

22661

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court

RECEIVED

D. Garrison Hill, Circuit Court Judge

JUN 22 2016

SC Court of Appeals

Appellate Case No. 2015-000476

Case No. 2012-CP-23-02887

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,
Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting,
LLC, Defendants,

John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third-Party Defendant and Counterclaim Plaintiff,

v.

David Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,

Of Whom David Wilson, Neologic Distribution, Inc. and Fresh Water Systems, Inc. are the
Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the
Appellants.

RECORD ON APPEAL
VOLUME I

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF COMMON PLEAS

2012-GS-23-02887

DAVID WILSON, INDIVIDUALLY
AND DERIVATIVELY ON BEHALF OF
CAROLINA CUSTOM CONVERTING,
LLC,

PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

JOHN GANDIS, ANDREA
COMEAU-SHIRLEY, ZOI FILMS,
LLC, AND CAROLINA CUSTOM
CONVERTING, LLC,

DEFENDANTS,

VOLUME I

CAROLINA CUSTOM CONVERTING,
LLC,

COUNTERCLAIM

vs.

DAVE WILSON, STEVEN NORVELL,
NEOLOGIC DISTRIBUTION, INC.,
AND FRESH WATER SYSTEMS, INC.

COUNTERCLAIM

DEFENDANTS.

September 29 and 30, 2014
October 1, 2, and 3, 2014
Greenville, South Carolina

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(PW) - Denotes Plaintiff's Witness

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All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

THE COURT: We are on the record in the case of Wilson v. Gandis, et al., 2012-CP-23-02887.

And, yes, sir, Mr. Arnold.

MR. ARNOLD: May it please the Court.

The Plaintiff would call John Gandis.

MR. FARRAR: Before we get there, we probably ought to say, for the record, we've stipulated into evidence all the exhibits. There are exhibit books on the witness's table. There should be an exhibit book in front of you. And we'll try to remember to tell you which book to look at as we go through the exhibits.

THE COURT: All right.

MR. ARNOLD: Yes. Sure.

(WHEREUPON, Plaintiff's Exhibit Nos. 1 through 174 were marked for identification and admitted into evidence.)

(WHEREUPON, Defendant's Exhibit Nos. 1 through 178 were marked for identification and admitted into evidence.)

THE COURT: Why don't y'all, just for the record, everybody introduce themselves and who they represent.

MR. ARNOLD: I'm Andy Arnold. And I represent Dave Wilson. And this is Jodi Fowler. She is my paralegal.

MR. CAMPBELL: Bo Campbell, Your Honor. I represent Steve Norvell, Fresh Water, and Neologic.

MR. STEPHENSON: Your Honor, I'm Tom Stephenson. And

1 I represent Carolina Custom Converting and its subsidiary,
2 Zoi.

3 MR. WILLIAMS: Your Honor, I'm Burl Williams of
4 Nexsen Pruet. And I represent the same entities with Tom
5 Stephenson.

6 MR. FARRAR: Steve Farrar. I represent Andrea
7 Comeau-Shirley.

8 MR. GOLDSMITH: Andy Goldsmith and I represent John
9 Gandis.

10 THE COURT: All right. Thank y'all very much.
11 Yes, sir.

12 MR. ARNOLD: John Gandis.

13 THE COURT: Sir, just place your left hand on the
14 Bible and raise your right hand.

15 WHEREUPON,

16 JOHN GANDIS,

17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ARNOLD:

20 Q I'm going to cut that on and try to keep it out of
21 your eyes.

22 Good morning, John.

23 MR. ARNOLD: Your Honor, we -- in this case, I think
24 we'd be permitted to refer to the witnesses by their first
25 name. It's just John, Andrea, and Dave. It's John

1 Gandis, Dave Wilson, and Andrea Comeau-Shirley, unless
2 they have an objection to that. I think we've kind of
3 become accustomed to that.

4 THE COURT: That's fine with me.

5 MR. ARNOLD: Okay.

6 BY MR. ARNOLD:

7 Q John, let's start just briefly with some of your
8 pre-CCC background. You went to North Carolina State; is
9 that right?

10 A Yes.

11 Q And you graduated there when?

12 A 1992.

13 Q Okay. And, just briefly, what was your background
14 after North Carolina State?

15 A My first job out of college was a process engineer
16 with Milliken and Company. I worked in Thompson, Georgia.
17 And I was there for a couple of years. Then I went to
18 work for a company called Vytech in Anderson, Vytech
19 Industries.

20 Q And when did you go to work for Vytech?

21 A It would have been 1994.

22 Q Okay. And is Vytech a company that was owned by your
23 father at the time?

24 A At the time, he was a part owner, yes.

25 Q Part owner. And what did you do for Vytech?

1 A Well, I did a lot of things. I really started out in
2 project engineering. I installed a textile line. I
3 developed a water base ink system.

4 Eventually, I worked my way into becoming the plant
5 manager of the plant. I really had an opportunity to
6 experience all aspects of the company.

7 And my father sold out his part of the company in
8 2000. And the new ownership made me the development
9 director product -- new product development. That's --
10 when it closed, that was my title.

11 Q What -- and what did Vytech do?

12 A Vytech was a vital manufacturing plant that printed
13 laminated -- all kinds of stuff.

14 Q Did they do some things similar to what Decotex would
15 later do?

16 A No. I would not equate the two at all.

17 Q So you were with Vytech. Were you there when they
18 filed bankruptcy?

19 A Yes.

20 Q Now, it was at Vytech that you met Andrea
21 Comeau-Shirley; is that correct?

22 A Yes.

23 Q She performed accounting services for Vytech?

24 A She did. But I didn't, actually, meet her until
25 after. I knew her through my father. I knew of her, but

1 we had never, actually, worked together when we were at
2 Vytech.

3 Q Did Andrea perform accounting services for your
4 father?

5 A I don't know that. Personally, I don't know.

6 Q Okay. And so -- and we're going to hear about John
7 Zamer. John Zamer is an attorney that you consulted with
8 on behalf of CCC; is that correct?

9 A Yes.

10 Q And was John Zamer, also, an attorney who represented
11 Vytech?

12 A From my understanding, yes. That's how I knew him
13 was from Vytech. I don't know what he did for Vytech.

14 Q Okay. And so after the bankruptcy of Vytech -- what
15 year was the bankruptcy?

16 A It would have been 2006.

17 Q So after the bankruptcy, I guess, you left. You left
18 Vytech?

19 A I didn't have much of a choice. That's how it works
20 normally.

21 Q Well -- and what did you do after Vytech?

22 A So when I left Vytech, I sought employment. I had
23 some interviews, and decided that I wanted to go into
24 business for myself. I went home and talked it over with
25 my wife, cashed in my 401K, and had a year to try to make

1 some income.

2 Q Okay. And how did that year go?

3 A Well, I already owned a company called M-Tech that
4 was doing sheet metal fabrication. We had about seven
5 employees and, of course, had the building.

6 So I was going to try to make a go there. Then I
7 opened Decotex shortly after with my father to -- you
8 know, there was -- it's more of an intellectual property
9 type of arrangement that I was putting together.

10 And then Dave approached me about getting into some
11 of the projects that he and I had worked on at Vytech
12 together. And that's how -- we really got Stewarts
13 Tolling was the first idea we had.

14 Q Well, let's talk about that. Was either M-Tech or
15 Decotex profitable in 2006? 2007?

16 A Decotex was not profitable. M-Tech, I think, was a
17 break even.

18 Q And so -- but you were surviving on your savings?

19 A Yes.

20 Q And now M-Tech owned a building; is that correct?

21 A Yes.

22 Q And is it the building that CCC occupies today?

23 A Part of it, yes.

24 Q Now, how did you meet Dave Wilson?

25 A A former employee of Vytech that was a technical

1 manager had suggested that Dave could help us import films
2 from China. We were laminating some films to our vinyl
3 and the -- we were buying it domestically. And we were
4 getting beat price wise.

5 So we knew that he had suggested that Dave was
6 somebody that could teach us how to import, and had some
7 knowledge about films that we didn't make.

8 Q And when we're talking about films, for the Judge's
9 benefit, tell us what we're talking about. We're not
10 talking about photography?

11 A Right.

12 Q Polyester films, polypropylene, are we -- can you
13 describe --

14 A So the film industry is, basically, the chemical
15 industry. Most of the chemical companies own film plants
16 so that they can have an outlet for their resins.

17 So, yeah, we -- Vytech made vinyl, which is a form of
18 plastic. Mitsubishi here in Greer makes polyester. It's
19 more of a chemical industry, I would say, than the film
20 industry.

21 Q What are these films used for? I know there's a --
22 food packaging?

23 A Yes.

24 Q Would that be one of the most prevalent?

25 A You know, I mean, I've never done an analysis to find

1 out what's the biggest market. I mean, it's such a large
2 enormous market.

3 Q So Dave was in the film business at the time you met
4 him; correct?

5 A That was my understanding, yes.

6 Q And did he own a business called Eastern Films
7 Solutions at the time?

8 A That was my understanding, yes.

9 Q And, at some point in time, you and he discussed
10 forming CCC; is that correct?

11 A Yes.

12 Q Okay. And what was the -- going to be the purpose --
13 the original purpose of CCC, Carolina Custom Converting?

14 A Well, we -- I mean, we, originally, came together to
15 form Stewarts Tolling, which was a company that was going
16 to poke holes in the film.

17 We had developed -- one of the products that Vytech
18 supplied was a vapor barrier that went into metal
19 buildings. One of the problems we had was it wasn't
20 breathable. And you had to poke holes in it. Especially
21 here in the southeast, you got ahold of all that good
22 stuff. And we had made up a metalized polyester vapor
23 barrier. And the only thing that was keeping it from
24 getting to market, we thought, were poking holes in it.

25 And so we got together to try to take that product to

1 market is really how we got started. And we worked with a
2 company called Stewarts of America. They make the
3 tooling. And we had worked out a plan with them that they
4 would make the tool for us to poke the holes. But we
5 still needed a machine to unwind and rewind the material.

6 So, you know, utilizing my engineering background, my
7 metal shop, I had space. I built a machine that would do
8 that. So that's really how Dave and I, initially, got
9 together.

10 Q Okay. But the perforating -- poking the holes in the
11 film, that really didn't go anywhere, did it?

12 A No.

13 Q So you kind of went to, I guess, we can call it plan
14 B. CCC was the start of plan B?

15 A Well, plan B really started as this machine that
16 would poke the holes, trim film, also. And Dave did have
17 existing customers that needed trimming film.

18 So to prove to ourselves that we could do it, we ran
19 some orders for Dave on that equipment to learn -- you
20 know, to get up to speed on, of course, making sure our
21 machine worked and that we could, in fact, slit with it,
22 so.

23 Q And, again, you're taking rolls of film -- and I know
24 this might not be a perfect example. But you take a roll
25 and if the roll is, let's say, 48 inches and the customer

1 needed 44 inches, CCC would slit that film to the
2 customers order; is that true?

3 A Yeah. My kids say that my dad makes big rolls
4 little. That's what we do.

5 Q So -- and that's the slitting process? You're just
6 taking bigger rolls of film and making them into smaller
7 rolls of film?

8 A Right.

9 Q And did you do these test runs of slitting this
10 product for Dave and Eastern Films before the formation of
11 CCC to prove you could do it, or did you do it after the
12 formation of CCC?

13 A Well, we had worked on an operating agreement for
14 Stewarts. So it was all kind of running together.

15 Q Okay.

16 A I think, you know -- yeah.

17 Q But Carolina Custom Converting, is that not somewhat
18 synonymous with slitting? I mean, you're converting big
19 film to smaller film?

20 A I would tell you that I bought that slitter -- we
21 rebuilt it in March of 2007. We didn't form Custom
22 Carolina until the end of 2007. So we had a good year to
23 get ourselves going.

24 Q And so -- and Dave was buying and selling film. So
25 he'd buy from the manufacturers and sell to various

1 customers; is that correct?

2 A Correct.

3 Q And he was doing that through Eastern Films
4 Solutions?

5 A Yes.

6 Q Yes. And --

7 A I guess.

8 Q Well, that was your understanding?

9 A Yeah.

10 Q And a good number of those orders required slitting
11 services?

12 A I don't know that. I mean, there's other ways to do
13 it, but, yes.

14 Q Some of them required slitting?

15 A Yes.

16 Q So the idea was, well, look, I'm buying and selling
17 film that needs to be slit. Let's form our own business
18 and we'll slit it through Carolina Custom Converting?

19 A That was the general idea, yeah.

20 Q Okay. And that was in November 2007?

21 A Correct.

22 Q Okay. And I want to show you some e-mails. And
23 there are quite a few.

24 MR. ARNOLD: This is notebook number one, Your Honor.

25 THE COURT: Okay.

1 BY MR. ARNOLD:

2 Q Now, let's take a look -- just to start, let's take a
3 look at Exhibit No. 2. And I don't think there's anything
4 tricky about this one. You've got two e-mails. It looks
5 like the first one is the top one, and the second one is
6 the bottom. Is that your observation, Mr. Gandis?

7 A Yes.

8 Q Okay. And so you had engaged Steve Potts to assist
9 in drafting an operating agreement?

10 A Correct.

11 Q And so he had -- you had written him and said, Please
12 stay with the LLC. I have a whole laundry list of things
13 from my accountant that I need to get to you concerning
14 the operating agreement. I'll try to get it to you by
15 Monday?

16 A Correct.

17 Q Okay. And he responds, essentially, that he's -- he
18 needs some additional information and wants to finish the
19 operating agreement for you and Dave; is that correct?

20 A You know, Steve was doing a lot of things for me.

21 Q What else was he doing for you?

22 A I had M-Tech. I don't think it's about the right
23 time. He did the document when we sold our assets at
24 M-Tech. But I had my father's agreement with Decotex that
25 he did do that operating agreement.

1 So I would say primarily the -- yeah.

2 Q But he was helping you with CCC as well?

3 A Yes.

4 Q And let's take a look at Exhibit No. 1. Because --
5 and if you could explain looking at Exhibit No. 1. What
6 is Exhibit No. 1, Plaintiff's Exhibit No. 1?

7 A All right. So when my father and I were forming
8 Decotex, my father consulted with Andrea on how to set up
9 the business. And this sheet was the questionnaire
10 working document. It was what was supposed to kind of be
11 the guideline for how the company would -- how the
12 operating agreement would come together. Just -- so it's
13 more of a tool, I think. But this was Decotex's.

14 Q So this was prepared for Decotex?

15 A Yes.

16 Q But when you and Dave were discussing CCC, you pulled
17 this document out and used it as an outline to assist in
18 trying to figure out the particulars of your agreement
19 with Dave Wilson in the formation of CCC?

20 A So I liked this document so much. I really kind of
21 considered that I could use it as a tool to try to form
22 CCC. I consulted with Andrea and she gave me a modified
23 one. Because, you know, an agreement between a father and
24 son would be different than between, you know, two
25 non-family members.

1 Q Well, she gave you a modified one. But that kind of
2 comes a little bit later, doesn't it?

3 A (There was no response.)

4 Q Trust me, we'll go through the documents. But you
5 took a stab with Plaintiff's Exhibit No. 1; correct?

6 A Yes.

7 Q And the handwriting on this document, is that your
8 handwriting?

9 A Some of it.

10 Q Okay. Can you tell us what's not your handwriting?

11 A In the upper right-hand corner where it says Carolina
12 Custom, and the part B where the 50/50 is scratched out
13 and it says 51/49.

14 Q Okay. We'll stay with that. So whose handwriting is
15 the 50/50 in?

16 A That's mine.

17 Q Okay. And whose handwriting is the 51/49 in?

18 A That's Steve Potts.

19 Q Okay. Because you gave this document to Steve Potts;
20 isn't that correct?

21 A So how this would have worked is I would have filled
22 it out, and I would have taken it to Steve. And we would
23 have sat down and talked about it.

24 Q But you consulted with Dave Wilson before you
25 completed this document?

1 A I don't remember.

2 Q Do you remember testifying to that in your deposition
3 that that's what happened?

4 A I think when you put it in front of me at the
5 deposition, I didn't realize that this was the Decotex for
6 sure. The one that I consulted with Dave on would have
7 been the other one that came later.

8 Q Let me hand you up your deposition.

9 MR. ARNOLD: If I may, Your Honor.

10 BY MR. ARNOLD:

11 Q If you'll turn to Page 29 in your deposition.

12 Now, this may be a little bit faint to your memory,
13 because this was taken the 16th of April, 2013, but you
14 may recall. Let's look at Line 22 on Page 29. Let's look
15 at Exhibit No. 3. Is that the questionnaire?

16 And your answer was?

17 A This looks like Andrea's. It looks like
18 Namaste's [phonetic] questionnaire.

19 Q And just so you know, I received this document from
20 Steve Potts.

21 And you answered?

22 A Okay.

23 Q So he produced -- and then you interrupted me and
24 said on Line 30 -- on Page 30, Line 4?

25 A We probably took it to him.

1 Q And whose writing is on that?

2 A That's mine.

3 Q And then I said, So this is your handwriting and this
4 would -- and so before you completed this, you would have
5 had a discussion with Dave and tried to answer the
6 questions, to the best of your knowledge, about what this
7 limited liability company would look like?

8 And your answer was?

9 A Correct.

10 Q So do you remember now testifying that you had a
11 conversation with Dave before you answered the questions
12 on this document?

13 A Dave and I had a conversation about the formation of
14 the business, yes, I mean, we did. Was it with this
15 document or the other? I don't remember.

16 Q Okay. Well, I did ask you again on Page 34, Line 2.

17 A This looks so much like the other one.

18 Q I understand.

19 A Yeah.

20 Q We'll get to it. And I asked you, Now, this is a
21 document that you drafted after your conversation with
22 Dave about what you and he were agreeing to; correct?

23 And your answer was?

24 A (There was no response.)

25 Q Page 34, Line 5.

1 A Okay. Yes. I said, Correct.

2 Q Okay. So -- and the intent was to give Steve Potts a
3 document that he could use to draft an operating
4 agreement, of course, isn't that what you did?

5 A Ultimately, yes.

6 Q Okay. And so this was the first document that was
7 given to Mr. Potts?

8 A Yes. I -- yes.

9 Q Okay. So let's just take a look at it. The first
10 part of it is what will be contributed as capital by each
11 member to the LLC. Does that have -- is that 95,000
12 beside your name?

13 A Yes.

14 Q And how much beside Dave Wilson?

15 A Zero.

16 Q And was that the agreement, you were going to put 95
17 grand into this?

18 A I had a hundred grand on my home equity line that I
19 could loan to the company.

20 Q So you were going to fund it, and Dave was going to
21 bring his slitting business to CCC?

22 A In November, yes.

23 Q Okay. And how and when will cash flow be
24 distributed? Do you see that? That is right here.

25 And your answer is right below it. Number 1-D, what

1 was your answer? What answer did you write as to how and
2 when will cash flow be distributed?

3 A It says, Mutual agreement.

4 Q Okay. And then it says, Distribution sufficient to
5 pay all income taxes on LLC profit allocations right
6 beside it. What does that indicate?

7 A Equal funds from partners.

8 Q Now, right below -- then we've got management. And
9 you were going to be the president; is that correct?

10 A Yes.

11 Q And what was Dave's position?

12 A VP. It just says VP here.

13 Q It was going to be VP of sales, or you tell me.

14 A You know, you're saying that I did this with him. I
15 mean, I don't recall that. I may have -- this was -- Dave
16 and I had several conversations. I put it on a piece of
17 paper.

18 Q But your goal was to try to put down as close as you
19 could recall those things that you and Dave had agreed
20 upon?

21 A Yes.

22 Q Because the goal was to get an operating agreement, a
23 written operating agreement; right?

24 A Yes.

25 Q Okay. And you had given this to the lawyer so he

1 could use this document to prepare that written operating
2 agreement?

3 A We were still trying to punch holes in film, too.

4 Q Sure. So we've got number two management. And
5 you've got your titles. And then it reads, How to handle
6 votes in a two-member entity. And what did you indicate
7 out beside that?

8 A Must be unanimous.

9 Q Must be unanimous. And then below it, there's a
10 series of questions about whether or not you needed a
11 super majority to hire senior employees, terminate
12 employees, admitting a new member. And you answered, yes,
13 to all of those, did you not?

14 A Yes.

15 Q A change in the nature of the LLC's business, you
16 answered, yes?

17 A Yes.

18 Q We'll turn the page. At the top, The creation of --
19 by the LLC of any debt or contract obligations that taken
20 with other existing debts or contract obligations require
21 the LLC to pay more than \$5,000 in any year. The answer
22 is, Yes. So that required unanimous consent as well?

23 A Yes.

24 Q Entering into an agreement or arrangement with an
25 affiliate of a member. What was your answer to that?

1 A Yes.

2 Q So let's make sure we understand that. So if either
3 you or Dave were going to do business with an affiliate, a
4 subsidiary, a related business, you needed unanimous
5 consent to do that?

6 A I didn't know what half of this form meant when I
7 filled it out, to be honest with you.

8 Q Okay. But is that your understanding of what that's
9 getting at?

10 A Yes.

11 Q Now, let's look at number three. Will service
12 partner, John -- now, let's stop there for a minute. In
13 Decotex, you were the service partner, and your father was
14 funding the capital; is that right?

15 A Yes.

16 Q Okay. And in CCC, it's really flipped, hasn't it?
17 You're the funding partner? So this provision really
18 doesn't -- didn't fit exactly, did it?

19 A I didn't know even how to answer it.

20 Q That's right. So this is one of the places where,
21 again, the Decotex part of this just quite didn't fit in
22 the CCC agreement, so you left it blank?

23 A This form wasn't made for CCC.

24 Q Okay. But we do know that in Decotex, you were going
25 to be the service partner. Were you to receive guaranteed

1 payments as a part of that LLC? Do you recall?

2 A No.

3 Q Now, right below it in 3-B, Compensation to be paid
4 as a stated salary or under a formula. And what was your
5 answer?

6 A Compensation to be left to a vote of the members.

7 Q Okay. Now, let's go down to D-3, which is here.
8 Termination of employment. On what notice can an employee
9 quit?

10 And your answer?

11 A Mutual agreement.

12 Q And then the next two, you've got, not applicable.
13 And I'm not sure why that is. I guess you don't either,
14 do you? Or do you?

15 A I'm sorry. The question?

16 Q D, little two, little three here, On what notice can
17 LLC terminate without cause? Not applicable.

18 A I think I reached a point in this form that there
19 were so many questions I had about the questions that I
20 just didn't really -- that's why I consulted with an
21 attorney to help me finish it.

22 Q Well, but right below that, you seem not to have too
23 much trouble with the next question, which was, Is there a
24 non-compete provision? And it says, During employment and
25 after employment. And what was your answer?

1 A No.

2 Q If you'll turn to Page 3. And let's just look at the
3 top. Is there an agreement regarding disclosure of
4 confidential information?

5 And your answer was?

6 A I'm sorry. What page are you on?

7 Q Same exhibit, which is Exhibit No. 1, Page 3 at the
8 very top.

9 A Okay.

10 Q Is there an agreement regarding the disclosure of
11 confidential information?

12 And your answer was?

13 A No.

14 Q Is there an agreement regarding solicitation of
15 employees?

16 A No.

17 Q So this was left with Potts, but the nature of CCC
18 changed, did it not? It went from being a slitting
19 business to something else. Would you agree with that?

20 A Yes.

21 Q Okay. Tell us what happened. What was the evolution
22 of the idea behind CCC?

23 A I remember being real anxious to have an operating
24 agreement. Because Dave was talking to Dow Chemical about
25 poking holes in their film. So when that didn't come to

1 fruition, CCC was taking a lot of my time and wasn't
2 really producing anything.

3 So, you know, Dave and I had talked about rolling his
4 EFS business into CCC and making a go at a larger piece of
5 plastic processing.

6 Q Because up to this point what is happening is Dave is
7 purchasing film -- or EFS is purchasing film, bringing it
8 to CCC, and CCC is slitting the film; correct?

9 A Yes.

10 Q And CCC is paid a fee to slit the film?

11 A Yes.

12 Q And then Dave takes the slit film and sends it to his
13 customer. And he collects the revenues off the sale -- or
14 EFS collected the revenues off the sale?

15 A Yes. That's my understanding.

16 Q And so it evolved. The idea was why not CCC purchase
17 some film and start selling film itself. Wasn't that kind
18 of the next evolution?

19 A Yeah. We weren't making any money just slitting
20 film.

21 Q Although, there was about \$250,000 of revenue that
22 CCC collected from EFS on slitting film during that first
23 year, wasn't there?

24 A I mean, I don't know that number. Show it to me on a
25 chart. That seems like an awful lot of money for slitting

1 services.

2 Q Okay. Well, you, also --in the end, you ended up
3 buying and selling film to EFS as well. CCC was --

4 A Right, when it all got --

5 Q Got rolling?

6 A When he brought EFS in, yes, of course, CCC started
7 buying film.

8 Q One thing I forgot to ask you. When you were having
9 these discussions with Dave about the formation of CCC,
10 did you and Dave have discussions about CCC being a
11 manager-managed entity?

12 A I didn't know what that means. I mean, I don't know
13 what that means.

14 Q So you and Dave didn't discuss that?

15 A Never.

16 Q Okay. And so when that ended up on the articles of
17 organization, I think your answer was that that was just
18 something the lawyer did by default?

19 A Yes.

20 Q And, also, did you and Dave have an agreement that
21 this was a term company?

22 A An agreement?

23 Q Yeah.

24 A We don't have any agreement.

25 Q But did you and him -- you talked about things, and

1 you put them on this little piece of paper here you had
2 given Steve Potts; right?.

3 A Right.

4 Q Plaintiff's Exhibit No. 1. And so during that
5 discussion about, hey, what's -- what are we going to do,
6 did that discussion ever involve a discussion about is
7 this going to be a term company?

8 A No.

9 Q You didn't -- I mean, you really didn't have -- .

10 A I didn't know what that meant. I'm still trying to
11 get my arms around it.

12 Q So, again, there was no agreement between you and
13 Dave that CCC was going to be a term company?

14 A Correct.

15 Q Okay. Now, you know, you alleged otherwise in this
16 lawsuit?

17 A (There was no response.)

18 Q Do you know why you've alleged that this was a term
19 company?

20 A The first time that whole issue was presented to me,
21 Dave, basically, told me he was going to shut us down
22 because we were at will, and he would disassociate. And I
23 had to buy him out and he was going to put 24 people out
24 of work. I consulted with an attorney and he told me what
25 it meant. That's when I learned it wasn't -- it was a

1 term company.

2 Q Well, the articles of organization had term company
3 written on them. Is that what you're referring to?

4 A Yes.

5 Q But there was never an agreement to be a term
6 company?

7 A There was never any agreement.

8 Q Okay. Would you agree that you were the point person
9 in charge of getting a written operating agreement
10 together between you and Dave?

11 A Yes.

12 Q Okay. And that just kind of -- and is it, also, true
13 that you never got a written operating agreement?

14 A I thought we had one. I mean, we wrote two. I sent
15 them to him. They never got signed, you know.

16 Q Did you ever sign one?

17 A Yes.

18 Q You did?

19 A Uh-huh.

20 Q Did you produce that to us?

21 A I think so.

22 Q Okay. Well, tell me how -- so what was -- let's talk
23 about the evolution of CCC. So we go from Dave buying
24 film, slitting it, and then selling it through EFS to
25 something else. What did CCC become?

1 A Well, we weren't making a lot of money just slitting
2 film. And we had an opportunity to do some really big
3 work. We had developed a recycled film into a really nice
4 margin opportunity. And it was going to take some capital
5 for equipment, and that sort of thing. So, you know, the
6 conversation started, you know, what would it take to get
7 this thing going.

8 Q When did this conversation start?

9 A Around May, maybe.

10 Q Of 2008?

11 A Of 2008. So, you know, we had a number of
12 conversations. We had other working documents. And, you
13 know, Dave said that in order for it to work for him, he
14 needed to have \$8,000 a month to -- because that's what he
15 was getting out of his existing Eastern Films business.

16 Q Well, and, at this time, did you begin consulting
17 Andrea Comeau-Shirley about structuring this new -- we'll
18 call it the new CCC?

19 A I would have said it was after Dave and I had had
20 several conversations. And, quiet honestly, I didn't know
21 how to -- how you do those things. Dave had some ideas.
22 I had some ideas. You know, some of them are in the
23 e-mails about the ideas getting thrown around. Andrea
24 gave us another -- a questionnaire on how to form
25 something like that.

1 Q Well, let's look at the e-mail in front of you. This
2 is Plaintiff's Exhibit No. 3. And that's -- the date of
3 that e-mail -- is that June 2nd?

4 A June 2nd of 2008.

5 Q Now, let's go to the start. Because that's -- so
6 let's go to -- flip back, let's say, three pages. And
7 there's an e-mail from you to her that starts this chain.
8 And that was written on May 30th, 2008?

9 A I'm sorry. Which one are you on?

10 Q That's Plaintiff's Exhibit No. 3. And so you sent
11 Andrea an e-mail. And what -- would you agree that you
12 and Andrea communicated pretty frequently by e-mail?

13 A Early on, you can see my father is copied on there.
14 I did not communicate with Andrea frequently in the early
15 days. She had consulted with my father and I on the
16 Decotex.

17 Q But, in this instance, you're communicating with
18 Andrea about the formation of CCC. And let's look at some
19 of the e-mails.

20 We really appreciate it -- let's start at the
21 beginning. I just wanted to shoot you an e-mail and say
22 thanks again for all the great help you gave us last week.
23 Had you met with Andrea the week prior?

24 A Yes.

25 Q We really appreciate it. It's been a real eye opener

1 for Dave and I. And my dad especially appreciates the
2 advice you gave me as he has been preaching to me all
3 along.

4 Do you see that?

5 A Yes.

6 Q And then you say -- skip a line. You say, Dave and
7 you sat down. And Dave is in favor of moving his accounts
8 into the CCC account column and collecting a salary for a
9 period of time until we can really get things going.

10 So was that Dave's proposal?

11 A That was one of them.

12 Q Okay. So he was going to roll some of his accounts
13 into CCC, and he was going to start collecting a salary.
14 That was one of his proposals?

15 A I mean, I don't see some in there. But in favor of
16 moving his accounts --

17 Q Well, let's keep reading. It says, We started doing
18 some of this this week by moving towards purchasing
19 inventory for future orders that Dave had under his
20 umbrella.

21 So, again, this is June 2nd. So it said you had just
22 kind of started purchasing some product to service some of
23 those accounts.

24 A Yes.

25 Q Then the next line, Fortunately, we have cash coming

1 in that will allow us to do this without borrowing any
2 money.

3 Do you recall that, not having to borrow money to
4 start that process?

5 A I remember thinking I wouldn't have to borrow money
6 for a lot of things. It didn't always work out that way.

7 Q But that's what you're representing to Andrea is that
8 you didn't have to borrow money to start this gig at this
9 time?

10 A Yeah.

11 Q Right?

12 A Yes.

13 Q And you were being honest and truthful with Andrea?

14 A I thought I was.

15 Q Okay. We, also, discussed putting Dave on the
16 payroll starting in July. Was that part of the
17 discussion, putting Dave on the payroll?

18 A Yes.

19 Q Okay. Then below that, In addition, I would like to
20 receive a management fee for what I'm doing, but do not
21 want to strap the business just so -- I do not want to
22 strap the business just so I get paid right away. But
23 your anticipation was you were going to get a management
24 fee?

25 A Yes.

1 Q And that's what you were alerting Andrea to; correct?

2 A These were our ideas, yes.

3 Q And then right below there, There are three accounts
4 that Dave imports that do not currently go through CCC,
5 and we both think it best that these accounts stay away
6 from CCC. Do you see that?

7 A Yes.

8 Q What were those three accounts?

9 A I have no idea.

10 Q Did you have any idea then?

11 A I know Dave talked about keeping three accounts out
12 because he could collect the commissions off of these
13 three customers to generate his income. That's what --
14 that was the general idea that was in front of us.

15 Q So that was -- that's what Dave had proposed, I'm
16 taking three accounts and I'm keeping those with EFS?

17 A That was a proposal, yes.

18 Q Okay. And -- but you didn't even know what those
19 three accounts were?

20 A No.

21 Q Okay. Now, attached to this e-mail, if you'll just
22 turn two pages, this is the newly revised partnership
23 structuring memo that Andrea had prepared for you and your
24 father; correct?

25 A Correct.

1 Q And she now has created a new document for CCC?

2 A That's my understanding, yes.

3 Q Okay. And one -- I hate to flip back and forth, but
4 if we'll go back to the first page of Exhibit No. 3. From
5 Andrea, she says -- she starts here, We had a great
6 meeting with Dave, laid a solid foundation for the
7 partnership.

8 And then if you'll turn the page, she has a
9 suggestion for you. Do you see it right here?

10 A Yes.

11 Q Can you read her suggestion?

12 A I'd like to suggest you complete this questionnaire
13 alone.

14 Q Keep reading.

15 A Although you're documenting the discussions you had
16 with Dave, I'd rather you write down your understanding of
17 the deal, rather than sit with Dave to complete it. In
18 this manner, if I have any suggestions that you like, they
19 won't perceive it as his deal is being changed. He will
20 still have full opportunity to negotiate for changes. But
21 this way, I won't have to explain items that may be better
22 for you than they are for him.

23 Q So Andrea is advising you; is that true?

24 A Andrea was the business advisor that I used for
25 years. I mean --

1 Q She was your accountant for M-Tech?

2 A No. That's not true.

3 Q She never did M-Tech accounting? Consulting?

4 A Not until after M-Tech closed.

5 Q So she did some consulting and accounting work for
6 M-Tech?

7 A After -- yes, after it was closed.

8 Q Okay. Decotex?

9 A Yes.

10 Q And so now she's giving you advice. And her advice
11 is here is this form I want you to complete, but don't
12 show it to Dave. So if she has some suggested changes, he
13 might not pick up on that. Isn't that what she's telling
14 you?

15 A Yes. I think much the same way any accountant would
16 advise.

17 Q Really? Well, was she advising -- did Dave
18 understand that she wasn't advising CCC, but that she was
19 advising you personally?

20 A I don't know why he wouldn't.

21 Q Well, y'all both sat down with Andrea to discuss your
22 deal and how to structure your deal; correct?

23 A Dave told me he wanted \$8,000 a month. I didn't know
24 how to do it. So I consulted with somebody that has a
25 much more vast business background and knowledge of how

1 those sort of things work out.

2 Q And she was going to prepare an operating agreement
3 for you and Dave, wasn't she?

4 A No.

5 Q Really?

6 A She was never going to prepare the operating
7 agreement. That's what attorneys do.

8 Q Well, we'll see what the e-mail says about that.
9 Let's move on.

10 So you got this form that you completed. Did you
11 follow her advice and complete it alone?

12 A Probably.

13 Q You usually took her advice, didn't you?

14 A Not always.

15 Q Well, let's just take a look at the next exhibit,
16 Plaintiff's Exhibit No. 4. This is June 16th. And this
17 is, again, from -- my mistake, which is -- is that Andrea
18 Comeau-Shirley?

19 A That's her company.

20 Q Have you -- this first -- I think we can move the
21 priority allocation. Do you have any idea what that
22 means?

23 A My understanding of the priority allocation is what
24 Dave was contributing to the business, he would get the
25 first \$8,000 off of profits for what he was contributing

1 to the business.

2 Q Okay.

3 A That was my understanding of what that meant.

4 Q So there was this preferred return and priority
5 allocation, and those you think were -- meant the same
6 thing.

7 A Yeah.

8 Q And if she attached --

9 MR. GOLDSMITH: I'm sorry. I don't know that he got
10 finished.

11 BY MR. ARNOLD:

12 Q I'm sorry. Did you get to finish, John?

13 MR. GOLDSMITH: Did the reporter get it?

14 THE WITNESS: Sorry.

15 BY MR. ARNOLD:

16 Q So the priority allocation and the preferred return,
17 I think it's referred to that way, too, are those two
18 concepts -- in your understanding, were they referring to
19 the same general idea?

20 A For the start up period, yes.

21 MR. ARNOLD: Okay. I'm sorry about that.

22 MR. GOLDSMITH: That's all right.

23 MR. STEPHENSON: Andy, I might suggest you --

24 MR. ARNOLD: You'll --

25 MR. STEPHENSON: Your Honor, it's the same document.

1 MR. ARNOLD: Yes, sir.

2 Your Honor, this is in color.

3 MR. WILLIAMS: That's our set.

4 MR. STEPHENSON: Your Honor, if you get our book and
5 you look in seven, some of the comments are in color and
6 some aren't. It's a little easier if you follow it that
7 way.

8 BY MR. ARNOLD:

9 Q Okay. So Andrea sent you -- apparently, you had
10 answered it. And this -- can you see this? Part of it's
11 in blue, and part of it's in green.

12 A Yes.

13 Q And the part in blue is your answers; correct?

14 A Yes.

15 Q And the part in green is her comments?

16 A The part in green is -- yes, that's -- those are
17 Andrea's follow-up to our meeting.

18 Q Okay. So you completed it alone. You sent it to
19 Andrea. And then she sends it back with comments;
20 correct?

21 A Yes.

22 Q Now, just take note, Dave is not copied on
23 Plaintiff's Exhibit No. 4, is he?

24 A He's not.

25 Q So he's still out of the loop on this new deal that

1 we're putting together, I mean, at least, in terms of this
2 document. He hasn't been let in the loop yet. Would you
3 agree?

4 A I was trying to figure out how to pay Dave \$8,000 a
5 month. Andrea was trying to help me get there.

6 Q Okay. So let's talk about -- we've got some of the
7 same questions now.

8 Ownership income. What will be contributed as
9 capital by John Gandis to the LLC at formation.

10 What is your answer?

11 A At formation, a hundred percent. 60,000 on home
12 equity line; 30,000 borrowed from Decotex.

13 Q And what's the \$300,000 in parenthesis there?

14 A I believe that was the cash that was available to me.

15 Q Okay. And then below it, it says, Subsequently. So,
16 at formation, you were going to provide a hundred percent.
17 It says, Subsequently. What was your answer about
18 subsequent financing for capital?

19 A A hundred percent all debt funded by John.

20 Q And then we've got another -- we've got borrowed 15
21 from M-Tech property line to purchase film?

22 A Correct.

23 Q So you had an M-Tech line; correct?

24 A Yes.

25 Q Y'all had Decotex's line?

1 A Not for this, but I used it, yes.

2 Q You used it for this. And then you had a home equity
3 line?

4 A Yes.

5 Q Because when Dave came to you, originally, he had
6 customers, didn't he?

7 A That's my understanding, yes.

8 Q Well, you did business with those customers?

9 A Some of them.

10 Q And he needed capital; right?

11 A We needed capital. The company needed capital to
12 make the \$8,000 a month work.

13 Q Well, that's the only reason he would need you. What
14 else would he need you for?

15 A You'd have to ask him.

16 Q Well, I'm asking you.

17 A Could you ask it more specifically?

18 Q Well, he -- who had the most experience in the film
19 business, Dave or you?

20 A I would say I did.

21 Q Really?

22 A Yes.

23 Q Okay. Vinyl film or all films?

24 A I've been in the chemical industry since I was
25 16 years old.

1 Q Okay. Did you have film customers?

2 A I worked with them through Vytech for years.

3 Q Okay. So you had film experience, and Dave had film
4 experience?

5 A Yes.

6 Q Did you have a book of business? Did you have
7 accounts that you were selling polyester film to?

8 A No.

9 Q Any form of film?

10 A No.

11 Q Okay. Did Dave?

12 A Yes.

13 Q Okay. And you agreed that you would provide the
14 capital if Dave would provide the customers. Wasn't that
15 really the deal?

16 A That capital is Andrea's word from the form. I mean,
17 they were loans. I was putting up the money to get the
18 thing rolling. And I wanted to make sure Dave was
19 comfortable that he would get his \$8,000 a month.

20 Q Let's keep going. Capital contributed by Dave at
21 formation?

22 A Where are you? I'm sorry.

23 Q I'm at B.

24 A At formation, I wrote, None.

25 Q Okay. Subsequently?

1 A I put, None, but that I would like to have Dave's
2 name attached to the note -- to the M-Tech property's
3 note. But I don't know if we would be able to make that
4 happen. I didn't want to be on the hook for everything.

5 Q What were the ownership percentages?

6 A I said, I'm cool with 50/50.

7 Q Okay. And is that what you and Dave had talked
8 about?

9 A Financially, yes. We would always split the profit.

10 Q Will any member have a preferential distribution of
11 profits or cash flow? The first one is Dave.

12 What is your answer?

13 A Dave needs to make \$8,000 a month. That is what he,
14 currently, pays himself. I think that with the current
15 level of business that we are bringing in, we should be
16 okay.

17 Q So let's make -- you keep mentioning \$8,000 a month.
18 Dave made it clear that EFS was his paycheck; isn't that
19 right?

20 A I have no idea. He told me he needed \$8,000 a month.

21 Q To pay his bills. That's how he lived. Isn't that
22 your understanding?

23 A I have no understanding of how he lived.

24 Q Did he have a job?

25 A EFS was his job.

1 Q EFS was a job.

2 A His wife has a job.

3 Q His wife had a job. But you understood that EFS was
4 Dave's job?

5 A Yes.

6 Q So he indicated to you if I'm going to move these
7 accounts into CCC, then I need a monthly income?

8 A That's what he told me.

9 Q And that's what you agreed to?

10 A That's what I was trying to do for him, yes.

11 Q Well, that was very nice of you. But you were going
12 to be collecting profits and rent eventually; correct?

13 A If the company made it, yeah.

14 Q And so at formation nor subsequently was he going to
15 have a capital contribution, but Dave needed \$8,000 a
16 month to pay himself. I think that with the current level
17 of business that we are bringing in, we should be okay.
18 Did you commit to Dave to pay that \$8,000 a month?

19 A Eventually, yes.

20 Q John -- return on capital -- this is the next page.
21 I'm not sure I'm understanding here -- was your...

22 So let's keep moving. If -- you didn't quite
23 understand that, apparently, or unless you've got
24 something you want to say about that?

25 A I put up almost a hundred thousand dollars of my

1 savings to buy the machines. I wanted to make sure I got
2 my money back.

3 Q Okay. Well, then we get to E, How and when will cash
4 flow be distributed? What do you say?

5 A I'm sorry. Which section?

6 Q E.

7 A Dave needs something monthly. Management fee for me
8 can be whenever.

9 Q So, again, Dave needs something monthly. That's
10 pretty important to Dave. That keeps coming up, doesn't
11 it?

12 A Yes.

13 Q Now, then we've got some other questions below it
14 about how and when will cash flow be distributed. And it
15 says, By majority vote. And you write, Yes. Andrea has
16 her comments. But Andrea is not part of the deal at this
17 stage, is she?

18 A No.

19 Q And she's just advising you; correct?

20 A Yes.

21 Q And she didn't send this document to Dave?

22 A I don't think so.

23 Q Turn to the next page. Management. Will managers be
24 designated, or will managers jointly manage.

25 And your answer?

1 A I've been running all operations. Dave runs the
2 sales.

3 Q Now, below that, though, it says, If more than one,
4 how to handle joint management.

5 And your answer was?

6 A I'm sorry. Which letter?

7 Q A-2. Is that mutual agreement?

8 A Would you point to it? I'm sorry. A-2. I -- yes, I
9 wrote mutual agreement.

10 Q And below that, how contract decisions are to be
11 made. And you wrote, Must be jointly for contracts over
12 \$5,000?

13 A Yes.

14 Q Actually, I think you wrote, Must be jointly. And
15 Andrea added, For contracts over \$5,000?

16 A Yes.

17 Q Okay. Now, let's go ahead and flip. Let's look at
18 Page 4, Paragraph 3.

19 A Okay.

20 Q And it says, Will any partner be an employee? And
21 then it says, A guaranteed payment needs to be funded from
22 alternative sources when no profits are there.

23 And what was your answer?

24 A Yes. But have to fund from some type of line,
25 preferably the M-Tech property's line.

1 Q So, again, the agreement here was -- or your answer
2 indicated that if there were no profits that any
3 guaranteed payments would have to be made from an
4 alternative source. And you indicated, yes, and that
5 alternative source would be the M-Tech property line
6 there; is that correct?

7 A A working document, yeah.

8 Q That's what you said; right?

9 A That's what I'm trying to figure out.

10 Q If you'll turn to Page 5. Let's look halfway down
11 the page at E. Is there a non-compete provision? Do you
12 see that?

13 A What happens with divorce of a member?

14 Q Page 5.

15 A Needs to be minus the three.

16 Q So you wanted a non-compete. But what does minus the
17 three mean?

18 A You know, again, this is a working document to get us
19 to an operating agreement. And that was the date -- that
20 was the idea that Dave had on the table to get him that
21 \$8,000 a month. That he wanted to exclude three accounts
22 so that we could pay him a salary based off of those
23 three, or he could derive his income from those three
24 accounts.

25 Q Right. So whatever he made from those three

1 accounts, he was keeping, EFS was keeping?

2 A That was Dave's idea, yes.

3 Q That was Dave's idea. And then we've got right below
4 it, right below that, it says, During employment. And,
5 again, you said, There are three accounts that Dave wants
6 to retain something over. It may be easier to discuss
7 this over the phone. Do you see that?

8 A Yes.

9 Q Was that your answer?

10 A Yes. I didn't understand how to make it work.

11 Q Andrea understood how to make it work, didn't she?

12 A She had some good suggestions.

13 Q Yep. And they kind of unfolded in 2008 all the way
14 through 2011, her ideas about how to make it work. Would
15 you agree with that?

16 A Her ideas helped us get Dave \$8,000 a month,
17 initially, yes. I'll answer to that.

18 Q Okay. And agreeing to allow Dave to keep his three
19 accounts separately -- separate allowed you to reach an
20 agreement with Dave. So he started transferring the other
21 accounts into CCC?

22 A That's not true. That's just not true.

23 Q Okay. Well, tell me what is true.

24 A Dave agreed to roll all of his business into CCC. It
25 was the only way to make it work.

1 Q It was the only way to make it work. Well, I think
2 what you're looking for -- well, let's look at Plaintiff's
3 Exhibit No. 5. And if you'll turn to the last page of the
4 e-mail with the -- it's 002 at the very bottom. It's the
5 last page of that e-mail. Do you see it?

6 A Yes.

7 Q Now, who is that e-mail to and from?

8 A It is from Andrea to me.

9 Q Okay. And this is after you sent her -- or you and
10 she exchanged the little corporate formation sheet; isn't
11 that true?

12 A I mean, I don't have the other date in front of me.

13 Q Well, it's number four. And I'll give it to you.
14 That was June 16th. So this is June 23rd?

15 A Okay.

16 Q And so she's writing to you. And can you read her
17 first sentence after "John"?

18 A If you want to make Dave more comfortable about how
19 things are moving along, you may want to go ahead and cut
20 him a commission check from the accounts you have already
21 been paid for. This assumes you know the appropriate rate
22 per -- she put yardage, but it's pound. When you make the
23 payment, be certain to note in a cover letter or check
24 that this is an advance on his preferred return.

25 Q And let's stop there for a second. What was his

1 preferred return going to be?

