do that. I would expect -- if we regrouped in
21 the morning, I would expect his testimony to last probably --

22 THE COURT: It will last whatever it lasts. Don't jinx
23 it.

24 MR. SHEHEEN: Okay.

25 THE COURT: Don't jinx it.

1 MR. SHEHEEN: I think we'll get done tomorrow.

2 THE COURT: Okay. Yes, yes. Cool? You're going to do
3 what you said you were going to do; yes?

4 MR. CLEVELAND: Yes, Your Honor. But I would like to
5 propose, since it's 3 o'clock, I wouldn't think that it would
6 take us more than 45 minutes to be debriefed by Mr. Quigley.

7 THE COURT: I'll wait.

8 MR. CLEVELAND: And then if we could then go to 5 on
9 direct. If he gets through on direct, I would like to
10 suspend my cross till tomorrow so I can have time to talk
11 with our expert about what we learn in the next 45 minutes,
12 but I'm just trying to make sure we finish.

13 THE COURT: I understand. I'm happy to remain. There's
14 no reason for me not to. I don't mind at all. I've got
15 plenty of things that I can do.

16 MR. CLEVELAND: I apologize for the imposition on the
17 Court.

18 THE COURT: You're not. It isn't.

19 I will share with counsel that I believe it is
20 appropriate that by virtue of the fact that I have access to
21 the Internet, I have looked at the South Carolina Secretary
22 of State website. I'll share that with you. If you want to
23 know more, I'll share more with you.

24 MR. SHEHEEN: Your Honor, if you're referring to the
25 SCENT Land II, I stated in the testimony that --