2 A He was going to derive the profit on what he rolled
3 in of \$8,000.

4 Q Okay. So was that -- that's something different than
5 a distribution, isn't it?

6 A I mean, I don't even know how to answer that.

7 Q Well, let me ask you. Did you know whether it was
8 something different than a distribution?

9 I think maybe your next e-mail may answer this, so
10 I'm probably being a little unfair. Before we move off of
11 this one, let's look at this sentence here. In this
12 manner, Dave's cash flow will be back to normal while you
13 guys work on completing the agreement.

14 Do you see that?

15 A I'm sorry. Where are you?

16 Q Same e-mail.

17 A Okay. I'm sorry.

18 Q In this manner, Dave's cash flow will be back to
19 normal while you guys work on completing the agreement?

20 A Yes.

21 Q That was in Andrea's e-mail to you?

22 A Yes.

23 Q So you were still completing the agreement?

24 A Yes.

25 Q But she's advising you that maybe you want to start

1 paying him the \$8,000 even before you complete the
2 agreement?

3 A Yes. Dave kept asking me for a check.

4 Q Well, had he already rolled Minova into CCC at this
5 time?

6 A I don't remember when Minova -- but I was involved in
7 development, so it is logical to think, yes.

8 Q And Minova -- do you know that Minova was -- let's
9 review Minova. Minova was an account with EFS that bought
10 film from EFS; correct?

11 A That's my understanding.

12 Q And then CCC was, originally, slitting the film?

13 A Yes.

14 Q And then EFS would ship it and collect the revenue
15 off of Minova?

16 A Yes.

17 Q And then Dave suggested that he would run that
18 business through CCC even before you had an agreement;
19 right?

20 A Where are you reading that?

21 Q Well, I'm just asking you from your recollection.

22 A I don't remember the dates and the times of when it
23 rolled.

24 Q Okay.

25 A We were buying a recycled film from a company called

1 Soliant. And, at some point, CCC started buying that film
2 to supply Minova. I don't know how so much -- how he was
3 doing it prior to the merge.

4 Q Are you aware that that first year of 2008 that CCC
5 made \$775,000 in revenues with Minova?

6 A It sounds about right.

7 Q And that was a pretty big margin on the Minova stuff,
8 wasn't it?

9 A It was our whole business.

10 Q It was your whole business. And there was about
11 \$350,000 generated on the margins of Minova alone; isn't
12 that true?

13 A You want me to talk numbers, and I don't remember --
14 I don't like --

15 Q It's your business.

16 A We made good money on Minova.

17 Q Okay. You just don't know the exact amounts. And I
18 think that's fair.

19 A Yes.

20 Q But you were making good money on Minova?

21 A Yes.

22 Q And that had been a prior EFS customer?

23 A That's my understanding.

24 Q Okay. So look at right above it. Your response to
25 Andrea was, Sounds good. I'm still waiting for the list

1 from Dave.

2 Now, wasn't that a list he was going to supply you of
3 some of his customers -- or the accounts he was going to
4 roll into CCC? Isn't that the list you were wanting from
5 Dave?

6 A Yes.

7 Q And then it says, He said he will try to get
8 something today. I think that I have to give Dave some
9 type of commission. But we really want to have the list
10 so you can help me figure out what it should be. But you
11 really felt like you needed to give Dave some sort of
12 commission?

13 A Yeah. He asked me for it every day.

14 Q And then you get a response back from Andrea. And
15 she says, In any event, do not call it a commission. Only
16 call it a partial advance or an advance to be applied
17 towards his preferred return.

18 So do you understand -- did you understand why we
19 started with the word -- I won't use the term games, word
20 selection, why it was important not to call it a
21 commission?

22 A Yes.

23 Q Why?

24 A Well, a commission implies that it's not a priority
25 distribution.

1 Q Okay.

2 A Which is what we had talked about for the agreement.

3 Q But you had said in just the e-mail before that you
4 thought it was really important to get Dave some sort of
5 commission?

6 A You know, call it a poor choice of words. I wanted
7 to get the guy a check.

8 Q Okay.

9 A I wanted to get the guy paid.

10 Q Now, before we get to the next -- this is July 10th
11 before you respond back to her. You and Dave had had an
12 exchange. And it's in Plaintiff's Exhibit No. 6. And if
13 there's any parts you want to read, but I'm going to --
14 this is from Dave Wilson to John Gandis on June 24th. Do
15 you recall receiving this e-mail?

16 A Yes.

17 Q And it says, In -- and he starts -- and I'll start
18 with the paragraph, In addition, we have business with
19 Minova that I could have kept, but chose to run through
20 CCC. I've been working on Minova two mill for several
21 years. Before we discussed paying me a salary, we were
22 looking at having CCC toll slit for Eastern Films
23 Solutions.

24 Then he says, The -- since I have a vested interest
25 in the success of CCC, I was happy to have CCC buy the

1 film from Soliant and resell it to me, to EFS.

2 So he's running this business through CCC even before
3 you have a written operating agreement; isn't that true?

4 A Yes.

5 Q And he's doing that before you've paid him a penny;
6 isn't that true?

7 A Yes.

8 Q And then he says -- and I think this is what you were
9 referring to earlier. If I am to focus all of my efforts
10 in the film business on CCC, I am foregoing an opportunity
11 to earn on those opportunities outside of CCC?

12 A That's my understanding of the deal. He was bringing
13 it all in.

14 Q Well, what about the three accounts?

15 A It's not even mentioned here.

16 Q It's not mentioned there, not at all?

17 A Not at all.

18 Q Right. So why did you think he had changed his mind
19 on those three accounts?

20 A Why would I think he hadn't?

21 Q Well, do you know how big those three accounts were?

22 A No idea.

23 Q No idea. Do you know how long they had been in the
24 works?

25 A Not if he was withholding it from me.

1 Q Well, he wasn't. He told you he had three accounts.

2 A He didn't tell me how big, what size.

3 Q Did you ask?

4 A Dave sent me a spreadsheet with the accounts he was
5 bringing.

6 Q Did you ask about the three accounts?

7 A By now, the three account idea is way past.

8 Q Did you ask him about what those three accounts were?

9 Did you ever ask him what those three accounts were?

10 A I think I must have, because I mention in another
11 e-mail how I don't think he's even doing any business with
12 two of them.

13 Q So you knew them, but you don't recall them here
14 today. Did you know it was West --

15 A I know we talked about them, three accounts.

16 Q Did you talk about West Carrollton?

17 A No.

18 Q Did you talk about Lamborn?

19 A No.

20 Q And did you talk about Modular Metal?

21 A No.

22 Q So, again, I'm trying to figure out whether or not
23 did you ask him, hey, Dave what were those three accounts
24 you want to keep out of this deal?

25 A There was never a consideration.

1 Q Never a consideration?

2 A Other than the discussion.

3 Q Well, it was a consideration because you told Andrea
4 that was what you and Dave had agreed to, to keep three
5 accounts --

6 A That's what we talked about.

7 Q Okay. But you didn't know what those were?

8 A No, sir.

9 Q And so had you contributed anything or did CCC
10 contribute anything to deals -- import deals involving
11 Lamborn or West Carrollton in 2008?

12 A I'd have to look. I know we did business with
13 Lamborn.

14 Q You didn't do any import business?

15 A No.

16 Q You didn't do any -- CCC didn't do any import
17 business until 2010; isn't that true?

18 A That sounds about right.

19 Q CCC wasn't in the import business at this time, was
20 it?

21 A CCC has always been in the plastic film market.

22 Q But it wasn't in the import business?

23 A I didn't know there was a difference.

24 Q Well, you didn't even know what the three accounts
25 were.

1 A Right.

2 Q So we might not want to completely rely on your
3 understanding. Would you agree with that?

4 A Say that again. I'm sorry.

5 Q Let's look at your e-mail back to Dave. I understand
6 and do appreciate greatly what you contribute to the
7 business. I think that the accounting issue to work out
8 is that your ownership percentage obtains a priority
9 guarantee.

10 So, now, we've moved from preferred returns to a
11 priority allocation to a priority guarantee based off of
12 the profits of the accounts. Technically, I don't think
13 we call it a salary as the owner is a distribution,
14 question mark. I think the company will, also, accrue for
15 your taxes.

16 So is this part of this deal now that he's going to
17 have a priority guarantee? Is that what you're telling
18 him you're going to give him?

19 A We discussed it, yeah. If the company made money,
20 that's the idea.

21 Q And so does that mean he gets his money first?

22 A The priority guarantee part, yes.

23 Q Did he receive a priority guarantee?

24 A He got his \$8,000.

25 Q But Andrea classified that later as a distribution,

1 didn't she?

2 A My whole life I've been a W-2 employee. I don't --
3 at the time of this document, I didn't know the difference
4 between a distribution versus a salary, you know. So I
5 consulted with an accountant how these things are
6 structured and how they worked. And that's what it is,
7 it's a distribution.

8 Q But you told Dave it was a priority guarantee?

9 A That's how we were going to get him paid.

10 Q And guaranteed -- do you understand the word
11 guaranteed to mean you're going to get it?

12 A And he got it.

13 Q He got it. He got what? \$8,000?

14 A And then some.

15 Q But all those were classified as distributions. And
16 then you got to take an equal amount; correct?

17 A I caught up.

18 Q You caught up. Is that anywhere in these e-mails
19 when you were making the deal with Dave?

20 A That I would get caught up?

21 Q That his -- what you called a priority guarantee,
22 that you were going to get exactly the same thing?

23 A I really don't know what you're asking me.

24 Q Okay. Let's go back. Because now your response to
25 Dave was on June 24th.

1 MR. ARNOLD: We can take a break just right after
2 this, Your Honor, if you like?

3 BY MR. ARNOLD:

4 Q So June 24th, you're still having discussions. And
5 we go back to where Andrea had advised you, Exhibit No. 5.
6 She had advised you, perhaps, you might want to make him
7 more comfortable and go ahead and give him this \$8,000.

8 So you had these discussions with Dave in the
9 meantime; correct? Because those were the 24th of June.
10 And now you're sending her an e-mail on July 10th; is that
11 correct?

12 A Yes.

13 Q Now, let's look right here. We are anxious to get
14 our papers together as big suppliers will not give us
15 terms without seeing them. What are you referencing
16 there?

17 A Show me where you are.

18 Q Top e-mail.

19 A So we had approached Mitsubishi about obtaining
20 credit --

21 Q Yeah.

22 A -- to buy film. And one of their requirements was
23 to -- we had to give them an operating agreement, and
24 audited financials, and just a lot of things that a start-up
25 company still didn't even have. So we wanted to get the

1 operating agreement done.

2 Q And was she working on it?

3 A I don't know why she would. She's an accountant.

4 Q Okay. So your testimony is she wasn't working on
5 your operating agreement?

6 A No.

7 Q Okay. Well, just so we can -- well, we'll get to it.
8 In your original discussion with Andrea, you told her that
9 there were going to be three accounts left out of the deal
10 between you and Dave, that little piece of paper you gave
11 her, blue and green?

12 A Yes.

13 Q Right?

14 A Right.

15 Q And, now, you're saying you paid Dave this \$8,000 and
16 that it changed. He wasn't keeping the three accounts
17 out. Is that your testimony?

18 A Yes.

19 Q Okay. Did you tell Andrea that in this e-mail, that
20 this deal had changed?

21 A I don't know why I would.

22 Q Well, we'll figure that out. Let's look at this
23 here. You tell her that CCC did write a check to Dave on
24 July -- for \$8,000, the business paid this and we did not
25 have to look for outside money. That's a good thing.

1 Cash is still tight as we get things switched over.

2 So you had funded the eight grand out of the revenues
3 of CCC, correct?

4 A That's what it says.

5 Q Okay. And then right below it, if you'll look at my
6 finger if you can't find it, in the middle of the next
7 paragraph, We are currently selling all of these people
8 close to the levels that Dave has outlined.

9 So -- because Dave had given you a customer list;
10 isn't that true?

11 A Yes.

12 Q And that list had accounts on it with numbers on it;
13 correct?

14 A Yes.

15 Q And you're telling Andrea that you're selling all of
16 those people; isn't that true?

17 A That's what the e-mail says.

18 Q And close to the levels that Dave had outlined?

19 A Yes.

20 Q Okay. Turn to interrogatory -- I mean to document
21 number eight, Exhibit No. 8, Plaintiff's Exhibit No. 8.
22 And this is a discussion with Andrea, Ask the lawyer to
23 confirm your entity is legally formed. If you need two
24 additional members, make it yourself, along with Decotex.
25 We'll add Dave through an amendment.

1 Did she not understand that you and Dave were
2 partners?

3 A Apparently not.

4 Q So she doesn't even really know what the deal is,
5 does she?

6 A I think that's what she's saying.

7 Q Okay.

8 A Do we even have an agreement.

9 Q And you really didn't have an agreement, did you?

10 A I thought we did.

11 Q You didn't have anything in writing. You didn't know
12 what these three accounts were; true?

13 A Correct.

14 Q Let's turn to Exhibit No. 10. Same date, July 14th.
15 Can you read that first line? That's from Andrea.

16 A Dave, as you know, I am working with John trying to
17 develop the language for the preferred return section of
18 the partnership agreement.

19 Q So she is working on the partnership agreement?

20 A She's working on developing the language.

21 Q Okay. The language. She wasn't printing the paper.
22 She was just writing the language on the paper. Is that
23 what you understood she was doing?

24 A I mean, my interpretation is the operating agreement
25 is a several-page document.

1 Q And she's working on part of it?

2 A She's not writing the several-page document. I think
3 she's looking to put a little piece in there.

4 Q Okay. The preferred return section?

5 A Right.

6 Q And that was the section you were talking to her
7 about before you paid Dave the \$8,000?

8 A Yes.

9 Q And that was the part you were talking to her about
10 when you told her that he wanted to keep three accounts
11 out; correct?

12 A (There was no response.)

13 Q You were talking about preferred or priority
14 allocation?

15 A We talked about a lot of things.

16 Q But that's what you were talking to Andrea about in
17 those e-mails we reviewed earlier. And so, now, your
18 testimony is that the deal has changed, that these three
19 huge import deals that Dave wanted to keep out are being
20 rolled in, but you didn't tell the person who's drafting
21 the partnership agreement. Is that your testimony?

22 A Ask the question again. I'm just not following you.

23 Q And it's probably a bad question. Back in Exhibit
24 No. 5, you and Andrea exchange e-mails about the
25 partnership agreement and drafting -- or giving Dave a

1 commission. And you exchange the green and blue form that
2 indicated that the three accounts were out; correct?

3 A The green and blue form was prior to July.

4 Q It was prior to July?

5 A Correct.

6 Q And so, in July, now that she's doing work on
7 drafting the agreement, you failed to tell her that the
8 agreement had changed, that these three import accounts
9 were now part of the deal?

10 A Her -- that green, those are her comments.

11 Q The blue are yours?

12 A Right. How it could be structured, how it could
13 work. And she was looking to put that language into the
14 agreement. That's all that is.

15 Q But y'all are still working on the agreement,
16 obviously?

17 A I mean, I wrote him a check in July and I thought
18 that was the deal.

19 Q No, no, no. CCC wrote him a check.

20 A That's right, funded with my money.

21 Q No, no, no. Read your own e-mails. Let's go back to
22 your e-mail. Your e-mail says in five, CCC did write a
23 check to Dave. The business paid this and we didn't have
24 to look to outside money. That's a good thing.

25 A Cash is still tight as we get things switched over.

1 Q Cash was always tight, wasn't it?

2 A Yes.

3 Q That was the problem with this business was you had
4 to have large amounts of inventory because you were
5 working on very thin margins, weren't you?

6 A That's the way CCC was run.

7 Q That's the way CCC -- and you ran it that way because
8 you were the CEO; right?

9 A It doesn't run that way now.

10 Q Is it doing better today than it was in 2011?

11 A I'd like to think so.

12 Q I'd like to see the 2014 financial records. Do you
13 know why you haven't given those to us since we've
14 requested them for a year now?

15 A The financial records are in QuickBooks.

16 MR. STEPHENSON: Your Honor, I object. He couldn't
17 have asked for 2014 a year ago.

18 MR. ARNOLD: I've been asking for updated financials
19 for about the last year.

20 BY MR. ARNOLD:

21 Q So do you know that we've been requesting for 2014
22 financials?

23 A Financials or QuickBooks?

24 Q Financials?

25 A They're not done.

1 Q A work in progress, is that what you're saying?

2 A I wouldn't call it that.

3 THE COURT: All right. Let's take a 10-minute break.

4 Thank you.

5 (WHEREUPON, a break was taken.)

6 THE COURT: Mr. Arnold.

7 BY MR. ARNOLD:

8 Q Mr. Gandis, so in July of 2008, you paid this \$8,000
9 check. What is the deal, as you understand it, at that
10 point in time?

11 A The deal was that they would roll his existing EFS
12 customers into Carolina Custom Converting and receive a
13 priority distribution on the profits. From those -- from
14 what he brought to achieve the \$8,000 a month.

15 Q Okay. Now, what about orders that had already been
16 placed before July of 2008?

17 A Orders that had been placed with?

18 Q With EFS prior to July of 2008.

19 A His accounts were to roll in.

20 Q So even if he had been working on those accounts
21 forever, and had purchase orders, and sales orders, he was
22 rolling in everything?

23 A We talked about buying his inventory from May.

24 Q Okay. Did you buy his inventory in May?

25 A Specifically, I think we bought some throughout.

1 Q But he continued to operate as EFS even after July of
2 2008?

3 A Because of the UL label that we sold.

4 Q Well, he, also, had some inventory and he had to sell
5 that inventory; correct?

6 A We never got into -- real heavily into the inventory.
7 I mean, we talked about buying his inventory, but I didn't
8 know how much he had.

9 Q But you knew he was --

10 A I knew he had some business.

11 Q Well, let's look at Exhibit No. 9 real quick. And
12 we've got from Carolina Custom Converting to Dave Wilson
13 at Eastern Films. This is July of 2009.

14 A Which book are you in?

15 Q I'm in the book you've got.

16 MR. GOLDSMITH: It's Exhibit No. 9.

17 THE WITNESS: Oh, I'm sorry.

18 BY MR. ARNOLD:

19 Q I'm on Exhibit No. 9, second page. So there's an
20 invoice from CCC to Dave Wilson at Eastern Films. Dear
21 customer, your invoice is attached.

22 So, in this instance, even in July after he's
23 received that check, EFS is still a customer of CCC?

24 A Yes. We were converting the UL customers over into
25 the company. And they wouldn't accept the Carolina Custom

1 Converting invoice.

2 Q Well, let's turn the page. It says, Can you go -- it
3 says, Hi, John -- this is from Dave to you. And he's
4 using his Eastern Films e-mail address.

5 A Are we on 10 now?

6 Q No. We're on Page 9, first page of nine at the very
7 bottom. Hi, John -- this is from Dave. Can you go
8 through this invoice with me. Were the 35 rolls from
9 prior run CCC film or EFS film? Also, the 37 rolls
10 produced from this film for Flagship, was that EFS film,
11 or did I sell that Flagship roll to CCC?

12 Do you see that?

13 A Yes. It's very confusing.

14 Q Very confusing. Because he was trying to wind down
15 his business; correct?

16 A Yeah. He had come in.

17 Q He had some wind down. He had some obligations and
18 he had some inventory; isn't that true?

19 A That was my understanding.

20 Q So, in July, he's winding some of this down. And
21 then you answer his question. What was your answer?

22 A Are you talking about above on August the 4th?

23 Q Yes, sir.

24 A The 35 holdovers were produced with the Abbott film
25 that CCC purchased. EFS was not invoiced for the rolls

1 that were added to the pallets. Hopefully, you added
2 these when you created your invoice to Lamborn. When we
3 came back and ran more, we ran Flagship. EFS invoiced CCC
4 for the material, invoice 4491.

5 Q So he received this \$8,000 check, but he's going to
6 make an invoice to Lamborn. And you're talking about
7 selling product back and forth between CCC and EFS. Isn't
8 that what this e-mail indicates?

9 A This e-mail indicates that EFS held the UL label,
10 right. These products cannot be sold to Lamborn if they
11 don't have that UL stamp on them. So if those rolls
12 showed up with any markings of CCC, they'd be rejected
13 because CCC did not hold the label.

14 Q Right.

15 A So what this is describing is the conversion over
16 towards the -- to the UL. It had to be done this way so
17 that the rolls would be accepted until we could get the
18 EFS UL label moved over.

19 Q Okay. So there were, again, these transition issues
20 that were occurring even after July of 2008. Would you
21 agree?

22 A Call it a transition issue. I think any two
23 companies that merge are going to have a little bit of a
24 transition.

25 Q Well, were they merging? Because you didn't take any

1 assets from EFS, did you? You didn't take their
2 inventory. You didn't merge your inventory, did you?

3 A We talked about buying whatever he had left. I
4 thought we had whatever he had left.

5 Q He still had segregated inventory a year after this
6 e-mail; isn't that true?

7 A That's my understanding, but I don't know why. I
8 can't tell you why.

9 Q But you knew it?

10 A He told us that he had some inventory left over.

11 Q And you told Andrea that he had some inventory left
12 over?

13 A Right.

14 Q And you were trying to figure out what to do with it
15 a year later?

16 A We were trying to understand why he had inventory.

17 Q Okay.

18 A We thought we had put it altogether.

19 Q Well, let's look -- let's look at 18. And if you
20 will look at 18, this is June 24th, 2009. This is a whole
21 year later. And the first e-mail is from you responding
22 to Andrea. Now, let's look at "to my knowledge." Do you
23 see that?

24 A (There was no response.)

25 Q Well, let's just start from the beginning. Dave and

1 I speak pretty openly about it. Dave tried to get rid of
2 this stuff to close out the EFS books, but it keeps
3 lingering.

4 Do you see that?

5 A Yes.

6 Q Sometimes, we have used some of his old inventory to
7 complete some of the orders that we have in-house. But
8 I'd always rather slit the film that we purchased, rather
9 than whittle down Dave's stuff.

10 So you were using EFS inventory from time to time;
11 correct?

12 A Dave brought his inventory to the Anderson facility.

13 Q And you kept it segregated; right? Isn't that what
14 this e-mail says?

15 A I mean, it -- I mean, even --

16 Q Did you keep it segregated --

17 MR. STEPHENSON: I object. Let him answer the
18 question.

19 MR. ARNOLD: I apologize.

20 THE WITNESS: These were returned goods. I mean, it
21 was segregated because it was returned. There were
22 customers that we took back EFS product so that CCC could
23 do business with that customer. So, yeah, we segregated
24 it. I mean, we tried to -- we tried to get back something
25 good out of it.

1 BY MR. ARNOLD:

2 Q But you didn't -- but you just testified that EFS and
3 CCC had merged, but you're keeping inventory separate.
4 That's not the only thing you're keeping separate, is it?
5 You were keeping accounts payable and accounts receivable
6 separate; correct?

7 A I don't know why you would say that.

8 Q Well, then let's keep reading. It says, I'm going to
9 have my warehouse get -- verify the EFS inventory before
10 we go any further. You're right, this inventory may not
11 have much value to us, especially knowing he was unable to
12 sell it last year. I told Dave that I would review all
13 the materials, and we'd make an offer based off of what I
14 would normally have paid other people for similar goods.

15 So you're making an offer to pay. And then you say
16 right below it, I'm not really following that EFS
17 contributed to the partnership. It sounds like something
18 explained better over a phone call. You're referring to
19 Andrea's e-mail?

20 A So I would tell you that I suspected that Dave had
21 not moved everything in. I was in the sales office, a
22 purchase order came over from Lamborn. I got excited.
23 And Dave quickly tells me, Oh, that's something old.
24 That's not ours.

25 And I was as shocked then as I am now to find out

1 that he was doing this stuff on the side. And so, you
2 know, as I say, it keeps lingering. It's like EFS isn't
3 going away. And so Andrea and I thought -- had a -- if it
4 is as simple as he's just got this inventory, he needs to
5 contribute it to the partnership.

6 Q But your proposal had been to swap out old accounts
7 payable from EFS to pay for --

8 A I don't know where you're reading that from.

9 Q Okay. Look on 18 -- Exhibit No. 18, Page 1, 2, and 3
10 at the bottom where it says, eight and then five EFS. Do
11 you see that? The very bottom.

12 A This is on June 22nd?

13 Q June 22nd, yes, sir, 2009. It's at the very bottom.
14 And while you're studying it, I'll read it to you. There
15 are about 20,000 pounds of EFS inventory. Dave any I -- I
16 guess that should be and I need to agree on some pricing.
17 And we will make some invoices cancel each other out.
18 Dave was in last week to get inventory of everything. The
19 warehouse guy confirms -- will confirm it here in a day.
20 Then Dave and I just need to agree, so the invoices to
21 Dave will go away. He has more film here than we will
22 probably want at this time.

23 So do you recall now that EFS and CCC had invoices --
24 cross invoices with each other, and those had not been
25 closed out even by June of 2009?

1 A Yeah. I was trying to do the guy a favor. I didn't
2 want this garbage. He owed CCC money. I thought it was
3 an easy way to do it. Andrea told me how you do it, you
4 contribute it.

5 Q But you just -- again, your point had been that EFS
6 had become CCC. That's what you testified to earlier.
7 That was the deal --

8 A That was my understanding, yes. So why wasn't the
9 inventory on my books?

10 Q Why wasn't it? You're the CEO. Why wasn't it?

11 A Dave never contributed it. He wanted money for it.

12 Q Tell me where any e-mail that you have or any piece
13 of paper you have where you and Dave agreed that for
14 \$8,000, you got all of his inventory. Don't look for it.

15 A It's not in any agreement.

16 Q That's right. It's not in any e-mail either, is it?

17 A If you'll go back to the May e-mails prior to June,
18 we talk about buying his inventory.

19 Q Buying his inventory. But you didn't buy his
20 inventory, did you?

21 A It was May. It was prior to when the deal was
22 struck.

23 Q You didn't buy his inventory, did you?

24 A Eventually, we did.

25 Q After June 2009?

1 A I don't remember when we bought it.

2 Q It had to be after June of 2009, wouldn't you agree?

3 A No. I don't know when.

4 Q Okay.

5 A It's all in the financials somewhere.

6 Q So in August of 2008, though -- let's just make this
7 clear. Second page. This is Exhibit No. 13. You're
8 still saying -- and this is number one halfway down Page
9 2.

10 MR. STEPHENSON: Hold on. What exhibit are we
11 talking about?

12 MR. ARNOLD: 13.

13 BY MR. ARNOLD:

14 Q I need to put the agreement to bed with Dave. I
15 think this is something that would make him and I sleep
16 better.

17 So you've given him \$8,000, which he thought was a
18 commission the month before. You understand it means that
19 he's closing down all of EFS. That was your testimony.
20 But here a month later, you still don't have an agreement;
21 isn't that true?

22 A I -- give me a second to read what we've got here.

23 Where is it you see CCC coming into this
24 conversation?

25 Q Exhibit No. 13, Page 2, halfway down the middle,

1 number one. It simply says, I need to put the agreement
2 to bed with Dave. And, actually, this was an e-mail you
3 had written to Andrea, and some of her comments are mixed
4 in. Do you see that?

5 A It's black and white on my page.

6 Q It is black and white. But my point here is -- and
7 the only point I want to make, you're still negotiating an
8 agreement with Dave in August of 2014?

9 A I say here, Dave and I, finally, seem to be on the
10 same page. And the company continues to chug along. We
11 have been able to stay cash positive, operating on a cash
12 basis. And I have managed to pay Dave for the last two
13 months \$8,000 per month.

14 Q And let's make that point. The \$8,000, those were
15 his priority distributions?

16 A Yes.

17 Q And they were coming from profits?

18 A I didn't know at the time. I mean --

19 Q Well, that's what you say when you say positive
20 operating cash basis. And you've paid yourself back
21 everything that you've borrowed from yourself; isn't that
22 true?

23 A That's what it says.

24 Q Okay. So this business that Dave is bringing to CCC
25 is not only paying for his \$8,000 payment, but it's paid

1 you back every penny you put into the thing that far?

2 A Currently, the only thing the company owes me for are
3 the machines. And these notes continue to be paid on
4 time.

5 Q There you go.

6 A Notes.

7 Q So let's -- and then if you keep going, let's look at
8 Exhibit No. 14. You had this building where you were
9 going to run CCC out of. What was your agreement with
10 Dave on rent?

11 A When the company could afford it, it would pay it.

12 Q Okay. How much was it going to pay?

13 A The initial payments just covered the machine cost,
14 the loan on the machine cost.

15 Q So we've got here Exhibit No. 14, an exhibit from
16 Andrea. Who is Kelsey Nana?

17 A That's Joy Whitman. We didn't have e-mail at that
18 point.

19 Q And she cc'd you. Can you read paragraph three, what
20 Andrea is instructing Joy to do?

21 A Rent bills for the property at 1,200 per month
22 starting with last November. To the extent that the
23 amounts have, actually, been paid to John, it appears that
24 3,750 has been paid. Those payments should be applied
25 against November 6, December 7, and January 6 invoices,

1 which a smidgen, \$150, applied toward the February 2006
2 rent.

3 Then go ahead and cut a check to M-Tech, if that is
4 the landlord, the remaining rent that is due. I compute
5 that to be 9,450 in order to be paid through September.

6 Q What's the -- read that next sentence.

7 A Date that check as of 08/31/07 in the system so it
8 will not show up as an additional payable, although it
9 will show as an outstanding check at month end. I
10 would -- I wouldn't normally ask you to backdate a check,
11 but since we are giving them 08/31 statements and he may be
12 showing Dave those statements, I would like all rent -- I
13 would like all rent cleared up before they're reviewed
14 again.

15 Q So Andrea is telling Joy to pay you rent and back it
16 all the way up to last November. That would have been
17 November of 2007; is that correct?

18 A That's how I understand her e-mail.

19 Q Okay. Did Dave agree to that?

20 A Dave and I always agreed that I would receive rent
21 when the company could afford it.

22 Q Perspectively or retroactively?

23 A What's the difference?

24 Q About \$9,400. That's what the e-mail says.

25 A I had a space. I never agreed that it would be for

1 free.

2 Q Did he ever agree to pay an extra \$9,400?

3 A I didn't run every check through Dave.

4 Q Is that a no?

5 A No -- yes, it's a no.

6 Q And, actually, Andrea is instructing Joy to backdate
7 a check just so it doesn't catch Dave's eye?

8 A That's not true.

9 Q That's not what that says to you?

10 A No.

11 Q Okay. Well, we'll agree to disagree on that one.
12 Because your opinion and my opinion really doesn't matter.

13 Let's go to 15 real quick. And all I want -- one
14 quick point here. November 14th, 2008. If you'll look at
15 my finger, it will probably be easier for you to find this
16 here. You and Dave have been working on the CCC deal for
17 months. You're still working on getting an operating
18 agreement in November of 2008; isn't that true?

19 A So tell -- ask me your question again. I'm sorry.

20 Q My point was that even in November of 2008, you had
21 still not finalized your deal with Dave?

22 A There's no operating agreement. There's still no
23 operating agreement. I mean, that's all that's being
24 acknowledged there.

25 Q Okay. So, now, we've got 17 -- Plaintiff's Exhibit

1 No. 17. Dave is telling you -- one of the accounts you
2 are suing Dave for is profits that EFS earned during 2008
3 that was from West Carrollton; is that true?

4 A Yes.

5 Q Okay. Well, I should say CCC is suing Dave for
6 profits he received from West Carrollton?

7 A Yes.

8 Q Now, are you aware that the West Carrollton business
9 had taken place in 2008? Were you aware that he was doing
10 business with West Carrollton in 2008?

11 A Yes.

12 Q But he didn't bring that business over to CCC?

13 A I don't know why not.

14 Q But you knew he didn't?

15 A No, I didn't.

16 Q Okay. Well, let's look at e-mail 17. If you'll look
17 at -- let's just stay on the first page. I have purchased
18 film from them in the past under a letter of credit. I'm
19 happy to have and confirm these terms again in an e-mail.
20 He's talking about bringing West Carrollton to CCC in
21 2009, isn't he?

22 A This was a new bid, a new opportunity bid.

23 Q New opportunity. But he supplied product to West
24 Carrollton in 2008, EFS had supplied?

25 A Yes. I knew that.

1 Q You knew that?

2 A Yeah.

3 Q Well, let's look at what else you knew, Plaintiff's
4 Exhibit No. 19. Is that an e-mail from Dave to you?

5 A Yes. It's the West Carrollton quote from the year
6 prior.

7 Q The year prior. And what's the date on that quote?

8 A The quote is July 14th of 2008.

9 Q Wow. Was that a smoking gun to you?

10 A No.

11 Q I mean, don't you see now that the very month you had
12 paid Dave Wilson \$8,000, he had written a proposal that
13 went to West Carrollton to supply them polyester from
14 October 2008 to March 2009?

15 A Mr. Arnold, it's a quote. That tells me nothing.
16 Why do you -- so he didn't get it.

17 Q But he wasn't even supposed to be quoting?

18 A Why not? I thought it was coming in.

19 Q How do you know he didn't get it?

20 A Because it didn't come in.

21 Q It didn't come into CCC?

22 A That's right.

23 Q But this is from EFS.

24 A In the initial start-up period, there was the -- we
25 were still using the EFS name. I thought when he wrote

1 this -- when I saw this, I thought this was a quote he did
2 for us. He didn't get it here. Here, we are trying
3 again.

4 Q But you knew the attempt was through CCC?

5 A In 2009, yes. We were established by them.

6 Q And you knew he had done business with West
7 Carrollton through EFS in 2008?

8 A Yes.

9 Q And here's a proposal to them in July of 2008?

10 A And we didn't get it.

11 Q How do you know EFS didn't get it?

12 A Because he must have side dealed if he did. I mean,
13 it didn't come into CCC.

14 Q Well, when you saw this document, did you go, why was
15 Dave quoting West Carrollton in July --

16 A No. I would have asked exactly -- well, I, finally,
17 get to see the quote. I don't know why we lost it. I
18 thought he had it.

19 Q What did you do to contribute to getting that
20 business?

21 A About 40 hours a week of running a plant, managing 15
22 people, an engineering degree.

23 Q West Carrollton was an import deal, wasn't it?

24 A Part of it.

25 Q All of it?

1 A We slit film for West Carrollton at CCC.

2 Q I'm talking about the 2008 deal. That was all
3 import?

4 A This -- we could have done this deal domestically.

5 Q But the whole reason Vytech wanted Dave to come
6 advise them was so he could tell them how to import.
7 Because your margins were higher on import stuff; right?
8 You wanted to import?

9 A That's always a scenario. There's other ways to skin
10 a cat.

11 Q So, again, you received Dave's proposal from EFS to
12 West Carrollton in 2008 -- 2009. Did you do anything to
13 verify or check to make sure Dave had not done that deal
14 on the side?

15 A Why would I? No.

16 Q Yeah. There would be no reason to, because that was
17 one of the three accounts he had kept out of the deal,
18 isn't it?

19 A It's nice to learn that now.

20 Q So by June 2009, was it your understanding that Dave
21 had essentially -- or EFS had completed its transition?

22 A Ask me again. I'm sorry.

23 Q By June 2009, was it your understanding that EFS had
24 completed its transition?

25 A I'd like to think, yeah.

1 Q Okay. And so let's look at Exhibit No. 20. I'll
2 tell you what my -- and I apologize. I want to show
3 you -- there's another account that you're suing Dave on.

4 MR. ARNOLD: And I apologize, Your Honor.

5 MR. STEPHENSON: What exhibit?

6 MR. ARNOLD: 145.

7 BY MR. ARNOLD:

8 Q You're suing Dave for Dundas Jafine. Is that one of
9 the accounts you're suing him for? CCC is suing Dave for
10 doing a side deal with Dundas Jafine?

11 A There's so many. I don't remember them all, but I
12 know -- that name is familiar.

13 Q Well, do you know that you're suing him for the two
14 invoices that are referenced in Exhibit No. 145? Are you
15 aware of that?

16 A Are they on the list?

17 Q Yes.

18 A Okay.

19 Q You don't even know? You have no concept of these
20 accounts that he did on the side that you're suing him
21 for?

22 A I haven't looked at the list in detail.

23 Q Okay. So, here, we've got Dave telling you in 2008
24 that he had two invoices for Dundas, and that he was
25 writing those checks over to CCC. Do you see that?

1 A Yes.

2 Q And CCC is suing Dave on those invoices and you
3 didn't realize that?

4 A The way the transactions worked with a lot of the
5 flex accounts is that CCC bills EFS. EFS bills the
6 customer. The customer pays EFS. And then EFS, in fact,
7 pays CCC.

8 Q And, in that case, Dundas Jafine paid EFS. And EFS
9 wrote a check over to CCC. And, now, CCC is suing Dave
10 for that amount?

11 A I'd just like to see the detail. I mean, there was
12 so many surprises when we sold the EFS stuff. I didn't go
13 line by line.

14 Q Now, things are going fairly well in 2009, would you
15 agree, with EFS -- I mean with CCC?

16 A We thought so.

17 Q And in Exhibit No. 20, Andrea made a proposal to you
18 and Dave, did she not? She wanted to distribute \$250,000
19 to each of you in 2010.

20 A We called it plan 250.

21 Q Yep. And that was Andrea's idea?

22 A I thought it was a great idea.

23 Q Yeah. It sounds like a great one. And if you'll
24 look at this multi-page -- this is a three-page plan about
25 how you're going to distribute \$250,000 to each of you.

1 A I think she says, I'm going to dump a lot of
2 thoughts.

3 Q And just to kind of review what had taken place up to
4 this point, just looking at distributions, in the first
5 year, the company distributed to you -- and this is to
6 Dave, 48 grand. It appears that in year two,
7 distributions will reach \$136,000 for each of you. It
8 says, That is a 180 percent increase over year one. Is
9 that what it says?

10 A Yes.

11 Q Okay. If you'll turn the page. The first at the
12 very top, Here is a little line history. In year one, we
13 had sales of \$800,000 cash basis, slightly over a million
14 on accrual. Is that consistent with what you recall?

15 A It's sounds about right.

16 Q Year two, you had about two million -- 2.3 million in
17 sales. And wouldn't you agree that almost all of that had
18 come from EFS customers?

19 A By 2009, I don't know how -- that I could answer that
20 without looking at his list of accounts that he brought
21 and where we were.

22 Q But a lot of your revenue was coming from EFS
23 accounts?

24 A Sure.

25 Q Now, during this whole time, you're loaning money to

1 the entity; correct?

2 A Yes.

3 Q You have these credit lines, the M-Tech credit line,
4 the Decotex credit line, and you're using those to fund
5 operations?

6 A I think by then, it was pretty much just the M-Tech
7 line.

8 Q And isn't it true that this business needed a line of
9 credit? CCC needed a line of credit; isn't that true?

10 A I'd like to think that it could have done it on its
11 own without the line of credit.

12 Q But it couldn't, and it didn't, did it?

13 A It didn't.

14 Q It didn't?

15 A We always had cash problems.

16 Q Always. And the agreement was your line of credit
17 was going to make up for those cash flow difs [phonetic];
18 isn't that true?

19 A I don't know where that agreement holds -- I agreed
20 to fund it for a short period of time.

21 Q Well, first of all, that's what you told Andrea in
22 the thing at formation and, subsequently, fund it at a
23 hundred percent?

24 A I never agreed to that.

25 Q You never agreed to that. Well, isn't that what you

1 did?

2 A I did it for a while.

3 Q Let's look at your Exhibit No. 123. This is
4 Defendant's Exhibit No. 123. Now, what is this? Do you
5 recognize this document?

6 A It looks like the loans that I made to CCC from 2007
7 to May 31st of 2011.

8 Q Okay. And if you'll look at that, every year and
9 almost every month of every year up through 2011, you're
10 funding -- well, let's say that the lines of credit are
11 funding cash shortfalls.

12 THE COURT: What exhibit?

13 MR. ARNOLD: That's 123 of theirs.

14 MR. GOLDSMITH: The Defendant's?

15 MR. ARNOLD: Yes, the Defendants.

16 THE COURT: Okay.

17 THE WITNESS: What's the question? I'm sorry.

18 BY MR. ARNOLD:

19 Q Go ahead. Get your water.

20 A Okay.

21 Q So I'm just asking you to review this, and to confirm
22 that working capital from the building loan was really a
23 constant feature of the business model of CCC. That's how
24 you funded your operations?

25 A There was a second line, too.

1 Q That's right. There was a second line. And it's
2 mentioned in here throughout. You see Decotex. But you
3 were doing that; right, in 2008?

4 A Yes.

5 Q And you did it in 2009?

6 A Yes.

7 Q And what we just reviewed in exhibit -- the plan 250,
8 was that even during those years that you were funding
9 film purchases with your line of credit, y'all were still
10 taking distributions?

11 A Yes.

12 Q And that continued all the way until -- what was the
13 last date?

14 A May 31st of 2011.

15 Q And then it just stopped?

16 A It stopped because we were trying to get a bank loan.

17 Q Now, the \$1.7 million, as of December 31st, 2011, you
18 had been paid back every single penny you put in CCC?

19 A Yes.

20 Q So that \$1.7 million is not money you invested and
21 didn't get back, is it?

22 A That's a correct statement. The company currently
23 owes me about 200,000.

24 Q Currently. That's happened since Dave was locked
25 out; right?

1 MR. STEPHENSON: I object. There's no evidence he
2 was locked out.

3 MR. ARNOLD: Really?

4 THE WITNESS: I would answer that it was before Dave
5 left.

6 BY MR. ARNOLD:

7 Q Before Dave left. But he was locked out, wasn't he?

8 A Eventually, yes.

9 Q You changed the locks?

10 A Yes.

11 Q So the -- again, at the time he left, you had been
12 paid back every penny. Now, that 1.7 million, that was
13 done in chunks of -- for example, you'd give CCC 30 grand
14 to meet cash flow. And then when they got over the hump,
15 they'd pay you back?

16 A Yes.

17 Q And then you might have to write another check for 40
18 grand until they got over the cash flow hump. And then
19 they'd write you a check back; right?

20 A Yes.

21 Q And that continued all along. And even when you were
22 writing those checks, funding film purchases from the
23 lines of credit, you were both receiving distributions?

24 A Not always. Not in 2011.

25 Q Not in 2011. Okay. Up through 2011. Things change

1 in 2011, don't they?

2 A Yes. So at the end of 2010, when my exposure was
3 over \$300,000 and I found out my partner was going to do a
4 side deal for 800, I needed to get my money out.

5 Q 800 what?

6 A Dollars.

7 Q Really? That's what changed the whole thing, an \$800
8 side deal?

9 A I had 300 -- over \$325,000 exposed, my family, my
10 house. We just came off the biggest year ever and my
11 partner ran a deal on the side.

12 Q Okay. Your original agreement -- and that's why you
13 did this and that's why this form looks the way it does is
14 your agreement with Dave was you were going to use your
15 line of credit to fund CCC?

16 A Until it could grow up on its own.

17 Q Okay. And so now even though in 2010, your funding
18 on this sheet 123, it shows you funding lines of credit
19 purchases, Andrea is proposing in that year you should
20 take \$250,000 each in distributions?

21 A What was the year?

22 Q 2010. It was Exhibit No. 20 that we were looking at.
23 Now, Andrea is a partner by this time, isn't she?

24 A I believe so, yes.

25 Q What were the terms of admission of Andrea into CCC?

1 A Well, we knew we needed some accounting help.

2 Q Yep.

3 A And we couldn't really afford much, especially to the
4 degree that we needed it. So Dave and I talked about it.
5 And we both offered her five percent of our interest to
6 come aboard.

7 Q So she became a 10 percent stakeholder?

8 A Yes.

9 Q So if you and Dave are getting 250 grand in
10 distributions, she would have been entitled to 50,000 that
11 year?

12 A Yes.

13 Q And did you have a really good year in 2010?

14 A We had a good year.

15 Q You had a monster year, didn't you?

16 A Yeah. Film was at an all time premium.

17 Q And it really was market driven?

18 A Yeah.

19 Q And do you know how much your profit was?

20 A It was a million dollars.

21 Q Something in excess of a million; right?

22 A Yeah.

23 Q Now, during 2010 -- or the tax year 2010, Andrea
24 decided to change from cash basis accounting to accrual
25 basis accounting. Do you recall that?

1 A I do.

2 Q And do you --

3 A My understanding is we had to. It was just the
4 rules.

5 Q And whether you did or you didn't, that had the
6 effect of increasing your tax liability a little bit?

7 A Yes.

8 Q Okay. And so then we come into 2010, the best year
9 you've ever had. But you left with a huge tax liability?

10 A Yes.

11 Q Right?

12 A Yes.

13 Q Now, in fact, you had been putting some money in a
14 money market account to start to fund some -- a tax
15 distribution?

16 A Yes. We had a plan.

17 Q You had this plan that you were going to fund the tax
18 distribution?

19 A That was the plan.

20 Q That was the plan. Let's look at Exhibit No. 23.

21 So, now, we're in 2011. We're making progress. Okay.

22 The first e-mail at the bottom here is an e-mail from
23 Andrea to you. Do you see that?

24 A Yes.

25 Q Will you, please, read -- it's a short e-mail, so

1 just read her e-mail.

2 A John, can you take the dollars in our money market
3 account for taxes and go ahead and repay M-Tech 50,000?
4 If we need these dollars on April 15th, we will just
5 borrow it back again. Then have M-Tech, also, repay Bank
6 of America the same 50,000. What I want to do is keep the
7 cash balance relatively low so we don't get a request
8 around tax time to distribute any extra money. Instead,
9 it will already have been used to repay debt, which is a
10 better use.

11 Q So you've got some money sitting in this money market
12 account; right?

13 A Yes.

14 Q And there's a balance on the M-Tech line of credit;
15 right?

16 A Correct.

17 Q And Andrea tells you that you should transfer that
18 tax distribution money to repay M-Tech?

19 A Yes. Because we were trying to pay all our lines
20 down so we could get a loan from the bank.

21 Q Okay.

22 A We were cleaning up the balance sheet.

23 Q But, actually, what she -- she doesn't really mention
24 the bank in this one, does she?

25 A She does.

1 Q What she says is she wants to keep the cash balance
2 relatively low. Why would the bank want the cash balance
3 to be low?

4 A (There was no response.)

5 Q It wouldn't, would it, Mr. Gandis?

6 A I think like she said exactly, we're repaying our
7 debt. We were using our cash to repay debt.

8 Q What she says is she doesn't want to get a request
9 around tax time to "distribute any extra money"?

10 A Dave was already getting distributions. I was not.
11 Andrea was not. There wasn't going to be any extra.

12 Q Well, there wasn't going to be any extra because --
13 let's turn the page to Exhibit No. 24. And look in the
14 second paragraph. You want to look where my finger is.
15 That may help you.

16 This is from Andrea to you, Funding the tax bill. It
17 might be okay to do after all. If Dave has large EFS
18 losses that are eating up his tax bill, then he doesn't
19 need the money to go to Uncle Sam. And we could leave it
20 in the business. And you can borrow your money from the
21 M-Tech line, which we just paid down.

22 Do you understand what that means?

23 A Give me a second to read it. Taxes are not my strong
24 point. I will admit to that.

25 Q But she was telling you --

1 A We knew that we had a big tax bill coming. We had a
2 plan from January to reduce as much inventory as possible.
3 We were taking all of our tolling customers and rolling
4 them into that money market account. We had been to the
5 bank looking for loans.

6 So, you know, to me, this was just part of the plan.
7 I knew I had to clean up the balance sheet. I sat in the
8 bank meeting when they told us that.

9 Q Well, your meeting with the bank was in July and
10 August of 2011?

11 A Dave and I had met with banks prior to that.

12 Q With Bank of America, Sherry Turner?

13 A That was the one we had kind of settled on going
14 with.

15 Q Well, I've got another e-mail, if I can find it. If
16 you'll give me one second.

17 Okay. Look at Exhibit No. 36. And look at the
18 bottom. This is an e-mail from Andrea to you. And on the
19 page before --

20 A You're talking about from me to her; right? I mean,
21 it's not in color.

22 Q Well, see, what she's done is copied your e-mail and
23 she says, See my comments within. And if you'll turn the
24 page, you can see that she had written you and she said,
25 It might make sense -- this is, again, Exhibit No. 36,

1 Page 2. John, it might make sense if we pay off a hundred
2 percent of your M-Tech line this month and leave it as
3 your emergency only line of credit. I don't know what the
4 balance is that you owe the bank. CCC is going to pay you
5 \$43,000 before the end of the month.

6 So she has -- she is proposing to you that the M-Tech
7 line that had always been used to fund CCC operations be
8 paid off and you now use it as your emergency fund?

9 A We had a huge tax bill coming. We had a plan to
10 accrue to pay it. And the plan wasn't coming to fruition.

11 Q So --

12 A But to put my loan back in the business would
13 eliminate any chance at getting a loan.

14 Q But you had a line of credit. It's the one that you
15 agreed at the outset would fund CCC?

16 A Initially, yes.

17 Q So go back -- turn back to page -- we're still on 36.
18 Go to Page 1. Because you -- because she has a comment.
19 You say that when you call it your emergency fund -- your
20 emergency, are you suggesting that we never tap it again
21 for CCC?

22 And her answer is what?

23 A I'm --

24 Q Right here.

25 A All right. I'm sorry. Ask me the question. I can't

1 tell because it's not in color.

2 Q So it says, When you call it your emergency, are you
3 suggesting that we never tap into CCC again?

4 And her answer was?

5 A Yes. I want you to keep this line available strictly
6 for estimated tax payments.

7 Q So if we run into another situation where the company
8 can't fund the tax distribution to the owners, you will
9 have cash available in the form of this line. It is for
10 this reason I'm trying to get this one paid off fully now.

11 So Andrea is giving you advice as to how you can pay
12 your tax distribution by not using the CCC credit line for
13 CCC. Isn't that her solution to your tax problem?

14 A I didn't know what I was going to owe. Dave was
15 getting a \$12,000 a month distribution, so he could put
16 money aside.

17 Q Well, he was getting \$12,000 a month because part of
18 your original deal was he needed a monthly income; right?

19 A \$8,000.

20 Q It started out as eight?

21 A Now, it was 12.

22 Q Now, it's 12. But it was a monthly -- that's what he
23 had --

24 A That's double what my family lives on.

25 Q Now?

1 A I don't know how he couldn't put half of it aside for
2 the taxes. I mean, it's not my call.

3 Q Well, I appreciate that. Perhaps, you manage money
4 better than him. But the bottom line is this e-mail
5 indicates that you're taking CCC's line of credit and
6 using it to pay your taxes?

7 A It's not CCC's line of credit. It's my building.
8 It's my property. It's my line.

9 Q It's all yours. And you didn't have any obligation
10 to use it for CCC?

11 A No.

12 Q No. Okay. And then, lastly, on the tax, look at 35.
13 Dave wants to know about the tax distribution. Just weeks
14 after you've solved your problem, Dave asks, Please, don't
15 do anything with my tax distribution payments until I
16 return from vacation in a week.

17 And Andrea's response -- do you see her response to
18 Dave?

19 A Yes.

20 Q She said, I want to make certain there is no
21 confusion. There is no tax distribution payments for you
22 or anyone else at this time.

23 A Dave is copied on that e-mail.

24 Q That's right. She's telling him there are no tax
25 distributions; right?

1 A She, early on in the company, wanted to send our
2 taxes directly to the IRS, and Dave chose not to do that.
3 He told her he didn't want her to send his tax
4 distribution into the IRS. So he was getting it in his
5 distribution. This made perfect good sense to me.

6 Q It made good sense to you because your tax bill had
7 been taken care of.

8 A I didn't know that.

9 Q You got the e-mail saying that she's clearing out the
10 line of credit for you?

11 A That line of credit didn't cover my tax bill.

12 Q It sure helped, didn't it?

13 A It was maybe a third.

14 Q And there was no tax distribution available for Dave?

15 A He was getting his tax distribution in his monthly
16 distribution.

17 Q What about his preferred return, when did he get
18 that?

19 A In the early years.

20 Q What about the later years? Wasn't he still making
21 profits off of accounts?

22 A He was always first. He always got the preference.
23 He got a check every month.

24 THE COURT: Let's just break for lunch. We'll
25 reconvene at 1:45.

1 Thank you.

2 (WHEREUPON, a lunch break was taken.)

3 THE COURT: Mr. Arnold.

4 BY MR ARNOLD:

5 Q Are you ready?

6 A Yes, sir.

7 Q We had talked about tax distributions before lunch.
8 And you had made several comments about that Dave was
9 getting paid the \$12,000 distributions. And so I thought
10 we'd pick up there.

11 A Okay.

12 Q Okay. If you will, look at -- this is Defendant's
13 Exhibit No. 98. And let's look at Exhibit No. 98. And
14 can you tell me what that document is?

15 A This is -- it looks like a report generated out of
16 our QuickBooks transactions by account. It's John's
17 equity balance, John's advances, other.

18 Q Okay. And so this Exhibit No. 98, essentially, shows
19 a history of your tax distributions or your member
20 distributions as part of CCC; correct?

21 A That's what it looks like, yes.

22 Q Okay. And the total amount of distributions you
23 received as of 12/15/2011 was \$382,584.05; is that
24 correct?

25 A That's what it says.

1 Q Okay. And that doesn't include any rent payments
2 that were made to M-Tech, does it?

3 A No rent.

4 Q Okay. And that doesn't include any interest payments
5 that were paid on any monies that you, through M-Tech,
6 were advancing through the line of credit; is that right?

7 A It does not appear to be, no.

8 Q Okay. And, just quickly, in numbers 97, we've got
9 Andrea's equity balance. She was distributed \$86,761.45.
10 Would you agree with me that that was the balance that Andrea
11 received during her --

12 A Which one are you on?

13 Q 97.

14 A That one says Dave's.

15 Q Okay. 90 -- I'm sorry. Let's go to 96.

16 A Okay.

17 MR. STEPHENSON: And, Andy, just for the record, you
18 said 97.

19 MR. ARNOLD: Well, I was referring to the exhibit
20 number.

21 BY MR ARNOLD:

22 Q But the amount is \$86,761.45; is that correct?

23 A Yes.

24 Q And then we've got Dave's. And I believe he is at
25 97. And his total distribution was \$382,354.05. Do you

1 see that?

2 A Yes.

3 Q Now, I think you referenced, at some point, you and
4 Andrea decided to forego distributions. Do you remember
5 when that was?

6 A There was a number of times we knew that we didn't
7 have the money to distribute to all the members. And, of
8 course, initially, when the company was getting started,
9 there was a period where we tried to get caught up. And
10 then we stopped sometime in 2011.

11 Q Okay. So -- but during the history of CCC, you would
12 all try to take distributions. Sometimes, there were not
13 enough to take distributions and somebody might get ahead,
14 and then you would catch up?

15 A It wasn't somebody. I mean, Dave always got ahead.
16 He always got his check.

17 Q So Dave always got his check?

18 A Yeah.

19 Q Because that was the deal, a monthly income; right?
20 That was the original deal?

21 A The original deal.

22 Q And so sometime in 2011, you and Andrea decided to
23 forego your distributions during that time, for a period
24 of time in 2011?

25 A Yes.

1 Q But you had another source of income, didn't you?

2 A I've always had another source.

3 Q Well, originally, you said that the original source
4 of your income was the 401K you cashed out?

5 A Correct.

6 Q Okay. But, eventually, Decotex started making money;
7 correct?

8 A Yes.

9 Q And that was your side business?

10 A There was never any side about it. It was always a
11 business I owned. I mean, call it whatever you want.

12 Q It was a business you had in addition to CCC; right?

13 A Decotex provided me with something to live on.

14 Q Okay. And so you could afford to forego your
15 distribution for periods of time because you had another
16 source of income; correct?

17 A Are you making a statement or asking me a question?
18 I did not get money from CCC. I got money from Decotex.

19 Q Okay.

20 A Yes.

21 Q Now, originally, wasn't there some discussion when
22 you were originally forming CCC about folding not only EFS
23 into CCC, those accounts that Dave brought and running
24 those through CCC, but, also, running EFS through CCC?
25 You had discussions about that with Dave?

1 A Say that again. You just said EFS twice.

2 Q I'm sorry. Originally, back in 2008, when you and
3 Dave were discussing running the EFS accounts through CCC,
4 you, also, had a discussion about running Decotex through
5 CCC?

6 A Dave and I talked about a lot of things. I mean, the
7 sheets we had were working documents. You don't see
8 Decotex on any of those working documents. I never agreed
9 to bring Decotex into CCC.

10 Q But you did discuss it?

11 A We had lots of discussions.

12 Q And did you discuss that?

13 A Rolling it in?

14 Q Yeah, moving accounts.

15 A No.

16 Q You never discussed that?

17 A Much past -- let's make a big plastic company, that's
18 what we talked about. Let's make a big plastic company.

19 Q Plastic or film?

20 A Plastic film.

21 Q Well, there's vinyl film, isn't there?

22 A There's all kinds of films.

23 Q And Decotex is in the vinyl film business?

24 A Decotex is in the royalty business.

25 Q You don't manufacture anything?

1 A No.

2 Q You don't have any embossers? What are the embossers
3 being set up in CCC at the moment?

4 A Insurance.

5 Q Insurance. What does that mean?

6 A I own three assets. I bought them out of an auction.
7 I'm storing them. In case I ever need to manufacture
8 vinyl, I've got a way to do it.

9 Q So you've got embossers that could manufacture vinyl
10 film?

11 A They're junkers that have to be rebuilt and restored.

12 Q Okay. Now, let's look at -- was there a time that
13 you decided that you wanted to start spying on Dave?

14 A I never wanted to spy on Dave.

15 Q You never wanted to spy on Dave. Let me restate
16 that. Was there a time when you decided that you wanted
17 to have access to his e-mails so you could read them and
18 determine what Dave was doing?

19 A So the company set up an archive system to capture
20 all of the incoming e-mails from customers that sent
21 things in. It went into an archive system. It collected
22 mine, Dave's, Bill Shaw. Eventually, it collected
23 everybody's.

24 The archive system was to cumbersome research. But
25 the purpose was that if we ever needed to go back and

1 reference what a quote was, what a need was, we had a way
2 to go back and get it. We had two separate offices
3 operating out of the Greenville facility. Of course, we
4 were in Anderson and did not have an easy way to go back
5 and reference those things.

6 Q Well, why would you want to hide it from Dave, that
7 you were monitoring his e-mails?

8 A I wouldn't say it was monitored. It's in our
9 handbook that it's company information.

10 Q So why would you try to take steps to hide that
11 effort from Dave?

12 A I don't know what you're talking about "take steps."
13 If he ever wanted to see the e-mails, he was welcome to
14 see them.

15 Q Okay. Let's look at Exhibit No. 25, Plaintiff's
16 Exhibit No. 25. I'll help. I know this is -- okay. This
17 is an e-mail. This is an e-mail, Plaintiff's
18 Exhibit 25 --

19 THE BAILIFF: I think you tripped that power cord.

20 MR. ARNOLD: I think you're right.

21 BY MR ARNOLD:

22 Q Okay. Let's look at 25. And this is an e-mail dated
23 March 10th, 2011. It's from -- who's it from?

24 A This is from Andrea to me.

25 Q Okay. And she's referring to this effort to capture

1 e-mails. She would rather let Kayla call Greenville. I
2 contacted Bill to get the name of the software. See the
3 e-mail chain below. The e-mail chain below refers -- you
4 can read it, the IT effort. The more we act like nothing
5 special is going on, the less likely they are to think
6 that something unusual is going on.

7 Do you see that?

8 A (There was no response.)

9 Q It's in the first paragraph, Exhibit No. 25.

10 A Okay. I see it.

11 Q So weren't steps being taken to hide this effort to
12 have Dave's e-mails intercepted and forwarded to you?

13 A I was not involved in this conversion with the
14 e-mails to the archive system. I mean, the -- I thought
15 we were doing what every company did when they were
16 gathering their information.

17 Q Do you think every company tries to keep it secret?

18 A I don't consider putting it in your handbook a
19 secret.

20 Q Well, first of all, did you -- had you distributed a
21 handbook to your employees in March of 2011?

22 A When we opened the company, we adopted the Vytech
23 handbook.

24 Q And did you distribute it?

25 A I don't think we had enough copies to distribute, but

1 that's what we used. That's what we went off of, and
2 employees were aware of it.

3 Q Well, Dave was your partner, wasn't he?

4 A Yes.

5 Q Do you think you'd have a -- don't you have a duty of
6 loyalty as a managing member of CCC to your other members?
7 Do you have a duty of loyalty to --

8 A Yes.

9 Q And do you think that duty of loyalty would have
10 included letting that member know that his e-mails were
11 going to be monitored?

12 A I figured he would have known from the handbook.

13 Q Do you think he would have known that you were going
14 to be reading his e-mails between he and his wife? Was
15 that in the handbook?

16 A I don't know that I read e-mails between he and his
17 wife.

18 Q Excuse me?

19 A I don't know that I read any e-mails between he and
20 his wife.

21 Q Okay. We'll get there. How about between him and
22 his accountant? Did you think he knew that you were going
23 to be reading e-mails between he and his accountant?

24 A Dave forwarded me e-mails between he and his
25 accountant.

1 Q But he didn't forward you all of his e-mails?

2 A I don't know.

3 Q How about between he and his lawyer?

4 A I don't think so.

5 Q You don't think you read any of those?

6 A Not until after.

7 Q Not until after. Okay.

8 A They were on the server. They sent him e-mails at
9 his CCC address. They were on our server.

10 Q Let's look at the next sentence. This is the one
11 that interests me. It says, The same stuff that protects
12 the business, also, helps protect the other goals.

13 So what are the other goals other than business?

14 A We strongly suspected that Dave was still running
15 sales through -- off the side -- off to the side, damaging
16 our company.

17 Q Well, that protects the business?

18 A Right. You'll have to ask Andrea what that is.

19 Q So you don't know?

20 A No.

21 Q Did you have other goals, you and Andrea?

22 A None that are jumping out of my head.

23 Q Didn't you have a goal of flipping Dave to an
24 employee?

25 A Never.

1 Q Never?

2 A It wasn't a goal.

3 Q It wasn't a goal?

4 A It was an option.

5 Q An exit strategy for Dave was never a goal?

6 A The exit strategy for Dave was to get him into a role
7 where he would be more successful selling. He was
8 constantly complaining about all the things that he had to
9 do.

10 So we were trying to get him in a position where he
11 could do nothing but sell, which is what he was good at.

12 Q Do you think Dave might would have liked to have
13 gotten your e-mails?

14 A He would have been welcome to them.

15 Q He would have been welcome to them. Well, if he had,
16 he would have seen this one right here. Let's look at
17 what he would have found on March 15th, 2011.

18 MR. STEPHENSON: Which exhibit is that?

19 MR. ARNOLD: This is Exhibit No. 30, Plaintiff's
20 Exhibit 30.

21 BY MR. ARNOLD:

22 Q Now, this is an e-mail from Andrea to you, March
23 15th. And she says, Here are those job descriptions as
24 well as a break out of how I estimate their time is spent
25 on a monthly basis.

1 Do you see that? She's sending you these job
2 descriptions and they're attached.

3 Now, let's look at number four. Well, let's see.
4 We've got several. Let's look at number one, accounting
5 department overview. Do you see that?

6 A The -- okay.

7 Q And somebody was going to be spending 15 percent of
8 their time on Decotex. Do you see that?

9 A Yes.

10 Q 24 hours a week was how she had it broken out that
11 the accounting department was going to spend their time?

12 A That's what's on here.

13 Q That's what's on there. Dave didn't see that e-mail,
14 though, did he?

15 A He would have been welcome to it.

16 Q Yeah. So you were going to use CCC employees to do
17 Decotex accounting work?

18 A So Joy, originally, did work for Decotex. Decotex
19 paid her to do Decotex work. She switched to an hourly --
20 she switched to an hourly function. We were trying to get
21 her some help in the areas where she was a little weak.
22 And -- but we still wanted to give her a 40-hour work
23 week.

24 So we carved out a certain amount of time she would
25 be able to dedicate to Decotex. And Decotex would pay her

1 for that time as would -- and the rest would be CCC.

2 Q Has Decotex been paying her?

3 A Had Decotex? Yes.

4 Q They were paying her at this time?

5 A On March 15th, I don't know. I don't know that. I
6 have a schedule of what I paid her somewhere.

7 Q Well, in fact, your affidavit -- and we can pull it
8 out. You denied that she was doing any work at Decotex at
9 this point in time at all?

10 A By 2011, that might be true.

11 Q Well, let's look on -- let's look at Exhibit No. 31.
12 And flip one, two, three pages to the fourth page. And
13 there's a line that begins, Account.

14 A I'm sorry. What page are you on?

15 Q Exhibit No. 31. And this is from Andrea to you. And
16 it says, Based on our current level, no growth, I think
17 it's a two-person department or two person, plus Joy. I
18 want to get Joy back on the M-Tech. Very little of that
19 needs to be monthly, and have the LOC accounted for
20 monthly. Decotex, I see this being about a day to day and
21 a half each week if she took the weekly Spartech reports
22 entered into the information in Excel.

23 Do you see that?

24 So Andrea is proposing to you that you need to use
25 Joy to do Decotex accounting.

1 A Yeah. This was a proposal of what to do with Joy's
2 time. We had hired -- or brought in somebody else to help
3 out. And we were trying to, you know, decide who was
4 going to do what in the office.

5 Q And so was Joy doing Decotex work and being paid by
6 CCC?

7 A This was a proposal for --

8 Q Well, let's look --

9 A I don't --

10 Q Why would she propose something that would be
11 dishonest?

12 A Joy Whitman was my father's personal secretary.
13 She's been with my family a long time.

14 Q Yep.

15 A Great lady. She just didn't have the skill set to do
16 what we do at CCC. And Andrea recognized that and very
17 politely was trying to come up with a way that I didn't
18 need to unemploy her, yet still meet the needs of CCC.

19 So Andrea was working to bring in more help. And, of
20 course, I was worried about Joy. I'll never let Joy go.
21 I mean, she'll just always be with us. And she was trying
22 to come up with some things, like this is something you
23 can do, this is something Joy can do, and Decotex was
24 going to pay her.

25 Now, how we acted on this, I don't remember. I mean,

1 we did bring Kimberly Cook to work.

2 Q Well, Kimberly was here. She was here before this.
3 Well, let's look at Exhibit No. 32. That might help jog
4 your memory a little bit.

5 Let's start with, When I -- this is, again, from
6 Andrea to you on March 16th. This is the next day. When
7 I spoke with Denise about a role in Decotex, I, obviously,
8 presented it as one where she would still have Joy helping
9 out so she could learn the industry and begin to focus on
10 existing and potential customers.

11 That doesn't sound like a proposal at all. This
12 sounds like Joy would still have -- be helping out with
13 Decotex. Isn't that what that says?

14 A (There was no response.)

15 Q And right below that -- do you see where I'm at,
16 John?

17 A Okay. So what's your question?

18 Q Well, this says that -- who's Denise? That's your
19 wife, isn't it?

20 A That's my wife, yes.

21 Q And she was doing Decotex work?

22 A No.

23 Q She wasn't doing Decotex work?

24 A I tried to get her to take on some of this stuff.

25 Q You tried to get her to take on a role at Decotex,

1 but she didn't want to. So this is where she's saying
2 about -- Andrea is talking about Denise taking on that
3 role. And I, obviously, presented it as one where she
4 would still have Joy helping out.

5 Is that what it says?

6 A Yes.

7 Q So was Joy still helping out with Decotex at this
8 time?

9 A Like I said, if she was, Decotex was paying her to do
10 it.

11 Q Well, we would know because -- if you had produced
12 the documents I subpoenaed from Decotex. I subpoenaed the
13 documents from Decotex. And do you remember you moved to
14 quash to prevent me from getting Decotex information? Do
15 you remember doing that?

16 A Decotex is not a part of this suit.

17 Q They've got employees in CCC's building doing work
18 for Decotex.

19 A That's just not true.

20 Q Well, you were ready to cut off a \$380,000 credit
21 line after you found out Dave had done \$800 in business on
22 the side?

23 A 380.

24 Q 380. Wow. So what were you paying Joy?

25 A I don't even remember.

1 Q She made more than \$800 doing Decotex accounting
2 work, didn't she?

3 A (There was no response.)

4 Q Look below it.

5 A You're asking me something I don't know the answer to
6 without having --

7 Q Who else other than the CEO --

8 THE COURT: Wait.

9 MR. ARNOLD: I'm sorry.

10 THE COURT: Don't cut him off.

11 BY MR ARNOLD:

12 Q Who else other than the CEO of CCC would know whether
13 or not CCC employees were doing work for Decotex?

14 A Who else besides me --

15 Q Besides you.

16 A -- would know --

17 Q Yeah.

18 A -- that I was paying people that worked at CCC to do
19 work for Decotex? Who else?

20 Q Shouldn't you know?

21 A Who else would know? I'm the sole owner of Decotex.

22 Q So you should know?

23 A I should know, yeah.

24 Q Next sentence, I agree that the accounting is like --
25 but since Spartech information comes in e-mail -- and

1 Spartech is a customer of Decotex, isn't it?

2 A Spartech is the manufacturer that generated the
3 royalty for Decotex.

4 Q Okay. And that information -- their information
5 comes in e-mail and needs to be converted from Spartech
6 into Decotex form. I thought it would be good for Joy to
7 continue to do this work without the paper trail at the
8 office once we took some of the CCC burden off of her.

9 Is that what that says?

10 A Yes.

11 Q So --

12 A So when she started doing work for Decotex, I set her
13 up an office at her house with a laptop that Decotex paid
14 for. And what this is describing is a way to free up her
15 time so she can go do that.

16 Q That's what this is. So the paper trail -- what was
17 the paper trail you were worried about leaving?

18 A It's very important not to have the Decotex stuff
19 mixed around with the CCC stuff. It was --

20 Q Somebody might get the idea that you were having CCC
21 employees doing Decotex work; right?

22 A That just wasn't the case.

23 Q Who is Sanina [phonetic]?

24 A Sanina is another old Vytech employee that came over
25 to work for us when Vytech closed -- well, not right

1 after, but eventually.

2 Q Does she -- Sanina is a CCC employee, isn't she?

3 A She is no longer, no.

4 Q Well, she was a CCC employee in 2011?

5 A Yes.

6 Q And do you recall a time when -- and I apologize.
7 I've highlighted the official exhibit here. It may help
8 you find it. Exhibit No. 170 --

9 UNIDENTIFIED WOMAN: They've got a copy.

10 BY MR ARNOLD:

11 Q So do you recall Andrea having Joy do a journal to
12 list every minute of her day? Do you remember her going
13 through that exercise?

14 A I remember hearing about it, that -- yeah. Andrea
15 had both ladies in the office -- we had a hard time
16 closing out the month every month. We were trying to get
17 more efficient in the accounting office. We had hired
18 help, but it still wasn't getting done really on time.

19 And so Andrea, from my understanding, had the ladies
20 go through an exercise of, you know, what is it that you
21 do in a week so we can identify where we're spending our
22 time and then, you know, become more efficient with it.

23 Q Well, the one thing that interested me, if you look
24 on the second page, 12/14 to 12/26. This is on Tuesday,
25 March 22nd. 12/14, Sanina came up needing two sheets of

1 Decotex labels found in an old backup file and printed.
2 She, also, needs 90 stuffed beige labels. But I said I
3 could leave those on her table downstairs when I got those
4 done.

5 Sanina is doing Decotex work there, isn't she?

6 A Sanina passed the FedEx box on her way home every
7 day. So, as a favor to me, she would pick samples up off
8 this table on her way out the door and deliver them to the
9 FedEx box. I didn't know she was going to Joy to get a
10 label. I probably wouldn't have done that.

11 Q Or you, certainly, wouldn't have had it put in a
12 document, would you?

13 A She spent 12 minutes of her time --

14 Q On that day; correct? 12 minutes on March --

15 A Yes.

16 Q And would it surprise you that folks who worked in
17 the Anderson facility observed Sanina doing Decotex work?

18 A They observed her driving my samples to the FedEx
19 box. Is that what you're asking?

20 Q I'm asking you, would it surprise you that --

21 A No. Everybody knew that she was the FedEx lady. She
22 took the CCC stuff there, too.

23 Q Let's talk about rent. Exhibit No. 33, more advice
24 from Andrea. And this is Plaintiff's Exhibit No. 33.

25 Now, if you'll look here, it says, You seem to have

1 forgotten that I forced you to raise the rent for CCC.

2 We've already seen the -- do you recall the earlier
3 e-mail of 2008 when we had the backdated rent that Andrea
4 had done? Do you remember that e-mail.

5 A Yes.

6 Q We've got the same thing going on here in 2011, don't
7 we?

8 A (There was no response.)

9 Q Well, let's read what Andrea told you, At the time, I
10 thought you were cutting CCC a deal that was unfair to
11 you. While I understood that CCC didn't have the cash to,
12 actually, pay the rent, we made a retroactive catchup on
13 the lease payments back to the inception so that our deal
14 was, actually, a deferred rent payment.

15 Dave never agreed to that then, did he?

16 A We didn't run all the accounting decisions through
17 Dave, if that's what you're asking me.

18 Q You're increasing your rent -- CCC's rent that's
19 payable to you. Do you think that Dave's approval would
20 be needed for any self-dealing transactions?

21 A When Andrea starts talking about the IRS and taxation
22 and rent, you know, a lot of this stuff goes right over my
23 head as to the reasoning behind doing the things that we
24 did.

25 Q So you just kind of let her do whatever she wants to.

1 If you don't understand it, you refer to Andrea?

2 A In taxation, sure.

3 Q Well, this isn't taxation. This is payment of rent.
4 This is money going out of CCC's account into M-Tech's
5 account, isn't it?

6 A It says the IRS will not have an issue with the air
7 conditioner and the new office space being paid for by
8 CCC. Because they're directly benefitting the business
9 operations we run inside the plant. That's part of a
10 purpose for all of this. There's --

11 Q Well, look on the first page. Again, go back to 33.
12 You're skipping to the second page. It says, Our deal was
13 that CCC pays all operating expenses, the taxes on the
14 property, and I believe we insure the property. That
15 means \$2,500 is pure profit for M-Tech, whose only
16 obligation is to maintain the assets of the ordinary wear.

17 When you get down to the IRS and talk about the air
18 conditioning, what are you talking -- what is she talking
19 about there?

20 A We made an investment to put a clean room in a
21 facility.

22 Q Yep. And an air conditioner?

23 A Part of it was air head lane, floor repair, roof
24 repairs. There was a lot that went into --

25 Q \$28,000, wasn't it?

1 A I don't know the number.

2 Q Something like that?

3 A It sounds about right.

4 Q And it was put on CCC's balance sheet, wasn't it?

5 A I don't know.

6 Q Well, I asked you about --

7 A To my understanding, it really should have never been
8 classified that way. It should have gone towards rent.

9 That was my understanding of that.

10 Q And that's what happened. The \$28,000 that CCC
11 purchased for air conditioning and a clean room
12 disappeared from the balance sheet and was reclassified as
13 rent?

14 A So I think that when the ladies in the office --

15 Q Could you answer my question, please? Is that a
16 "yes" or "no"? Isn't that what happened?

17 A Ask me the question again. I'm sorry.

18 Q That CCC paid \$28,000 to have a clean room with an
19 air conditioner, the Trane air conditioner. Those assets
20 were on CCC's balance sheets originally, but then they
21 were removed and reclassified as retroactive rent?

22 A What balance sheet? I mean, what balance sheet that
23 was presented anywhere that --

24 Q I'll tell you what, I will find it. Okay. Because
25 there are numbers of them. But let's go. We've talked

1 about this before. Your memory is not as good today.

2 Let's look at Page 108 of your deposition. Let's
3 start with Page 108, Line 5. I said, But the Trane air
4 conditioner is still there. It's attached to your
5 property; correct?

6 A Yes.

7 Q The company paid for it; correct? And I said, You
8 don't know.

9 And what did you say?

10 A CCC wrote a check for it.

11 Q Okay. And they paid for the new office space
12 addition?

13 A Yes.

14 Q And then the clean room improvements, \$12,000, or
15 whatever that cost; right?

16 A Yes. I mean, I don't know what the --

17 Q What was your answer?

18 A You're telling me something. I mean --

19 Q I said, Well, is that true?

20 A How it was booked -- it was part of the rent.

21 Q I'm asking you, was it done? Were those things --
22 And you said?

23 A Did we buy an air conditioner and -- yeah. We did
24 that.

25 Q Okay. So whether how it's booked is done, you've got

1 an air conditioner sitting out there that belongs to you
2 now because it's been taken off the books of CCC; isn't
3 that right?

4 And what was your answer?

5 A (There was no response.)

6 Q You said, I don't know what exactly you're asking me
7 specifically.

8 I said, Okay. \$28,000 or a Trane air conditioner
9 that was bought by CCC is attached to the property that
10 M-Tech owns?

11 And you answered, Yes.

12 I said, It's been taken off the books of CCC?

13 And you said, Right.

14 I said, By classifying it as rent, it has been
15 effectively transferred to M-Tech?

16 And you said, Yes.

17 And I asked you, Did Dave ever authorize that? Did
18 he ever agree to that?

19 You said, I never asked him.

20 Isn't that the way that reads?

21 A So my understanding --

22 Q Isn't that the way that reads?

23 A You read it, yeah.

24 Q I want to make sure I'm reading it accurately. So --

25 MR. STEPHENSON: He gets to explain his answer.

1 BY MR. ARNOLD:

2 Q Explain.

3 A So my understanding is that when those purchases were
4 made, the ladies in the office didn't really know how to
5 book them. And, you know, what Andrea explained to me is
6 if CCC were to move, those assets would not move with the
7 company.

8 So, therefore, they should be charged to rent. And
9 that's why they ended up there. Any space I've ever
10 rented out and somebody put things in and they remained,
11 they became part of the property.

12 Q But that increased the rent. You and Dave had agreed
13 to \$2,500 of rent, hadn't you? Wasn't that the agreed
14 upon rent, \$2,500?

15 A We never really discussed what the number should be.
16 We just paid what we could afford.

17 Q Just whatever you thought was best to pay for rent,
18 is that how you made it up, as you went along? You and
19 Dave had an agreement, \$2,500 for rent. Wasn't that the
20 agreement?

21 A We were paying M-Tech \$2,500 for rent, yes.

22 Q And then this retroactive accounting boondoggle
23 increased the rent retroactively to \$28,000 for that year,
24 didn't it?

25 A (There was no response.)

1 Q Didn't it?

2 A If you say so.

3 Q If I say so. And Dave didn't -- Dave was clueless,
4 was he not?

5 A Dave was in our books every day. Dave knew exactly
6 what happened. Dave --

7 Q It took a hundred thousand dollars for Del Bradshaw
8 to figure out what was going on. Do you think Dave could
9 figure out the --

10 A If you're insinuating that Del Bradshaw spent
11 \$100,000 to figure out that expense had moved -- I don't
12 think you're saying that, but...

13 Q Let's go to Exhibit No. 39.

14 A I would point out, Andy, that that did happen while
15 Dave was still at the company.

16 Q Yes, it did.

17 A And he had access to all the financial information.
18 He knew all about that. If he had any questions, he could
19 ask me at any time.

20 Q But since you were engaging in transactions which you
21 were standing to profit from, don't you think it's your
22 obligation as a fiduciary to let him know?

23 A I don't -- I mean, at the time, I wouldn't have
24 thought how having two air conditioners on the rent would
25 have profited me at all, but...

1 Q I'm going to have to get an answer to that question.
2 Don't you believe that if you are --

3 MR. STEPHENSON: Your Honor, he's asking for a legal
4 conclusion. That's what this is about.

5 MR. ARNOLD: He's a fiduciary.

6 THE COURT: You're asking him if he thinks he has a
7 fiduciary obligation?

8 MR. ARNOLD: As a managing member, if he's engaging
9 in a transaction which he stands to profit, does he, as a
10 fiduciary, have an obligation to inform his co-member?

11 THE WITNESS: I didn't think of that way.

12 THE COURT: You'll have to rephrase it.

13 MR. ARNOLD: He didn't think of it that way. I'll
14 move on, Your Honor.

15 BY MR. ARNOLD:

16 Q 39. Now, we're up to August 16th, 2011. I want to
17 point out this is another e-mail from Andrea to you.
18 And I'm looking where my finger is and it says, Before you
19 talk to Dave about Brian and BOPP, can we talk about how
20 we shore up the sales function thinking exit strategy from
21 Dave? I can see Brian and Tony, eventually, becoming the
22 replacement for Dave, one in PDT and the other in BOPP.

23 A Okay.

24 Q Do you see that?

25 A Yes.

1 Q Why would Andrea be suggesting that you and she come
2 up with a strategy to get rid of Dave?

3 A You're going to have to ask her. But we wanted to
4 help Dave get back into a solely sales function. I think
5 that's what he was most successful at. And these were
6 some of the ideas we had for bringing other people into
7 sales roles to assist. Dave was doing our purchasing. He
8 was managing the inventory. He was selling. He wore a
9 lot of hats. And our sales were starting to decline.

10 Q But there's other e-mails where you talk about
11 restructuring Dave. This is an exit strategy?

12 A You'll have to ask her about her use of that word.

13 Q Well, did you not ask her when you received this
14 e-mail?

15 A My interpreting would have been to get him to a
16 solely selling function.

17 Q Well -- and isn't that what ended up happening is you
18 didn't make a tax distribution to Dave; correct?

19 A Dave got a distribution every month.

20 Q Okay. And Dave didn't get a tax distribution;
21 correct?

22 A Dave got a distribution every month. There's plenty
23 of money in there for taxes.

24 Q Well, let me ask you this. How much was his tax
25 liability?

1 A I don't know.

2 Q Well, then how do you know there was plenty of money?

3 A Because he added a \$180,000 music room to his house.

4 Q Did you find out about that by spying on his e-mails?

5 A No. He told me.

6 Q Well, let's go ahead and move to Exhibit No. 41.

7 September 19th, 2011. And let's look at the second page,
8 the very bottom.

9 A Which one? 42?

10 Q 41. I'm sorry. 41. Do you see at the very bottom
11 who sent the e-mail at the very bottom? Who sent the
12 e-mail at the very bottom?

13 A This is an e-mail from the main to Andrea, which
14 would have been me.

15 Q The very bottom.

16 A Oh, that's from Julie to Dave.

17 Q So Julie, being Dave's wife. And so in addition to
18 reading e-mails from customers, you're reading e-mails
19 between Dave and his wife; correct?

20 A So if it came in through the main, we had access to
21 it. If it came in through the main.

22 Q And then you forwarded this to Andrea?

23 A I did not understand my partner's behavior.

24 Q Sneaky fellow, isn't he? So you forwarded this to
25 Andrea. Did you consider it might be private?

1 A He shouldn't have sent it to the main if it was
2 private.

3 Q He didn't send it to the main.

4 A She shouldn't have sent it to his company e-mail
5 address if it was private.

6 Q So you forwarded this to Andrea. And if you go to
7 the first page of 41, look what she says. She tells you,
8 This is probably your opportunity to make a restructuring
9 offer to Dave under which you restructure your
10 relationship with him so that he gives up his equity
11 ownership and converts to a structure where he is only
12 taxed on what he receives.

13 So you found out your partner was having marital
14 issues and you thought -- and Andrea thought this was a
15 good time to restructure Dave. Did you agree with her?

16 A I knew that Dave wanted a check every month at the
17 first of the month.

18 Q And do you know why you knew that?

19 A Every month of the year.

20 Q And do you know why you knew that?

21 A And I didn't know that I could keep doing it. And we
22 were declining rapidly going into the end of the year.
23 And, you know, we started talking about ways -- what we
24 could do to keep getting Dave his check. And
25 restructuring was one of the ways to do it. That was one

1 of the options.

2 Q But the reason you knew he wanted a check at the
3 beginning of every month is because that's what he had
4 asked you for back in 2008 when you made your original
5 deal; right?

6 A Four years prior, yes.

7 Q Four years prior. Well, you're the one that's
8 contending this is a term company. So the company is
9 supposed to last to what, 2057? How long did you think
10 Dave expected to be paid?

11 A I've never gone into -- I've owned a lot of start-up
12 companies. And I've never gone into them thinking that I
13 would be paid forever. I mean, I just --

14 Q Well, maybe you should have found another partner.
15 Maybe Dave wasn't a good match for you. Did you ever
16 consider that? He wanted to be paid. You didn't really
17 think it was the way it should be done.

18 A And he had plenty of opportunities to restructure
19 himself into a way to get paid every month.

20 Q But if you would have let him know up front in 2008
21 that his guaranteed preferential treatment --

22 A Who knows --

23 Q -- wasn't guaranteed, he could have told you in 2008
24 he didn't want to do business with you; right? Couldn't
25 he have told you that in 2008?

1 A He could have, but who knows that, Andy? Who knows
2 that when they start a company if they're going to be
3 successful or not?

4 Q You've got a deal and you're changing the deal on
5 Dave. You're -- because the result of this -- let's go to
6 that. The result of this was you started telling Dave
7 that he might not receive his monthly income. Wasn't that
8 what happened during this period of time?

9 A This is September?

10 Q This is September.

11 A So this was prior to a lot of those discussions.

12 Q Well, let's turn --

13 A We weren't meeting any goals. We weren't meeting any
14 sales goals. We had not sold down the inventory. I did
15 not have the money to keep piling into this company.

16 Q You had just closed the credit line. You had been
17 using the credit line to fund the business from day one.
18 And the reason you didn't have the money in 2011 was
19 because you decided no longer to use that credit line for
20 CCC; isn't that right? Isn't that the source of the
21 problem?

22 A I don't see that as being the source of the problem.
23 The source of the problem is I had a million dollars of
24 inventory sitting in the warehouse that he wouldn't sell.
25 There was the tax bill right there. All he had to do was

1 sell it.

2 Q Well, let's look at Exhibit No. 42. This is the very
3 next day. Confidential business structuring is the title.
4 And this is from Andrea to you, isn't it?

5 A Yes.

6 Q And she says -- look about -- So I go to Dave and I
7 say, This year has been a tough year on cash. And I
8 expect next year will be as well. Are you prepared for
9 another year like last year with high taxable income where
10 we have to borrow to cover our taxes? I have a proposal
11 for you to consider. Here it is in writing.

12 That's Andrea's suggestion for what you should go and
13 tell Dave now that you know he has marital issues. Did
14 you go to Dave and say that?

15 A It had nothing to do with marital issues. I knew
16 Dave needed a check every month. I was trying to figure
17 out a way to get it to him.

18 Q So did you go to Dave and tell him it's been a tough
19 year on cash and he shouldn't expect any for the next year
20 either?

21 A Basically, at the end of October, we put a proposal
22 in front of him. I did.

23 Q The proposal was for him to become an employee and
24 give up his equity?

25 A Participate in all the upside. He wanted a steady

1 salary, and participate in all the upside. And I did
2 everything I could to try to keep him in that capacity.

3 Q An at-will employment; right?

4 A As long as I've worked anywhere, it's always been
5 at-will.

6 Q And a non-compete; right?

7 A That's usually how it works.

8 Q Okay. So let's look at the second page of this.
9 Andrea's advice to you, what you should go tell Dave.
10 Right here it says, When you flip Dave to employee, he
11 needs to understand he will bring home what -- he will
12 need to understand what he will need to bring home, if he
13 does his part, and if Toni does her part, and if Buck does
14 his part.

15 A Which number are you on?

16 Q I am on number four. If you'll look at the screen,
17 you'll see where my finger is, when you flip Dave to
18 employee.

19 Now, look at number five. You said, He's going to
20 get all the upside. Down at the very bottom. If the
21 company were to ever sell, Dave would have an opportunity
22 to participate in the profits based solely on the
23 percentage of business that he was in charge of at the
24 time of the sale. You need to say that at an exit. If he
25 were still employed with the company, he would participate

1 in a bonus plan.

2 So that's his upside?

3 A If you'll read the top, if Dave would stay on the --
4 sell to salary, that would have a base plus bonus
5 structure. Dave would, also, participate in some of the
6 profit provided by the sales reps. He got a little bit of
7 everything in this deal.

8 Q He did. Look at six. If we ever found out that Dave
9 was cheating or selling any type of film, laminate, paper,
10 film, foil, then his agreement with CCC would cease
11 immediately. This would be covered in a non-compete. And
12 we need to find out from an attorney how to make it
13 certain that this agreement on his part would be linked to
14 number five making your commitment voidable if we find the
15 smallest amount of evidence.

16 That doesn't sound like such a good deal. You
17 lose --

18 A It doesn't sound like a good deal if you're going to
19 cheat your partners and run side deals on the side. It's
20 a great deal for somebody that wants to get a check every
21 month and participate in all the upside.

22 Q Sounds like you're describing your deal, Decotex,
23 rent increases, Joy, Sanina. Isn't that the deal you
24 have?

25 A You don't even understand my agreement with Decotex.

1 You keep calling it a manufacturer. It's a royalty
2 company.

3 Q 42. Let's just -- you wondered how he might react to
4 this. Let's see. I'm sorry. 43.

5 You and Andrea are talking about Dave's reaction.
6 And up where I've got my finger, you said, Interesting
7 request considering the way he has acted. Now, maybe the
8 panic is setting in.

9 Did you think the panic was setting into Dave now
10 that the tax distribution was hanging over his head, and
11 you had indicated to him that he might not be receiving
12 his monthly distributions any longer?

13 A I didn't know Dave's personal situation. But he
14 would not respond to anything.

15 Q Did you think panic was setting in?

16 A (There was no response.)

17 Q Let's look at Exhibit No. 47. Here is Andrea sending
18 you an e-mail. And she is advising you to get a note from
19 Dave before you make another advance on his distributions,
20 isn't she?

21 A Dave was trying to call them distributions, but they
22 were loans.

23 Q Well, they were advances.

24 A Right.

25 Q Isn't there a difference between an advance and a

1 loan?

2 A (There was no response.)

3 Q Well, I'll tell you what, let's just see what Andrea
4 has to say about it. Back on Exhibit No. 5. And you
5 don't need to look at it, but I'll read it to you if you
6 want to look.

7 In theory, an advance is an interest-free loan.
8 That's what Andrea said back in 2008. But the advances
9 you started making to him in 2011 came with an interest
10 payment, didn't they?

11 A That was to make it easy for him.

12 Q You wanted to make it easy for him so you charged him
13 10 percent interest?

14 A That the company -- I don't remember how the note
15 worked. But it, basically, got -- you can ask Andrea
16 about how that worked.

17 Q Do you remember when Andrea stopped reimbursing Dave
18 for his expenses in 2011?

19 A I don't know that we quit paying his expenses. He
20 was putting personal things through his expense report
21 that were getting charged to his capital account, I guess,
22 or however you say that.

23 Q Well, surely you remember when you two removed him
24 from the signatory from the checking account. Do you
25 remember doing that?

1 A I don't.

2 Q Do you remember when Andrea revoked his authority to
3 make wire transfers in November of 2011?

4 A I don't remember that. We, actually, had somebody
5 steal our account numbers at some point in our existence.
6 And we did -- we changed everything after that. And I
7 just don't know that -- Dave wasn't signing any checks.
8 So we didn't make him a signature.

9 Q Were you aware -- well, you were copied on it. This
10 is Exhibit No. 70. This is in notebook number two. When
11 Andrea notifies the bank that Dave needs to be removed
12 from the wire authorizations -- and he's not copied on any
13 of these e-mails, is he?

14 A (There was no response.)

15 Q Do you remember that, John?

16 A I think -- I mean, Andrea is saying here, I want to
17 stay in sync with whatever you and Dave set up. Part of
18 the purpose for the wire authorization is we were putting
19 in -- well, I don't remember the approval processes for
20 purchasing offshore. You'll have to ask her.

21 MR. ARNOLD: Can we take a break, Your Honor? I'm
22 45 minutes away from being done, I think, with this
23 witness.

24 THE COURT: Do you need a break?

25 MR. ARNOLD: Well, we can keep going.

1 THE COURT: Okay.

2 MR. ARNOLD: Let's keep going.

3 BY MR. ARNOLD:

4 Q Wasn't the reason that Dave was told that he wasn't
5 going to receive -- strike that.

6 Dave was told that come January of 2012, he was not
7 going to receive an advance or distribution in for that
8 month if he didn't agree to become an employee; isn't that
9 true?

10 A We had a number of options that we put in front of
11 Dave that if he wanted to continue to get a check every
12 month that we could do, you know. But to go with a cash
13 plan into the new year, we were anticipating that there
14 would be no distributions the first two months.

15 So we tried to give him as much of a heads up on
16 that. Dave told me that his brother-in-law would help him
17 out. And, you know, that was, certainly, presented to him
18 that that could happen. We were going to start acting
19 more like a business and put our suppliers first, of
20 course, and our employees over the owners. And our loans
21 to Dave were putting us in a bad position. We were paying
22 our suppliers late and...

23 Q And you had a credit line with a balance of zero?

24 A That's not true.

25 Q It's not true? Are you sure?

1 A I could have tried to go to Bank of America and get
2 one at the end of the year, although I had my doubts.

3 Q The M-Tech, the Decotex lines that you had used,
4 there was no CCC balance on those accounts at the end of
5 2011?

6 A There was no CCC balance on those lines at the end of
7 2011. The company was going to have to make it on its
8 own.

9 Q And, again, that's not the way it had been in the
10 past. But you decided that was the way it was going to be
11 in the future; right?

12 A I had been generous enough. The company had to make
13 it on its own or...

14 Q Well, generous enough, you had made \$386,000 in
15 distributions. You had been paid rent, retroactive rent,
16 deferred rent, interest. Who made more money from this
17 deal, you or Dave?

18 A Dave is currently 120 something thousand ahead of me.

19 Q In distributions. You're not counting your rent, are
20 you?

21 A I never looked at the number. It was one of the
22 factors against the 123. It made no sense to me how a
23 business could go four years and need a constant supply of
24 cash.

25 Q Why didn't you just say, Dave, you know what, this

1 isn't working out. We need to resolve this business. I
2 can't be true to our agreement. Did you ever think about
3 saying that? Let's just go our separate ways.

4 A We could have had that discussion.

5 Q But you didn't, did you?

6 A He could have asked me the same thing.

7 Q Let's look -- so you made an offer to Dave.

8 MR. ARNOLD: We gave these to you yesterday, Tom.

9 Your Honor.

10 MR. STEPHENSON: What number is that, Andy?

11 MR. ARNOLD: This is 163.

12 MR. STEPHENSON: 163.

13 BY MR. ARNOLD:

14 Q Now, you made an offer to Dave -- you made a lot of
15 offers to Dave, didn't you?

16 A I thought we did.

17 Q Actually, Andrea wrote a bunch of offers for you to
18 make to Dave; isn't that the truth?

19 A Andrea helped me make the offers to Dave, yes. She
20 helped me figure out how it would work.

21 Q So we've got this offer. And you've offered Dave
22 \$200,000 and forgiveness of the loan, as you call it, the
23 advances. And attached to this is a spreadsheet -- or is
24 a balance sheet that that offer was based on.

25 A Do you have a question?

1 Q Is that right?

2 A Yes.

3 Q Okay. And the \$28,000 of equipment that had been on
4 the CCC books that had been taken off and reclassified as
5 rent has been removed from this balance sheet, hasn't it?

6 A I have nothing to compare it to.

7 Q Well, it's not on there, is it?

8 A You keep saying it was on there.

9 Q It's not on there, is it?

10 A I imagine the equipment is just one big lump number.

11 Q Well, we've already read your deposition testimony
12 where you said it was on the books and then it wasn't.

13 It's not on this balance sheet, though, is it?

14 A I don't know. It could be in the fixed assets.

15 Q Let's look at preference on units. Do you see that,
16 that hundred thousand dollars?

17 A Where are you?

18 Q I'm on the balance sheet.

19 A Correct.

20 Q Do you know what preference on units was?

21 A So you're skipping ahead quite a bit. We put a
22 number of opportunities for Dave in front of him, none of
23 which he would even give us so much of an inclination of
24 which one he wanted until he had suggested -- you know
25 what, he didn't even ask me if he was converted what his

1 salary would be. So I thought you know what, I'm just
2 going to put his mind at ease and put in writing an offer
3 for employment at the current \$12,000 a month that he was
4 already at and a buy out number.

5 Now, there's a lot of work that goes into trying to
6 figure out what the fair number would be. I know Andrea
7 and a number of employees worked through the holiday to
8 try to come up with something that Dave would be
9 comfortable with. And, you know, if there is going to be
10 a sale, Andrea needed to be included in it.

11 Q Well, Andrea would be included in it because she was
12 a 10 percent member; right?

13 So let's go back to my question. Preference on
14 units, what is that?

15 A I think that's what we used to identify her payout
16 for our -- for the buyout.

17 Q But this is an offer to buy out Dave?

18 A Yes. But when I presented it to Dave, he said to me,
19 you know, you wouldn't even accept that. And I said that
20 I would.

21 So I went to Andrea and asked her if she was
22 interested in meeting this number. And I think in her
23 e-mail you see it says, Heck, yes, we'll sell at that.
24 And that's when Dave went out to try to -- he said that --
25 he had told me his brother-in-law was interested in

1 investing. And I knew that Steve had some income. He had
2 come to talk to us about a loan before. So, you know, I
3 thought that we could be bought out with this offer.

4 Q This was a hundred thousand dollar obligation that
5 Andrea had booked on this balance sheet to herself. Isn't
6 that what that preference on units is?

7 A I'll let you ask her. But that's my understanding of
8 what it is.

9 Q Okay. So she was going to get a hundred thousand
10 dollars just because it was put on this balance sheet.
11 And you -- had you promised her a hundred thousand
12 dollars?

13 A I thought that was a really good deal for four years
14 of work that she had put into the company.

15 Q She had already been paid \$86,000.

16 A She had been distributed 86, yes.

17 Q Yes. So you thought she deserved another hundred
18 thousand dollars?

19 A She put a lot of work into the company.

20 Q Did you talk to Dave about giving Andrea a hundred
21 thousand dollars extra?

22 A You know, I want to say -- of course, I did. And we
23 were trying to structure a number that could make sense
24 for everybody.

25 Q Well, that number doesn't make a whole lot of sense

1 to Dave. Because that would reduce his share by \$45,000,
2 wouldn't it?

3 A (There was no response.)

4 Q That doesn't sound like such a good deal for Dave to
5 me.

6 A He had the option to stay. I mean, he had the --

7 Q He had the option to stay if he didn't want to get
8 paid.

9 A He had the option to stay if he wanted to get paid.

10 Q But he had to sell at your price, which included this
11 hundred thousand dollar bogus --

12 A He could have --

13 Q -- liability --

14 A -- waited --

15 THE COURT: Wait, wait. Don't talk over each other.

16 THE WITNESS: I'm sorry.

17 BY MR. ARNOLD:

18 Q Isn't that right? His number that you offered to buy
19 him out for included that hundred thousand dollar bogus
20 liability?

21 A I didn't consider it to be bogus, but...

22 Q And then you've got a reserve for tax distributions,
23 \$147,000. What did that do to the balance sheet?

24 A I'm -- where are you?

25 Q I'm at the very top, cash. You had \$122,000 of cash.

1 And then you reserve of \$147,000 for tax distributions?

2 A Yeah. When it comes to talking balance sheets, I
3 think you're going to need to direct your questions to
4 Andrea.

5 Q You're the CEO of this business. And you were making
6 offers to Dave to purchase his interest; right?

7 A (There was no response.)

8 Q Right? Right?

9 A Yeah.

10 Q And you didn't understand the balance sheet that was
11 the basis for the offer you were making?

12 A I've never been real good with accounting.

13 Q Well, so you said -- you know what, you agreed to
14 accept the same offer?

15 A Yes.

16 Q Now, Dave's offer was to be paid out over time,
17 wasn't it?

18 A That was included in my employment agreement to him,
19 yes.

20 Q 18 months?

21 A I don't remember the time frame, but that sounds
22 about right..

23 Q Okay. And then he was going to get an employment
24 contract, an at-will employment contract; right?

25 A Yes. There were a number of things in the contract.

1 Q Well, let's look at Exhibit No. 82. Because this is
2 the terms that Andrea informed Dave that you and she would
3 accept. This is the, heck, yes e-mail you mentioned a
4 minute ago. Do you remember that?

5 A Yes.

6 Q And when she -- Dave mentioned he might be interested
7 in buying. Her answer was, Heck, yes. But then she's got
8 terms, Cash at closing. Do you see that?

9 A Yes.

10 Q That's different than the offer you made Dave.

11 A How so?

12 Q Well, you were going to pay Dave out over 18 months.

13 A I had to come up with the cash to do that.

14 Q So did Dave.

15 A He was going to talk to a group of investors.

16 Q But it's not the same deal?

17 A Well, then he could have negotiated it.

18 Q No escrows or claw backs apply to myself or to John.
19 Look at number three. John must receive a fair price for
20 the real estate.

21 So if Dave wanted CCC, he had to buy the real estate?

22 A That's not true.

23 Q That's what this says. Is this document not true?

24 A So, again, Dave says to me, you know, you wouldn't
25 accept that deal, so.

1 And I say that I would.

2 And he said, Well, I'm talking to some folks. And my
3 brother-in-law and I think I can get the money to do it.

4 So I said, you know, If you're serious, I need to
5 talk to Andrea, but I'm fine with that.

6 But it was December 29th.

7 Q Yes.

8 A We had just worked through Christmas. And I don't
9 know, buyers coming into this type of situation are,
10 typically, ready to buy. There's not a lot of time here
11 for due diligence.

12 Q Your real estate. They had to buy the M-Tech
13 building. That was part of the offer?

14 A They could have just as easily come to me and said,
15 you know what, we'll take the company without the
16 building. And I would have been fine with that. I tried
17 to give the building away, as a matter of fact.

18 Q It really isn't worth that much, is it?

19 A It's really not.

20 Q You charged \$6,000 rent for it, though?

21 A And I got an appraisal to justify that.

22 Q But you never got an agreement from Dave to do that,
23 did you?

24 A (There was no response.)

25 Q Did you, John?

1 A I had an agreement with Dave to get rent.

2 Q Not \$6,000.

3 A I had agreement to get fair rent.

4 Q Okay. Let's look at 84 real quick. Again, Andrea is
5 counseling you about your real estate. Yes, call a real
6 estate broker and find out what your building is worth.

7 That's a triple exclamation point. I guess she was
8 really adamant about that. Make certain that you get a
9 damn good price for the building. No depressed real
10 estate value.

11 A I gave Dave the depressed real estate value number.

12 Q So you rejected her advice that one time?

13 A Yes.

14 Q Well, let's just move on to the lockout.

15 MR. ARNOLD: Let's note that there's no objection.

16 BY MR. ARNOLD:

17 Q Did Dave quit, or did Dave resign?

18 A My understanding is that he resigned.

19 Q Your understanding. Well, let's look at what your
20 understanding was in Exhibit No. 92.

21 Now, look at the very -- go to the last page of that
22 exhibit. I tell you -- the next to the last page at the
23 bottom. It says, As far as my to-do list for tomorrow --
24 so you're writing to Andrea, to the 10 percent member, and
25 you're confirming your to-do list with her; is that

1 correct?

2 A You're skipping ahead a bit, but.

3 Q Well, I apologize, John. But I've had you up on the
4 stand for a long time and I think I need to wrap it up.

5 A Right. Well, it doesn't tell the story. It just
6 skips straight to this e-mail. But, you know, Dave and I
7 met on the morning of the 16th. I drive to the Greenville
8 office. We have a typical sales meeting, what do we got
9 to do to get this thing going in 2012. I thought we had a
10 pretty good meeting.

11 I get in my car. I get to the plant. And Andrea
12 calls me and says that Zamer is trying to reach me. But
13 that Dave is leaving, and we need to disconnect their
14 service to the server. I had already -- I knew prior to
15 the 17th from the e-mail that came in on the main that
16 Dave was talking to a part -- a competitor.

17 Q Mark McGarel?

18 A Yeah. And, of course, the conversation was not about
19 a buyout. I think Andrea followed that discovery with an
20 e-mail saying, You know what, it was not our understanding
21 that you were going to go out and shop the company.

22 So, you know, we were on notice that, you know, the
23 buyout offers floating around both ways had failed. We
24 were aware of the conversations of what were happening,
25 not to the extent that we learned later, with McGarel.

1 And then I get the call to get him out of the
2 Greenville office. So we found a labor attorney that
3 advised us on how to proceed and still try to protect the
4 company trade secrets.

5 So on the next -- you know, we were afraid he was
6 going to take them or I would have changed the locks the
7 night before. But we had the fear -- he was saying he was
8 going to take them.

9 So I called -- at the lawyer's advice, I contacted
10 the police department and described to them the situation.
11 I had never released anybody from service and not had
12 someone with me. They had explained that the police
13 officer could stay in the parking lot, you know, unless I,
14 in fact, needed them.

15 So, you know, this is the night before. Yeah, I'm
16 upset, you know, that it's come to this. And so Andrea,
17 like a big sister to me, is counseling me here a bit.

18 But I walked into Dave's office the next day -- I met
19 the police officer outside. He stayed in the parking lot.
20 I walk into Dave's office and I had a piece of paper. And
21 I said, I accept your resignation. And he looked at me
22 and he said, I'm not ready to go. I wasn't ready to go.

23 And, you know, rather than sit there, he -- I think
24 he tried to get Clayton Jennings on the phone. And rather
25 than debate with him, I did walk out to get the police

1 officer, who came inside and then watched Dave walk to his
2 car with three arm loads of CCC property. He took our
3 computers. He took a number of files.

4 And I had, also, arranged for a locksmith to be on
5 the premises around the time that I was going to accept
6 his resignation. And when the police officer, clearly,
7 would not stop Dave from stealing our property, as soon as
8 the lock was changed, I locked myself inside.

9 Q You had made an offer that expired on January the 7th
10 to Dave; correct?

11 A I don't remember the date that it expired.

12 Q So --

13 A Sorry.

14 Q That's all right. I just don't want -- so we've
15 skipped ahead. So we're going to skip back just a second.

16 So Dave starts looking for either someone to buy the
17 business, or for another job; right?

18 A (There was no response.)

19 Q He was talking to Filmtech about a job?

20 A Yes.

21 Q And he --

22 A And taking all of the CCC customers and business with
23 him.

24 Q Did he have a non-compete?

25 A I didn't think you had to have a non-compete with

1 your partner.

2 Q John Zamer didn't tell you that?

3 A John Zamer is not a labor attorney.

4 Q Well, did your labor attorney not tell you that?

5 That's it's a free country, unless you've got a

6 non-compete, you can go out and compete?

7 A I think --

8 MR. STEPHENSON: I object to what the lawyer told
9 him.

10 MR. ARNOLD: He's been testifying about what his
11 lawyer told him for the last 10 minutes.

12 THE COURT: You can ask him what his knowledge is.

13 BY MR. ARNOLD:

14 Q So Dave has got this offer hovering out there that's
15 going to expire. So let's go back to 88. This is my
16 favorite, really.

17 The subject is, Dave offer expires, question mark.
18 Patience, grasshopper, patience.

19 Do you remember that e-mail?

20 A I do. It made me sick that my partner would put his
21 family at risk.

22 Q And she said, No, you don't need to be the one that
23 reminds him of anything. His lawyer is all over this. I
24 know you want this done, but it's like a cake in the oven.
25 You just have to wait until the buzzer goes off. Once

1 Friday comes and goes, we are better off than we are
2 today.

3 Why were you better off on Friday when the buzzer
4 goes off on your cake?

5 A I was half scared to death he would accept that
6 offer. I was going to have a really hard time scrounging
7 up the funds to pay him out and pay him that salary.

8 Q She said, You teach a child lessons by making them
9 suffer the consequences of their actions.

10 Is that what you and Andrea were doing, making Dave
11 suffer the consequences of his actions?

12 A Dave was inaction. It was all inaction. He wouldn't
13 communicate with us at all.

14 Q Well, you just got through saying a little while ago
15 that he was doing so much stuff that you wanted an exit
16 strategy for him to relieve him of all these hats he was
17 wearing. Maybe he didn't have time to communicate. What
18 is it, was he too busy, or was he inaction?

19 A I don't know where you're going with your question.

20 Q And so we're back to 92. And at the very bottom --
21 and you indicated that you were accepting Dave's
22 resignation. But before you did that, you and Andrea had
23 this exchange of e-mails, didn't you, on January 17th?

24 A Yes.

25 Q And it says, As far as my to-do list tomorrow, call

1 the landlord at Greengate to discuss changing the locks
2 and what will be involved. Potts is setting up a time.
3 Steve Potts is number two. That's your lawyer. Possible
4 legal ramifications for firing Dave. What should I use in
5 the termination, question mark.

6 Next page, What steps would I have to go through to
7 get the law on-site for termination?

8 So those were your questions to Andrea; correct?

9 A I was trying to protect our company. I was afraid
10 the guy was going to walk out with everything.

11 Q It was Dave's company, too, wasn't it?

12 A CCC was our company.

13 Q And so she -- so Andrea gives you a little pep talk.
14 It says, First, remember, you have already fired other
15 people. And South Carolina is fairly lax in employment
16 laws. So you really can't botch this as long as you keep
17 a professional attitude and you don't say anything that's
18 not necessary.

19 Why did you feel the need to claim that Dave had
20 resigned?

21 A I worked as a plant manager and did terminate a lot
22 of people. But this was the first time I ever had
23 somebody's attorney call my company attorney and tell them
24 they're leaving. That's a resignation to me.

25 Q Well, why in your e-mails do you and Andrea call it

1 firing and termination, and worry about lax employment
2 laws? What's the whole relevance of that in a
3 resignation?

4 A Well, the reason we needed a labor attorney is, you
5 know, in one capacity, Dave is an employee and in the
6 other capacity, he's an owner. And I did not understand
7 how to make a go of it. I do appreciate there are legal
8 ramifications for everything you do when it comes to
9 people's employment. And we wanted to make sure we
10 handled it properly.

11 Q Weren't you just going to say whatever you needed to
12 say, whatever fit the moment? Wasn't that really what you
13 were doing? You'd say he resigned if that fit, and you'd
14 say he was terminated if that helped you. You were just
15 making it up, weren't you?

16 A No. I did all this at the advice of legal counsel.

17 Q You did it all at the advice of Andrea
18 Comeau-Shirley?

19 A That's not true. We had William Floyd from Nexsen
20 Pruet.

21 Q Let's look at 97. Once again, Andrea to you, January
22 21. Do you see that? Did you receive this e-mail? She
23 says, Well, here is my advice. When you talk to Bruce --
24 and that was referring Hotmer, Bruce Hotmer?

25 A So this is an e-mail from Andrea to me about advice

1 in talking to Bruce.

2 Q Bruce Hotmer?

3 A Yes.

4 Q And he's a sales rep?

5 A Yes.

6 Q And she says, Well, here is my advice. When you talk
7 to Bruce, ignore what I said about Dave resigned. Tell
8 him it is regrettable, but we believed that Dave was
9 already competing with us and asking for broker fees while
10 he was working with us. And we informed him -- when he
11 informed us that he was going to leave the company, we had
12 no choice but to protect the company and its 20 employees.

13 A That's advice. I was trying to protect the company
14 and my employees.

15 Q By changing your story. What you were trying to do
16 was get Bruce to tell you whether or not Dave was doing
17 something on the side; right?

18 A My understanding is that they were. I didn't know
19 what Bruce and Dave were up to.

20 Q You mean reading all those e-mails didn't tell you
21 what they were up to?

22 A I had my suspicions.

23 Q Suspicions aren't evidence, are they, John?

24 So let's look at 98. So, now, he's gone. Another
25 e-mail from Andrea, M-Tech rent, line of credit transfer.

1 So the line of credit is back in. So what does she say?
2 This is to you and Denise. She says, Guys, I want to make
3 certain you both know how I see the money moving about
4 here.

5 So she's got some money she's going to move around.
6 And she wants to let you know what she's going to do with
7 CCC's money; right?

8 A (There was no response.)

9 Q Is that what we've got here?

10 A (There was no response.)

11 Q So, up to this point, CCC has been paying \$2,500 rent
12 per your and Dave's agreement; right?

13 A Yes.

14 Q But, now, every month in 2012, CCC will be paying
15 rent to M-Tech equal to \$6,000 per month. From this,
16 M-Tech will be paying Cliff. That's your dad; right?

17 A Yeah. I owed my dad some money.

18 Q So M-Tech will be paying to Cliff \$2,500. And this
19 amount is scheduled to stop either this spring or next.
20 So she tells you how it's going to happen each month. The
21 bank will draft interest only payments on the M-Tech bank
22 account. Do you see that?

23 A Okay.

24 Q And then CCC will periodically take advances on the
25 M-Tech line of credit and may, also, make repayments on

1 the line of credit. So, now, the M-Tech line of credit is
2 going to start funding CCC again, isn't it?

3 A This is -- again, this is a proposal.

4 Q A proposal. You adopted it, didn't you?

5 A Not all of it.

6 Q Did you pay yourself \$6,000 rent?

7 A For a little while.

8 Q Did you ask Dave? Did you get his permission?

9 A No.

10 Q Now, John, CCC will make an interest payment to
11 M-Tech at a rate of 1.5 percent per month. This is an
12 18 percent annual interest rate. So in addition to
13 getting \$6,000 of rent, you're going to start getting
14 18 percent interest; is that true?

15 A I don't remember where it ended up with the interest,
16 to be honest with you. I was thinking it was more like
17 10.

18 Q And look at the next sentence. And if we're still
19 advancing funds on the loan next year, this rate increases
20 to 24 percent. CCC is going to be paying you 24 percent
21 interest. That had never taken place since the beginning
22 of CCC, had it?

23 A I don't remember the rate that CCC paid.

24 Q You wouldn't remember a 24 percent return?

25 A I don't know what the interest rate was on the loans

1 that we did.

2 Q Have you got any other investments returning 24
3 percent?

4 A (There was no response.)

5 Q And I'll leave -- you can read the rest of it. Go
6 back to 100. She gets a little more detailed about how
7 she's going to do this.

8 It says, Then going forward, you should pretend that
9 the line of credit is zero and the books of M-Tech, Inc.
10 should show a contribution by John in January that paid
11 the loan to zero. In Decotex books, it will show a
12 distribution to John for the money that he moved from the
13 Decotex line of credit to the M-Tech line of credit.

14 Are you familiar with the term self-dealing?

15 A Why don't you tell me what it means.

16 Q It means what you see on documents 98 and 100.
17 That's what it means. It means lining your own pocket.

18 A So putting money into a company to keep it operating
19 is self-dealing? That's what you're saying?

20 Q At 24 percent interest, yes. \$6,000 a month rent
21 when your partner hasn't agreed to it.

22 So Dave is out. Let's look at Exhibit No. 105. Dave
23 makes you an offer. He had been out for a while. Y'all
24 exchanged offers.

25 MR. ARNOLD: And I'm not going to read the whole

1 thing, Your Honor. But I would recommend that this be a
2 document that should be considered.

3 BY MR. ARNOLD:

4 Q He ends it with, I don't have any ill will towards
5 you, John. I wish you success in whatever you do going
6 forward. I, obviously, have to make a living. And since
7 I have 20 years in the film business, I intend to stay in
8 it. I hope we can agree on a settlement that is fair and
9 puts this chapter of our lives behind us. I look forward
10 to your reply.

11 Did you reply to this?

12 A I don't remember.

13 Q He was agreeing --

14 A I think he filed a lawsuit a month later.

15 Q He agreed to a non-compete. He would accept \$60,000
16 for a non-compete, forgiveness of the loan, title to the
17 Lexus, and \$60,000 in cash, \$20,000 paid in six months,
18 and \$5,000 paid monthly thereafter. Didn't you think that
19 was an imminently fair offer from Dave?

20 A I, also, knew that he took all of my company trade
21 secrets. And by giving him a hundred thousand dollars, I
22 was, basically, setting him up in business to compete with
23 us.

24 Q What trade secrets?

25 A We'll go over them.

1 Q We're going over them right now.

2 A He walked out with three computers.

3 Q And what did it have on --

4 A All the files.

5 Q And what did it have on them?

6 A All of our customer information, all of our vendor
7 information, all of their e-mails, all of their toll
8 numbers, all of their fax numbers, all of the films that
9 we sold, who we sold them to, how we connect a customer
10 to -- the vendor to the customer, the tools that we used to
11 make efficient sales. It had our inventory tracking sheet.
12 It had our vendor -- we had a vendor tool that we match up.

13 (WHEREUPON, Plaintiff's Exhibit No. 175 was marked for
14 identification only.)

15 BY MR. ARNOLD:

16 Q Did you have a non-disclosure agreement with Dave?

17 A Non-disclosure?

18 Q A non-disclosure agreement, a confidentiality
19 agreement.

20 A If it wasn't in the handbook, I don't know where.

21 Q Did you have a confidentiality or non-disclosure
22 agreement with Bill Shaw? Bill Shaw was an employee of
23 yours; right?

24 A Bill Shaw was an employee of ours, yes.

25 Q Did you have a confidentiality or non-disclosure

1 agreement with him?

2 A Not before, no. I don't know. Not while Dave was
3 there, no.

4 Q No, you didn't, did you? And you fired Bill Shaw in
5 2012; right?

6 A He was like a layoff.

7 Q Okay. And did you ask him to return any documents
8 that he might have at his house? Because he worked from
9 home, didn't he?

10 A He did.

11 Q Two days a week. And he worked from home and this
12 box of documents, which has been marked as Plaintiff's
13 Exhibit No. 175, were things that were left in his
14 possession. You never asked for these things to be
15 returned?

16 A I asked for everything. I went to great lengths to
17 get everything out of his office. He lied and he brought
18 them to you.

19 Q He lied and brought it to me. Well, I'll let your
20 attorneys know that I had this box of documents in my
21 office and it sat there for two years.

22 A Because you said you wouldn't look into it.

23 Q I didn't say anything. Supply One Rockwell, was that
24 a customer of yours?

25 A Yes.

1 Q They were buying 92-gauge polyester, one-side
2 silicone treated, \$8,400. Do you know how many customers,
3 and what they were buying, and their addresses, and their
4 contacts? Do you know what's in this box?

5 A A theft.

6 Q Really?

7 A Yeah.

8 Q Well, what did you do about it?

9 A I didn't even know he had it. He came to the plant.
10 He delivered his laptop. The company paid him extra money
11 so he could work at home with his laptop and connect to
12 our server. All the work of CCC was to be done on that
13 server.

14 And so to now come forward and say, oh, there was a
15 box left behind. We intentionally brought him in to let
16 him go. We told him to bring his laptop and everything
17 with him. And I gave him an exit interview the whole day.
18 And I told him why he was being let go. I felt bad about
19 the whole thing. But I needed to make sure that I had all
20 of his company property then and there. And he told me,
21 You got it. It's on the laptop.

22 Then I walked him to the door. And I said, you know,
23 There's a subpoena out there that Andy Arnold has sent
24 you. And I said, I don't know if it's going to be quashed
25 or not. I'll let you know. Somebody will be in touch

1 with you.

2 And he says, I know where his office is. That's what
3 he told me.

4 Then Lee Plumblee wrote Bill or called him -- I don't
5 know how that worked -- and told him that's -- if you have
6 company property, it is our property. So I was as shocked
7 as anybody in Bill's deposition when he said it showed up
8 on your premises. Because Lee told me you told him if it
9 showed up on your premises, it was secure.

10 MR. ARNOLD: Well, I object to the degree he's
11 testifying to hearsay and what I said to Lee.

12 BY MR. ARNOLD:

13 Q But the bottom line is you left --

14 MR. STEPHENSON: Your Honor, he opened the door.

15 MR. GOLDSMITH: You don't deny saying that to Lee, do
16 you?

17 MR. ARNOLD: Yes, I do.

18 MR. GOLDSMITH: So we'll bring Lee in.

19 MR. ARNOLD: If you have to.

20 MR. GOLDSMITH: Very good.

21 BY MR. ARNOLD:

22 Q You filed a motion for injunction or protective order
23 on this information?

24 A There have been plenty of protective orders filed in
25 this case.

1 Q There's been one and it didn't cover that
2 information, did it? But you didn't have a non-disclosure
3 with Bill Shaw, did you?

4 A Bill Shaw had a duty. He knew what he had in his
5 possession. It was his job to know what was confidential
6 to the company.

7 Q Does Andrea have a non-disclosure agreement?

8 A No.

9 Q So Andrea doesn't have a non-disclosure?

10 A I wouldn't think that owners needed to.

11 Q Dave left and started competing, because he didn't
12 have a non-compete, or a non-disclosure, or any legal
13 obligation to do otherwise?

14 A I never said that Dave couldn't go compete. But what
15 I am saying is it is not fair for him to take everything
16 out of this company and use it against me to compete with
17 me. That's what's wrong, Mr. Arnold.

18 Q Everything that -- the customer information was
19 developed by Dave during his 20 years of employment --

20 A That's just not true. That is not true. I've been
21 in technical development practically my entire adult life.
22 And to say that Dave just appeared with it all, that's
23 just not the way it ended. The customers he brought,
24 there might have been two left when he left.

25 Q How many of them are left now?

1 A The biggest one he brought landed people in jail. It
2 was fraud. It was a fraudulent deal.

3 Q Did it land you in jail?

4 A (There was no response.)

5 Q How much money did you make off that fraudulent deal?
6 How much?

7 A I have no idea.

8 Q How much did you return? A penny?

9 A To Minova?

10 Q Yeah.

11 A I thought I had been damaged by them.

12 THE COURT: All right. We're going to take a break.
13 Let's take about 10 minutes.

14 Thank you.

15 (WHEREUPON, a break was taken.)

16 MR. STEPHENSON: Your Honor, before we go any
17 farther, the box of documents, that was not put on any
18 exhibit list. It was brought up here as an act of
19 showmanship.

20 Lee Plumblee is going to say it was given to him. He
21 agreed to keep it in his office and not send it anywhere.
22 That's what he's going to say to this Court. If it's
23 going to be anywhere, it needs to be under protective
24 order.

25 Were we notified the box of documents was going to be

1 put into evidence --

2 MR. ARNOLD: I showed it to you and we brought it
3 to --

4 MR. STEPHENSON: Did you say you were going to put it
5 into evidence?

6 MR. ARNOLD: We brought it to Bill Shaw's deposition.

7 MR. STEPHENSON: And you said you were going to keep
8 it in your office.

9 MR. ARNOLD: That's where it's been.

10 MR. STEPHENSON: So I expected you to keep it in your
11 office and not put in the public record.

12 MR. ARNOLD: Well, I'm sorry if you think I've done
13 something --

14 MR. STEPHENSON: I think it ought to be under seal.
15 If he needs to put it into evidence -- other than that,
16 let's take it and put it somewhere. Because it's got
17 information that we don't want in the public record.

18 MR. ARNOLD: Well, I think it's a little late for
19 that, but I'm not going to get --

20 MR. STEPHENSON: A little late for that. I mean, you
21 just did it.

22 MR. ARNOLD: I just did it. It's been in my office
23 for how long?

24 MR. STEPHENSON: Right, in your office.

25 THE COURT: Wait a minute. I don't recall it ever

1 being admitted into evidence.

2 MR. ARNOLD: It hasn't. I marked it for --

3 MR. STEPHENSON: Can I have it? He says it's ours.
4 It's been in his office because I trusted him.

5 MR. ARNOLD: Listen, I sent you an e-mail over a year
6 ago. Nobody came and got it then. If you want it now --
7 I'm not going to get in a fuss with these guys. I mean,
8 look, it was to make a point. The point has been made.

9 THE COURT: All right. You keep it.

10 MR. STEPHENSON: Who keeps it?

11 THE COURT: Mr. Arnold keeps it until further ruling.
12 I'm not going to get sidetracked by that.

13 MR. GOLDSMITH: We've got Lee Plumblee coming.

14 MR. FARRAR: No. You missed that part. He's not --

15 MR. GOLDSMITH: Okay.

16 BY MR ARNOLD:

17 Q John, I've opened that book to 116. Have you ever
18 seen that e-mail before?

19 A I saw it on Sunday when you turned it over to us --
20 or Saturday, or whenever.

21 Q Well, I will correct the record that I didn't turn it
22 over to anybody. It was turned over to me. But,
23 regardless, this is an e-mail that went to Mark McGarel;
24 correct?

25 A It went to Dave DeAngelis on behalf of info --

1 Q And he forwarded it to Mark McGarel?

2 A I spoke with Joy. Joy is info@CCC.

3 Q Yep.

4 A And this was one of the items she was doing for Dale,
5 I believe, and Lee, when we were trying to put a
6 presentation together to tie out the Zoi. And in order to
7 keep it all in a file, she had a habit of resending
8 e-mails to herself at info@CCC. And she tells me that
9 when she went to do that, she accidentally populated with
10 the Filmtech guys' e-mail.

11 Q And attached to that e-mail that went to Filmtech,
12 which is a competitor of yours that you were concerned
13 about Dave speaking with; correct? That's the same
14 company?

15 A Yes.

16 Q When they received this e-mail, they received a copy
17 of -- what is this, all of Zoi's receipts from January to
18 December of 2012?

19 A I mean, specifically, what this document is -- she
20 was sending it to Lee Plumblee. I mean, I know Lee was
21 working on the Zoi-CCC tie out. So, I mean, it's
22 unfortunate that she made that mistake. But I think
23 everybody in this room is probably guilty of
24 self-populating a field in Outlook.

25 Q So -- but the basic point is this e-mail with Zoi's

1 sales, their prices, the customers --

2 A I don't know that prices are in here --

3 Q -- went to Filmtech. Isn't that all this is?

4 A There's no price information in here. It's got
5 invoice numbers.

6 Q Well, let's finish by talking about Zoi.

7 MR. STEPHENSON: Just for the record, what exhibit
8 number was that?

9 MR. ARNOLD: 116.

10 MR. STEPHENSON: 116. Okay.

11 BY MR. ARNOLD:

12 Q What was Zoi? What is Zoi?

13 A So about in March, after David left, we needed
14 salespeople. So we went out in the industry and found
15 some folks that had some experience in some areas. We
16 wanted to work primarily in the food industry. And, quite
17 frankly, CCC didn't have the best reputation for quality.
18 We had about \$200,000 in claims when Dave had left.

19 So it was a rebrand. Really, it started out as a
20 rebrand is what we were trying to do, give these sales
21 guys a fresh name and a fresh start. So that was the
22 early discussion.

23 Q Well, let's look at what may be the earliest
24 discussion, which is March 15th, 2012. This is an e-mail
25 from Andrea to you?

1 MR. STEPHENSON: What exhibit number?

2 MR. ARNOLD: I'm sorry. Exhibit No. 107.

3 BY MR. ARNOLD:

4 Q Now, John, let me just show you. She starts off,
5 John, as we think about where we want to end up some day,
6 maybe printing capabilities, maybe embossing capabilities,
7 we should consider going ahead and starting out our two
8 new guys as reps for a newly created entity.

9 And those two new guys, was that -- that was Steve
10 Elvey [phonetic] and Brian Cunningham?

11 A Yes.

12 Q And despite the cash crunch that CCC found itself in,
13 you hired these two new guys after you got rid of Dave;
14 right?

15 A I didn't consider it a cash crunch. It cost me less
16 than Dave.

17 Q You paid them combined \$120,000 a year?

18 A Yes.

19 Q And then Andrea comes up with this idea to have this
20 newly created entity?

21 A Andrea has a lot of ideas.

22 Q Yeah. You're not kidding. And, here, her idea --
23 let's look at it. It says, Also, in this manner, if we --
24 hold on. I've lost my place. I think I'm going to look
25 at 106. That's where I think she originates the idea.

1 Can you turn to 106?

2 A I'm there.

3 Q Okay. And she says, Also, as we think about new
4 business for these guys, we might want to consider another
5 company name to use. In this manner, we don't need to
6 haggle with Dave W. about how much of this new stuff is
7 his.

8 That doesn't say anything about the bad reputation of
9 CCC, does it?

10 A So --

11 Q Does it?

12 A Does it say anything about the quality?

13 Q Yeah.

14 A No.

15 Q What she's saying is that if you recreate a new
16 entity, you don't have to haggle with Dave Wilson about
17 how much of the new business is his?

18 A We thought we were headed towards a settlement with
19 Dave. This was March. We were exchanging letters. We
20 were looking to create a new entity to get a fresh start.
21 When we talk about new stuff, we're talking about the
22 trade secrets.

23 Q And you're talking about not having --

24 A Not new stuff to our business. We were talking about
25 changing everything, the way we did business, and the

1 films we sold.

2 Q And this e-mail talks about making sure you don't
3 have to haggle with Dave Wilson about his share; right?
4 Isn't that what this e-mail says?

5 A I don't see where you see share.

6 Q How much of the new stuff is his?

7 A Well, if we were to settle with Dave, there would
8 have been stuff that he retained.

9 Q But if he didn't know about Zoi and stuff was in Zoi,
10 then you wouldn't have to haggle about Zoi stuff with Dave
11 Wilson, would you?

12 A You'll have to ask her, you know. My understanding,
13 also, is if -- even though we were a wholly-owned
14 subsidiary, we didn't think we necessarily needed to run
15 everything by Dave in a structure.

16 Q Well, you say this is a wholly-owned subsidiary, but
17 107 and 108 -- you can go ahead to 108. She says, Also,
18 maybe we'll have M-Tech be a partner in the new entity and
19 that will facilitate future funding.

20 So was -- so the original discussion was that M-Tech
21 was going to be the partner; right?

22 A Yes. So my understanding, really, is, I guess, I was
23 kind of perplexed in how my efforts to protect our company
24 I was sued personally. And, you know, it made sense to me
25 that if the members were companies, then that might offer

1 me some protection in the new entity.

2 Q But you're going to be doing film business in this
3 new entity; right?

4 A We were having lots of talks about what we were going
5 to do with it.

6 Q You were going to do film. That's what you just
7 stated.

8 A Different kinds of film, yes. It's the chemical
9 industry.

10 Q Now, on 109 -- Exhibit No. 109, she's got a couple of
11 different spellings. Do you see that, Zoi Films, Zoi LLC?

12 A Uh-huh.

13 Q I'm going to go ahead and shoot an e-mail to
14 Mr. Potts, that's your lawyer, to have him form an LLC
15 with M-Tech as the manager and with a 15-year life.

16 Did you agree to that?

17 A I don't remember this e-mail and what the final
18 product looked like.

19 Q Well, what about this, I thought we could, perhaps,
20 use the attorney as the registered agent address for the
21 next couple of years, or otherwise a married sister.

22 Why would you want to use a married sister as a
23 registered agent?

24 A You'll just have to ask her.

25 Q You know the answer to that, don't you?

- 1 A No.
- 2 Q Do you have a married sister?
- 3 A Yes.
- 4 Q What's her last name?
- 5 A She just changed it back to Gandis.
- 6 Q But the idea was to make sure that if you had a
- 7 married sister, she wouldn't have your last name and Dave
- 8 couldn't figure it out, could he?
- 9 A You know, you'll just have to ask her what the
- 10 intent --
- 11 Q Who did you end up with as your registered agent?
- 12 A I don't remember, specifically. I think it was
- 13 M-Tech and Major Brainstorms, Inc.
- 14 Q Actually, your registered agent was Michael Shirley,
- 15 Andrea's husband, wasn't it?
- 16 A Yes.
- 17 Q And you organized it as a Georgia LLC; correct?
- 18 A That's my understanding, yes.
- 19 Q And is M-Tech -- M-Tech is a South Carolina LLC,
- 20 isn't it?
- 21 A Yes.
- 22 Q Decotex is a South Carolina LLC?
- 23 A Yes.
- 24 Q CCC is a South Carolina LLC?
- 25 A Yes.

1 Q What's so special about Zoi?

2 A Well, we had a bright idea that we could go out for
3 investment. And it was going to be pretty hard to do that
4 while CCC was involved in a lawsuit.

5 So Andrea was more familiar with Georgia law than
6 South Carolina. So it just made more sense to establish
7 it there.

8 Q Andrea was familiar with Georgia law. Do you take
9 legal advice from Andrea?

10 A I try not to.

11 Q Now, let's look at 133. Do you recognize 133? I'm
12 sorry. Now, this is the certified copy of Limited
13 Liability Company Resolutions operating and maintaining
14 deposited accounts and services. That's what this
15 document is, isn't it?

16 A Yeah. This was to open a checking account.

17 Q And you had to represent to the bank who the members
18 of Zoi Films, LLC, were, didn't you?

19 A Yes.

20 Q And you signed this as John Gandis, president of
21 M-Tech, Inc.?

22 A Yes.

23 Q And Andrea signed it as vice-president for Major
24 Brainstorms, Inc.; right?

25 A Yes. But, I mean, it's not her signature, but she

1 wrote her name down. I signed the other page.

2 Q So where is CCC in all this?

3 A Honestly, when we filled this out, this was to open a
4 checking account, I thought, opening and maintaining
5 deposit accounts.

6 Q Well, sure. You've got to provide the bank accurate
7 information, don't you?

8 A (There was no response.)

9 Q Don't you?

10 A That's what I thought I was doing.

11 Q So you thought it was accurate that M-Tech and Major
12 Brainstorms, Inc., were the members of Zoi Films, LLC?
13 That's what you thought was correct at the time?

14 A Yes.

15 Q Now, isn't it true, John, you wrote your name, didn't
16 you?

17 A Uh-huh.

18 Q And you wrote president beside it, didn't you?

19 A Yes.

20 Q But somebody else added M-Tech, Inc., didn't they?

21 A Yes.

22 Q That's Andrea's handwriting, isn't it?

23 A I think so. I don't know. You'll have to ask her.

24 Q And on the next page, again, the resolution has you
25 signing it on behalf of M-Tech, Inc.

1 Now, let's look at 134 real quick. Again, this is
2 just a sales tax document again that indicates that the
3 signatory for Zoi Films was Major Brainstorms, Inc., with
4 Michael Shirley as president. Do you see that?

5 A 134?

6 Q Yes.

7 A I mean, mine is not signed, but his name is down
8 here.

9 Q That's right. His name is written and listed.

10 Now, do you recall getting a letter or your lawyer
11 getting a letter from me when we found out about Zoi?

12 A I believe my salesman called me on the weekend
13 telling me that you had called them and wanted to know.
14 That's the first time I had heard that you guys had heard
15 about Zoi.

16 Q Did you know that we found out about Zoi from -- we
17 matched the telephone number of Brian Cunningham with the
18 old Dave Wilson cell phone number?

19 A Yeah. It wouldn't be hard to do.

20 Q It wouldn't be hard to do. And so what did you do
21 when you realized we knew? Didn't you go -- let's look at
22 Exhibit No. 131. After you received that letter
23 indicating that we had -- we were on to Zoi, you went and
24 had John Zamer draft a declaration that's attached as
25 Plaintiff's Exhibit No. 31, didn't you?

1 A You know, what I remember is Andrea and Michael were
2 very tied up with his chemotherapy, not very accessible.
3 I don't remember when Zamer got involved and did the
4 paperwork, you know. I don't remember the time frame,
5 particularly.

6 Q Do you recall if it was after we found out about Zoi?

7 A We weren't really doing anything in Zoi. So it was
8 still just an idea, not selling anything, not making
9 anything, just trying to get it together.

10 Q You had purchased import material that was coming
11 from China. And you borrowed money from your father to do
12 that, didn't you?

13 A Much later, much later.

14 Q That was August?

15 A Show me.

16 Q I'll show you. But let's look at this document
17 before we leave. This document really isn't dated, is it?
18 It says it's effective as of July 9th, 2012. That's the
19 date Zoi was formed, isn't it?

20 A I think it was somewhere around the 4th. With the
21 holidays, people were hard to track.

22 Q But this was created six to eight weeks later. Do
23 you remember the e-mail that Andrea drafted to your father
24 to try to get him to invest in Zoi?

25 A I had a sale at CCC. It was important to us to try

1 to keep the customers. CCC didn't have the cash. So we
2 tried to figure out a way to get it and approached Cliff
3 about that.

4 MR. ARNOLD: This will be the last one, Your Honor.

5 THE COURT: The last one of what?

6 MR. ARNOLD: My last e-mail, my last question.

7 BY MR. ARNOLD:

8 Q Here it is. 113. This is from Andrea to you. And
9 she is forwarding you an e-mail she had sent to your
10 father on July 19th?

11 A I'm not sure we're looking at the same one. We're in
12 the black book? 113?

13 Q Yeah.

14 A Okay.

15 Q So, in July, she was talking to your father about
16 investing in Zoi, wasn't she?

17 A She spoke to a few people. I didn't know who the
18 others were, but...

19 Q Now, just to point out a couple of -- what she said
20 here is, As there likely won't be new film purchases, the
21 cash that allowed CCC to pay all its vendors -- and if we
22 do this right, we have cash left over, which would be
23 divisible among the owners. The first portion of the cash
24 goes to John and me to catch us up to the cash that Dave
25 has already received. It says, Since CCC has no cash yet

1 to buy new film, that means when a customer is looking for
2 a film that is not in stock at CCC, we will let them know
3 that CCC is unable to fill that order. At that time,
4 we'll suggest other vendors that might help them fill
5 their need, including Zoi Films.

6 So, essentially, you're not going to buy any more
7 film through CCC. And you're going to start suggesting to
8 your customers that they can buy their film through Zoi.
9 Wasn't that the plan?

10 A Just give me a second to read this one.

11 MR. STEPHENSON: Is there a question?

12 MR. ARNOLD: I think he's reading.

13 MR. STEPHENSON: Okay.

14 THE WITNESS: I think you're going to be better off
15 asking Andrea about this one. I mean, this is after we
16 were formed.

17 BY MR. ARNOLD:

18 Q It was after you were formed. This is July 19th.
19 This is before we found out. And if you'll look here, if
20 you want to follow me.

21 A I don't know when y'all found out. And I don't know
22 when he made the loan.

23 Q But you had some film coming from China. And what
24 you indicated that you were going to do with Zoi was to
25 manage risk. John and I have agreed that we will only use

1 this line of credit for silver transactions, which means
2 it will be the best opportunities in the market.

3 So Zoi was going to get the silver transactions;
4 isn't that right?

5 A The general idea is that we would not do so much of
6 the slitting type. We were going to get into higher end,
7 more guaranteed type of work, you know, to work with the
8 line. I think she was trying to assure Cliff that the
9 risk was less. She thought the risk would be less.

10 Q Well, what she's describing here is a wind-down
11 strategy. She says, John and I have discussed a wind-down
12 strategy to create cash from CCC stock, but it will take
13 several more months to come to fruition.

14 Do you see that at the very bottom?

15 A We were trying to sell off our inventory. We had
16 tons of inventory.

17 Q Yeah. You were trying to cash out CCC and move
18 everything to Zoi. Isn't that what you were going to do?

19 A Well, if we were ever able to come to some sort of
20 agreement with Dave. I wasn't planning on agreeing to get
21 out of the business. And, you know, Zoi may have been
22 that entity to continue in.

23 Q And it would be especially helpful if Dave didn't
24 know about Zoi, wouldn't it?

25 A I don't know what Dave knew about Zoi. I don't know

1 why it would be especially helpful.

2 Q You're creating a competing entity and you don't know
3 why he would be interested in that?

4 A It's not competing. Everything that Zoi made goes
5 into CCC.

6 Q Because we caught you; isn't that right?

7 A That's not true.

8 Q Yes, it is. Okay. One more thing and we'll leave it
9 at that.

10 As Dave is, also, out there selling film again for
11 his new employer, it is in CCC's best interest to have his
12 new employer buy film for us to help us wrap up CCC more
13 quickly.

14 So here is Dave having carted off your trade secrets
15 and Andrea is proposing to sell him film. Did you agree
16 with that?

17 A Where are you on this? We didn't know he was selling
18 all our trade secrets.

19 Q You were trying to give all your trade secrets to
20 Zoi, weren't you?

21 A No. It was all new stuff, new sales guys, new
22 products.

23 Q That deal from China that your daddy was financing
24 was a CCC deal, wasn't it?

25 A We didn't have the cash to complete the foil

1 laminate, correct.

2 Q But it came into CCC and you didn't have the cash, so
3 you got daddy to give you some cash so you could do it
4 through Zoi; right?

5 A So if CCC did not complete that order, we would have
6 lost that business, which we did when Dave took it.

7 Q And then running it through Zoi, you didn't have to
8 haggle with Dave W. about what his share might be; isn't
9 that right?

10 A All the profits from the sale.

11 MR. ARNOLD: I'm done, Your Honor, finally.

12 MR. STEPHENSON: Your Honor, just for planning
13 purposes, to speed up the trial, I'm going to try to do
14 most of his direct. So we're definitely not going to get
15 finished tonight, but I kind of want to start.

16 THE COURT: Well, I'm thinking about quitting about
17 5:15 or 5:30?

18 MR. STEPHENSON: That's up to you, Your Honor.

19 THE COURT: Well, it was just a question.

20 MR. STEPHENSON: This is your courtroom. We'll go as
21 long as everyone is comfortable.

22 How about that?

23 THE COURT: That's fine.

24 MR. GOLDSMITH: If I could, Tom, if we don't need
25 Lee, I'm going to ask him to go, if we're done with the

1 box.

2 THE COURT: I think we always need Lee, don't we?

3 MR. GOLDSMITH: We're always glad to have him.

4 THE COURT: That's right. But, yes, he's free to go,
5 if y'all aren't going to use him.

6 MR. LEE PLUMBLEE: All right. Thank you.

7 MR. GOLDSMITH: Thank you, Lee.

8 MR. LEE PLUMBLEE: I, finally, found a job I'm good
9 at, say nothing and leave.

10 CROSS-EXAMINATION

11 BY MR. STEPHENSON:

12 Q All right. John, let's clean up some things. First
13 of all, Zoi -- isn't it true that every net dollar Zoi
14 ever made went into CCC?

15 A Yes.

16 Q No money was ever taken out of Zoi and distributed to
17 anybody other than CCC?

18 A Correct.

19 Q And, as we sit here today, Zoi is a subsidiary of
20 CCC?

21 A A hundred percent.

22 Q Now, let's go back to Mr. Arnold's point. He pointed
23 you to an e-mail written by Andrea in July of 2012.
24 Okay.

25 A Yes.

1 Q At that time, hadn't Dave Wilson sued to dissolve
2 CCC?

3 A Yes.

4 Q And it was your understanding that the company was
5 going to be divided up; right?

6 A Yes.

7 Q He was going to take part of it, and you were going
8 to take part of it?

9 A Yes.

10 Q And y'all wanted an entity to do business after it
11 was dissolved, because you intended not to get out of the
12 business?

13 A Yes, sir.

14 Q And when that didn't happen, every dollar of Zoi went
15 into CCC. Am I right about that?

16 A Yes.

17 Q Okay.

18 A I think the Del Bradshaw report says as much.

19 Q John, let's go back to the beginning and talk about
20 the deal. And, if you would, turn to Andy Arnold -- or
21 Dave Wilson's Exhibit No. 3.

22 Now, Andy has taken a bunch of e-mails that people
23 wrote, quoted the parts he wanted to, and ignored the
24 rest. So let's look at this e-mail. We spent some time
25 on it this morning. Remember that?

1 A Yes.

2 Q And I am at the top. It says, Subject, update. Hi,
3 Andrea, hope you had a great week --

4 MR. GOLDSMITH: You probably ought to say which
5 number.

6 MR. STEPHENSON: I did. You need to listen.

7 MR. GOLDSMITH: All right.

8 MR. STEPHENSON: Exhibit No. 3.

9 BY MR. STEPHENSON:

10 Q Are you with me?

11 A Yes.

12 Q And this was written before the deal was finalized.
13 This particular e-mail was May the 30th; right?

14 A Yes, sir.

15 Q And Andy left out some of it. Down here at the
16 bottom, there are three accounts that Dave imports that do
17 not, currently, go through CCC. We think it's best to
18 leave these out. Dave agrees that all future orders, even
19 if they are imports, should be run through CCC.

20 He didn't read that, did he?

21 A No, sir.

22 Q Down at the bottom, In two of the cases, Dave had
23 told you they were worthless anyway because they probably
24 wouldn't generate any money. Am I right about that?

25 A Yes.

1 Q Did you ever agree that Dave Wilson could keep these
2 three accounts and do a side business and not run them
3 through CCC?

4 A Never.

5 Q Now, we've got maybe tens of thousands of e-mails
6 here. Is there an e-mail anywhere that says -- from Dave
7 Wilson, or from you, or from Andrea, or from your daddy,
8 or from anybody else that says three accounts would be
9 segregated and Dave Wilson could do business on the side?

10 A No. There's nothing.

11 Q Well, let's look at the e-mails we do got. This is
12 June the 24th. By then, y'all are pretty close, am I
13 right about that, to the deal?

14 A Yes.

15 Q Y'all had talked about a number of ways for Dave to
16 get money in April, May, and June, hadn't you?

17 A Yes, sir.

18 What's the number?

19 Q This is nine -- seven. I'm sorry. I think this is
20 our seven. It's Defendant's Exhibit No. 7. The other
21 book.

22 A Okay. Got it.

23 Q You've got it?

24 A Yes, sir.

25 Q Okay. At the top, it says -- I don't think you do

1 have it. Go to our books.

2 MR. STEPHENSON: Your Honor, we've got so many books
3 here, they're hard to keep straight.

4 BY MR. STEPHENSON:

5 Q In our book, it's Exhibit No. 7. Have you got that?

6 A Yes, sir.

7 MR. STEPHENSON: Your Honor, I think that's the wrong
8 book.

9 THE WITNESS: Seven is the LLC formation.

10 THE COURT: What number is it now?

11 MR. STEPHENSON: Wait a minute. Let me make sure.

12 MR. CAMPBELL: It's Exhibit No. 8 in y'all's book.

13 MR. STEPHENSON: Exhibit No. 8 in our book.

14 Is everybody there?

15 THE WITNESS: Yes.

16 BY MR. STEPHENSON:

17 Q Exhibit No. 8 is an e-mail from Dave to you on June
18 the 24th; right?

19 A Yes, sir.

20 Q And the discussion is, Dave, how can I ensure the
21 best I can that you get \$8,000 a month? Because you said
22 that's what you've been driving out of Eastern Films; is
23 that right?

24 A Yes.

25 Q So Dave sends you the EFS sales that he intends to

1 roll into CCC; right?

2 A Correct.

3 Q And if you look at the exhibit behind it, it's all
4 the sales of EFS; right?

5 A Yes.

6 Q Was there ever an agreement from you that you would
7 exclude any of the sales from EFS going forward, or CCC
8 would get them all?

9 A CCC would get them all.

10 Q Well, just looking at this. Is Minova on there?

11 A Yes.

12 Q Is J.P. Lamborn on there?

13 A Yes.

14 Q Is Oriden on there?

15 A Yes.

16 Q Is West Carrollton on there?

17 A Yes.

18 Q Was it your understanding from this e-mail that
19 Dave's intention was to roll every sale going forward into
20 CCC?

21 A Yes, sir.

22 Q Look at Exhibit No. 10 in our book. And let me
23 follow along with you and make sure I've got the right
24 one.

25 I do.

1 Exhibit No. 10 is an e-mail from Dave to you; right?

2 A Yes.

3 Q This is June the 24th?

4 A Yes, sir.

5 Q This is 10 days before he gets his first check for
6 \$8,000?

7 A Yes.

8 Q And he says, EFS sales and projected CCC sales;
9 right?

10 A That's the title, yes.

11 Q And I'm focusing on the second paragraph. He says,
12 The real question is this, are the customers, vendors, and
13 margins I bring to the table worth the salary we are
14 proposing? If I am to focus all of my efforts on the film
15 business, I am foregoing opportunities.

16 Do you see that?

17 A Yes.

18 Q Was it your understanding that all of his efforts at
19 EFS would be transferred over to CCC?

20 A Yes.

21 Q In return for that, did you guarantee him that if
22 there were profits, he would get the first \$8,000 for some
23 period of time?

24 A Yes. That's how we were going to do it.

25 Q 2008 went by. I'm going to ask you to look at 31.

1 MR. STEPHENSON: This is like backing up a trailer,
2 Your Honor. You've got to be able to do it.

3 BY MR. STEPHENSON:

4 Q 31 is an e-mail from Dave Wilson a year later; right?

5 A Yes.

6 Q April of 2009. And he's talking about what he's
7 gotten since July of 2008. Do you see the one, two,
8 three, fourth paragraph? Do you see that?

9 A Yes, sir.

10 Q Would you read that to the Court, please?

11 A Regarding my distributions last year, should these
12 payments be classified as guaranteed payments, instead of
13 distributions? The company can deduct 50 percent of this
14 which will reduce our net income. The payments I received
15 last year was, basically, a salary, which I required since
16 I was taking my customers from EFS and putting them into
17 CCC and reducing my ability to earn a living.

18 Q Did he ever tell you he was taking part of his
19 customers and rolling them into CCC?

20 A No. It was all of them.

21 Q Did you have specific discussions with him about
22 that?

23 A That they all come in, yes.

24 Q Now, this whole deal about salaries versus
25 distributions. This is 2009. Did you and Andrea make it

1 clear that what he was receiving was a preference
2 distribution on profits?

3 A Yes.

4 Q Let's back up, John. I'm going to refer you to
5 Exhibit No. 7.

6 Are you at Exhibit No. 7?

7 A Yep.

8 Q Again, Mr. Arnold left out parts of this document.
9 This is an e-mail, June 16, 2008, from you and Andrea.
10 And this is y'all's working discussion about what CCC
11 might look like; right?

12 A Yes.

13 Q Now, we don't contend Dave saw this. But this is a
14 record of what y'all were talking about?

15 A Yes.

16 Q And parts of it happened and parts of it didn't;
17 right?

18 A Correct.

19 Q All right. Would you look at 1-C, 1-C on Page 1. Do
20 you see that?

21 A Yes.

22 Q This was not a guaranteed payment. It was a
23 preference on profit; right?

24 A Yes. That's what it was called.

25 Q Was that your understanding from the beginning?

1 A Yes.

2 Q Would you look at Page 2, E, little letter I, little
3 letter V, Page 2 at the bottom paragraph. Do you see
4 that?

5 A No guaranteed payments.

6 Q Was it your understanding that if there wasn't any
7 money, no distribution would be made?

8 A Yes.

9 Q Would you look at Page 4, 3-B. Do you see 3-B?

10 A Yes.

11 Q Was it your understanding that these payments would
12 only continue for a limited period of time because at some
13 point, the company had to stand on its own?

14 A Exactly. Recalibrate every -- in the second and
15 third year.

16 Q Now, this is written back in May of 2008?

17 A Yeah, June. Right.

18 Q You say here, For one year to be renewed and
19 recalibrated in the second and third, after which priority
20 allocations are to be removed. Is that your
21 understanding?

22 A Yes.

23 Q Well, you did it 2008, 2009, 2010, and part of 2011.
24 Am I right about that?

25 A Yes.

1 Q Well, let's talk about 2010. What kind of year was
2 2010?

3 A 2010 was a great year to be in the film business.
4 The polyester film, in particular, was at an all time
5 demand. Prices practically doubled overnight. And
6 Carolina Custom had some nice relationships in the middle
7 of polyester heaven. We had a number of manufacturers in
8 the area and we were --

9 Q Y'all made a lot of money in 2010?

10 A Yes.

11 Q We talked a little bit about the 250 plan. Do you
12 recall that?

13 A I do.

14 Q Were you able to distribute \$250,000 each?

15 A No.

16 Q Why not?

17 A We didn't meet the plan. It just --

18 Q Even though it was a good year, it wasn't a good year
19 as you had hoped?

20 A Correct. But all our money was sitting in inventory.

21 Q Let's talk about 2011. What happened in 2011?

22 A In 2011, we were staying the plan through June. We
23 were on track. But then polyester film flooded back into
24 the market and, all of a sudden, we were stuck holding
25 film that we could only sell at a price less than what we

1 bought it for.

2 Q Did it get worse? In other words --

3 A It continued to climb from June until the end of the
4 year.

5 Q And is that really what happened?

6 A Is that what happened to CCC --

7 Q Yeah.

8 A -- to its demise? Yes, I would say --

9 Q Well, let's go back. Let's look at Exhibit No. 12.
10 Are you there?

11 A Yes.

12 Q Exhibit No. 12 is --

13 MR. STEPHENSON: Your Honor, are you able to follow
14 in the book?

15 THE COURT: Which book?

16 MR. STEPHENSON: This is our book. It's a spiral
17 notebook, blue.

18 THE COURT: Oh, yours is not spiral.

19 MR. GOLDSMITH: It's a ring binder.

20 MR. STEPHENSON: It's a white notebook.

21 THE COURT: It's the heavier one.

22 BY MR. STEPHENSON:

23 Q Are you with me?

24 A Yes.

25 Q This is back in time now, July of 2008. Dave had got

1 his \$8,000 preference. Did you get a draw that month?

2 A No.

3 Q Now, before we get into this, tell the Judge the kind
4 of things you had done to make CCC a success through July
5 of 2008. What had you done?

6 A Sure. So I had a staff that had the ability to
7 fabricate. And we rebuilt the slitter to get the machine
8 started. I had some space available that we could utilize
9 without paying rent for a while. And, you know, I've been
10 an engineer since 1992. And I supervised all of that.

11 Q Were you spending most of your time on CCC?

12 A I spent a lot of time on CCC.

13 Q And for how many months had you been spending most of
14 your time on CCC?

15 A Well, we bought that machine in 2007, so it was
16 easily seven months, eight. So I may have gone as long as
17 a year.

18 Q Did you have any idea the very month you gave Dave
19 Wilson the first \$8,000, or preference on \$8,000, or draw
20 against profit for \$8,000 that he was doing a side deal
21 with his brother-in-law, Steve Norvell?

22 A I had no idea.

23 Q Did he have an e-mail address that would be
24 DaveWilson@CCC?

25 A At that point, I don't think we did. He was still

1 using Eastern Films.

2 Q Well, did there come a time relatively quickly that
3 he had an e-mail address?

4 A With Carolina Custom?

5 Q Yes.

6 A I believe so. I just don't remember the date.

7 Q Isn't it true that now we've gotten discovery, all
8 the side deals he did were done on his Eastern Films
9 address, and none of them on his CCC address?

10 A Yes.

11 Q If he wanted -- if he thought you knew about it, is
12 there any reason for him to do it not on his CCC address
13 so you do know about it?

14 A Well, he wouldn't do it on a CCC e-mail address. If
15 he had, then I would have known about it.

16 Q Let's go forward. Exhibit No. 14.

17 Are you there? Are you with me?

18 A Yes.

19 Q So this is August. He's gotten his second check.
20 You think you've got all of the EFS business rolled into
21 CCC. Am I right about that?

22 A I did.

23 Q And a guy named Himey called you. Tell me about
24 that.

25 A So Himey was a production manager at Lamborn. And,

1 you know, he was refusing our invoice. He didn't know who
2 Carolina Custom was, our relationship to Eastern Films.
3 And so I kind of explained to him, Carolina Custom is EFS
4 now. EFS has rolled its business into CCC. And he was
5 confused.

6 So, yeah, I was not real comfortable. It kind of
7 went against what Dave had told me when I started paying
8 him the \$8,000 a month.

9 Q What he told you, he mentioned some two-inch and
10 eight-inch clear that he ordered out of China?

11 A Right.

12 Q You didn't know anything about that, did you?

13 A No.

14 Q You say you were paranoid, why?

15 A Because I thought Dave had contributed everything to
16 CCC. That's what he had been telling me. But this made
17 me question the honesty of what Dave had told me.

18 Q Did you ask Dave about it?

19 A I did.

20 Q This is an e-mail to him. Did he reply orally?

21 A Yeah. He said it was just some old stuff and Himey
22 was just confused, but that all of the Lamborn business
23 would continue to go through CCC.

24 Q It turned out that wasn't true?

25 A I learned later, yes.

1 Q It turned out that Himey had let you know part of the
2 deal, but you didn't catch on; right?

3 A Correct.

4 Q And Dave lied to you?

5 A Yeah. He kept telling me it all had to do with the
6 UL.

7 Q This is Exhibit No. 19, Defendant's Exhibit No. 19.
8 This is an e-mail from Steve Norvell to Dave, West
9 Carrollton, good news. Do you see that? Are you at 19?
10 Do we have the same 19?

11 A I've got a Lamborn invoices.

12 Q Things aren't perfect --

13 A 18 is West Carrollton? It's 18.

14 Q This is 19 --

15 MR. WILLIAMS: It's 19.

16 MR. FARRAR: That's 19 in my book.

17 MR. STEPHENSON: Thank you.

18 MR. FARRAR: And it's 19 on --

19 MR. STEPHENSON: In any event, we'll get it
20 straightened out.

21 BY MR. STEPHENSON:

22 Q Steve wrote an e-mail to Dave on August the 28th.
23 The deal had been in effect for two months. And Steve
24 says, The pet business is back on the table.

25 So this was a new deal; right?

1 A That's how I would interpret it, yeah.

2 Q But you didn't know about it at the time?

3 A No.

4 Q Did Dave ever tell you about it?

5 A No.

6 Q Did he ever copy you on any of these e-mails about
7 any of these side deals?

8 A No.

9 Q Each time you found out about side dealing on the
10 side, was it by accident?

11 A Yes.

12 Q Did Dave always deny it?

13 A Yes, except the one before -- at the end of 2010 on
14 the Horizon when he told me it was Christmas.

15 Q This is Exhibit No. 25, John.

16 Are you there?

17 A Yep.

18 Q December. Another e-mail from Steve to Dave about
19 Lamborn. Do you see that?

20 A I think my book is different.

21 Q This is 25. Did I say 25?

22 A This is from Steve to Dave about Lamborn, sorry.
23 Yes.

24 Q 25. December the 10th, 2008, that first year. And
25 he says in the second paragraph, I have another

1 opportunity for us.

2 Dave says that to Steve?

3 A Correct.

4 Q Same thing. You didn't know about it?

5 A No.

6 Q And Steve is going to make an easy eight to 10. What
7 would an easy eight to 10 have meant to you in 2008?

8 A With a start-up company, it meant everything.

9 Q I'm looking at 31 again, but I think it's worth
10 looking at. We had all of these side deals. Dave sent
11 you an e-mail in April. This is, what, 10 months into the
12 deal?

13 A Yes.

14 Q Did he say anything about side deals?

15 A Never.

16 Q Is there an e-mail anywhere that he ever said, hey,
17 I'm doing side deals?

18 A No.

19 Q Well, as a matter of fact, he told you, I was taking
20 my customers from EMS -- EFS and putting them into CCC.
21 He never said some of the customers, part of the
22 customers, a slice of the customers, it was always all the
23 customers. Am I right about that?

24 A All of them, yes.

25 Q 32.

1 Are you there?

2 A I am.

3 Q 32 is an e-mail from Dave to Steve. It's talking
4 about a Lamborn foreign order. You thought Lamborn was
5 your customer; right?

6 A I did.

7 Q And when Himey called you, Dave assured you that you
8 had all the Lamborn business; am I right about that?

9 A Yes.

10 Q And if you look at the second page of this exhibit,
11 you'll see that, according to Dave, he was going to make
12 \$38,000 out of this one deal. Do you see that?

13 A I do.

14 Q And it's going to be split 50/50 with Mike. Do you
15 know who Mike is?

16 A Mike Myers.

17 Q Mike Myers, according to the Plaintiff, who is going
18 to testify for them tomorrow?

19 A Yes.

20 Q This is a guy splitting these side deals with Dave
21 unbeknownst to you?

22 A Unbeknownst, yes.

23 Q And, of course, Steve financed part of it and he was
24 getting his share, too. So they made \$38,000 on one deal.
25 Steve made his share and Mike and Dave made \$38,000?

1 A Correct.

2 Q Did you have any knowledge of that?

3 A No.

4 Q Did anybody ever tell you that?

5 A No.

6 Q We've talked about 2010 and what a good year it was.
7 You made a lot of money?

8 A We did.

9 Q Did you know that Dave Wilson had huge tax problems
10 because of these side deals on top of all the money you
11 were making at CCC in 2010?

12 A I really did not know his tax bill.

13 Q Did he ever tell you, hey, I made some money
14 elsewhere. Not only is CCC causing me a problem because
15 of this phantom income, but I've made all this side deal
16 money and I've got to pay taxes on that?

17 A He never mentioned it. I knew that he had Duetex,
18 which was --

19 Q Well, we haven't mentioned Duetex. That is one thing
20 he did?

21 A Right.

22 Q He was permitted to do?

23 A Right.

24 Q Was there some discussion about that?

25 A There was. I encouraged it because Duetex customers

1 buy film.

2 Q Well, tell the Judge what Duetex was, and what y'all
3 agreed to do regarding Duetex?

4 A So Duetex is a scrim manufacturing company. It's
5 more like a fabric than a film. And companies that buy
6 scrim, in fact, buy film.

7 So they were paying for his travel. So it was a nice
8 compliment to what we were trying to do that he did rep
9 Duetex. I was aware of that. I didn't know the magnitude
10 of what he did with them. But that was his other...

11 Q That was with your permission?

12 A Yes.

13 Q And that helped CCC?

14 A I thought so, yes.

15 Q Now, we talked about these side deals, and a little
16 bit about how much money it was, and the tax problem Dave
17 must have had that you didn't know about. Would you look
18 at 126. You can't see it, but I'm going to ask you some
19 questions about it. I think the Judge can see his copy.

20 THE COURT: What number are you on now,
21 Mr. Stephenson?

22 MR. STEPHENSON: 126.

23 THE COURT: Of your book?

24 MR. STEPHENSON: Yes, sir.

25 MR. GOLDSMITH: The other book, Your Honor.

1 MR. STEPHENSON: We've got two books.

2 THE COURT: I know. I'm just trying to get to the
3 second one without causing personal injury up here.

4 All right. I'm with you.

5 BY MR. STEPHENSON:

6 Q All right. What we've got are the records of Eastern
7 Films that were produced to us during discovery. And what
8 you're claiming, John, is that all of the sales made
9 beginning in July when Dave began receiving his guaranteed
10 preference of \$8,000 should have gone to CCC. Am I right
11 about that?

12 A Yes.

13 Q And your testimony is you knew about none of these?

14 A None of these.

15 Q Now, CCC is shown as a customer of EFS. And you
16 mentioned EFS -- UL. If you would, tell the Judge why
17 there was a period of time that CCC was a customer of EFS
18 and it didn't affect the deal at all?

19 A All right. So a large portion of the market that we
20 got into when we opened the business was for the flexible
21 duct air handling that delivers the air to your vent.
22 That is a UL certified product. And Eastern Films held
23 one.

24 Q What does that mean, UL?

25 A Underwriters laboratory. Sorry.

1 So when you hold a UL, underwriters will come in and
2 test your facility, your quality standards, make sure
3 you're maintaining a certain level of quality in order for
4 you to be able to sell UL certified products. So the
5 customers that buy it, also, have a UL certified product.
6 So it's not so easy as just switching the two. They have
7 to add the new trimmer into the file in order for them to
8 be able to accept.

9 Q That took a while?

10 A It took a while to get them switched over. So we
11 were billing things through EFS so that the manufacturers
12 of the flex duct would accept it.

13 Q And that's what most of this CCC work is. Am I right
14 about that?

15 A Yes.

16 Q Well, let's look at some of the big ones. I'm going
17 to tell you we've added them up and it's about \$1.7
18 million in side deals. Does that sound right, John?

19 A Yes.

20 Q And if you look at it, J.P. Lamborn, it starts on
21 Page 6, I think, at the bottom. Do you see that?

22 A Yes.

23 Q If you would, run through some of those just so the
24 Judge gets an idea of the magnitude of these side deals.

25 A January 21st of 2009, there's an eight-inch metalized

1 order that sold for 46,280 -- I'm sorry, \$73,135 by a
2 container load. So the total was 755,000 for Lamborn.

3 Q Lamborn alone was 755,000?

4 A Yeah.

5 Q And some of that was pre-July, but the bulk of it was
6 after July; right?

7 A Yes.

8 Q And you didn't know any of that and you thought you
9 had all of Lamborn?

10 A Correct.

11 Q How about Carrollton? Perhaps, you can find it in
12 here better than I can.

13 A Maybe I can. West Carrollton containers were selling
14 anywhere from -- it looks like 654,000 to 71,000 in a
15 container.

16 Q Roughly, what was the size of the Carrollton business
17 alone post-July?

18 A Post-July, 600,000.

19 Q Now, I guess Dave Wilson is going to come testify
20 tomorrow that you agreed to exclude three customers. Are
21 there a lot more than three customers on here?

22 A Oh, yeah.

23 Q Before this lawsuit started, did you ever agree to
24 exclude any customers?

25 A No customers excluded.

1 Q If you would, go to 46. 46 in my book.

2 MR. STEPHENSON: And, Your Honor, I'll be in this
3 book for the next 15 minutes or so, and then we'll
4 probably quit, if that suits you.

5 THE COURT: That's fine.

6 BY MR. STEPHENSON:

7 Q 46 is an e-mail from Andrea to you and Dave; right?

8 A Yes.

9 Q And it's entitled, Inventory Reduction Plan. Do you
10 see that?

11 A Yes.

12 Q And she starts out, Gentleman, as you know, there are
13 a couple of months left in this year to implement the
14 inventory reduction plan. Tell the Judge about the plan
15 and why it was necessary.

16 A So we had really started from the beginning of the
17 year coming off of 2010 knowing that we had a looming tax
18 bill. And Andrea was encouraging us pretty much monthly
19 on cutting our inventory down. We only wanted to buy film
20 if a roll had hope.

21 So we weren't to do any speculative buys. We didn't
22 want to buy off of what -- a promise. We didn't want to
23 bring any film, literally, unless a customer had a need
24 for it. Otherwise, we were to sell everything in our
25 inventory.

1 Q By this time, had you and Dave been to several banks
2 trying to secure bank financing so you no longer were the
3 bank for the company?

4 A That was the plan, yeah.

5 Q And you and he had been to banks, you and Dave?

6 A Yes.

7 Q Was there a point in time that you settled on BOA?

8 A I had a lot of history with BOA. And they were the
9 most cooperative.

10 Q Did BOA tell you some things you had to do before
11 they would give you bank financing?

12 A Very early on, we understood that the company had to
13 show that it could stand on its own two feet without the
14 Gandis notes. So, you know, we, as quickly as possible,
15 tried to get those notes off the balance sheet. And then,
16 you know, we were to try to make it on our own.

17 Q All right. If you would, look at 47.

18 Are you there?

19 A Yes.

20 Q Another e-mail from Andrea to you and Dave about the
21 inventory?

22 A Yes.

23 Q Was the latter part of 2011 worse than you had hoped?

24 A Historically, October through December can be bad
25 because most films are trying to unload their inventory

1 going into the end of the year. So that's why Andrea was
2 really trying to give us as much warning as possible going
3 into the end of the year. I think, you know, if it wasn't
4 sold, really, by the end of September and end of October,
5 it probably wasn't going to get sold before the end of the
6 year.

7 Q All right. If you would, 49. It's an e-mail from
8 Dave to you about physical inventory. Did he know the
9 QuickBooks was off?

10 A Yes.

11 Q Was there a reason the QuickBooks was off?

12 A For a time period, our warehouse was a real mess.

13 Q Well, tell the Judge about how you trimmed film and
14 why QuickBooks couldn't keep up with it.

15 A Right. So when we make a roll or when we buy a roll,
16 we may, say, buy a 40-inch, but a customer may want
17 20 inches of it. So we buy it at 40, sell it at 20.

18 But by the way the books -- in QuickBooks, it still
19 shows as a 40. So you've still got 20 left in the
20 QuickBooks is the only way I know how to describe it. So
21 it's very easy to overstate your inventory in QuickBooks.
22 So we were working on a manual spreadsheet to try to track
23 that stuff. And the spreadsheet and the QuickBooks never
24 matched.

25 So what Andrea and our accounting folks tried to do

1 is -- always at the end of the year try to come to a way
2 that they would reconcile each other. And I don't know if
3 this is the e-mail, but even Dave knew that our inventory
4 was way off because he was in the QuickBooks all time.

5 Q So if Dave took a balance sheet and gave it to
6 somebody and told them it was an accurate representation
7 of inventory off QuickBooks in 2011, he would have known
8 that probably was not true?

9 A Yeah.

10 Q You were, also, trying to get out of debt in 2011.
11 Am I right about that?

12 A We wanted to be able to stand on our own two feet.

13 Q Did Dave agree that you should get out of debt?

14 A Yes.

15 Q Did he agree to it years previous?

16 A Yes. I think he, generally, supported the idea.

17 Q Just hold your finger where you are and go back to
18 Exhibit No. 31. Are you at 31?

19 A Yes.

20 Q 31 is an e-mail from Dave to you, copied to Andrea.
21 Do you see that?

22 A Yes.

23 Q And you see that one, two, three, four, the fifth
24 paragraph. Do you see that?

25 A We need to determine. That one?

1 Q We need to determine. And Dave says in there, I
2 think we need to have a plan for distributions that we
3 both agree on that makes sense for us to operate the
4 company without debt.

5 Do you see that?

6 A Yes.

7 Q Those were his words?

8 A His words.

9 Q Was that everyone's understanding?

10 A That's where we wanted to be.

11 Q And this, of course, is April the 13th, 2009?

12 A Correct.

13 Q All right. If you would, turn to 50.

14 Are you there?

15 A I am.

16 Q And these e-mails always confuse me a little bit.
17 This one starts at the bottom and it starts with an e-mail
18 from Dave, to Andrea, to you. And it talks about
19 inventory; right?

20 A Yes.

21 Q And he says he's very concerned about how you handle
22 inventory: Right?

23 A I believe -- yes. Dave had a similar issue with
24 Palmetto. I don't know if he says it in this e-mail.

25 Q Well, how much does he believe inventory is

1 overstated in October of 2011?

2 A It says, I know for a fact that our QuickBooks
3 inventory is overstated to the tune of 300,000 or more.
4 If this is true and the inventory has disappeared during
5 the year due to scrap loss, then our net income is
6 overstated.

7 Q So if he represented to somebody that the QuickBooks
8 was accurate, he would have known that was not true?

9 A Yes.

10 MR. STEPHENSON: I've got one more question and then
11 it may be a good time to break, Your Honor.

12 BY MR. STEPHENSON:

13 Q We talked about the restructuring and converting Dave
14 to an employee. Could you tell the Judge how that came
15 about. How did that whole conversation get started? And
16 this is September or October of 2011. I'm not looking at
17 an e-mail. I just want you to tell us.

18 A We knew from January that we had a looming problem.
19 And I thought we were all working on getting it down.
20 I -- you know, I was worried about my partner and getting
21 him that monthly check. And I went to Andrea and I said --
22 I mean, she's a brilliant person. She has a lot of great
23 ideas. Some of them might seem wacky in an e-mail.

24 But I asked her, I said, Is there a way we can wipe
25 out his tax bill? Because I knew that was the problem. I

1 wanted to help him out. That's really what initiated a
2 lot of these restructure -- they couldn't be done without
3 a restructure. Otherwise, it meant me going to my dad for
4 more money, which just wasn't going to happen.

5 Q Were you willing up until the day he left, on January
6 the 18th of 2012, for him to remain as a full partner, and
7 enjoy the same benefits and problems that you had?

8 A I wanted him to stay.

9 Q And the proposals you made to him were why?

10 A To put him in a situation where he didn't have to
11 feel like his family was at risk.

12 Q Turn to Exhibit No. 52.

13 Are you there?

14 A Yes.

15 Q And, of course, the proposals you made to Dave always
16 one of them was, hey, remain as you are and if we're able
17 to distribute money, we will; right?

18 A Yes.

19 Q Read paragraph three of what he told you he intended
20 to do. Read it out loud.

21 A So Dave gave me three options. CCC start making
22 regular accruals and distributions to the members to cover
23 tax liabilities incurred by their ownership in CCC. He
24 said he could set up an installment plan with the IRS
25 which would spread the tax payments out over a number of

1 years.

2 He said, I would, also, insist that we accrue for
3 2011 taxes so that quarterly distributions can be made to
4 cover a percentage of the projected liability for 2011.

5 Q Did you have any idea of the extent of the side deals
6 and his huge tax bill that he must have had because the
7 side deals contorted his income?

8 A I had no idea what -- how big his tax deal was.

9 Q Read paragraph three, what his third option was.

10 A Dave resigns and disassociates from the LLC. The LLC
11 then has 30 days to set forth a purchase plan for my
12 shares at fair market value. If the other members are
13 unable or unwilling to buy my shares, by law, the company
14 is to close, assets liquidated, and funds dispersed to its
15 members net of liabilities.

16 MR. STEPHENSON: Your Honor, this may be a good place
17 to stop.

18 THE COURT: Okay. We'll start again at 9:15 in the
19 morning.

20 MR. STEPHENSON: Your Honor, Mr. Gandis is my client.
21 I have to talk to him tonight. And I think that that
22 should be allowed, that I can speak to him between now and
23 in the morning.

24 THE COURT: About his testimony?

25 MR. STEPHENSON: Well, I mean, we can hardly talk

1 about this trial without talking about his testimony,
2 because we've still got to talk about the rest. We've got
3 to talk about Wilson leaving. We've got to talk about
4 2012. We've got to talk about 2013. I want to make sure
5 I don't unintentionally do something the Court does not
6 want me to do.

7 THE COURT: Mr. Arnold.

8 MR. STEPHENSON: Sir?

9 THE COURT: I'm asking Mr. Arnold what his position
10 is on this.

11 MR. ARNOLD: Well, my position is we play by the
12 rules. And the rules, as I understand them, if you've got
13 a witness on the stand, you don't talk to the witness
14 about his testimony or anything related to his testimony
15 until he's done.

16 MR. STEPHENSON: He put him in his case and took an
17 entire day. I could have chose not to put him up and he
18 wouldn't go up until Thursday. So I'm trying to expedite
19 the trial and get through the majority of his testimony by
20 11:00 tomorrow.

21 I, also, think I'm advantaging Mr. Arnold by doing
22 so. Because he gets to hear most of his direct before
23 Mr. Wilson has to testify. I could have done it
24 differently. So I don't see how allowing me to talk to
25 Mr. Gandis is disadvantaging Mr. Arnold.

1 THE COURT: I mean, I understand the procedural stage
2 and that he was called by the Plaintiff. But the fortuity
3 of the break is not -- you wouldn't be able to talk to him
4 if we didn't take a break. That's the principle behind
5 the whole rule.

6 MR. STEPHENSON: All right. I just wanted to get it
7 clear.

8 THE COURT: I mean, I know you're not going to do
9 anything improper. I think it's just the same as if we
10 took a recess, you couldn't talk to him about his
11 testimony. And I think an overnight recess is the same
12 thing.

13 MR. STEPHENSON: Thank you.

14 See you at 9:30.

15 MR. GOLDSMITH: 9:15.

16 THE COURT: 9:15.

17 And let me just say something really quick. And
18 don't interpret this as any kind of opinion I've got about
19 anything related to this case, because it's not. Because
20 I, certainly, haven't heard all the evidence.

21 It strikes me that both sides -- as I've noticed
22 throughout this litigation, we started out when we were
23 all a lot younger, that everyone in here is professional,
24 nice, experienced business people. And, you know, when
25 you have a deep profound disagreement about past events, a

1 trial, particularly, with the excellent lawyers y'all have
2 chosen will allow you to honestly examine the past. But
3 it can never be judged to the satisfaction of anyone or
4 everyone.

5 And that means that I think you ought to consider, as
6 you already have, some fair compromise. And I'm not going
7 to pressure anybody. I'm not going to twist anybody's
8 arm. I just wanted to make the observation. Because if I
9 have to rule, and I will rule, I don't know what will
10 happen. But there are a lot of causes of action. And I
11 could find liability against every party in this case,
12 based on how y'all have it set up.

13 And I heard today somebody was an engineer. And I
14 know somebody is an accountant. I don't know if there are
15 other professionals in here. But if you want a judgment
16 on the public record for something like breach of
17 fiduciary duty, or misappropriation, or conspiracy -- and
18 I don't know if you have to report those things to your
19 licensing agencies or not. But you might want to consider
20 that before we go forward. I'm sure that your lawyers
21 have given you some forecast of what they think the
22 probabilities are to the extent they're going to do that.

23 I remember reading one time that Michael Eisner, who
24 used to run a company called Disney, said when he was
25 asked by the press what the chances were of Disney doing

1 something, he always said 50/50 and he learned that from
2 the lawyers.

3 See you all tomorrow.

4 (WHEREUPON, the proceedings were concluded at
5 approximately 5:13 p.m., to be reconvened on
6 Tuesday, September 30, 2014.)
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1 TUESDAY, SEPTEMBER 30, 2014

2 THE COURT: Yes, sir, Mr. Stephenson.

3 CONTINUED CROSS-EXAMINATION

4 BY MR. STEPHENSON:

5 Q All right. John, I want to go back to the end of
6 2010. Do you recall a meeting with Dave at Starbucks in
7 2010?

8 A Yes. It was around Christmastime.

9 Q What happened?

10 A I had suspected Dave had done a side deal. And, you
11 know, this was well after he had assured me that
12 everything had rolled into CCC. We were coming off of a
13 bumper year. We made a lot of money in 2010. And I was
14 pretty disappointed to find that out. So I invited him to
15 meet me at the Starbucks close to where we live.

16 And I asked him, I said, Did you do this deal outside
17 of CCC?

18 And he said, Hey, it's Christmas, you know.

19 And I was incensed. And, you know, I left -- you
20 know, he assured me, yeah, but I haven't done it much.
21 And, you know, it's Christmas and I'm all in. That's what
22 he told me.

23 Q All right. There was some laughter about it being
24 800 bucks. What bothered you about it, the amount? What
25 upset you about the whole thing?

1 A Well, Dave and I both had a responsibility to our
2 employees, our company, to our other partner. I was not
3 making any money. My exposure at that point was 300 plus,
4 320 plus. My house, my savings, everything was at risk.

5 And my partner -- call it 800, it could have been
6 \$10. It's just not right. Where does it stop when you've
7 got somebody that's willing to cheat you after you just
8 made all of that money? I don't care what the amount was.
9 And I left there very upset knowing that I had to get my
10 money out of this thing.

11 Q All right. Well, let's go into 2011. In 2011, you
12 had made the decision to try to secure bank loans,
13 alternative financing other than you; is that correct?

14 A Yes.

15 Q Did you and Dave go see various banks?

16 A We had approached a number of banks in years prior,
17 local banks. And we had settled on BB&T and Bank of
18 America. I had a relationship with Bank of America. And
19 that's kind of where we ended up.

20 Q You ended up at Bank of America. And what did Bank
21 of America tell you about giving a loan to the company?
22 What were the requirement they placed on you, if any?

23 A Well, a lot had to do with cleaning up our balance
24 sheet. We had to show that the company could meet a sales
25 plan and live without, you know, my constant -- they

1 didn't want to just replace my line. We had made a lot of
2 presentations on what we were going to do with the money
3 with import opportunities, big sales opportunities. And
4 they, of course, wanted to know that it wasn't, like I
5 said, just a replacement of me.

6 Q All right. If you would, turn to Exhibit No. 50 in
7 the Defendant's book. It will be the first book, book
8 one. Defendant's, not that one. The other book. That's
9 the wrong book.

10 Are you there?

11 A Yeah.

12 Q All right. We talked yesterday about everybody
13 bought into the plan to reduce the inventory, and try to
14 raise cash, and not spend money on inventory. Because
15 when you buy inventory, you reduce cash and the cash is in
16 the warehouse; right?

17 A You can't meet a payroll of film.

18 Q All right. Down at the bottom, we've got an e-mail
19 from Dave to you and Andrea. And he says he's very
20 concerned about the way you handled inventory. Waiting
21 until the end of the year is irresponsible and QuickBooks
22 is overstated to the tune of \$300,00. Do you see that?

23 A Or more.

24 Q Or more. Everybody knew that?

25 A Yes.

1 Q And what was the plan?

2 A We had, as a company, really, been working on it
3 since the beginning of the year. We had hired staff to
4 get our warehouse in order. We leased space across the
5 street. We invested in a lot of narrow-aisle racks so we
6 could get our warehouse organized.

7 We hired, I guess -- you know, we had Bill Shaw now
8 and John Higgins injected into that. And we even hired
9 additional sales help to try to get this stuff moving, so.

10 Q At this point, did you know you were going to move
11 money in 2011 very likely?

12 A By October 12th, we were off plan by then. It really
13 started to turn in June with the market. We were on plan
14 in June. It really just started going down after that.

15 Q All right. At the top, Dave says, I'm very sensitive
16 to this issue, the inventory issue, because inventory
17 issues were one of the things that sunk PCFI.

18 What was PCFI?

19 A My understanding was Palmetto Custom Films was a
20 company that Dave had owned prior to forming Eastern
21 Films. And they went under for a lot of reasons that I
22 didn't -- that I -- you know, I'm just not privy to.

23 Q Well, one of them was inventory, apparently?

24 A I know they didn't have enough money to pay their
25 bills, but there was a big sell off when PCFI liquidated.

1 Q All right. 51. We talked about the restructuring
2 plan because Dave was concerned about his taxes. And, at
3 the end of the day, there were three options for Dave; is
4 that correct?

5 A Yes.

6 Q One of the options was stay, just like you and
7 Andrea?

8 A Yes.

9 Q And hope the company could generate enough money to
10 distribute cash?

11 A That was the plan.

12 Q That was the first option?

13 A Right. To be treated just like the rest of us.

14 Q And the third option was to become an employee. He
15 would be W-2'd, and sell his interest to you, and his
16 taxes would be paid for like all employees. And he would
17 have all sorts of bonus plans, all that; right?

18 A Yes.

19 Q There was a second option. Do you recall that?

20 A We made a second offer after the first one when I
21 realized that he wasn't --

22 Q Well, did the second offer include his retaining part
23 of his membership interest and transferring his tax
24 obligation to someone else? Do you recall that?

25 A Yeah. He would transfer it to me.

1 Q You were going to assume his tax obligation?

2 A Yes.

3 Q Were any of the options you ever gave him in 2011 to
4 just leave?

5 A Never. I never wanted him to leave.

6 Q Was one of the options always remain as you are, and
7 let's try to make a go of it?

8 A That was always an option.

9 Q All right. Exhibit No. 54. Are you with me on 54?
10 54 has color type. Do you see that?

11 A Yes.

12 Q And tell me if I'm correct. This is a back and forth
13 between -- it starts out with you and Andrea, but Dave is
14 in on the conversation?

15 A Yeah. You know, this is --

16 Q This is -- it says at the top, See comments in red.
17 So his comments would be in red. Am I right about that?

18 A Yes.

19 Q All right. Well, if you look at paragraph two,
20 Dave's comments are at the top. Would you read that into
21 the record, please? These are Dave's comments in red.

22 A This is the second page?

23 Q Yes.

24 A There is no chance of sales being what they were last
25 year. Selling prices have dropped by 50 cents per pound.

1 And several large customers we sold to last year are no
2 longer buying from us. She is going to be shocked when
3 she, finally, realizes that our inventory is, at least,
4 400,000 lower than what QuickBooks says it is.

5 Q So that was his comment meaning Andrea would find out
6 it was even worse than she thought?

7 A Yes.

8 Q All right. Down at the bottom -- at the top -- well,
9 paragraph three, Andrea says, You will need a plan for
10 every roll. Do you see that?

11 A Uh-huh.

12 Q What was his response to that?

13 A I agree with her comment about having a plan for
14 every roll.

15 Q Who was managing inventory at this point in time?

16 A Dave and Bill Shaw -- well, Dave.

17 Q Dave.

18 A They were in charge of purchasing.

19 Q Who knew more about inventory than anyone else?

20 A Dave Wilson.

21 Q All right. 56. 56 is an e-mail from you to Dave.

22 And it's at the end of October. It's -- I guess that's
23 Halloween, October 31st. And, at the bottom, you say, You
24 don't have anything there for machine or freight and an
25 estimated \$20,000 per week in operating costs.

1 What are you talking about? What is this about?

2 A Well, I -- you know, I had put an offer out there for
3 Dave. And, you know, he replied by threatening me that he
4 would liquidate us, which I really didn't understand. And
5 then he would show up with his plan for getting paid,
6 which, you know, I wasn't really spending a lot of time
7 trying to figure out his plan.

8 But I did, at this point, look at his plan and say,
9 Well, I hear what you're saying, but here is what's wrong
10 with it. He only had \$20,000 in there for operating
11 costs. We were at 120. He only had 12,000 in there for
12 payroll. And our employees were 50,000 a month. So his
13 numbers were just not realistic. I just --

14 Q All right.

15 A I couldn't support his plan.

16 Q All right. 59.

17 Are you there?

18 A I am.

19 Q Some of these e-mails are confusing, because at the
20 top, it says 2012. And that has to do with production,
21 not when it was created. This e-mail was created a month
22 or so later on November 21st. And it's from you to Dave;
23 right?

24 A Yes.

25 Q And you sort of give Dave a deadline.

1 A So, yeah. We --

2 Q Why? Why were you giving him a deadline?

3 A Well, it's November 21st. And in order to do the one
4 offer where we would restructure, we would have to get
5 attorneys to draft the documents, and those sort of
6 things. There was time in that. I was going to have to
7 secure the financing to be able to support that.

8 And, you know, here we were coming into the end of
9 the year and there wasn't going to be any time. He just
10 didn't reply at all. I tried to give him a deadline so we
11 could get -- you know, just tell us where your heart is so
12 we could even get it done.

13 Q Okay. 62. For the record, 62 is an e-mail from Dave
14 to you. And it's a week or so later, December 1st, 2011.
15 And he wanted how much for his shares?

16 A \$770,000, at a minimum.

17 Q He, also, wanted in paragraph five?

18 A A five-year guaranteed monthly salary, and \$350,000
19 at closing.

20 Q Paragraph eight?

21 A I don't even know if some of this stuff is legal when
22 he talks about allocating the gains and losses in number
23 three.

24 Q What did you think when you saw what he wanted?

25 A I mean, it befuddled me. I mean, he pretty much had

1 been threatening me that he was going to shut down the
2 company. Here we are in December.. He throws a number
3 like that out in front of me. I've got 24 employees. I'm
4 worried about protecting the company at this point. We're
5 headed into Christmas. And I've got a partner that's just
6 not -- nowhere near where I am.

7 Q I think you said yesterday, at some point, in
8 December, y'all got into a back and forth. And he said,
9 You wouldn't buy me out at that price. And it, certainly,
10 wasn't this price. And you said, yes, you would. You
11 would sell at the same price you were offering to buy him
12 out. Do you recall that?

13 A Yes.

14 Q Did it then get into Dave had a group of investors
15 who might buy you guys out?

16 A You know, I had met Steve Norvell. I knew he had,
17 you know, sources of income. He had a company of his own
18 that I understand to be very successful. And he said it
19 was Steve. So I thought it was a very viable option that
20 Steve would buy the company.

21 Q All right. 64.

22 Are you there?

23 A Yeah.

24 Q This is Andrea's e-mail to Dave copied to you where
25 she confirms that Dave said he had a group of investors

1 and, heck, yes, y'all would be interested in selling. Do
2 you see that?

3 A Yes.

4 Q Was that true?

5 A We --

6 Q That y'all were interested in selling?

7 A Oh, absolutely.

8 Q All right. John, do you recall how much money on the
9 company's tax return CCC lost in 2011?

10 A (There was no response.)

11 Q If I told you it was \$456,000 that you lost that
12 year, would that be correct?

13 A I mean, I was thinking between four to 500,000.

14 Q That's what the company lost?

15 A Right.

16 Q All right. Go to Exhibit No. 69. We're now in
17 January. Y'all are thinking that he may buy you out. You
18 knew he was sharing company information with possible
19 investors; right?

20 A We knew that he was sharing information with his
21 brother-in-law.

22 Q January 9th. This is an e-mail from Andrea -- the
23 middle of it -- and Andrea talks about a third party. Did
24 you get wind that he was sharing it with other people by
25 then?

1 A I did see on an e-mail sent to him over the main at
2 CCC -- at the CCC address that Mark McGarel with Filmtech
3 was giving him a non-disclosure.

4 Q That's all you knew at that point?

5 A Correct.

6 Q So you knew Steve and Mark McGarel at that point?

7 A Yes.

8 Q And Andrea says to him in the second paragraph -- can
9 you read that in the middle of the page?

10 A Before we go much further, your answer on sharing
11 company information with any third parties was not in line
12 with our thinking. To be more specific, information about
13 the company as an asset of the company, not any of its
14 equity holders. And you'll need the expressed permission
15 of the company to provide any company information to any
16 third party, whether a competitor or not.

17 Q All right. I note by this time we've got all kinds
18 of lawyers copied on these e-mails. Y'all had John Zamer?

19 A John Zamer represented Carolina Custom.

20 Q He's a lawyer in Atlanta?

21 A Yes, sir.

22 Q And by then, Dave had Clayton Jennings?

23 A Yes.

24 Q And everybody knew that everybody had lawyered up by
25 then?

1 A Yes.

2 Q All right. If you would, I'm going to ask you to
3 look at a group of e-mails. If you could, look at 70, 72,
4 76, and 78. And what they are is a group of e-mails
5 between Dave and Mark McGarel. To put them in context,
6 you need to flip through them.

7 A Okay.

8 Q You've read them all. Now, it's true, isn't it, that
9 you didn't really become aware of these e-mails until
10 after Dave left?

11 A Correct. We got these in discovery.

12 Q But if you look at them, on January the 9th, when
13 y'all were under the impression that Steve Norvell may buy
14 the company, he's talking to Mark McGarel; right?

15 A Yes.

16 Q Mark McGarel has a company up in Tennessee called
17 Filmtech?

18 A Yes. And his wife owns a company called Plastic
19 Suppliers.

20 Q Which would have been a direct competitor of you?

21 A Yes.

22 Q All right. So he's talking to McGarel. You find
23 out. And if you would, look at 74. Are you with me?

24 A Okay.

25 Q Are you there?

1 A I am.

2 Q This is January 16th, from Dave to Mark. And you got
3 this e-mail after Dave left. Tell the Court how you
4 happened to get this e-mail. Was it on the company
5 server?

6 A Let me see. This one, I think, we got in discovery.

7 Q All right. Read paragraph four. What was he telling
8 Mark McGarel two days before he left?

9 A He wanted a full-time employer with a salary of
10 \$8,000 a month. His goal would be --

11 Q Let me stop you. That's the \$8,000 a month we've
12 talked about for three years; right?

13 A Yes.

14 Q And you were paying him what?

15 A We were paying him \$12,000 at that point.

16 Q Okay. Go ahead.

17 A My goal would be to move as much of the business I
18 manage at CCC to Filmtech as quickly as possible. In
19 addition, I will work to bring perspective business that
20 CCC has been working on or qualifying over the past three
21 to six months. I will, also, need 500 per month to secure
22 an office and Internet service.

23 Q So he's telling a guy he will, "move as much of the
24 business as I manage at CCC to Filmtech as quickly as
25 possible." How much did he manage?

1 A Dave managed all the sales, all the...

2 Q If he was able --

3 A All the perspectives.

4 Q If he did what he says he wants to do in paragraph
5 four, what would it have done to CCC?

6 A It would have closed us.

7 Q All right. Let me back up one second. I left
8 something out. If you would, just keep your finger there
9 and go to 57. Okay. This is -- y'all are back -- y'all
10 have been back and forth. This is November the 3rd of
11 2011. This is two months back; right?

12 A Yes.

13 Q And Dave needs money. Y'all made the decision not to
14 distribute money unless you've got money; right?

15 A Correct.

16 Q The company, you know by then, is going to lose
17 hundreds of thousands of dollars; right?

18 A Yes.

19 Q But you gave Dave \$12,000; right?

20 A I was trying to get him comfortable, yes.

21 Q Did you have to do that?

22 A No.

23 Q So this was \$12,000 more than anybody -- than you
24 got?

25 A At that point, it was a whole lot more.

1 Q But this was one additional check that you didn't get
2 that you gave him in November of 2011?

3 A Yes.

4 Q All right. If you'll look at 76.

5 Are you there?

6 A I am.

7 Q This is an e-mail from Dave two days before he left.
8 Actually, practically a day because it was 5:00 on Monday,
9 the 16th; right?

10 A I believe this is the day that Clayton called --

11 Q You had a meeting with Dave that morning, didn't you?

12 A Yes.

13 Q And you thought you had worked everything out with
14 him one way or the other. Perhaps, he might stay as a
15 partner?

16 A I thought we were moving forward, yeah, together.

17 Q So at 5:00 that day, he sends an e-mail out to Mark,
18 the information one through 11, markets and products. Is
19 that something you would want a competitor to know?

20 A Go ahead and give away my trade secrets. It's got my
21 pricing in there. It's got the markets we sell into.

22 Q Look at the chart that he attached. He's still
23 working at CCC; right?

24 A Yes.

25 Q He hasn't left?

1 A Correct.

2 Q He's your partner?

3 A Correct.

4 Q And he gives him this chart. Does this chart look
5 familiar to you?

6 A This matches our sales plan that we had for 2012.

7 Q Does it look like he simply just sent him your sales
8 plan?

9 A He did.

10 Q So the chart shows customers, products, widths,
11 pounds per month, pounds purchased in the past, selling
12 price, costs, budgeted sales, and budgeted costs; right?

13 A Yes.

14 Q Is that the essence of your company?

15 A It's a good bit of it.

16 Q And we found out about this after he left. You
17 didn't know it at the time?

18 A No.

19 Q But this was going on a day before he left?

20 A Yes. You know what, there was one that appeared on
21 the Blackberry when we turned it back up.

22 Q We haven't got there yet.

23 A Okay. Sorry.

24 Q You talked yesterday about the departure and what
25 happened on the 16th, 17th, 18th. I'm not going to take

1 you through that. But if you would, look at 77.

2 Are you there?

3 A Yes.

4 Q Y'all had lawyered up by then. You got a local
5 lawyer, William Floyd. And William wrote Clayton a letter
6 on the 19th, the day after Dave left; correct?

7 A Yes.

8 Q Dave had taken the computers. How many computers did
9 he take?

10 A He walked out with two machines.

11 Q And a Blackberry?

12 A And a Blackberry.

13 Q Did he, also, take paper?

14 A He had piles of files; but I didn't know what they
15 were.

16 Q So Mr. Floyd admonishes him not to -- tells his
17 attorney -- read paragraph -- the first sentence of
18 paragraph four, Mr. Wilson.

19 A Mr. Wilson must not destroy, copy, sell, or use any
20 of this property, including the computer data.

21 Q Were you interested in seeing all the e-mails he had
22 sent back and forth in January to various people?

23 A It was the purpose for trying to close things the way
24 we did so we would retain that.

25 Q Did the top paragraph warn him that y'all considered

1 all of this to be trade secrets and confidential
2 information?

3 A Yes.

4 Q Did there come a time that the computers came back?

5 A It was several weeks later.

6 Q What was on the computers when they were delivered?

7 A My understanding is the computers had been wiped.

8 Q How about the Blackberry?

9 A The Blackberry, they had replaced the SIM card. So
10 everything had been erased, destroyed.

11 Q All right. Exhibit No. 78. It's an e-mail from
12 Renee McGarel to Mark McGarel, copy to Dave
13 Wilson@charter.net. Do you see that?

14 A Yes.

15 Q Charter.net was not an e-mail you had access to; am I
16 right about that?

17 A You're correct. I did not.

18 Q How did you become in possession of this particular
19 e-mail? And when did you get it?

20 A So this was a Saturday --

21 Q Saturday, a couple days after he left?

22 A Yes. The number that Dave carried was the sales
23 number for Carolina Custom. So we went to Verizon to have
24 them activate that number on another Blackberry device.
25 And when they did, this e-mail popped in.-- popped into

1 it.

2 Q And you got it?

3 A Yes, sir.

4 Q If you look behind this e-mail, we've got an
5 attachment. What did the attachment show?

6 A The attachment is more of our sales plan. I really
7 didn't know who Renee McGarel was, and what her company
8 did at that point. But she's who he's sharing our
9 confidential information with now.

10 Q If you would, go to Exhibit No. 97.

11 Are you there?

12 A Yes.

13 Q Mr. Arnold went over this yesterday. But 97 is
14 simply a recap of the distributions that Dave got. And
15 there's a similar exhibit for what you got; right?

16 A Yes.

17 Q And you both got distributions for \$382,000; am I
18 right about that?

19 A Over the course of the business, yes.

20 Q But this doesn't include other payments made to Dave
21 because the company loaned him money?

22 A Correct.

23 Q How big was the loan to Dave at the end of 2011?

24 A I believe it was somewhere around \$125,000 plus.

25 Q All right. Would you look at 124? That's in the

1 other volume.

2 THE COURT: What did you say? \$125,000 was
3 additional compensation?

4 MR. STEPHENSON: Well, this will clear it up, Judge.

5 BY MR. STEPHENSON:

6 Q Are you at 124, John?

7 A Yes.

8 MR. STEPHENSON: Judge, do you see 124? We've got
9 two volumes.

10 THE COURT: Okay.

11 BY MR. STEPHENSON:

12 Q This is just a recount of who put in what, and who
13 took out what; right, John?

14 A Yes, sir.

15 Q Now, to be fair, it says funds through 2011. Even
16 though you had made loans to the company, you had been
17 paid back all of your loans; right?

18 A Yes.

19 Q And what I'm interested in is distributions. In
20 2008, he got 48 and you got 10; right?

21 A Yes, sir.

22 Q 2009, you caught up somewhat; right?

23 A Yes.

24 Q 2010, y'all's big year, he got 110, you got 99, plus,
25 he got 25. You made him a loan so he could pay his taxes

1 in 2010?

2 A Yes.

3 Q And there was no dispute about that, he knew it was a
4 loan; right?

5 A Yes. Correct.

6 Q And 2011, you both -- 2011, the year we're
7 complaining about, you got 84, he got 84, and he got
8 another 104; am I right about that?

9 A Yes.

10 Q So he got 25,855 and 104,741 over and above what you
11 got, even though y'all had the same interest?

12 A Yes.

13 Q So when he left, he was that far ahead of you?

14 A Yes.

15 Q Okay. After he left, you told me that the company
16 lost \$457,000 in 2011?

17 A Yes, sir.

18 Q After he left, did you have to put more money in?

19 A Yes.

20 Q How much money did you have to put in the company?

21 A I put 250,000 in.

22 Q Did you get any back?

23 A I've gotten 50,000 back.

24 Q Did you lose money, again, in 2012?

25 A We did.

1 Q All right. We know the suit was filed in April of
2 2012. Do you remember that? We went over that yesterday.

3 A It was April of 2012.

4 Q Everybody went back and forth and fought in 2012
5 about buying and selling. I don't want to rehash all
6 that. Right?

7 A Yes.

8 Q Were y'all throughout 2012 willing to buy and sell at
9 the same price?

10 A Yes.

11 Q I want to take your attention to a hearing that was
12 conducted before Judge Hill on December the 6th. Do you
13 recall that hearing?

14 A I do.

15 Q Do you recall showing up at the hearing and being
16 willing to dissolve? Had you reached the decision we'll
17 just dissolve the company?

18 A Yes.

19 Q Did you believe that Dave would agree to dissolution
20 at that time?

21 A I did.

22 Q That's what you had been told?

23 A Yes. That's what he was seeking.

24 Q All right. So you got to the hearing on December
25 6th, and said let's quit fighting. I'm losing money.

1 I've got all this tied up in it. Let's just dissolve it.

2 A Yes.

3 Q That's what you thought was going to happen on
4 December the 6th?

5 A I did.

6 Q Okay. Did they surprise you and say at the hearing
7 that they wanted to buy the company?

8 A Yes. Andy Arnold made the statement in the courtroom
9 that there's a half million dollar offer on the table, and
10 that the company shouldn't be dissolved.

11 Q Okay. Well, let's look at what happened. All right.
12 102 is the transcript of the hearing. This is two years
13 ago.

14 Are you there?

15 A Yes, sir.

16 Q If you'll turn over to Page 7. I'm going to read
17 what Mr. Arnold represented to the Court, and you tell me
18 if I'm reading it correctly.

19 Mr. Arnold: We don't want to gut the entity. We
20 think the business has value. Remember, we were here not
21 long ago because they didn't want to give us the customer
22 list, because the customer list has such value. Well, we
23 agree it has value. And we want -- well, actually, we
24 made an offer to purchase this business for almost half a
25 million dollars.

1 Do you see that?

2 A Yes.

3 Q And they took dissolution off the table?

4 A Correct.

5 Q Back up one exhibit. That would be 101.

6 A Yes.

7 Q Do you see that he offers to buy their interest --
8 your interest, you and Andrea, for \$442,000, and he's got
9 some terms?

10 A Yes.

11 Q Was a meeting scheduled where y'all tried to accept
12 his offer?

13 A Yes. We met.

14 Q Did that go anywhere?

15 A They opened the meeting by saying the offer was off
16 the table.

17 Q All right. Between the time that Mr. Arnold said
18 they wanted to buy and the time you went to the meeting to
19 accept, did Steve Norvell and Dave come out to the plant
20 and tour it, and look at all the equipment?

21 A Yes.

22 Q And you thought --

23 A We thought an appraiser was coming. And I wasn't
24 there. My plant manager met Dave and was surprised to see
25 that Steve was with him.

1 Q If you would, tell the Court how much this litigation
2 has cost you.

3 A I don't even know where to begin. I mean, I've gone
4 without pay for three and a half years, my time. I work
5 80 hours a week just to get by. I mean, including lawyers
6 cost, with that, we've spent over 200, 300,000. I don't
7 know.

8 Q Well, some of your costs have been paid for out of
9 the company; right?

10 A Yes.

11 Q Some of them?

12 A Yes, some.

13 Q Did you --

14 A I was sued personally, so I've been paying those
15 bills personally.

16 Q You paid Mr. Goldsmith out of your own pocket?

17 A Yes.

18 Q And you've had to advance loans to the company so you
19 could pay your vendors?

20 A Correct.

21 Q And your employees?

22 A Yes.

23 MR. STEPHENSON: I may be through. Let me have a
24 second, Your Honor.

25 THE COURT: Okay.

1 (Pause.)

2 MR. STEPHENSON: Your Honor, we're going to recall
3 Mr. Gandis in our case, but we're not going to rehash this
4 stuff.

5 THE COURT: Okay.

6 MR. STEPHENSON: Wait a minute. Mr. Arnold is going
7 to have some questions maybe, or Mr. Campbell.

8 REDIRECT EXAMINATION

9 BY MR. ARNOLD:

10 Q Good morning, Mr. Gandis.

11 A Good morning.

12 Q I'm sorry. You didn't have nightmares about e-mails
13 last night, did you?

14 A Go to the lake.

15 Q Let's start with this. You said by October the 12th,
16 you knew that the company was in trouble?

17 A That's a pretty broad statement. October the 12th,
18 we were missing our sales plan. And our inventory
19 reduction was not going as we had hoped it would.

20 Q Well, actually, you had a pretty significant
21 inventory reduction during the period of September to
22 December, didn't you?

23 A (There was no response.)

24 Q Didn't you?

25 A I mean, without looking at my inventory, I don't know

1 what you're referring to. We sold off as much stuff as we
2 could.

3 Q Hundreds of thousands of dollars of inventory was
4 taken off the books during that period of time; isn't that
5 correct?

6 A When we were trying to come up with a value for the
7 business for Dave. And we were evaluating the value of
8 the inventory that was on the books and the adjustments
9 were being made, yes, that was corrected.

10 Q And when you take that inventory off the books, would
11 you agree that some of it should have been taken off the
12 books back in 2010?

13 A Would I agree? I mean, we were trying to fix a lot
14 of stuff. We had a real weakness in our accounting area
15 that we were trying to get corrected.

16 Q I understand.

17 A It's typical for a start-up company.

18 Q But if I'm asking "yes" or "no" questions, it will
19 help if you will, at least, start by answering "yes" or
20 "no," then you can explain.

21 A Okay.

22 Q So, again, you -- some of the inventory write-off,
23 should that have occurred in 2010? I mean, there was
24 inventory on the books in 2010 that didn't exist. Would
25 you agree with that statement?

1 A Yes. We just never got -- we didn't have the systems
2 in place to make the corrections.

3 Q So by not writing it down in 2010, the taxable income
4 in 2010 maybe was higher than it should have been?

5 A Yes. That's a very true statement.

6 Q And by shifting it to 2011, that increased the cost
7 of goods sold for 2011; right?

8 A Repeat the question. I'm sorry.

9 Q By writing down the inventory all in 2011, that had
10 the effect of increasing the cost of goods sold in 2011?

11 A As it should, yes.

12 Q And that reduces your profit, what you're showing as
13 profit on your books, doesn't it? I mean, this is
14 elementary; right?

15 A Elementary to you.

16 Q I've learned most of it from your accountant. But it
17 doesn't -- by decreasing the inventory, that doesn't
18 really have an impact on cash, does it? Because your cash
19 is whatever it is. You're just on the books increasing
20 the cost of goods sold?

21 A Correct.

22 Q So what was the cash situation at this dire point in
23 time on October 12th, 2011?

24 A Without looking at the checkbook, I --

25 Q Well, let's do this. Do you see November 6, 2011?

1 Do you see the date? This is Plaintiff's Exhibit No. 57.

2 Have you found that?

3 A I have the e-mail, yes.

4 Q Okay. And that is an e-mail from Andrea to you; is
5 that right?

6 A Yes.

7 Q And the title of it, Day-to-day, starting to see what
8 has happened to our money. Here is a schedule for you.

9 And this is directed to you; correct? I mean, this
10 is an e-mail to you?

11 A Yes.

12 Q And Dave is not copied on this e-mail, is he?

13 A No.

14 Q Okay. And this -- there's a cash flowchart attached
15 to this, but let's turn the page. And do you see -- just
16 one page.

17 So it's Exhibit No. 57, and turn one page. This is
18 Plaintiff's Exhibit No. 57. But you're right. You're
19 right. And if you'll look at 2011, let me read what
20 Andrea tells you about year to date, The company has
21 generated positive cash flow of \$539,000 --

22 A 536.

23 Q Very good. Good catch. 536.

24 So your cash flow in 2011 is, actually, above -- at
25 this point, which is after the October 12th date, you

1 testified you knew you had real cash problems. The
2 company has made over a half million dollars of positive
3 cash flow at this stage; correct?

4 A Yes.

5 Q Now, that all disappears by the time it hits the
6 balance sheet. Because you're increasing the cost of
7 goods sold by taking off all this inventory in 2011;
8 right?

9 A The cash disappeared because we repaid our loans.

10 Q We'll get to that. Repaid the loans to you?

11 A Repaid the loans, yes.

12 Q But the cash flow, at this stage, was \$536,000. Not
13 so dire from a cash standpoint, would you agree?

14 A I think you're making an overbroad statement.

15 Q Well, let's just --

16 A A checkbook doesn't lie, you know.

17 Q Does Andrea lie?

18 A That checkbook never at any one time said \$536,000.

19 Q Not at any one time.

20 A We're not a cash-basis company. It was an
21 accrual-basis company at that point.

22 Q But you testified by October --

23 A Any cash we had in our checkbook was already
24 committed.

25 Q You testified that you stopped paying -- had told

1 Dave he was going to have to stop being paid because y'all
2 were in a tight cash position; isn't that right?

3 A Yes, we were.

4 Q And you testified that you were sure of that by
5 October 12th?

6 A Yes.

7 Q And here we've got positive cash flow. Now, before I
8 leave this e-mail, let's look at the first page real
9 quick. Do you see 2008? This is what -- this is
10 Andrea's.

11 She's telling you, I have quarter by quarter numbers
12 there for you so you can see the trend activity. You will
13 note that each quarter was an overall outlay of cash,
14 except for the third quarter. The year finished with an
15 overall drain of cash. I would have paid the owners zero
16 in salary.

17 Do you see that at the top?

18 A Yes.

19 Q Now, if you would have paid the owners zero in
20 salary, there never would have been a CCC, would there?
21 Because Dave required a monthly income; right?

22 A You know --

23 Q This is not rocket science --

24 A Dave needed a monthly income, yes.

25 Q Right.

1 A Would there not be a CCC, I can't answer that --

2 Q Do you think he would have agreed to the deal --

3 A I mean, that's, typically, the way it works in small
4 businesses --

5 Q But it wasn't the way this deal worked, was --

6 THE COURT: All right. Now, wait a minute. Let me
7 tell you something. I can sit up here and snipe at you
8 all day for interrupting each other, but it's real simple.
9 Ms. Jenkins is an excellent court reporter. But if y'all
10 want what your question is or what your answer is in the
11 record, you need to let each other finish. Otherwise,
12 it's not going to get there.

13 MR. ARNOLD: And that was my fault. And I apologize.

14 THE COURT: It's both of y'all's fault.

15 MR. ARNOLD: Yes, sir.

16 BY MR. ARNOLD:

17 Q Let's point out one other thing. It looks like in
18 2010 on revisionist history -- 2010, again, the company
19 generated positive cash flow. By now, your personal risk
20 has increased to \$307,000. At this point, I still -- I
21 would still not pay the owners a salary.

22 Do you see that?

23 A Yes.

24 Q That's relating to 2010. Remember her plan 250 to
25 distribute \$250,000 in cash to each of you? Remember that

1 plan?

2 A Yes. That was the plan.

3 Q But now she's saying if it had been up to her, she
4 wouldn't have --

5 A We weren't successful in achieving the plan.

6 Q So let's look at 59, Exhibit No. 59. And I want you
7 to turn to Page 3. And I've got it. And it starts with,
8 Then. This is from Andrea to you; correct?

9 A Yes.

10 Q And it's dated November 9th?

11 A Yes.

12 Q This is after the October 12th realization that
13 there's a cash crunch. And this is what Andrea tells you,
14 I want you to look at the summary sheet I have above. I
15 worry that he will focus solely on our current year, 2011.
16 As you can see, during this year, we generated about a
17 half million dollars in cash. As you know, I worked hard
18 during the year to undo the disparity in funding this
19 company and we repaid all of your loans this year, the
20 \$361,000 or 67 percent of cash that was generated.

21 I worry that Dave might argue that you are treating
22 him unfairly because you can afford to loan money to the
23 company. And he might argue if his money had been divided
24 45/45/10, then he would have had enough money to pay his
25 taxes. And in parenthesis, And he would not have had to

1 take advances from the company.

2 Do you see that?

3 A I do.

4 Q And she sent that cash flowchart to you; right?

5 A Yes.

6 Q And she was concerned that if Dave saw it, Dave might
7 get the idea that what you're telling him about cash is
8 not the truth. Isn't that what she's concerned about, him
9 getting the wrong idea?

10 A At this point, Andrea and Dave were not communicating
11 at all. It was no secret to anyone that the two were kind
12 of -- so I tried to be a conduit to communicate as much of
13 this stuff as I could. A lot of it, I didn't understand.
14 But --

15 Q Okay.

16 A Dave is not on this e-mail, you're correct.

17 Q Real quick. Managing inventory. You said Dave was
18 in charge of managing inventory. Is that the truth?

19 A Dave did all the purchasing.

20 Q He did the purchasing. Who managed and counted the
21 inventory, kept counts of inventory?

22 A We just -- we had people at the plant that did it.

23 Q Actually, you hired somebody at the plant to do it?

24 A John Higgins was trying to get our warehouse
25 straight, but he was not responsible for the inventory.

1 Q Well, wait a minute.

2 A He did not buy film to put in inventory, or reorder
3 when he needed to -- you know, he's a warehouse manager.

4 Q Where was your inventory kept?

5 A In Anderson.

6 Q Where did Dave work?

7 A The Greenville office.

8 Q Now, how is he going to be counting inventory stored
9 in Anderson when he works in Greenville?

10 A He would drive.

11 Q And how often did he drive to Anderson to count
12 inventory? Almost never?

13 A Once or twice a month.

14 Q Now, again, you said that Dave made this threat about
15 dissolving the business. And you were so worried about
16 the 24 employees you had around Christmastime of 2011. Do
17 you remember that the testimony?

18 A Yes.

19 Q It took you one year to want to dissolve the company.
20 Did you forget about those 24 employees by then?

21 A No. We had other plans to move forward.

22 Q And Dave made an offer?

23 A That we accepted.

24 Q You did not accept that offer. Is it your testimony
25 on the stand today that you accepted the offer that Dave

1 made?

2 A We did.

3 Q Okay. You didn't counteroffer?

4 A I didn't see it as a counter.

5 Q Did you know you countered it at \$500,000?

6 A I thought that's what you represented in the
7 courtroom. You said --

8 Q We made a \$446,000 offer.

9 A So we were 44,000 apart.

10 Q That's right. And you offered a two-month
11 non-compete. Do you remember that?

12 A We e-mailed the next day. We offered a term sheet
13 with --

14 Q With different terms?

15 A We could negotiate it off the term sheet to move
16 forward.

17 Q Okay. The three accounts. Let's start there. You
18 testified a little bit about the three accounts. And you
19 used Defendant's Exhibit No. 8 --

20 THE COURT: What was that last exhibit you had up on
21 the screen? 50 what?

22 MR. FARRAR: 59.

23 BY MR. ARNOLD:

24 Q We went through this exhibit pretty quickly
25 yesterday. And I want to slow down and go through it a

1 little more carefully. This is an e-mail from Dave
2 sending you EFS customer information; right?

3 A Yes.

4 Q Okay. And so if you'll turn to the first page.

5 MR. FARRAR: What exhibit number is that?

6 MR. ARNOLD: This is Defendant's Exhibit No. 8

7 BY MR. ARNOLD:

8 Q Can you see that?

9 A Yes.

10 Q And the first category is 2007 EFS sales by
11 customers. Do you see that?

12 A Yes.

13 Q Below it, you have 2008 year to date EFS sales by
14 customer?

15 A Yes.

16 Q Okay. And then that continues on the next page. Do
17 you see that?

18 A Yes.

19 Q And on there, do you see Modular Metal?

20 A Yes.

21 Q Do you see West Carrollton at the very bottom?

22 A Yes.

23 Q And do you see J.P. Lamborn?

24 A Yes, sir.

25 Q So he was telling you he was selling to those

1 accounts in 2008?

2 A Yes.

3 Q Okay. And then he gives you one last sheet. Let's
4 see if we can get that line at the top. What does that
5 say?

6 A Carolina Custom Converting accounts from EFS to new
7 business.

8 Q Now, let's look at that. Do we see on there anywhere
9 Modular Metal?

10 A No.

11 Q Okay. Do we see anywhere on there West Carrollton?

12 A No.

13 Q Now, we do see Lamborn right here and right here;
14 correct?

15 A Correct.

16 Q Now, actually, CCC was selling to Lamborn, weren't
17 they?

18 A Yes.

19 Q They were selling film obtained domestically;
20 correct?

21 A Yes.

22 Q And do you see the three question marks right there
23 beside Lamborn?

24 A I do.

25 Q Okay. What did that mean?

1 A I have no idea.

2 Q You're putting together a business deal. He sends
3 you a sheet with the accounts from EFS, and there's a
4 question mark beside one and you don't even inquire about
5 it?

6 A My understanding was that all three pages were
7 contributed to the business in order to justify the \$8,000
8 a month.

9 Q There was only one of those that he represented to
10 you that were EFS customers that he was bringing into CCC.
11 That was the last one, wasn't it?

12 A I believe this same attachment is on our Exhibit No.
13 10. And that's the e-mail where Dave says if I am to
14 bring all of my accounts into CCC and that this same chart
15 is listed. And that's further on down.

16 Q I understand. But you've got a sheet where he gave
17 you a specific listing?

18 A We were still talking about how to structure it to
19 get him the \$8,000 a month.

20 Q And the fact is he showed you that list. And we'll
21 go to it just to review. When you got that list and you
22 paid him that check, you told Andrea that we are currently
23 selling to all of these people close to the level Dave has
24 outlined?

25 MR. STEPHENSON: You need to tell him what exhibit.

1 BY MR. ARNOLD:

2 Q I'm sorry. This is Exhibit No. 5. And you can just
3 look up here. Plaintiff's Exhibit 5.

4 So you're telling Andrea, Hey, we're already selling
5 to all the customers Dave told us we were going to sell
6 to.

7 A I'm sorry. Where are you referring?

8 Q Do you see it?

9 A I think I'm -- I mean, to be fair, I think you've got
10 to read what I'm saying prior. Because I'm still -- you
11 know, the ones we are -- you know, the list that Dave
12 provided is -- it's monthly, but they were all averaged.
13 So it is not untypical for you not to have an order from
14 an account every month.

15 Q You were --

16 A So my understanding, again, was Dave was
17 communicating with these people and they're coming in?

18 Q Okay.

19 A They were coming in the way he told me they would.

20 Q Well, you told Andrea that they had already come in.
21 We are already selling to all of these people; right?

22 A That wouldn't even be true, I think, for some of the
23 ones being listed.

24 Q So you were not being truthful to Andrea when you
25 sent her that e-mail?

1 A (There was no response.)

2 Q Which one is it?

3 A I was trying -- so to answer, yes, I was not being
4 truthful. I was trying to get comfortable with how to
5 justify the \$8,000 a month.

6 Q But, now, you say you accidentally left off
7 \$1.7 million. Actually, the import deals were
8 \$1.4 million. So let's look at your interrogatory
9 responses.

10 MR. ARNOLD: I would like to mark this.

11 (WHEREUPON, Plaintiff's Exhibit No. 176 was marked
12 for identification.)

13 BY MR. ARNOLD:

14 Q I'm going to show you what's been marked as 176 --
15 Plaintiff's Exhibit No. 176. And I want to call your
16 attention to Page 6. And we asked you to identify each
17 instance in which Dave Wilson breaches a fiduciary duty to
18 you or the company. And you answer -- your first answer
19 is usurping of corporate opportunities. Do you see that?

20 A I'm sorry. Where are you?

21 Q Page 6, interrogatory 4-A.

22 A Okay.

23 Q And so these are the accounts. And we've got 12
24 items?

25 A Yes, sir.

1 Q Now, did you understand that Flexible Technologies,
2 the \$3,400, that was for wire?

3 A I -- yeah. I have no way of verifying that.

4 Q Do you have any way of verifying any of this?

5 A A lot of this stuff is what we received out of
6 discovery. I think it even states later on that we had
7 some banking records that were due in and they weren't
8 added to this. But there were additional things in
9 addition to this.

10 Q Actually, you really didn't get this from discovery,
11 did you? You got this from the EFS QuickBooks file that
12 you hacked into that was on the computer in the Greenville
13 office when you locked Dave out. Isn't that where you got
14 this information?

15 A The -- yes. The EFS QuickBooks were on the company
16 file.

17 Q Right. So --

18 A Then we got it in discovery, also.

19 Q Okay. So did you look in there to determine that the
20 Flexible Technologies was wire?

21 A I really have no way of verifying that.

22 Q And the Dundas Jafine, do you realize that you were
23 paid for much of the Dundas Jafine, part of 89,000?

24 A I don't know that.

25 Q Now, Horizon Energy, you realize that you received a

1 check for \$11,400 from Eastern Films for Horizon Energy?

2 A I know we received some money from Eastern Films for
3 Horizon.

4 Q Well, when we find the check, I'll show it to you.
5 But the big ones are J.P. Lamborn, Modular Metal, and West
6 Carrollton. Those are the three accounts, the big
7 accounts; right?

8 A On this sheet, they are --

9 Q Yep.

10 A -- the biggest three.

11 Q Now, let's look at Defendant's Exhibit No. 97. I'm
12 just going to walk up to you real quick and show you
13 Plaintiff's Exhibit No. 140. There's the check made to
14 CCC for Horizon Energy in the amount of \$11,400. Do you
15 see that?

16 A Yes.

17 Q Now, is this figure and these other figures the wire?
18 There was one -- Industrias Vermont, did you realize that
19 was glue?

20 A I have no way of verifying that.

21 Q So this is information you gave your expert
22 witness -- CCC's expert witness to calculate how much Dave
23 needs to pay to CCC?

24 A And there's still more that we haven't even got
25 included in there that we've learned from the bank

1 records.

2 Q Okay. But you provided -- the information you
3 provided includes this Horizon Energy, the Dundas Jafine,
4 the glue, the wire, all of that; right?

5 A I have no way of verifying that.

6 Q Well, let's look at Defendant's Exhibit No. 97. And
7 these are -- this is the list of Dave's advances.

8 A 97 here?

9 Q Yeah, 97. And I'm on Page 2 of 3.

10 A Okay.

11 Q Okay. Now I want you to look down at the general
12 journal near the bottom. Actually, it looks like five
13 from the top right here.

14 A Okay.

15 Q And there's a credit memo entered against Dave's
16 capital account?

17 A Yes.

18 Q What was that credit memo for?

19 A I don't know.

20 Q Well, that's for the deal -- that's for his Lamborn
21 deal. And some of that product got rejected and sent
22 back. Do you remember that?

23 A Yes. I do know that in order to further business
24 with Lamborn, Dave had some old quality issues that they
25 expected us to resolve before we could continue -- before

1 we could supply them. So CCC purchased that and we
2 charged it against his account. Specifically, I don't
3 know that that's the one. I think we did that with
4 Dupont, also.

5 Q But you did it with the return from Lamborn; right?

6 A We did it with the return from Lamborn, yes.

7 Q Because that \$714,000 didn't have anything to do with
8 CCC, did it? That wasn't your problem. That was --

9 A 714,000?

10 Q \$714. I'm sorry.

11 A Ask me the question again. I'm sorry.

12 Q The reason you charged it against Dave's capital
13 account is because it didn't --

14 A Yeah. It was Eastern Films.

15 Q It was Eastern Films. So the \$714 was Eastern Films
16 loss, their payment. But, now, you're claiming
17 entitlement to all the profits from the Lamborn
18 transaction; right?

19 A I'm not following you. I'm sorry.

20 Q Aren't you claiming that you're -- that CCC is
21 entitled to \$626,363.91 of business that EFS did with J.P.
22 Lamborn?

23 A Yes. That was business that should have come through
24 Carolina Custom.

25 Q Well, why wasn't the return -- why was that not the

1 responsibility of CCC?

2 A I had no way of knowing what else was going to EFS.

3 How -- I don't understand the question, maybe.

4 Q You don't know, though, do you? You don't know. You
5 don't know the relationship between these things?

6 A Respectfully, Andy, when people give me returns,
7 you'd be amazed at what comes out of warehouses.

8 Q Well, I'm just trying -- you're suing my client for
9 \$1.7 million.

10 A If that's what -- if you're saying I knew the age of
11 that material, I mean, that sort of thing happens in the
12 course of business.

13 Q Well, when did you think he sold that to Lamborn?

14 A I don't know.

15 Q Well, then how did you know to charge it against EFS?

16 A Because Lamborn told us that I have some old EFS
17 quality issues that we expect to get cleaned up.

18 Q And did you think, wow, I would need to inquire about
19 that?

20 A No. This happens all the time, especially at year
21 end. People start cleaning out their warehouse and stuff
22 appears that's 10 years old and has a layer of dust 10
23 feet high. I mean, it's -- that's why some companies
24 clean their warehouses. They get credit for it.

25 Q Do you know who Mike Myers is?

1 A I do.

2 Q Who's Mike Myers?

3 A Mike worked for CCC as a sales rep. He and Dave
4 worked together at Palmetto. He was the sales manager at
5 Palmetto.

6 And then he went to work for a company called
7 Advanced Dome Systems that did what we do. And then when
8 Advanced closed, he repped for us at CCC.

9 Q Okay. And one of his accounts was Gray Flex; right?

10 A That was the only account he did with us.

11 Q Do you remember traveling to -- up to Gray Flex -- to
12 meet with Gray Flex with Mike Myers?

13 A I do.

14 Q And do you remember talking to him about the Lamborn
15 deal that he and Dave had done?

16 A No.

17 Q And you wanted to know whether or not CCC could do
18 similar importing with his contacts in China for Lamborn?

19 A I don't remember that conversation.

20 Q You don't remember it. Do you deny it?

21 A We talked about a lot of things. It's a
22 four-and-a-half-hour drive. We probably talked about
23 sports, too. I mean, I don't remember the details of the
24 conversation. I just met Mike.

25 Q Okay.

1 A That was probably one of the first times I ever --

2 Q Well, that conversation would have occurred sometime
3 in 2010?

4 A I don't remember.

5 Q You don't remember. So when you're talking to him
6 about Lamborn, how is it that you came to know then that
7 he and Mike had done these Lamborn imports?

8 A Well, they worked together at PCFI.

9 Q They did the deals that you're suing Dave for?

10 A I didn't know that.

11 Q You didn't have the conversation about the deals that
12 he and Dave did while Dave was at EFS with Lamborn?

13 A I don't know how Mike would even know.

14 Q Okay. Now, let's --

15 A I didn't know that Mike worked with Dave at EFS.

16 Q So you didn't know about the Lamborn, and you didn't
17 have that conversation?

18 A Not that I remember.

19 Q Just a few more. Your Dave with deal -- your deal
20 with Dave -- is that a sign I've been talking too long?

21 The deal with Dave that was struck at some point in
22 time that you say included West Carrollton, when was it
23 that Dave was supposed to give CCC West Carrollton? On
24 what date?

25 A When he started receiving a check in July.

1 Q What if he had received orders before he started
2 receiving a check?

3 A Well, when someone says roll it in, I would assume
4 they would come into CCC and CCC would fulfill those
5 orders.

6 Q Did CCC have hundreds of thousands of dollars to buy
7 the imports that West Carrollton had ordered from EFS?

8 A If we needed it.

9 Q If we needed it. Really? Well, let's just take a
10 look at notebook three, Exhibit No. 127.

11 A Which one? Three?

12 Q Yes, sir. 127. Do you see that?

13 A Yes.

14 Q These are Eastern Films documents related to the
15 sales involving West Carrollton. Do you see that?

16 A Yes.

17 Q And, actually, if you'll just flip to the very back.
18 Just go all the way back to the very last document and
19 let's go backwards.

20 What's the date of that sales order?

21 A 2/27/08.

22 Q Is that before you gave Dave a check?

23 A Yes.

24 Q What's the next -- turn the page and let's look at
25 the next sales order. What's the date on that sales

1 order?

2 A 2/27/08.

3 Q Is that before you paid Dave a check?

4 A Yes.

5 Q Next sales order?

6 A 2/27/08.

7 Q Next sales order?

8 A 2/27/08.

9 Q Next sales order?

10 A 2/27/08.

11 Q Again?

12 A 2/27/08.

13 Q Again?

14 A I get your point.

15 Q And if you'll, actually, go back, keep going because

16 there's 12/14/2007. The West Carrollton deal was in place

17 long before you gave Dave an \$8,000 check; right?

18 A Apparently, yes.

19 Q Okay. But you're suing him for that; right?

20 A Yes.

21 Q It's on your list. How many hundreds of thousands of

22 dollars do you want for those orders?

23 A (There was no response.)

24 Q Now, let's look at Exhibit No. 147. Before you --

25 I'll tell you what, I'm going to just -- those West

1 Carrollton, if you'll look, he's selling metalized
2 polyester film to West Carrollton. Okay. That's on the
3 sales orders?

4 A Yes.

5 Q Did CCC ever sell metalized -- 62-inch metalized film
6 to West Carrollton?

7 A I don't remember.

8 Q Would the answer be no?

9 A It could be.

10 Q Okay. Well, let's look at 147. It's an e-mail from
11 Dave to you. This is March 11th, 2009. Do you see that?

12 A Yes.

13 Q Eastern Films. Do you see that e-mail address?

14 A Yes.

15 Q Is there anything sinister about him using Eastern
16 Films in corresponding with you?

17 A I think -- no. You know, typically, with the cell
18 phones, it kind of self-populates when you're using it.
19 So it was not uncommon to get e-mails from Dave.

20 Q So, here, we've got -- I'm sorry. Here, we've got an
21 e-mail from him to you saying, Hi, John, we got a 62-inch
22 metalized back from West Carrollton within the past week
23 or two. Can you have Jeff locate this pallet and get a
24 new weight for me? I need to send West Carrollton a
25 credit for this film.

1 Do you see that?

2 A Yes.

3 Q Do bells start going off in your head, what metalized
4 62-inch film?

5 A You know, I -- no bells would go off. Because, like
6 I said, it is not uncommon for a customer to want a credit
7 years after you've sold them something. The next e-mail
8 that would have followed this would be Dave saying, hey,
9 could we buy this at CCC and have a use for it?

10 Q You had never sold them metalized -- 62-inch
11 metalized, had you?

12 A Like I said, I don't know. I know we sold them some
13 things. I don't know, specifically, what we sold them.

14 Q Okay. Lastly, I want to go back to one document we
15 looked at yesterday on West Carrollton. This is
16 Plaintiff's Exhibit No. 19. And I was a little lazy, and
17 I didn't do a very good job. But I want to redeem myself
18 here today and go through this in just a little more
19 detail.

20 Okay. What is the date on this document?

21 A 7/17/08.

22 Q Okay. That's the revised version. That's fine. And
23 this is from Eastern Films; correct?

24 A Yes.

25 Q And it's to West Carrollton; correct?

1 A Yes.

2 Q And it's about metalized polyester pricing for
3 October 2000 to March 2009?

4 A Yes.

5 Q And he sent this to you?

6 A He sent it to us a year later, yes, when we were
7 rebidding the job.

8 Q And look at the bottom paragraph. So, in 2008, he is
9 telling West Carrollton that after weeks of negotiating, I
10 have secured pricing on 43-gauge metalized polyester fixed
11 for a six-month period. Against West Carrollton's
12 existing PO's, we have 10 containers still scheduled for
13 delivery at pricing confirmed by West Carrollton's PO's.

14 Do you see that at the very bottom?

15 A Okay.

16 Q This document tells you that in 2008 -- July of 2008
17 that Dave was shipping containers to West Carrollton?

18 A When I got it in 2009, I did not interpret it that
19 way. Obviously, that's not what I was looking for when I
20 received this.

21 Q Did you read it?

22 A I think it was, actually, Andrea that asked to see
23 how -- the quote before she was trying to prepare the
24 financing to do the deal. Specifically, I had no reason
25 to look at how it was quoted prior.

1 Q Well, you were about to quote it again?

2 A Yes. I was most interested in how the financing
3 would work, because it would require a large sum of money
4 to do it.

5 Q Wouldn't this provide you with a clue?

6 A A clue? I mean --

7 Q Yeah, about the pricing. Let's look at it again. If
8 you read it --

9 A If I -- I'm sorry.

10 Q We sincerely appreciate the business you have placed
11 with Eastern Films Solution, and look forward to serving
12 you in the months and years ahead.

13 You knew this in July of 2009; right?

14 A I didn't read it that way when I received it in July
15 of 2009.

16 Q Okay. Well, how do you read it now?

17 A It's not uncommon for a customer to place a blanket
18 and try to hold a supplier to a long-term deal. I mean,
19 Dave is talking about securing -- he negotiated securing
20 the supply side. It is not uncommon for a customer to
21 give you a blanket that you're unable to fulfill. Because
22 our supplier would adjust the price.

23 Q You took no action?

24 A We took no action.

25 Q And that's -- there can be only two reasons for that,

1 either you knew the information in that document already;
2 right?

3 A (There was no response.)

4 Q Or Dave was -- you had information Dave was screwing
5 the company and you just ignored it, one of the two.
6 Which one was it?

7 A Well, in both scenarios you just gave, you're saying
8 I had knowledge that I understood it.

9 Q Well, you've got an engineering degree; right?

10 A I do.

11 Q And as the CEO of the company, you're in charge of
12 protecting EFS, aren't you -- I mean, CCC, aren't you?

13 A Yes.

14 Q And if you find information that suggests that
15 somebody is doing side deals, you would have an obligation
16 to put a stop to that, wouldn't you?

17 A Yes.

18 Q And if you had suspicion that they were doing side
19 deals, you would have an obligation to investigate that,
20 wouldn't you?

21 A Yes.

22 Q But you didn't, did you?

23 A When we suspected it, we put the e-mail function in.
24 That's what -- I mean, when we set up the main, that was
25 the motivator for all that.

1 Q So you saw a fax with Eastern Films on it for an \$800
2 side deal and bells went off. But then you get -- I
3 mean --

4 A This was later.

5 Q -- \$630,000 worth of work being proposed to West
6 Carrollton and you just look the other way?

7 A Your time facts are -- your times are different.

8 Q Tell me.

9 A So this quote came in 2009. The side dealing, we had
10 stronger suspicions in 2010. And then we put the e-mail
11 archive system in then after.

12 Q What was the side deal in 2010? What was he selling?

13 A It was a Horizon Energy sale.

14 Q What was he selling?

15 A A product that we sold at CCC.

16 Q Really?

17 A Yes.

18 Q What was that product?

19 A It was a laminate.

20 Q What kind of laminate?

21 A A white laminate. It was a broker deal. We sold the
22 same product at CCC.

23 MR. ARNOLD: I don't have anything else, Your Honor.

24 THE COURT: We'll take a short recess for 10 minutes.

25 Thank you.

1 (WHEREUPON, a break was taken.)

2 MR. GOLDSMITH: They tell me Mr. Gandis has concluded
3 his testimony.

4 MR. CAMPBELL: No questions, Your Honor.

5 THE COURT: Yes, sir.

6 MR. ARNOLD: The Plaintiff calls Mike Myers.

7 WHEREUPON,

8 MIKE MYERS,

9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. ARNOLD:

12 Q Let's just, for the Court's benefit, get a little bit
13 of background. Where do you work now?

14 A I work for myself. I have a company called Myers
15 Sales Consultants. And I, basically, broker film.

16 Q And what does that mean, "broker film"?

17 A I have customers that I sell to and, basically, buy
18 from overseas and various places in the states, and sell
19 it to them.

20 Q So you connect buyers and sellers?

21 A Basically, yeah.

22 Q Now, do you, actually, buy the film, or are you just
23 kind of a conduit?

24 A I, actually, buy it and then resell it.

25 Q Okay. And how long have you been in the film

1 business?

2 A Since 2004.

3 Q Okay. And is that how you met Dave Wilson?

4 A No. I have known Dave -- my wife has known Julie
5 since junior high.

6 Q Okay.

7 A And then Dave and I became friends through family.
8 When we lived in Oklahoma, we'd come visit. My wife's
9 family is in Greenville. And we would always hook up at
10 Christmas and summer. So we've known each other for
11 probably 25 years.

12 Q And is Dave the reason you're in the film business?

13 A Yes.

14 Q Tell me about how you got involved in the film
15 business.

16 A He had started a company back in, I guess, probably
17 maybe 2002, or so. And I was working in Oklahoma for a
18 paint company. And I was over all the sales. And I had
19 kind of reached the end of the line of what I was going to
20 do. It was a family business. And my name wasn't the
21 same last name as the owners.

22 So Dave presented this opportunity. And I said, hey,
23 I'd like to help out. So I invested some money in the
24 company. And then as things progressed, Joy, and I, and
25 our family moved out here in January of 2004. And so we

1 started working together then.

2 Q And what business or company did you begin working
3 for in 2004?

4 A A company called Palmetto Custom Films.

5 Q Okay. And you were with them for how long?

6 A Probably about four years, or so.

7 Q Okay. Now, when did Dave leave PCFI?

8 A I would think probably 2005 or 2006.

9 Q And then you continued on with PCFI after Dave left?

10 A Yes, for a year or 18 months, right around that time.

11 Q Okay. Now, at some point, do you recall that you and
12 Eastern Films Solutions did a project with Lamborn?

13 A Yes.

14 Q What is Lamborn?

15 A It's a flex duct company. They manufacture flex
16 duct, which is the tubes that carry your -- the air from
17 your heating and air conditioning unit to the vents.

18 Q And what relationship does film have with this?

19 A The tubes are made out of polyester film.

20 Q Metalized polyester film?

21 A It's clear and metalized, both.

22 Q Okay. So tell me about what was your involvement in
23 that. Who approached who about Lamborn?

24 A Dave had approached me. I had a relationship with a
25 vendor. And Dave had approached me and -- about, hey, do

1 you want to work together on a project to sell Lamborn
2 some film? And since I had the relationship with the
3 vendor and he had the relationship with the customer,
4 that's how we kind of started that thing.

5 Q Okay. And who was the vendor?

6 A Polyasia [phonetic].

7 Q And where is Polyasia located?

8 A In China.

9 Q And when would Dave have approached you about
10 considering this opportunity?

11 A Probably the first to the middle part of 2008.

12 Q Okay. And so tell me what you recall about the
13 Lamborn transactions.

14 A It was a screwed up deal. What happened was they had
15 promised to place -- they had placed some PO's in the
16 middle of 2008. And so they were supposed to ship -- what
17 usually happens when you import stuff, you place an order
18 and it arrives from overseas eight to 12 weeks later for
19 manufacturing and the shipment time.

20 And so when we were getting to the time that they had
21 placed orders, that was when the housing market had slowed
22 down, prices dropped. And Lamborn wanted to say we don't
23 want this film. We want to push it off, or, actually, we
24 want to cancel the PO's. Well, at that point, the
25 material had already been made, and we couldn't let them

1 do that.

2 So Dave worked through the owner -- he went to the
3 owner of Lamborn and got them to live up to their word.
4 So stuff that was supposed to deliver late 2008 didn't,
5 actually, deliver until the second quarter of 2009.

6 Q Okay. But those orders were placed sometime in
7 mid-2008?

8 A Yes.

9 Q Okay. How do you know -- or do you know John Gandis?

10 A Yeah. I know him.

11 Q How do you know him?

12 A Through Dave.

13 Q Okay. And did you ever establish any personal
14 relationship or business relationship with John Gandis?

15 A No personal relationship. But we had a business
16 relationship.

17 Q Okay. And did you do work with CCC?

18 A I did. I repped a company in North -- I repped for
19 them to a company in North Carolina called Gray Flex,
20 which is another flex duct manufacturer.

21 Q So tell me how that works. You repped for CCC?

22 A Yeah. I had a relationship with Gray Flex. And I
23 was looking for a place to, you know, sell film. I sold
24 them through other companies.

25 So because of my relationship with Dave, I thought,

1 hey, this is a good opportunity. So I approached them and
2 we started selling film to Gray Flex.

3 Q Now, what were they selling Gray Flex?

4 A They were selling clear metalized polyester film to
5 them.

6 Q Now, were they selling this to you, and you were
7 selling it to Gray Flex?

8 A No. They were selling directly to Gray Flex.

9 Q And, again, I apologize. Can you tell me again what
10 the product was?

11 A Flexible duct, same as Lamborn.

12 Q Same as Lamborn. And when did that relationship
13 begin?

14 A I think it began in 2009, but it really cranked up in
15 2010.

16 Q When you say "really cranked up," what does that
17 mean?

18 A Based off of my relationship with them and the stuff
19 that John had said that CCC could do, we started getting
20 more and more orders from them. I think in 2010, we
21 probably did close to a million bucks, maybe a little bit
22 more in 2010.

23 Q And what was the margin on that?

24 A You know, I mean, it's not a high margin. You're
25 probably looking at 25, 30 cents a pound, depending on how

1 you buy stuff. I mean, you can buy stuff and make really
2 good money on it.

3 Q So was there ever an occasion when you and John went
4 to visit Gray Flex?

5 A Yes.

6 Q Tell me -- do you know when that would have occurred?

7 A It was probably in March or April of 2010.

8 Q And why do you think it occurred during that period
9 of time?

10 A We were -- because I wanted him to go up and meet the
11 customer so they kind of have a face with CCC.

12 Q Okay.

13 A And we took his little -- he had a little Lexus. I
14 remember driving up there because it didn't have any
15 brakes -- he was worried about not having brakes. I think
16 it was a blue Lexus. So that's one of the things I
17 remember about that whole trip.

18 Q Do you remember about any conversations you had
19 during this trip to Gray Flex?

20 A We talked about a bunch of things. But one of the
21 things that is applicable here is we had a conversation
22 about Lamborn. And he had mentioned, you know, I knew
23 that you and Dave had done some business with Lamborn and
24 imported stuff. And do you think there would be an
25 opportunity to continue that relationship of importing

1 things to Lamborn again?

2 Q And before 2008, had you ever -- had you and Dave
3 ever sold to Lamborn?

4 A I -- yes, through other companies.

5 Q Through other companies?

6 A Yeah.

7 Q And so in 2008, you had -- do you remember how many
8 shipments -- how many containers?

9 A I think they had ordered six or eight containers of
10 film.

11 Q Okay. And after you shipped those in 2009, did that
12 relationship with Lamborn end?

13 A For Eastern Films, yes.

14 Q And did you and Dave, other than that order, do any
15 other business through Eastern Films?

16 A In 2007 and 2008, we did some business with a company
17 called Modular Metal, which is another company in the flex
18 duct industry.

19 Q But after -- the Lamborn last shipments, the delayed
20 shipments in 2009, did you and Dave do any business
21 through EFS?

22 A Not that I can recall.

23 Q Okay.

24 A We -- because what I remember the most about that
25 whole situation was I was concerned because Dave had come

1 to me and said, Listen, after we finish this, all of my
2 business is rolling into CCC. Well, my thing was am I
3 going to get paid? Because we both had a pretty good
4 spread of money that we're going to make.

5 And he said, Yeah, we'll get paid. But then anything
6 new, we're going to run through CCC. Because I've rolled
7 all my business into CCC.

8 Q Okay. And so what about Modular Metal? So -- one
9 more thing. So the conversation you had with Mr. Gandis
10 on the way to Gray Flex, was there any doubt in your mind
11 that he understood that you and Dave had --

12 A No.

13 Q -- been selling to Lamborn?

14 A He knew. Yeah. There was no doubt in my mind that
15 he knew.

16 Q And, yet, he really wanted you and CCC to do the same
17 thing?

18 A Yeah.

19 Q Modular Metal, did you have a role in that?

20 A Yeah. I had a relationship with a guy who had a
21 relationship with Modular. He had sold them adhesives and
22 stuff. And he had come to me asking me if we could sell
23 some film to him.

24 And then Dave and I worked together on a deal for
25 that. Dave had some film -- or had a way to get some film

1 that we could get at a good price and we could sell to
2 Modular. It started in 2007.

3 Q So that deal would have started in 2007. Why did
4 that deal take so long to develop?

5 A Well, we were using a different type of film. It was
6 polyester, but it had gone through a special kind of
7 process. And we had to send it to the customer to test.
8 They had to do all of their testing and make sure that it
9 works for all their process, and everything like that.
10 And then, after that, that's when we started getting some
11 orders.

12 Q So, essentially, you've got this process where you've
13 got to show them the film you're going to sell them;
14 right?

15 A Yes.

16 Q And it's kind of got to go through a qualification
17 process?

18 A Right.

19 Q And y'all had done that in 2007?

20 A The end of 2007 to 2008.

21 Q And then you were going to start shipping product --
22 this film to Modular Metal?

23 A Yes.

24 Q And was this deal between you and Eastern Films
25 similar to your Lamborn deal in terms of payment

1 structure?

2 A Yes.

3 Q Okay. Where do you get your information about
4 manufacturers of film?

5 A Word of mouth. I mean, you can go on websites. Like
6 if I wanted to find an attorney, I could -- find a
7 business law attorney, I could go on the Internet and find
8 one. I mean, it's easy to find polyester manufacturers.

9 Q Well, how many polyester manufacturers are there in
10 the U.S.?

11 A Probably five or six.

12 Q Who are they?

13 A Torre, SKC, Mitsubishi, Dupont, Polyplex and Plex
14 America. There may be another one I'm missing, but that's
15 the main ones.

16 Q And are there some -- and I guess there's some --

17 A They're far and wide. I mean, you start going into
18 the worldwide market and there's 50 to a hundred.

19 Q Now, import records, are you familiar with the
20 availability of import records online?

21 A I mean, I can -- I think you can get them, but I'm
22 not super familiar with it.

23 Q How about customers? If you're looking for potential
24 customers, where do you -- what are your sources of
25 information identifying who you might want to sell film

1 to?

2 A I do a lot of business in the flex duct industry.
3 You can go to a website that's called Air Diffusion
4 Council that's every flex duct manufacturer around. I do
5 business in packaging.

6 Q Yeah.

7 A And if you do a search for flex packaging, you'll
8 pull up multiple companies. And then you kind of just
9 build your database off of that.

10 Q Trade associations. Are there trade associations?

11 A There's trade associations. I mean, I'm going to a
12 trade show next month called the Pack Expo. And there
13 will be every manufacturer you could ever think about and
14 every customer. I mean, it's very -- I mean, it's easily
15 available.

16 Q Would it be fair to say that any records that you
17 have, databases that you have related to selling a film,
18 the information on those databases all come from public
19 sources?

20 A Yeah.

21 Q What about pricing? How secret or confidential is
22 pricing in this industry?

23 A It depends. I mean, I had two -- in the last two
24 weeks, I've had a customer up in North Carolina send me an
25 e-mail saying, Hey, this guy is quoting me this price, how

1 is this possible? And I had -- I still do business with
2 Lamborn. And I sent them an e-mail because my orders had
3 kind of slowed down. And he said, Well, here's where my
4 price is at, here's where you're at.

5 So there are some purchasing agents that aren't going
6 to tell you. But, usually, it's not super hard to figure
7 out what the price is.

8 Q And, for example, the manufacturers, let's take
9 Mitsubishi or Dupont, am I right to understand they send
10 e-mails out with their pricing?

11 A They do.

12 Q How regular do those e-mails go out about what their
13 pricing is?

14 A There is -- they have a surplus list that goes out, I
15 think, every week that tells you what the products are,
16 what the price is, if you buy it less than a truckload,
17 over a truckload, so.

18 Q Did CCC ever ask you to sign a non-disclosure
19 agreement?

20 A No. Now, I was accused of signing one.

21 Q What do you mean?

22 A When I was -- had that relationship with Gray Flex, I
23 got a call from Gray Flex, the customer -- the purchasing
24 agent there, a lady named Janine Gowens. And she said,
25 Hey, John Gandis is coming up here and why aren't you

1 coming? And so I tried to call John and he wouldn't take
2 my phone calls. And he goes up there and kind of says
3 I've done these unethical things and broken a deal.

4 And then I get a letter from him that said that they
5 had heard from multiple sources that I had -- was
6 competing against them, and that I -- and I had broken an
7 agreement that we had. And that because of that, he was
8 going to not pay commission that he owed me and
9 potentially pursue legal action, or something like that.

10 Q Well, let's go back to Gray Flex. He went up to meet
11 with the customer without you?

12 A Yes.

13 Q And do you know what was the result of that meeting?

14 A I guess the result of it, he tried -- he cut me out
15 of the whole deal. And I think if you look at their sales
16 after they cut me out, they took a big nose dive. And the
17 thing is I'm still selling to them. So --

18 Q But that was the purpose of his deal with -- his trip
19 to Gray Flex on his own was to say, hey, we can sell to
20 you directly?

21 A I guess. I mean, and to tell her that I was
22 unethical, and I had broken an agreement.

23 Q Just to make sure, you don't recall any deals with
24 EFS after 2009?

25 A I don't.

1 Q Okay. At one point in time, Dave, I think owed you
2 some money?

3 A Yes.

4 Q How much money did he owe you?

5 A About 30,000.

6 Q Okay. And when was this?

7 A Gosh, probably 2005.

8 Q And Dave filed bankruptcy?

9 A Yes.

10 Q When did he file bankruptcy?

11 A I don't --

12 Q After incurring that debt to you?

13 A Yes.

14 Q How much of that money did you get paid back?

15 A All of it, plus, I think, seven or eight percent
16 interest.

17 MR. ARNOLD: I don't have anything else, Your Honor.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. STEPHENSON:

21 Q Mike, you didn't come because you got a subpoena, did
22 you?

23 A No.

24 Q You came because Dave is a friend of yours; right?

25 A Yes.

- 1 Q That goes back years and years?
- 2 A Right.
- 3 Q Your wives are friends?
- 4 A Yes.
- 5 Q You have dinner together?
- 6 A Occasionally.
- 7 Q He's almost like family?
- 8 A I wouldn't say like family --
- 9 Q One of your closest friends?
- 10 A Yes.
- 11 Q And, of course, if Dave were to win this lawsuit, you
- 12 wouldn't be sad about that, would you?
- 13 A No. Because I can't -- well, yeah. Because I can't
- 14 stand -- I think John Gandis is a crook.
- 15 Q And the flip side of that is you can't stand John
- 16 Gandis?
- 17 A Yeah. I think he's a crook.
- 18 Q You think he's a crook. You don't like him?
- 19 A Yeah.
- 20 Q And you no longer do business with his company, CCC?
- 21 A (There was no response.)
- 22 Q Right?
- 23 A Yes.
- 24 Q All that's true?
- 25 A That's all a hundred percent accurate.

1 Q Let's go back to PCFI, Palmetto Custom Films. You
2 started there in 2004ish?

3 A Yes.

4 Q And it was Dave's company?

5 A Yes.

6 Q There were investors?

7 A What's that?

8 Q There were investors?

9 A Yes.

10 Q But it was Dave's company. Dave got investors. Dave
11 ran it?

12 A Yes.

13 Q He was the president. He made all the decisions?

14 A Yes.

15 Q You were an employee?

16 A Yes.

17 Q And, certainly, while you were there, you wouldn't do
18 a side deal without Dave's permission, would you?

19 A No.

20 Q Nobody would do that, would they?

21 A No.

22 Q That's just known, any time you work for an employer,
23 you don't do side deals unless you've got permission. You
24 would agree with me that everybody knows that?

25 A Yeah.

1 Q Every salesman knows that?

2 A I would agree.

3 Q And, certainly, if you're partners, it's even
4 stronger. You wouldn't go around your partner, would you?

5 A No.

6 Q Everybody knows that?

7 A Yes.

8 Q Now, as I understand it, Palmetto Custom Films kicked
9 Dave out?

10 A Yes.

11 Q He signed his interest over?

12 A Yes.

13 Q To the guys who had invested money?

14 A Right.

15 Q And the reason Palmetto Custom Films went down is too
16 much inventory, too much debt; right?

17 A I wasn't involved with it day-to-day.

18 Q But your understanding --

19 A I would say probably, yes.

20 Q And you continued on after he was gone; am I right
21 about that?

22 A Yes.

23 Q And, of course, Dave was in charge of the inventory.
24 He was the head dog there; right?

25 A He was. We had a purchasing agent who was, also, in

1 charge of things.

2 Q But Dave was the guy?

3 A Yeah. He was the owner, yeah.

4 Q And the investors thought Dave had -- let's be
5 kind -- mishandled the situation and kicked him out?

6 A Yes.

7 Q Okay. You continued on?

8 A Yes.

9 Q And Dave owed you \$30,000?

10 A Uh-huh.

11 Q And Dave repaid you over time?

12 A Yes.

13 Q And, of course, he repaid you after he got to
14 Carolina Custom --

15 A No. No.

16 Q He repaid you after he left Palmetto Custom Films?

17 A Yes.

18 Q He repaid you after he declared bankruptcy?

19 A Yes.

20 Q Now, you talked a little bit about confidential
21 information. Certainly, Palmetto Custom Films had
22 information they would not want their competitor to know;
23 right?

24 A Yes.

25 Q Every employer has that?

1 A Yes.

2 Q You wouldn't want your competitor to know about your
3 financial records. Would you agree with that?

4 A Yes.

5 Q You wouldn't want them to know your margins, would
6 you?

7 A Yes -- or no.

8 Q No.

9 A Right.

10 Q So although you can find out what you can buy film
11 for and you can find out what somebody can -- what
12 somebody wants it for and what they'll pay for it, you
13 wouldn't want your competitor to connect the dots, that is,
14 to know what you were able to buy it for and what you were
15 able to sell it for? That's not something you would want
16 your competitor to know?

17 A Yeah. But I -- in this situation, it's not top
18 secret information.

19 Q Well, you wouldn't want your competitor to know it,
20 would you?

21 A No. I wouldn't want them to know it. But, I mean --

22 Q All right.

23 A -- I would be able to find it out. It's not rocket
24 science.

25 Q And you wouldn't want your competitor to have your

1 customer list with contact information, with telephone
2 numbers, with prices, with margins, and with records about
3 what a customer had bought over time. You wouldn't want
4 your competitor to have that, would you?

5 A No.

6 Q Okay. Would you tell a falsehood for Dave?

7 A Not knowingly.

8 Q Have you ever told a falsehood for Dave?

9 A Not knowingly.

10 Q Have you ever stretched the truth for Dave?

11 A I don't think so.

12 Q You're, certainly, not doing that now?

13 A No.

14 Q Would it be fair to say if you've done that before,
15 you might be doing it today? Would that be fair?

16 A Yes.

17 Q Okay. Let's look in your second book up there. Let
18 me help you find it.

19 MR. STEPHENSON: Your Honor, I'm going to turn to
20 Exhibit No. 148.

21 MR. CAMPBELL: Plaintiff's or Defendant's?

22 MR. STEPHENSON: This is the good guy's book.

23 MR. CAMPBELL: The Plaintiff's.

24 BY MR. STEPHENSON:

25 Q All right. Are you there with me, Mike?

1 A Yes.

2 Q 148?

3 A Yes.

4 Q 148 is an e-mail from Dave to you; right?

5 A Yes.

6 Q And, at the time, you're working for CCC; right?

7 A In 2008?

8 Q Yeah.

9 A No.

10 Q You're working with Dave at Eastern Films; right?

11 A We did some things together, yes.

12 Q And what he did is he e-mails you and says, Hi, Mike,

13 I listed you as a contact on the credit reference sheet to

14 Vytech. I am buying some surplus metalized from them. I

15 put you down as Palmetto Custom Films and gave them your

16 cell number. If they call, tell them I have up to \$30,000

17 with you and I'll pay in 30 days.

18 That wasn't true, was it?

19 A I don't remember that --

20 Q That wasn't true, was it?

21 A I don't think so.

22 Q He asked you to tell a lie, didn't he?

23 A I -- yes.

24 Q All right. He's your buddy?

25 A Yes.

1 Q You want to help him?

2 A Yes.

3 Q He's your friend?

4 A Yes.

5 Q You want to help him?

6 A Yes.

7 Q Would you pick up your book and look at 128?

8 Are you there?

9 A Yes.

10 Q There's a series of checks there. And if you look at
11 the screen, it's probably going to be easier, but they all
12 come out of 128?

13 A Yes.

14 Q We've got September the 9th, you write a check to
15 Eastern Films for \$65,000. That's your signature; right?

16 A Which -- where are we?

17 Q You can look up on the screen. It probably will be
18 easier to follow. You can see it.

19 A 128?

20 Q I think it's 128.

21 A Okay. Yeah. I see it, yes.

22 Q September the 26th, \$65,000; October the 8th, \$2,400;
23 October the 28th, \$69,000; November the 10th, \$61,000;
24 January the 9th, \$66,000; June the 29th, \$3,000. Well,
25 these are checks to you. Okay. He wrote you some checks,

1 too. Y'all did a lot of business together, didn't you?

2 A Yes.

3 Q You made a lot of money?

4 A I don't know if we made a lot of money. We made --

5 Q You all made some money. November the 2nd, \$4,000;

6 November the 10th, \$2,000. And then we're in 2009.

7 February the 19th, \$8,300; June 1st, \$3,900; June 4th,

8 \$4,000; July 20th, \$18,000. August 16th of 2011 -- do you

9 see that?

10 A Uh-huh.

11 Q You said on direct that you didn't do anything after

12 2009, but we now know as late as 2011, Eastern Films,

13 which had dissolved in 2008, was still writing you checks;

14 right?

15 A I guess. I have no idea what that's for.

16 Q You don't remember that?

17 A No.

18 Q But we do know -- we've established and you agree

19 he's your buddy. You hate Gandis. You didn't come under

20 subpoena?

21 A No.

22 Q He's asked you to lie before?

23 A Yes.

24 Q And you'd like for him to win this case?

25 A Yes.

1 MR. STEPHENSON: Okay. No more questions.

2 MR. ARNOLD: Two questions.

3 REDIRECT EXAMINATION

4 BY MR. ARNOLD:

5 Q The information you don't want your competitors to
6 have, they could find it all out anyway on their own, can
7 they not?

8 A Yes, anywhere.

9 Q And every one of those checks, except for the last
10 one, you do not remember?

11 A Right.

12 Q Those were checks related to Lamborn and Modular
13 Metal; correct?

14 A As far as I can remember, yes.

15 Q Okay. I think that's what was noted on them.

16 MR. ARNOLD: I don't have anything else.

17 MR. STEPHENSON: Nothing further, Your Honor.

18 THE COURT: Thank you, sir.

19 MR. ARNOLD: The Plaintiff calls Bill Shaw.

20 THE COURT REPORTER: Pause at the end of the bench.

21 Place your left hand on the Bible and raise your
22 right hand.

23 WHEREUPON,

24 WILLIAM RAINER SHAW,

25 after first having been duly sworn, testified as follows:

1 THE COURT REPORTER: Thank you.

2 If you will have a seat. And state your name.

3 THE WITNESS: My name is William Rainer Shaw.

4 DIRECT EXAMINATION

5 BY MR. ARNOLD:

6 Q Mr. Shaw, I'm Andy Arnold. We've met.

7 A Yes, sir.

8 Q A little background. Where are you from?

9 A I am from Columbia, South Carolina, originally.

10 Q Okay. And when did you come to Greenville?

11 A I, actually, reside in Spartanburg, but I came to the
12 upstate around 2004.

13 Q And where do you work at right now?

14 A Right now, I work at Neologic Distribution located in
15 Greenville.

16 Q Okay. And is -- that is with Dave Wilson?

17 A That is correct.

18 Q And Neologic has a film division; is that correct?

19 A That is correct.

20 Q And Neologic sells film?

21 A Yes, sir.

22 Q Now, where did you work at prior to Neologic?

23 A I worked at Carolina Custom Converting.

24 Q Okay. Now, while you were there, what was your --
25 what were your job duties at Carolina Custom Converting?

1 A I was hired to create and establish a customer
2 service department. All encompassing included customer
3 complaints, having a return process, RGA's and to assist,
4 at the time, Dave Wilson in purchasing. I would take
5 customer PO's, issued sales orders, issued manufacturing
6 orders to the plant.

7 And then on the purchasing side, I would create
8 purchase orders, copy all of the appropriate individuals,
9 and send those to the vendors.

10 Q Okay. And who else worked with you in the Greenville
11 office?

12 A Just Dave Wilson.

13 Q So just the two of you?

14 A Yes, sir.

15 Q And y'all's offices were right next to each other?

16 A Yes, sir.

17 Q Now, while you were working with Carolina Custom
18 Converting, did you ever hear Dave discuss any deals
19 involving Eastern Films Solutions?

20 A No, sir.

21 Q Now, when you were hired by CCC, were you asked to
22 sign a non-disclosure agreement?

23 A No, sir.

24 Q Did you ever sign any type of contract?

25 A No, sir.

1 Q Did you receive an employee handbook while at CCC?

2 A No, sir.

3 Q Had you ever seen an employee handbook?

4 A No, sir.

5 Q Had you ever heard of an employee handbook?

6 A I heard there was one in the works, but nothing that
7 had been published.

8 Q And, certainly, you never signed a receipt for one?

9 A No, sir.

10 Q Now, how much of a role in inventory, management of
11 inventory did you and Dave have?

12 A In a role of management of inventory, I guess I --
13 when -- well, from a very logistic standpoint, when the
14 invoice was received, I made sure that it was properly
15 formatted. And then I handed it off to John -- John
16 Higgins, who was a production scheduler to, actually,
17 enter it into an Excel spreadsheet.

18 But the inventory was up-to-date for -- I guess for
19 the managers to be able to look at it any one time. And
20 we used it quite a bit as far as if we got customer
21 inquiries, we would look at what available films there may
22 be to fill a particular need. I don't know past that what
23 you're asking.

24 Q That's close enough. So it was maintained in an
25 Excel spreadsheet?

1 A Yes.

2 Q And John Higgins was in charge of entering the
3 information into the Excel spreadsheet?

4 A That's correct.

5 Q And you used that spreadsheet to make purchasing
6 decisions?

7 A Yes.

8 Q Now, tell me the process for purchasing film. So who
9 tells you to purchase film?

10 A When Dave was still there and he and I were in the
11 Greenville office, you know, the decisions were made if we
12 had a customer -- specific customer need, we'd go out.
13 We'd look at three or four different vendors, find the
14 film that we needed. If it was available, then, you know,
15 the decision to purchase it was made. And then, of
16 course, I would copy John Gandis, and the girls in
17 accounting, and Dave Wilson when I sent the purchase
18 orders to the vendor.

19 Then there were, you know, business decisions made
20 about buying particular films to get away from trying to
21 spot buy on the market and go ahead and get some films and
22 inventories that would allow us to go after, you know,
23 certain customers.

24 Q So was John Gandis copied on every purchase order for
25 film?

1 A Yes, sir.

2 Q So there wasn't anything purchased that didn't go
3 through his inbox?

4 A No, sir.

5 Q Now, towards the end of 2011, did you notice anything
6 unusual about Dave's inventory purchases?

7 A No, sir, I didn't.

8 Q Jump ahead to January 2012. Were you at the office
9 when John Gandis came to meet with Dave to speak to him
10 about continued employment?

11 A Yes, sir. I sure was.

12 Q Can you describe what you witnessed and heard?

13 A Yes, sir. Just for everybody's information, it was a
14 little foyer office and then two offices off of that. So
15 you would walk into one office. And, as you were walking
16 in, you would see an office door here and an office door
17 here.

18 I was in my office and Dave was in his office at the
19 time. And John Gandis came into the office. And Dave
20 walked out into the foyer. And John said, I have a letter
21 here accepting your resignation. You are to turn in your
22 company phone, and vacate the premises immediately. It
23 was to that effect.

24 Dave said, John, I haven't resigned.

25 And John said, again, I have a letter here that's

1 accepting your resignation. You are to turn in your
2 company equipment and phone, and vacate the premises
3 immediately.

4 Dave said, John, I haven't resigned. I'm a partner.

5 And I believe he even said, Bill, I'm a partner;
6 right?

7 And then John said, Are you going to vacate the
8 premises?

9 And Dave said, John, I'm not leaving.

10 So John said, Am I going to have to get the police
11 involved?

12 And Dave said, Well, John do what you have to do.

13 And John took two steps, opened the door, and in
14 walked the policeman he had had outside the door ready to
15 go. And then the policeman just stated that, I can't
16 force this gentleman to leave. I'm just here to make sure
17 that this stays peaceful.

18 And then sometime -- I think, at that point, John
19 called I guess it was Andrea on the phone and said, He
20 won't leave. Basically, what do I do?

21 And then John handed the phone to the policeman.

22 And the policeman said, Ma'am, I don't know who you
23 are. This is for a judge to decide. I'm just here to
24 make the peace.

25 And through that while I'm sitting there wide eyed

1 and watching, John looked at me and, you know, why don't
2 you go take a break.

3 So, at that time, I left, you know, and left the
4 scene. So that's where it ends, to my knowledge.

5 Q Okay. And so the next -- did you ever return to the
6 Greenville office?

7 A I did the next morning.

8 Q Okay. And how many more times did you return to the
9 Greenville office after that?

10 A Maybe only one other time to help remove furniture,
11 to put it on a truck to head over to Anderson, to the
12 plant in Anderson.

13 Q Now, when Dave left, he left with a couple of
14 computers in his hands?

15 A I --

16 Q You weren't there?

17 A He hadn't left.

18 Q So after Dave left CCC, did your job duties change at
19 all?

20 A No, not really. I just reported directly to John
21 Gandis for handling purchasing duties.

22 Q And where did you work if you didn't report to
23 Greenville any longer? Where were your -- where was your
24 office?

25 A I was graciously allowed to work three days a week

1 out of a home office in my house in Spartanburg, and two
2 days a week at the plant in Anderson.

3 Q And how long did you do that?

4 A I did that from January -- well, I worked out of my
5 house for possibly two or three weeks while they were
6 getting the offices ready, I guess. And then I started
7 making the commute. But I did that from, essentially,
8 February through the first of November.

9 Q Okay. Now, during the time that you were there, what
10 would you do -- what was your job task in Anderson? Did
11 they differ at all from what you did at home?

12 A No. I did sit in on the morning production meetings.
13 But my job duties didn't change and functions did not
14 change.

15 Q Now, in your home office, you did purchasing; is that
16 right?

17 A That is correct.

18 Q And did you keep hard copies of any of the documents
19 that were generated from your efforts at home?

20 A Absolutely. One thing I did, I kept hard copies of
21 customer PO's off sales orders that I entered for customer
22 files and, also, all of the purchase orders that I
23 created. You know, the goal was to try to carry it all
24 back and get it all back in the files in Anderson. But
25 being really busy, it just kind of stacked up there at the

1 house.

2 Q Did anybody ask you at CCC about any information that
3 you were keeping at home?

4 A No, sir.

5 Q Now, at some point, did you hear the word Zoi Films?

6 A Yes, I did.

7 Q Tell me what you recall about Zoi Films.

8 A There was a salesman hired, and his name was Steve
9 Elvin. And Steve was on-site at the plant. And the
10 office that I had -- actually, you had to walk through the
11 office area I was in to go to a smaller office where a
12 salesman named Tony Mayfield was.

13 And Steve came in and was talking to Tony. The door
14 was opened. I was out there. And he was just talking
15 about great big things going on and exciting things about
16 Zoi Films. It was the first I had ever heard anything or
17 ever heard the word.

18 Q And did you ask any questions about what Zoi Films
19 was?

20 A I did.

21 Q And what were you told?

22 A It was a new company that John and Andrea were
23 starting up.

24 Q Okay. And what was your involvement in the business
25 of Zoi Films?

1 A At first, I was given some Zoi customer purchase
2 orders to enter a sales order transaction into the
3 QuickBooks system at CCC. That then changed to where I
4 was getting a sales order that was produced on a template
5 in QuickBooks or QuickBooks style system, instead of
6 getting the actual customer purchase order. And I would,
7 in turn, enter a Zoi sales order into Carolina Custom
8 Converting systems.

9 Q Were there any distinctions between the purchase
10 orders or sales orders that you had traditionally gotten
11 for CCC and those that you were receiving for Zoi?

12 A Yes, sir. As my purchasing duties and as customer
13 service -- and I knew all -- I saw all of the customer
14 purchase orders for CCC, what the sales prices were. I
15 knew what all the purchase prices of the films were.

16 The purchase orders that I would get from Zoi would
17 have a magic marker blacking out pricing on them. The
18 sales orders from Zoi, they first came to me as an
19 Anderson P.O. Box. Then they came to me as a Marlis
20 Court, Greer address, which is John Gandis's home address.
21 Then they started coming to me in a Mableton [phonetic] or
22 Georgia address. I always thought that was odd.

23 Q Okay. Did either John or Andrea ever tell you, or
24 anybody else in your presence, what Zoi Films was?

25 A The only time there was ever anything that I was

1 directly involved in was right around the August time
2 frame, possibly the end of August time frame, inventory
3 that we were doing. And Andrea and John had the managers
4 in the office -- and they were, essentially, saying, you
5 know, that we -- kind of saying, you know, as y'all know,
6 we're in a lawsuit with Dave. And, you know, we had to do
7 what we had to do, because Dave was going to spin the
8 company and was going to -- all he wants is for all of you
9 in this room to lose your job. And we're trying to do
10 what we can do so you can keep your jobs.

11 And then they went and said they had to start Zoi
12 Films because of Dave's soiled reputation in the industry.
13 That they had to disassociate themselves from CCC so that
14 they could make a go of it.

15 Q Had you ever heard anything negative about Dave
16 Wilson from your involvement in film purchasing while you
17 were at CCC?

18 A Not outside of CCC, no, sir.

19 Q Okay. So the only thing you heard negative about
20 Dave came from John or Andrea?

21 A John or Andrea, or maybe one of the production
22 managers.

23 Q Okay. So what about -- so you were -- you received a
24 subpoena from me. Do you recall that?

25 A Yes, sir.

1 Q Do you recall when that was?

2 A Yes, sir. It was about two days before I was let go.

3 Q Okay. And so you received a subpoena. And then when
4 was the next time you heard from either John or Andrea?

5 A I, actually, think -- I got an e-mail that day
6 stating not to come in on my Thursday -- my normal
7 Thursday, but they were going to move up inventory, to
8 come in on Friday. And we're, also, doing software
9 upgrades to the laptops. So be sure to bring in your
10 laptop and to, also, make sure you have your password
11 handy and in there so that the IT guys won't be held up or
12 anything doing the work. That was within an hour of me
13 physically being handed the subpoena.

14 Q Now, did you take your computer to Anderson?

15 A Yes.

16 Q Tell us about that.

17 A I got there about -- I want to say about 8:30, or
18 thereabouts. I went upstairs where I was instructed to --
19 everyone was instructed to set their laptops. And I had
20 the password in there like they asked. I sat it down, and
21 noticed it was the only one.

22 I went back downstairs and went to log onto the
23 system, to the server. And my access was denied. I
24 thought, well, that's -- okay, this is interesting. And
25 then I got a page from John to come up to his office, at

1 which time, he let me know that the company wasn't doing
2 very well. And due to lack of work, I was being let go
3 for economic layoff.

4 Q Did he ask you about whether or not you had any
5 information related to CCC's business at your home office?

6 A No, sir.

7 Q Did he ask you to return any information that you
8 might have, anything other than your computer?

9 A No, sir.

10 Q And did you deliver a box of documents to my office?

11 A Yes, sir.

12 Q And those documents contained all the documents that
13 you had accumulated over the time that you were employed
14 at CCC?

15 A Yes, sir.

16 Q And those documents included sales orders, purchase
17 orders?

18 A Yes, sir.

19 Q Did it have customer information?

20 A Well, there were customer PO's in there and vendor
21 information.

22 Q Okay. Now, how is it that you came to work for
23 Neologic?

24 A After I was let go from CCC, I initiated contact with
25 Dave Wilson. And through the course of several months, he

1 had mentioned that he had an opportunity. He was able to
2 go and do film sales through his brother-in-law's
3 corporation. And he wanted me to come on board.

4 I thought -- at the time, I had looked at other
5 opportunities in Spartanburg, but nothing came about. I
6 had a family to feed. I thought this would be a good
7 opportunity.

8 Q You were added to the Neologic payroll; correct -- or
9 I'm sorry, the Fresh Water payroll?

10 A Fresh Water payroll, that's correct.

11 Q Do you know why that was done?

12 A Because that's where all the accounting and
13 infrastructures were in place at the time. And, at the
14 time, I believe it was only Dave and myself.

15 Q And did Neologic offer health insurance?

16 A No.

17 Q Did Fresh Water offer health insurance?

18 A Yes.

19 Q And was that important to you?

20 A It was very important to me.

21 Q Had you had health insurance at CCC?

22 A Yes.

23 Q Had you lost that health insurance?

24 A I had Cobra. But it was running out, yes.

25 Q Now, while at Neologic, have you ever used any CCC

1 document or information in performing your task at CCC --
2 at Neologic?

3 A I put together a very generic vendor cross-reference
4 for my own purpose there at CCC. And that document, I
5 guess, Dave wound up with it. And we all shared it,
6 because it was just very generic.

7 But we had Dupont, and Mitsubishi, and Torre, and 3M
8 and all of these various vendors that would have surplus
9 film or they would have downgrade film. And a lot of
10 times when they downgraded their film, they would put it
11 into categories other than what the prime code was.

12 So for you to understand what it was, it was very
13 simple, it was, is this a high clarity film? Is it
14 untreated? Is it treated? So I just created a
15 cross-reference that said, well, if this is 2661 or 2261N
16 Mitsubishi, then it's 1360 code. So when I get this
17 e-mail from Mitsubishi, I can open it up and start looking
18 for the gauge and whatever I may need.

19 Q So you took all the information you received from the
20 manufacturers of film and you put it in a spreadsheet?

21 A Yeah.

22 Q Other than that spreadsheet, have you ever seen any
23 CCC information being used by anyone at Neologic?

24 A No.

25 Q Have you ever used any?

1 A No.

2 Q Have you seen any stored on the Neologic computers?

3 A No.

4 Q How is Neologic doing?

5 A Quite frankly, we probably couldn't support our
6 overhead right now. And, honestly, this entire two-year
7 ordeal that Dave has been put under has been quite a
8 distraction. So we haven't gained any traction.

9 Q So you've got sales?

10 A We've got sales.

11 Q And if you hit a certain number, you'll get
12 commissions?

13 A I was told, but was never sat down and, actually,
14 shown the commission structure, because we've been
15 woefully short of that.

16 MR. ARNOLD: Okay. I don't have anything else.

17 MR. WILLIAMS: May it please the Court.

18 CROSS-EXAMINATION

19 BY MR. WILLIAMS:

20 Q Good morning, Mr. Shaw. My name is Burl Williams. I
21 represent CCC. I'd like to just clarify some key points
22 here. You were let go from CCC for economic reasons; is
23 that correct?

24 A That's what I was told, that's correct.

25 Q There were others let go that day, were there not?

1 A After the fact, I found out there was some wage and
2 hourly. There were no other salary let go.

3 Q So there were other employees let go that day as
4 well; correct?

5 A Sure. Yes, sir.

6 Q Okay. And you work for a company called Neologic;
7 correct?

8 A That's correct.

9 Q But you're on the payroll of Fresh Water, you
10 testified to that, and you consider your immediate boss
11 Dave Wilson?

12 A I would consider that correct.

13 Q And you would consider your boss Mr. Norvell?

14 A Yes.

15 Q And Mr. Norvell runs Fresh Water and he runs
16 Neologic, does he not?

17 A Yes, sir.

18 Q He's in charge?

19 A Uh-huh.

20 Q Okay. All of them are defendants in this case, are
21 they not?

22 A Yes. I'm aware they are.

23 Q So as far as you're concerned, you would be happy if
24 they won this case, would you not?

25 A I would be happy when it's over.

1 Q Okay. I think we can stipulate to that.

2 Mr. Shaw, I just want to go through a couple of
3 points. You mentioned that you had some -- a box of
4 documents at home from doing your work at home?

5 A Yes.

6 Q When you did your exit interview with Mr. Gandis and
7 he, specifically, asked you do you have anything at home,
8 what did you tell him?

9 A He did not, specifically, ask me anything.

10 Q Okay. Mr. Shaw, in your deposition -- and I can hand
11 it to you --

12 A Sure.

13 Q -- and we can look at it. Page 63 is the question
14 and answer. Mr. Shaw, the -- I believe it was
15 Mr. Stephenson asked you about that box of documents. And
16 the question was, Do you remember telling John that you
17 have those documents?

18 And what did you tell us?

19 A I don't recall ever telling John that.

20 Q Okay. And then you went on to say?

21 A It wouldn't be something I would have said -- wait a
22 minute. It wouldn't be something I would have said the
23 morning I was blind sided and let go.

24 Q Is it possible he asked you about it and you just
25 don't remember?

1 A It never came up. As a matter of fact, counsel, when
2 they wanted me to bring in the laptop under the guise of
3 the -- all the instructions for me were in an e-mail. Do
4 you have those e-mails that I could take a look at where
5 they instructed me to come in?

6 Q I do not.

7 A You do not. So I'm being told that -- or, at least,
8 you're being told that I was asked during an exit
9 interview by whom? By Mr. Gandis?

10 Q That's correct.

11 A That did I have anything else in my possession at my
12 home, any documents, or anything of that nature?

13 Q That's correct. The box of documents that are
14 sitting over there.

15 A That's completely untrue, sir.

16 Q Okay. Mr. Shaw, I just want to ask you a series of
17 hypothetical questions. You're in the film sales business
18 now, aren't you?

19 A Yes.

20 Q Okay. Let's assume your film sales company has a
21 book of business. If a competitor found out who your
22 customers were, would that be helpful to your competitors?

23 A The industry information is just out there to
24 where -- would it be helpful? It might just save you a few
25 minutes of going out to a trade association magazine and

1 writing down names of converters and manufacturers within a
2 geographical area and then, actually, going to the website
3 finding out who they are, give them a call, find out who the
4 purchasing agent is, give them a call, and find out what
5 films do they purchase and could you go out and --

6 Q Let me continue the line of thought. If a competitor
7 found out the precise product and specs you sold to your
8 customer, would that be helpful to them?

9 A Very limited. I mean --

10 Q How about if the competitor found out the exact
11 contact person, e-mail address, phone number, and location
12 of the purchasing agent of your customer, would that be
13 helpful to your competitor?

14 A Like I said, it would save a few minutes, counsel.

15 Q What if the competitor found out the price of what
16 you sold to the customer?

17 A (There was no response.)

18 Q Would you agree with me that all of these things
19 would benefit your competitor?

20 A I don't know how to, actually, answer that.

21 MR. WILLIAMS: Your Honor, if I may ask one question.

22 THE COURT: Sure.

23 (Pause.)

24 MR. WILLIAMS: No further questions.

25 MR. ARNOLD: I've got just a couple.

REDIRECT EXAMINATION

BY MR. ARNOLD:

Q When you were let go, you said there were -- was there another employee let go?

A I believe that there was a wage and hourly let go.

Q Was Sanina Hood let go?

A No.

Q Did you ever observe Sanina Hood in the performance of her job duties?

A Yes, I did.

Q Did you ever -- what did you observe Sanina Hood do?

A Well, Sanina worked on receiving inventory and worked in -- out of her little office. And she would be cutting samples. She would do samples for CCC or she would do samples for John's business, Decotex.

Q And how often did you observe Sanina Hood cutting samples for Decotex?

A It wasn't anything I really paid attention to, counsel. It was just sort of everyone knew John ran Decotex out of CCC. So it was just -- I didn't really think to go and look how many times. But, certainly, she was heading to the post office quite a bit or, you know, out doing samples. And I can't really quantify that, honestly.

Q What about anybody in the accounting office, did they

1 perform any services for Decotex?

2 A Well, Joy did.

3 Q What did Joy do?

4 A Just some bookkeeping activities, as far as I knew.

5 Q How did you knew -- how did you know?

6 A Just the conversation in the office between the girls
7 in accounting and myself. And it would just be a
8 frustration of not only being overwhelmed of what they're
9 trying to get done at CCC, but, also, having other duties
10 as well. And that was one that Joy did for John, which
11 was the Decotex.

12 MR. ARNOLD: Okay. That's it.

13 THE COURT: Any further questions of Mr. Shaw?

14 MR. WILLIAMS: No, Your Honor.

15 Thank you, Mr. Shaw.

16 MR. CAMPBELL: None, Your Honor.

17 THE COURT: Thank you, sir.

18 THE WITNESS: Thank you.

19 MR. ARNOLD: Would you like me to call another
20 witness?

21 THE COURT: How long or short?

22 MR. ARNOLD: I expect it to be short, but it could be
23 30 minutes, maybe not that long.

24 THE COURT: All right. Well, sure. Go ahead.

25 MR. ARNOLD: I would call Bruce Hotmer.

1 THE COURT REPORTER: Sir, if you'll pause at the end
2 of the bench. Place your left hand on the Bible and raise
3 your right hand.

4 WHEREUPON,

5 BRUCE HOTMER,
6 after first having been duly sworn, testified as follows:

7 THE COURT REPORTER: Thank you.

8 If you would have a seat. And if you'll state your
9 name.

10 THE WITNESS: My name is Bruce Hotmer.

11 THE COURT REPORTER: And if you'll spell your last
12 name.

13 THE WITNESS: H-O-T-M-E-R.

14 DIRECT EXAMINATION

15 BY MR. ARNOLD:

16 Q Good afternoon, Mr. Hotmer.

17 A Good afternoon.

18 Q A little background. First of all, where are you
19 from?

20 A I live in California.

21 Q And how is it that you ended up here in Greenville
22 this morning?

23 A I was asked to testify in this case.

24 Q And you did that voluntarily?

25 A Yes.

1 Q No subpoena?

2 A Yes.

3 Q Did Mr. Wilson pay for your air fare?

4 A Yes.

5 Q And he put you up at the Hampton Inn?

6 A Yes.

7 Q And you're leaving tomorrow?

8 A I'm, hopefully, leaving tonight.

9 Q Let's talk just a little bit about your background.

10 A Okay.

11 Q Have you had a career in the film -- polyester film
12 industry market?

13 A Yes. I joined ICI Americas in 1974 as a sales rep
14 back -- that was 40 years ago. So it was a long time ago.
15 The world was divided -- the polyester world was divided,
16 broadly speaking, into the United States and then the rest
17 of the world.

18 When we talk about polyester film in the United
19 States, we know the brand name Mylar because it's a Dupont
20 name. But in the rest of the world, they know Melonex,
21 which is the ICI name. ICI, actually, invented the
22 product back before World War II, and then licensed out
23 the technology, including to Dupont.

24 Q Okay. And when --

25 A And I joined in 1974 when the plant was just a few

1 years old in Hopewell, Virginia, and really was sort of
2 the vanguard of developing the United States market.

3 Q And how long did you stay with ICI?

4 A Until 1996.

5 Q Okay. And what did you do in 1996?

6 A I worked for about -- a very short period of time for
7 a small venture start up with air packaging technologies,
8 which is another whole awful adventure. But then I was
9 approached by an Indian company called Jindal, and one of
10 the big industrial families in India to set up an America
11 subsidiary in the United States. And I ran that -- set it
12 up. And I ran that business for five years or so.

13 Q What was the name of that business?

14 A Jindal America.

15 Q And after you left there?

16 A Then I started my company, which is Valencia
17 Specialty Films.

18 Q Okay.

19 A Still in polyester.

20 Q And how long have you had Valencia?

21 A Since 2001.

22 Q When did you meet Dave Wilson?

23 A Well, we met probably in the late 1990s. I don't,
24 specifically, remember when. But in our industry, you get
25 to know or touch on pretty much everybody in the industry.

1 So you'll meet somebody and then you'll have an occasion
2 to talk with them about something, and then you don't see
3 them for a few years. So it's hard for me to pin down
4 when I saw him -- first met him.

5 Q Right.

6 A But I know he worked for a company in South Carolina
7 called Interfilm. That was started by some of my
8 coworkers at ICI, you know, way back in the day. So I had
9 a very strong connection with that company because of --
10 again, as part of that network within the industry.

11 Q And did you do business with Dave Wilson while he was
12 at Interfilm? Did you and he work together?

13 A No, not really. He was a sales rep, so I would have
14 had no reason to. I would have talked with their
15 purchasing people or, in fact, one of the principles of
16 the company. I think he was the director of sales or
17 something with my former boss.

18 Q Well, how is it that you came to form a more personal
19 relationship with Dave Wilson?

20 A Well, when I started Valencia Specialty Films, I
21 wanted to be in the film business, but I didn't see any
22 reason to invest in hardware, and in plants, and in
23 people, and all the nightmares that you have when you're
24 an employer.

25 So what I was doing back then was, essentially,

1 setting up what I call a virtual company. And I would use
2 other people's resources to get my film in the right shape
3 so I could sell it to my customers. And, with Dave, it
4 was with -- he had the ability to buy film, to slit film,
5 to warehouse film, and then to ship film, and, sometimes,
6 even import film. So we sort of shared our areas of
7 expertise and had this loose network.

8 Q Now, I don't want to go too much into the history of
9 the film business.

10 A Okay.

11 Q But in terms of information about buyers and,
12 distributors, and manufacturers, and customers of film,
13 how has access to that information evolved over time?

14 A Well, like everything else in the electronic world,
15 it's become easier to get ahold of information. Back
16 when -- in the mid-70s, we would have to go to the atomic
17 registry, these big thick books organized by state. And it
18 was one of my very first jobs.

19 And, actually, I was transferred to Chicago in the
20 winter of 1975. And the regional manager had nothing for
21 me to do, so he gave me these books and said go find some
22 business. And so I dug through the books and created,
23 actually, an entire sales territory by just good old
24 detective work.

25 What's happened since then, of course, is the

1 Internet, which makes it infinitely easier to find out
2 what's going on in the marketplace.

3 Q Well, what happened to the Thomas Register?

4 A It went on the Internet.

5 Q So all the information that you had access to in the
6 70s and maybe 80s through the Thomas Register is now
7 available online at Thomasnet.com; is that correct?

8 A Yes, but much more.

9 Q Well, what -- when you say much more --

10 A Well, going to find potential customers through the
11 Thomas Register is, certainly, an avenue, but it's very
12 broad. It's organized by geography first and then by
13 industry within that. Depending on who does the coding,
14 it may or may not lead you to a customer that buys film.

15 If you do research and you look under an association
16 that's specific to an industry in the polyester world,
17 now, you've really focused your search. And that's all
18 online. And it's a much -- in my opinion, it would be a
19 much more effective way of finding potential customers.

20 Q Okay. What about -- so customers -- what about
21 distributors? Can you find that information? That's on
22 the Thomas Register, too, is it not?

23 A Yes.

24 Q And can you find people to purchase?

25 A Oh, sure. And not only just companies, but contacts,

1 phone numbers.. So all the information you need is there.

2 Q Well, what about the products they need?

3 A Well, you wouldn't find that in the Thomas Register,
4 according to my memory. Now, if they've changed, I would
5 be surprised. But the polyester business is a very
6 specific detailed business. In ICI, we had over 20,000
7 product codes. So it's very, very -- and we probably
8 had -- I don't know -- 250 customers. So it all boils
9 down to a very specific requirement by customer.

10 So if you're deciding you want to get into a
11 particular marketplace with polyester, and -- for
12 instance, when we would -- when we were in marketing, I
13 spent -- I had a number of different roles in ICI,
14 including from sales rep to marketing to, eventually,
15 national sales manager. We would go to our customers and
16 make presentations to them about how the market is divided
17 up, and we would divide it into segments.

18 So you had the food packaging market, you had the
19 graphic arts market, you had the industrial market, and
20 you had the time and magnetic recordings market. Within
21 that, you had subsections of different applications where
22 it would be -- in the graphics, it would be reprographic,
23 zero graphic, and micrographic. In the -- I'm getting too
24 specific here.

25 But the point I'm making is, as you drill down, the

1 types of films that customers bought for that segment came
2 down to a very small number, usually less than five with
3 any given customer. And that's usually a lot.

4 For instance, if you were in food packaging, they
5 would almost entirely -- you know, if you look at the big
6 percentage, they would buy a half mill film, very thin
7 film in polyester. So you know if you're going to go in
8 and talk to these guys, you're going to buy a general
9 purpose half mill film. You better have it available.

10 But you, also, have to recognize that everybody in
11 the market, international and domestic, sells that same
12 product. Everybody has that product. If you want to be
13 more specialized, you go in the graphic arts business.
14 That isn't half mill, it's thick film and it's clear. And
15 so you get to know this. And it's because that's where
16 the market leads you.

17 Q Let me show you -- let me show you Defendant's
18 Exhibit No. 76.

19 A Okay.

20 Q And I will find it.

21 A I'm not touching anything.

22 Q Yeah, you probably shouldn't.

23 Here you go.

24 A Okay.

25 Q Let's start with markets and products.

1 A Okay.

2 Q Do you see this information?

3 A Yes, sir.

4 Q Just review it.

5 A Okay.

6 Q And when you come to something you don't know, stop
7 and let us know.

8 A Okay. And so I'm looking at the markets and products
9 sections numbers one through nine. Is that what you're --

10 Q There's some on the other side?

11 A Okay. See, I don't have to read this because I can
12 skim it. Because this is all knowledge that everybody --

13 MR. STEPHENSON: Your Honor, I object. I don't
14 understand the relevance of this. He's giving opinions, I
15 guess. He wasn't identified as an expert witness. He
16 hasn't testified about this case at all and he's been up
17 there 10 minutes.

18 MR. ARNOLD: He'll testify about this case. But I'm
19 trying to establish -- you indicated this would be helpful
20 for a competitor.

21 THE COURT: All right. Overruled.

22 BY MR. ARNOLD:

23 Q Go ahead.

24 A So this information is a nice summary information of
25 what I was describing before as you go into -- as you

1 start to go into a particular marketplace, then you get an
2 associative film type and thickness and, in some cases,
3 width.

4 Q Okay.

5 A But not always.

6 Q Do you come -- do customers of film distributors,
7 typically, sign non-disclosure agreements?

8 A I'm sorry. Do who sign?

9 Q Customers of film distributors.

10 A No.

11 Q So are they free to share with you what they're
12 buying, from whom they're buying, and at what prices
13 they're buying?

14 A Yes.

15 Q I mean, isn't that your primary source of information
16 on pricing, customers?

17 A Yes.

18 Q And so how do you find out what a customer is paying
19 their current distributor?

20 A You -- that's what salespeople do. They go out and
21 they make sales calls. They sit down with the buyer.
22 They probe to see where there's an opportunity to sell.

23 You have to understand, when you're selling, you're,
24 actually -- you're selling to somebody who's buying a
25 product from someone else. You're asking that buyer to

1 fire the other person, essentially. You have to have a
2 good reason to do it.

3 So you have to find where the weaknesses are from the
4 other person. It's not always price. It could be
5 delivery. It could be the fact you can't get them on the
6 phone. It can be that they don't know their products and
7 they're always having to search, or they're sending the
8 wrong thickness, or they're asking questions and just
9 reveal they don't know the business. There's a certain, I
10 want to say, arrogance in our industry that leads us to
11 prove to each other that we know more about the business
12 than the next guy.

13 Q Do -- have you ever signed a non-compete?

14 A No.

15 Q And would you characterize the film market as a
16 commodities market?

17 A I do now, yes. As sad a statement as that is, yes,
18 that's true very much.

19 Q And so there's a lot of information from public
20 information about how manufacturers price their film,
21 their products?

22 A It's not only widely available, it's part of the
23 expectation of your organization of the sales force. It's
24 what you expect.

25 I was a regional manager and a national sales manager

1 for ICI and we -- and I was a sales rep. We were expected
2 to know all that information about our customers, and our
3 competitors, and their competitors.

4 Q And from your dealings with Dave Wilson --

5 A Yeah.

6 Q -- how knowledgeable is he, in your view, about the
7 film market, polyester --

8 A I think he's very knowledgeable.

9 Q Your involvement with CCC, have you done deals with
10 CCC?

11 A Yes.

12 Q How many? How many different customers have you --

13 A Probably -- I would give you an estimate, probably
14 between 10 and 20.

15 Q Okay. Let's just talk about a couple.

16 A Okay.

17 Q Do you still have a relationship with CCC?

18 A No.

19 Q Why do you no longer have a relationship with CCC?

20 A Because after -- well, because they went after my
21 customers.

22 Q Well, tell me about that -- well, first of all --

23 A Okay.

24 Q -- your customers?

25 A Yeah.

1 Q So are these folks that you brought to CCC?

2 A Yes.

3 Q And you brought them and said what?

4 A I said, I've got an opportunity. And I'm always very
5 specific about this. And the reason I do this is because,
6 first of all, you develop a relationship like I had with
7 Dave and we trusted each other. We had done a number of
8 dealings with customers. I will tell him who my customer
9 is, where they are. The reason for that, when they
10 prepare the film, they ship it to that customer. So
11 they're going to know who it is. It's not a big secret.
12 It's impossible to keep it a secret.

13 So anyway -- but there's this limit of trust. And so
14 we had -- there were two specific situations that I can
15 think of easily where when Dave was no longer directly
16 involved with the company, I got a phone call from a
17 company by the name DarTape, D-A-R, capital T-A-P-E, one
18 word.

19 And Darlene was outraged and offended that she had
20 been approached by CCC claiming that they were no longer
21 going to be selling through me, that they were going to
22 take the account directly. She's been in the business a
23 long time and can sniff out that this stinks. And she
24 said she would never --

25 MR. STEPHENSON: I object to what somebody else said.

1 THE COURT: All right. Sustained.

2 THE WITNESS: Okay.

3 BY MR. ARNOLD:

4 Q So was there another relationship?

5 A Yeah. Another relationship where we had -- it's
6 called NS Tape. I was selling that business. And it was
7 film that was slit to a narrow width, five and a half
8 inches or so. And this was an important piece of business
9 to me from a profit standpoint. It represented about
10 \$10,000 of profit a quarter. And it was going along very
11 fine. We were doing fine. And then all of a sudden, they
12 said, Oh, you've got a problem.

13 And I said, What happened?

14 And she said, Someone came in, quoted, underbid.

15 And I said, Who?

16 And she said, Well, I think it's the people who's
17 doing the slitting for you.

18 And I said, I don't understand.

19 I was in shock because this doesn't happen in our
20 industry.

21 Q Let's start a -- and let's end with SKC?

22 A Yes.

23 Q Who is SKC?

24 A SKC is a manufacturer. It's a Korean company with a
25 manufacturing plant just outside of Atlanta, Georgia. And

1 they started their plants -- oh, gosh, I don't know. I
2 don't exactly remember when, but probably in the 90s
3 sometime. But, you know, in my world, that was fairly
4 recently, 20 years ago. And they make film in the United
5 States.

6 So they're a manufacturer. They're not a
7 distributor. They have their own sales force. When I --
8 I was transferred from the film group out to California to
9 run a speciality chem group out there for a while. And
10 right after that, ICI divested itself from its films
11 business and sold itself -- sold the film business to
12 Dupont. At that time, a lot of the ICI employees fled.
13 You know, it's typical. There's nothing bad about the
14 product. It just worked that way.

15 Q And my guess is one ended up at SKC?

16 A One ended up at SKC. And I knew him very -- he
17 worked for them. He's now the director of production.

18 Q And what was the opportunity?

19 A Manufacture -- I want to cut through this because I
20 don't want to make it too -- you can back up if you need
21 more detail. There's -- sometimes, when they manufacture
22 film, there's an off cut that is sent down to the basement
23 and reclaimed. And they can make film with it again. If
24 they can sell this off cut, they improve their profit to a
25 certain extent, but, also, their production is out the

1 door.

2 Q And you're talking about ultra slim slices of film?

3 A Yes. And, sometimes, the thickness is all weird and
4 just it would be low end application. So it's really junk
5 stuff. So you wouldn't get a lot of money for it. And
6 SKC was not in that business. They weren't interested in
7 selling in the market this way. They reclaimed it all.

8 And I called my contact at SKC and said -- sorry,
9 first Dave and I were talking about this. And I believe,
10 if my memory is correct, he had asked me, Do you have any
11 contacts at SKC? We can't find anybody that will answer
12 the phone and answer our questions.

13 And I said, Yeah, I do. I mean, I know the director
14 of production.

15 So I called him and set up this appointment. And, at
16 that meeting, John Gandis was there. Dave Wilson was
17 there. I was there. And the purpose of this was to see
18 if there could be an agreement where they would take this
19 off cut, very low quality film and instead of reclaiming
20 it and turning it into new film, they could sell it to
21 CCC.

22 Q How were you going to make your money in this deal?

23 A I wasn't -- I was -- as the project was going
24 forward, I wasn't going to make much of anything. But I
25 had said to Dave, look, for the first year or so, for a

1 short period of time, figure in your profits, pay me
2 something, pay me a couple of pennies. I mean, I'm not
3 looking for a lot of money on this. But if I can get a
4 couple of pennies, it will pay for my -- I paid for my air
5 fair to go to Atlanta to do my friend a favor. I wasn't
6 getting anything out of it.

7 And Dave said, That's fine. We'll work on something.

8 At the meeting, SKC offered to -- and part of the
9 deal was if we sold -- not we, they, SKC, sold film to
10 CCC, I think, at above \$1.30 that they'd pay me a
11 commission. Well, that was pleasant news. I hadn't
12 expected that.

13 And so then I had -- I'm not double dipping.
14 Anything above \$1.30, I'll get covered by SKC. Anything
15 under, just a finder's fee. Whatever you can afford. And
16 it's typical in our industry. We just help each other
17 out. It's part of the network.

18 Q And after you learned Dave left?

19 A Yeah.

20 Q You sent John Gandis an e-mail?

21 A Yes.

22 Q And I believe it's Plaintiff's Exhibit No. 99. And
23 do you recall sending this e-mail?

24 A Yes.

25 Q And what was the basic point of the e-mail?

1 A To reconfirm that we had a deal. Because, now, the
2 person that I talked to in the deal was gone. And so I
3 wanted to reconfirm that what we -- you know, it's just
4 buttoning down the details. You can't go in after this
5 happens and say oh, by the way, you owe me money for the
6 last six months. So I got ahead of him.

7 Q And what did John Gandis tell you?

8 A I don't know that he even responded.

9 Q Did he -- did CCC honor that deal?

10 A No. I've not received any money at all ever from
11 CCC.

12 MR. ARNOLD: I don't have anything else, Your Honor.

13 THE COURT: Okay.

14 CROSS-EXAMINATION

15 BY MR. STEPHENSON:

16 Q Mr. Hotmer --

17 A Yes.

18 Q -- you came all the way out here from California; right?

19 A Yes, sir.

20 Q You don't like CCC?

21 A (There was no response.)

22 Q You're not too fond of CCC?

23 A Okay.

24 Q You like your buddy, Dave; right?

25 A Yep.

1 Q What time did you get in last night?

2 A 5:00.

3 Q 5:00. You had dinner with Dave. You met with his
4 lawyers, and went over your testimony; right?

5 A Okay. Yes.

6 Q All that happened?

7 A Yep.

8 MR. ARNOLD: Objection.

9 MR. STEPHENSON: What do you object to?

10 MR. ARNOLD: I'm guessing he misremembers.

11 BY MR. STEPHENSON:

12 Q You talked about SKC and how you thought you were
13 done wrong; right?

14 A Yes.

15 Q And, of course, the reason you think you were owed
16 money is you knew the guy to call at SKC, because they
17 couldn't get anybody to answer the telephone. They didn't
18 know the individual at SKC, who to call. You made the
19 introduction. And that's valuable, isn't it?

20 A Yes.

21 Q Having that name; right?

22 A Right.

23 Q Having that e-mail; right?

24 A Right.

25 Q Having his telephone number; right?

1 A Well, more than that.

2 Q More than that?

3 A We worked together.

4 Q More than that. All of that is valuable and you
5 thought you were due some money for it; right?

6 A Yes.

7 Q Okay. I'm going to wind this up. You flew all the
8 way out here to help your buddy, Dave. And you owe him
9 money, don't you?

10 A No.

11 Q You have owed him money?

12 A Well, as a supplier.

13 Q Well, you owe him money now?

14 A No.

15 Q You want him to win the case; right?

16 A I want the right thing to be done.

17 Q Okay. I do, too.

18 A Good.

19 Q You've been a big help. I appreciate you coming from
20 California.

21 A Thank you.

22 REDIRECT EXAMINATION

23 BY MR. ARNOLD:

24 Q Dave had the same name you had at SKC?

25 A Yes.

1 Q He just didn't have the relationship; correct?

2 A Right. His name wasn't secret.

3 Q So it's the relationship that was valuable?

4 A Yes.

5 MR. ARNOLD: Nothing else.

6 THE COURT: All right. Thank you, sir.

7 We'll reconvene at 2:00.

8 Thank you.

9 (WHEREUPON, a lunch break was taken.)

10 THE COURT: Yes, sir.

11 MR. ARNOLD: Are you ready?

12 THE COURT: Yes, sir.

13 MR. ARNOLD: The Plaintiff calls Dave Wilson.

14 THE COURT REPORTER: Place your left hand on the
15 Bible and raise your right hand.

16 WHEREUPON,

17 DAVE WILSON,

18 after having been duly sworn, testifies as follows:

19 THE COURT REPORTER: Thank you.

20 You may be seated.

21 DIRECT EXAMINATION

22 BY MR. ARNOLD:

23 Q Dave, let's give the Judge a little bit of
24 background. Where are you from?

25 A I was born and raised in Columbus, Ohio.

1 Q And when did you move down south?

2 A I moved down here in -- well, for college in 1987.

3 Q Where did you go to college?

4 A I went to a couple different colleges. I, eventually,
5 graduated from Furman.

6 Q What year did you graduate?

7 A 1999.

8 Q And coming out of school -- did you work while you
9 were in school?

10 A While I was at Furman, I was married. I had two
11 kids, one on the way. I worked during the day and went to
12 school at night. I finished my degree.

13 Q And how old are your kids now?

14 A 19, 17, and 15.

15 Q Okay. And the 19-year-old, where is he at?

16 A He's in college up in Boston.

17 Q Okay. Now, when did you first get into the film
18 business?

19 A I believe it was 1991, I think, after Desert Storm.
20 I had been on active duty with the Navy. And after the
21 conflict, I moved back to Greenville and, actually,
22 enrolled in nursing school and needed a job to kind of pay
23 my way through school. And I answered an ad on the
24 bulletin board at Interfilm. They were looking for some
25 operators to run the machines at night. So I started

1 working there as a machine operator.

2 Q Okay. And how long were you a film operator -- or a
3 machine operator at Interfilm?

4 A Maybe a year or two. I, eventually, transitioned
5 into working in the warehouse and with inventory. I kind
6 of came in and did special projects.

7 Q Okay. And after you left Interfilm, what did you do?

8 A I was kind of recruited by another film company that
9 was a metalizer out of Connecticut. They asked me to come
10 and work for them. So I left Interfilm and went to work
11 for a metalizer, a film metalizer.

12 Q And what was the film metalizer -- what did you do?

13 A Metalizers take clear films and apply aluminum to the
14 surface to give them a better barrier. For instance, the
15 inside of a potato chip bag is silver. That's aluminum
16 that's been applied. And it increases the barrier of the
17 film and allows the chips to stay fresh longer.

18 Q Okay. And how long did you do that?

19 A I was with that company -- it was called Ultra-Vac
20 Metallizing -- for about three years.

21 Q Okay. What did you do after that?

22 A After that, I left Ultra-Vac. Ultra-Vac was kind of
23 going on some rocky times. And the owner of the company,
24 I guess, felt a little responsible for kind of hiring me
25 away from a good job. And he said, I don't know where

1 this thing is headed, but why don't you take your
2 customers, buy some of my equipment, and start your own
3 company.

4 Q Okay. And is that what you did?

5 A That's what I did.

6 Q And what was that company?

7 A Palmetto Custom Films.

8 Q That's PCFI?

9 A Yes.

10 Q And what year was that?

11 A I believe that was 2003.

12 Q Okay. And how long did that endeavor last?

13 A I believe I was at Palmetto Custom Films until
14 sometime in 2005.

15 Q Okay. That didn't work out so well, did it?

16 A No.

17 Q What happened?

18 A Well, we made a lot of rookie new business venture
19 mistakes. One was we were under capitalized. One of the
20 biggest things that impacted PCFI was that right about the
21 time that we started the company and we're doing narrow
22 web slitting for flex duct and some other industries,
23 China had added a lot of film capacity and had slitting
24 over there. And they started importing narrow web film at
25 about the price we could buy master rolls here.

1 So our margins were very, very skinny. So we had a
2 lot of overhead and were working on very skinny margins.

3 Q Did you make any mistakes? Were any of the reasons
4 for the failure your responsibility?

5 A Absolutely.

6 Q And you had some investors; right?

7 A Yes.

8 Q Who were your investors in that business?

9 A Blake Kelly and Randy Sawyer were the two primary
10 investors.

11 Q Okay. And so how did that venture end?

12 A Well, things started getting kind of tense between
13 the three of us. I sought out Lee Plumblee to get some
14 advice.

15 And he reviewed the agreements that we had in place
16 that my partners had written themselves without an
17 attorney. And he said, you know, your partners agreements
18 are not worth much. They're really creditors. So if you
19 go to court, you'll probably win. But, at the end of the
20 day, since they're on all the bank notes with you, if they
21 pull out, the bank is going to pull and call the lines and
22 the company will fold.

23 Q Okay. So how did you reach a resolution with those
24 two guys?

25 A Well, we, eventually, sought kind of arbitration --

1 maybe not arbitration, mediation with some church elders.
2 Randy went to church with me. And we just reached an
3 agreement. I agreed to sign my interest over to them to
4 let them try to make a go of it, and that I would go and
5 do my own thing.

6 Q Okay. Were any lawsuits filed?

7 A I don't believe so.

8 Q Okay. So you left and went and did your own thing?

9 A Yes.

10 Q And what was your own thing?

11 A Eastern Films Solutions.

12 Q Okay. And what was going to be the difference
13 between Eastern Films and PCFI?

14 A Well, the main difference was I didn't really have
15 any employees. I didn't have a plant. I didn't have
16 slitting equipment. I was just going to kind of buy and
17 sell film, and maybe rep for some companies.

18 Q Okay. And is that what you did?

19 A Yes.

20 Q When did you start EFS?

21 A I believe 2005.

22 Q Okay. And how did that go?

23 A That, actually, went well. I was able over the next
24 two or three years to pay off \$130,000 of debt that I had
25 to my brother-in-law, Steve Norvell, and Mike Myers. They

1 had put money into PCFI -- or loaned it to me while I had
2 had PCFI. And even though I had filed bankruptcy, they
3 didn't really get an interest in the company. So I felt I
4 had an obligation to make sure they were made whole.

5 Q Okay. And so when you were at EFS, how did you
6 develop customers? How did you find your customers, your
7 vendors?

8 A Well, by this time, I had been in the film business
9 for over 10 years, so I had a lot of contacts. I did
10 some -- I kind of partnered up, not legally, but just
11 partnered up with some other people who had film companies.
12 They gave me a lot of contacts. Phoenix Films was one. Ted
13 Nitca, he gave me contacts. Film Quest gave me some
14 contacts. But I had a lot of contacts already.

15 And then I, also, used, you know, trade associations,
16 the Internet, the Thomas Register, which by this time was
17 either on CD ROM or on the Internet.

18 Q Did you attend any trade shows?

19 A Yeah. I would attend the Air Diffusion council
20 meeting. I was a member of that trade association for a
21 long time. I would attend Pack Expo, you know, sometimes
22 every year, other trade shows and associations.

23 Q And so, over time, you developed relationships with a
24 lot of folks in the film industry?

25 A Yes.

1 Q Was there any particular focus on any type of film?
2 Because there's a lot of different types of film.

3 A Well, at Eastern Films, my focus was primarily on
4 polyester film. Because that had been the primary product
5 that Interfilm sold, you know, the company I started in
6 business with. They, eventually, branched into other
7 films. But most of the time I was there, they were mostly
8 a polyester company.

9 And so I had relationships with the polyester
10 manufacturers here in the U.S. And I had a lot of
11 customers that bought polyester. They bought some other
12 films as well, but polyester was my primary focus.

13 Q How much of your business would you estimate
14 polyester made up of your sales with EFS?

15 A Maybe 90 percent.

16 Q Okay. And so you had that business in 2005, 2006,
17 and 2007; right?

18 A Yes.

19 Q And then when did you meet John Gandis?

20 A I believe I met John Gandis in 2007. He was working
21 for Vytech Industries at the time. And someone had
22 suggested that Vytech -- I can't remember if I called --
23 if I just did a cold call or someone suggested I call on
24 them. Maybe it was a mutual friend, I don't quite
25 remember.

1 But I made a call and was told that they buy
2 metalized polyester film. And I started calling on Vytech
3 to sell them film and was introduced to John. And John
4 kind of took an interest in working with me because I had
5 a polyester background. And Vytech, even though they
6 bought some polyester films, you know, there wasn't really
7 anyone in-house that was kind of a polyester expert, so to
8 speak.

9 So -- and they had some products that they wanted to
10 develop, some new products that would include polyester
11 film and maybe lamination. So we started kind of working
12 to develop some new products.

13 Q Okay. And how long did -- that effort between you,
14 and Gandis, and Vytech, how long did that occur over?

15 A It wasn't that long. Because I think within a year,
16 Vytech filed for bankruptcy and closed the doors.

17 Q Okay.

18 A Yeah.

19 Q But you and John maintained contact?

20 A John and I maintained contact. I mean, we had kicked
21 around some ideas, you know, while we were working
22 together at Vytech, some -- you know, just some oddball
23 products that Vytech wasn't involved in that maybe we
24 could make some day. And I knew he had a metal
25 fabricating business in Anderson. And he had a guy that

1 did some work for him who was an engineer who kind of
2 could put machines and processes together.

3 Q Okay.

4 A So we stayed in touch.

5 Q And when was the first time you and John, actually,
6 went beyond brainstorming these oddball ideas to,
7 actually, discussing a real business relationship?

8 A I think it would have been in 2007. I had -- I was
9 operating Eastern Films. John was, I guess, running his
10 metal business. And one of the ideas we came up with was
11 punching holes in films and making them breathable.

12 And we found a local company called Stewarts of
13 America who made tooling, primarily, for the textile
14 industry. But we met with them. And they said they could
15 make some tooling for us to perforate films. So we
16 decided to start a company to perforate films.

17 Q And was that company CCC?

18 A Yes.

19 Q And so what was the original purpose of CCC?

20 A The original purpose of CCC was to do micro
21 perforating of films and possibly down the road get into
22 some other types of converting or fabricating using films
23 and other --

24 Q At what point did you decide to start slitting film?

25 A Well, in order to perforate films, we needed a

1 machine to attach the perforator to. I mean, we could
2 have built one, but building a machine from scratch is
3 tough sometimes.

4 So we thought we could buy a slitter and put the
5 perforating unit on the back and run the film through the
6 slitter and perforate it. And so we decided to buy a
7 slitter. And I believe John bought that through -- maybe
8 through M-Tech or one of the companies he had.

9 Q Now, when you formed CCC, the legal formation, did
10 you and he discuss whether this entity would be a term
11 company?

12 A No.

13 Q What did you discuss about ownership?

14 A That we would be 50/50 owners.

15 Q Okay. And were you going to have a division of labor
16 in this effort?

17 A I don't know if we got that far when we formed the
18 company. I think it was obvious that -- you know, I had a
19 sales background and sourcing background. And he was an
20 engineer and had kind of a manufacturing background. So
21 it was kind of probably in our thoughts that we both had
22 some expertise to bring to the table.

23 Q Okay. And did you -- did either one of you make any
24 financial contributions at the outset?

25 A We both put in \$3,000.

1 Q So, again, at the very outset, was there any
2 discussion about buying and selling film?

3 A No, not at the outset.

4 Q And the outset would have been in November of 2007?

5 A Correct.

6 Q Did you get a slitter put together? Did CCC obtain a
7 slitter?

8 A We did. I don't know that -- I believe that the
9 slitter may have been purchased by M-Tech, but it was for
10 CCC's business. And I think, eventually, starting in
11 maybe 2008, CCC bought the slitter from M-Tech.

12 Q Okay. And what was the plan with the slitter?

13 A Well, the original plan with the slitter was to get
14 our perforating tooling installed. And we had, actually,
15 placed an order with Stewarts of America to make the
16 tooling. And that tooling took quite a while to come in.
17 I mean, I'm going to say, at least, six months, maybe
18 longer.

19 And so while we're waiting on this perforating
20 tooling to come in, there's a slitter sitting in Anderson.
21 And I had been outsourcing my slitting needs to other
22 convertors in the industry.

23 Q To who?

24 A Companies like Pilcher Hamilton, maybe Plastex in
25 Greer, maybe Film Quest, just other companies who might be

1 technically competitors of mine, but I didn't really bump
2 into them much. So they would slit film for me.

3 Q Okay.

4 A So we now have the slitter in Anderson. It makes
5 sense to run it to, at least, generate some kind of
6 revenue on that, and make sure it's working properly. So
7 I started sending my slitting orders down to Anderson.

8 Q Okay. And I think we've probably gone through this,
9 but let's just make it clear. When we talk about slitting
10 film, what are you doing? You're buying film. And what's
11 the process?

12 A Well, manufacturers make film on lines that are the
13 size of a football field. And these rolls that come off
14 their lines are 300 inches wide. So when they slit rolls,
15 they slit rolls to 60 inches, or something that their
16 customers need.

17 Q Right.

18 A They don't really have an interest in doing narrow
19 web slitting. So I would buy master rolls from
20 manufacturers. Master rolls are off cuts. They're
21 ranging from 20 inches to 80 inches wide. And then what I
22 would do is I would have those rolls slit down narrow for
23 my customers. Most -- a lot of my customers needed narrow
24 rolls.

25 Q What kind of customers did EFS have? What were the

1 primary areas of business that EFS purchasers of film were
2 engaged in?

3 A Well, I had a lot of business in the flexible duct
4 market, which we've heard about today. It's kind of an
5 industrial market, manufacturers that make duct work for
6 the HVAC market. And I had a lot of customers.

7 Because when I was at Interfilm, that was one of the
8 markets I had developed for them. When I went into sales
9 for Interfilm, they had maybe three or four customers in
10 the flex duct market. And when I left, they had just
11 about everybody. They were supplying just about everybody
12 in the market.

13 So I had a real familiarity with the customer base
14 and the products. But, you know, I, also, sold some small
15 label converters and flexible packaging converters.
16 Minova was a customer.

17 Q Well, let's talk about Minova. What did Minova need
18 film for?

19 A Minova is a company that makes mining and
20 construction products. And one of their main products is
21 a resin cartridge. It's very similar and looks like a
22 sausage. But it's made out of polyester film. And as
23 they're making this sausage, they extrude cement, kind of
24 a grout, and a resin into this cartridge that's separated
25 by another piece of film.

1 So they sell these cartridges to mines and
2 construction companies building bridges, dams. And the
3 miners will drill a hole in the mine shaft to put rebar in
4 to reenforce the mine shaft. And they'll stick this
5 cartridge up in the mine shaft.

6 And when they run this rebar into the hole, it's got
7 the cartridge. The cartridge will break open, the two
8 parts will mix. And within three seconds, it turns to
9 cement. So that's what Minova uses film for, to make
10 those products.

11 Q And what size film does Minova -- what kind of film?
12 What size?

13 A Minova has always used two thicknesses, 200-gauge and
14 142-gauge polyester. And they had a couple of widths.
15 They had 84 millimeter. That was their big two mill
16 width.

17 On the 142 gauge, they used 38 millimeter and 54
18 millimeter. On the two mill, they, also, used some
19 hundred millimeter and 114 millimeter. They used
20 probably, you know, a couple truckloads a month. And I
21 would say that 75 to 80 percent of it is two mill. And
22 the rest is 142 gauge.

23 Q And did this film have to be slit?

24 A Yes.

25 Q Okay. And so how long had you had the Minova

1 account? How long had you been supplying them with film?
2 In the beginning of 2008, how long had you been providing
3 for Minova?

4 A I picked up business with Minova again in -- I don't
5 remember if it was 2006 or 2007. But Minova is one of the
6 accounts I managed at Interfilm. So I had known that
7 account for 10, 15 years.

8 Q Okay.

9 A And so when I made contact with Minova again in,
10 let's say, 2006, the VP of operations remembered me. And
11 he said, you know, I -- we're, actually, looking for other
12 sources of polyester, and we'd love to have you quote us,
13 if you can supply it.

14 So I gave them a quote. I started to get products
15 qualified. And, initially, I picked up their 142-gauge
16 business, which is the narrower widths, and was, actually,
17 importing that from China.

18 Q And so in 2008 -- the beginning of 2008, did -- was
19 there -- did you decide to start having CCC slit the
20 Minova film?

21 A Yes.

22 Q And how much business was the slitting of Minova
23 film?

24 A Well, in 2008, I discovered a source of two-mill
25 polyester that was pretty inexpensive. It had been used

1 by a company called Soliant in Lancaster, South Carolina.
2 They bought two-mill polyester for their process.

3 And after they used it, they rewound it. And they
4 would sell it off as scrap. And, for the most part, the
5 rolls were in pretty good shape, not always, but a lot of
6 them were.

7 So I thought, you know, maybe this is a film that
8 Minova can use. And if they can, the margins would be
9 very, very nice. Because you're buying film for \$0.35 to
10 \$0.50 a pound and selling it for, you know, a buck 50 to
11 two bucks a pound. It just needed to be slit.

12 Q Right. So did you have conversations with John about
13 slitting film for EFS?

14 A Yes.

15 Q Tell me about those conversations.

16 A Well, I think earlier in 2008 -- it may have been
17 moving toward the middle of 2008, I started having CCC
18 slit my Minova film. And knowing that, you know, CCC
19 needed a certain amount of revenue and cash to operate,
20 John and I discussed CCC buying the film from Soliant,
21 slitting it for me, and then reselling it back to me at a
22 small up charge so I could then resell it to Minova and
23 still have a pretty decent margin.

24 Q And is that what you did?

25 A Yes.

1 Q How long did you -- how long did that arrangement
2 last?

3 A I think we had kind of just started doing that when
4 John and I kind of started our conversations about making
5 CCC something other than a slitting company and kind of
6 combining, you know, our resources.

7 Q Okay.

8 A So, eventually, Minova -- I just put Minova a hundred
9 percent into CCC.

10 Q Okay. In the midst of those conversations?

11 A Yes.

12 Q Do you recall in 2008 how much revenue Minova
13 generated for CCC?

14 A In 2008, we did \$775,000 with Minova out of a total
15 sales of 1.6 million. So it was almost half of our
16 volume. And, based on our costs, our purchase cost of two
17 mill and 142-gauge that year, I would estimate that our
18 gross margin was somewhere around \$350,000.

19 Q Okay. So let's talk about these conversations. So
20 you have a conversation about CCC evolving into something
21 more. So how does that conversation continue?

22 A I believe John, actually, approached me one day. I
23 had -- I was maintaining an office and warehouse in
24 Taylors. And John would stop by, at least, once a week.
25 And we'd talk before he'd go down to Anderson.

1 And, you know, he said this slitting thing -- first
2 of all, the perforating doesn't look like it's really
3 going anywhere, but this slitting business is -- it's
4 okay, but not that great for CCC. So, you know, what do
5 you think about making CCC something more than a slitting
6 company. You've got customers, and vendors, and
7 relationships, and expertise. I've got a building that
8 we're using. And I've got, you know, access to capital.

9 Q Okay.

10 A So we talked about that. We had multiple
11 conversations about that.

12 Q Okay. And so did you -- what did you and John agree
13 to pursue?

14 A Well, at some point, we agreed in principle that I
15 would start to kind of wind down the EFS business over
16 time, transition those customers, particularly, the
17 slitting customers into CCC. And CCC would start buying
18 film. And we would start reselling film through CCC.

19 Q Okay.

20 A And then John would fund the business. You know, he
21 had a building we were already using. He had -- maybe by
22 this time, we had a couple of employees. I think in -- I
23 don't know if it was in 2007 or 2008, John had kind of
24 sold off his metal business, which he explained was not
25 really -- wasn't profitable. So he had sold off his

1 laser, you know, plasma cutters, whatever metal
2 fabricating machinery he had.

3 Q And was there any discussion at this time of what
4 might happen to Decotex?

5 A Yeah. John had recently started this Decotex.
6 business. And I didn't know a whole lot about it, other
7 than it was similar to what he had been involved in at
8 Vytech, which was embossed vinyl films and printed vinyl
9 films for a couple of different markets, one is the
10 manufactured housing market.

11 So I knew he was doing something. He had this
12 Decotex business. And we talked about that, you know, are
13 we going to -- are you going to roll Decotex in? Are we
14 going to do some embossed films? And he said, Yes, I
15 think it makes a lot of sense that, eventually, we will
16 roll -- I will roll Decotex into CCC.

17 Q Okay. What did you agree -- what accounts did you
18 agree to run through CCC?

19 A Well, there was a list -- there was a list of
20 accounts I gave John.

21 Q Was it the list we looked at this morning when John
22 was testifying?

23 A Yes.

24 Q Okay.

25 A And it was a list of accounts that I had been

1 selling -- primarily, slit film customers that I had been
2 selling through Eastern Films. And by this time, I was
3 six months into a relationship and a deal with my
4 brother-in-law, Steve Norvell, on the West Carrollton.

5 I made it clear to John that that was not going to be
6 part of CCC, that that was -- I had made a commitment to
7 my brother-in-law that that was going to -- we were going
8 to finish out, at least, a year. It might renew for
9 another year. It was all imported film. And that there
10 were a couple of imported accounts that I had been working
11 on earlier in 2008 and late 2007 that I was expecting some
12 sizable commitments for, that those would not come into
13 CCC, at least, initially. They might in the future.

14 You know, the whole importing thing was kind of -- we
15 talked about maybe importing in the future when CCC had
16 the means to do that. But, you know, I made it clear
17 there were three sizeable pieces of the business that were
18 not going to come in.

19 Q Well, West Carrollton was one. What were the other
20 two?

21 A The other two were Modular Metal and J.P. Lamborn, at
22 least, the metalized eight-inch part of J.P. Lamborn.

23 Q Okay.

24 A But there was a component of J.P. Lamborn that we
25 could start to supply immediately, which was clear film,

1 narrow, two-inch film, and any type of kind of fill-in
2 orders that they might need on the eight-inch for some of
3 their other plants.

4 Q Did you mention these accounts by name to Mr. Gandis
5 when you were -- you and he were discussing this evolution
6 of CCC?

7 A I don't, specifically, remember, but I think it's
8 logical that I would have. I'm confident that I mentioned
9 West Carrollton to him. But I don't know for sure if I
10 did or not.

11 Q Okay.

12 A It seems logical that I would have.

13 Q But you made it clear there were three accounts?

14 A Yes.

15 Q What was his reaction with that?

16 A He was fine with that.

17 Q And did you ever have another conversation about
18 those three accounts in which you agreed to roll the
19 business of those accounts through CCC in 2008?

20 A Not in 2008, no.

21 Q Okay.

22 A The -- I mean, going back to our conversations about
23 Eastern Films and CCC, you know, one of the things that I
24 made clear to John was that if I'm going to take the
25 customer base or, at least, part of the customer base and

1 put it into this partnership that I'm foregoing the
2 opportunity that I would have on this business I've
3 developed in future sales.

4 So, you know, I needed to have -- be compensated for
5 that. I needed to have an income from those accounts.

6 Q And so what did you propose?

7 A I proposed a salary of \$8,000 a month.

8 Q Okay. And was that salary going to be in addition to
9 any profit distribution from CCC in your mind?

10 A In my mind, yes, that was going to be above and
11 beyond what I would receive for my 50 percent ownership in
12 the company.

13 Q And what about John, was he going -- he had agreed to
14 float the rent for a while. Was there a discussion,
15 eventually, about paying rent to John?

16 A I don't remember a conversation about rent to John
17 until maybe later in 2008. Because it was kind of like
18 one of the things he was bringing to the table was a
19 building. But we did, eventually, have some conversations
20 about rent. I think he asked for \$1,200, or \$1,500, or
21 something later in 2008. And I said sure.

22 Q At some point, did he, also, ask for a management
23 fee?

24 A He did. It was a little bit later as well. I don't
25 really recall the month. I think it may have been towards

1 the end of 2008, he -- I don't know if he used the word
2 management fee with me. He may have just said something
3 for my time. Because he was putting some time into CCC.

4 Q A decent amount of time into CCC?

5 A I didn't really keep tabs of how much time he was
6 spending on CCC versus his other endeavors, but it could
7 have been, yeah.

8 Q Now, when you and John agreed that you would start
9 winding down EFS, did you have inventory?

10 A Yes.

11 Q And did you have discussions with John about how to
12 handle that inventory?

13 A Yeah. We discussed it. He suggested that CCC buy
14 inventory when it makes sense. We, also, discussed if
15 there were some customers that -- if I had inventory that,
16 for instance, was already slit to a width that one of my
17 customers used that I would go ahead and sell that, get
18 rid of it through Eastern Films.

19 I think I still had inventory in my warehouse at the
20 end of 2008 when I closed down the Taylors warehouse and
21 we opened the Green Gate office in Greenville. And I
22 think I shipped all that inventory down to CCC.

23 Q To Anderson?

24 A To Anderson, yes.

25 Q But up until 2008, you were working out of an office

1 paid for by EFS?

2 A Yes.

3 Q And the Greenville office of CCC did not open until
4 when? January of 2009?

5 A January of 2009, yes.

6 Q Okay. Now, let me show you something you prepared.
7 (WHEREUPON, Plaintiff's Exhibit No. 177 was marked
8 for identification only.)

9 BY MR. ARNOLD:

10 Q It's a little hard to read, so we're going to rely on
11 you, Dave, to maybe interpret some of these numbers for
12 us.

13 A Okay.

14 Q But looking at the first column, what is this first
15 column?

16 A This first column is Eastern Films Solutions sales
17 from mid 2006 to mid 2009.

18 Q Okay. And what is the total revenue?

19 A Close to 6 million, 5.9, 5.8.

20 Q Okay. And then you -- then we've got CCC sales in
21 the next column; correct?

22 A Yes.

23 Q And what are the highlighted --

24 A The highlighted customers for CCC sales, 2008. And
25 these are probably all, if not close to all, after, say,

1 July of 2008. So this would be like the second half of
2 2008. The highlighted customers are former EFS customers.
3 And out of 1.6 million we did in the second half of 2008,
4 1.4 million was Eastern Films customers.

5 Q How much business did CCC do with Eastern Films?

6 A In 2008?

7 Q Yeah.

8 A \$260,000.

9 Q Now, how much of that was slitting? Do you know?

10 A I don't really, no.

11 Q Okay. Now, the tax return that was filed in 2008,
12 did it show \$1.6 million in revenue?

13 A I'm not sure. I don't believe so.

14 Q What do you think it showed?

15 A Well, the current PNL on the books for CCC shows
16 revenue in 2008 of about a half million dollars in
17 revenue.

18 Q Right.

19 A So if you run a report out of CCC's books for PNL,
20 revenue shows half a million. But if you run a report out
21 of the same set of books, sales by customer summary for
22 2008, it shows 1.6 million.

23 Q Now, at that time, Andrea, she was not really -- she
24 didn't have the same role in 2008 that she developed
25 later. Would that be true?

1 A That would be true, yes.

2 Q I mean, do you know who was keeping the QuickBooks
3 then?

4 A I think Joy Whitman was doing a lot of the
5 bookkeeping, maybe John. I think John, and Joy, and I all
6 had access to QuickBooks. I don't recall at what point
7 John and I kind of stopped doing anything other than
8 viewing and printing in QuickBooks. And I'm not sure at
9 what point Andrea had got access to QuickBooks and
10 started, you know, kind of overseeing that part of it.

11 Q All right. The next column, what is that?

12 A So the next column is CCC sales in 2009,
13 \$2.9 million. And the highlighted customers, again, are
14 former Eastern Films customers. And that is \$2.7 million.

15 Q Okay. And this last column?

16 A The last column is CCC sales in 2010, \$7 million.
17 And, again, the highlighted customers are still former EFS
18 customers that we were selling. And that equates to
19 3.5 million.

20 Q Okay. Now, you, also, prepared some graphs, which
21 are almost too small to read. But the graph itself tells
22 a story. There are numbers at the top. And you'll
23 forgive me if I don't try to read them. But what does
24 this graph show?

25 A Yes. This is a graph of sales for EFS and CCC

1 monthly starting in January of 2008 and going through, it
2 looks like, July of 2009, maybe August of 2009. And so
3 the blue is Eastern Films sales.

4 Q Dave.

5 A Yes.

6 Q What were the dates you said?

7 A January of 2008.

8 Q Yeah. And it looks like the last date is 12/10?

9 A Oh, well, maybe not on my -- oh, okay. 12/10, yeah.
10 I was looking at the top part here. Yeah, so the end of
11 2010, I guess.

12 Q And so the blue is right there. I've got to use my
13 pointer to find it.

14 A Right.

15 Q And so we've got blue here. And who --

16 A Blue is CCC -- or excuse me. Blue is Eastern Films.

17 Q And red is?

18 A Red is CCC.

19 Q Okay. And so over time, does this demonstrate a wind
20 down of one in the --

21 A Yes. You can see, as you approach the end of 2008,
22 there's a distinct wind down of EFS. And you can see that
23 the CCC business starts to grow.

24 Q Now, we've got some -- so where is -- we've got 2009.
25 What are these little blue bumps right here? That's EFS

1 business into 2009. What is that?

2 A I'm not sure what those bumps are.

3 Q Well, what would they represent in terms of revenue?
4 Where would that revenue be coming from?

5 A I don't know where that revenue would be coming from,
6 other than maybe --

7 Q Did you do any -- did you sell anything -- did EFS
8 sell anything in 2009?

9 A Well, I know the two big bumps in 2009 were the
10 Lamborn orders that were held over from 2008.

11 Q Okay. And so you --

12 A Excuse me. The blue may have been inventory that CCC
13 bought from EFS in 2009.

14 Q Right. But these two right here, that's Lamborn?

15 A Yes.

16 Q And those were the Lamborn orders that dated back to
17 2008?

18 A Correct.

19 Q And then you've done one more?

20 A Yes.

21 Q And that, basically, shows the same story. You --
22 where did you get this information from?

23 A From EFS books and CCC QuickBooks.

24 Q Okay. Now, if the 2010 -- tell me about 2010. You
25 had somewhere between \$6 million and \$7 million in

1 revenue, whether you were doing cash or accrual
2 accounting; right?

3 A Yes.

4 Q That's a pretty big year, a pretty big jump. What
5 happened?

6 A So, in 2010, we had, obviously, maintained customers
7 that we had in 2009. We picked up some customers because
8 the market -- there was a pretty significant change in the
9 market in the supply of polyester film from the
10 manufacturers. And so the polyester film pricing is
11 heavily tied to global capacity.

12 So if the supply of polyester from the mills
13 outstrips the demand, then prices fall. If the demand for
14 film outstrips the capacity, then prices rise.

15 So, in 2010, we had a shortfall in the supply, which
16 caused prices to rise. And we were fortunate enough to
17 have some relationships with our vendors where we were
18 able to source polyester film. And we picked up a number
19 of accounts that we had not previously sold just because
20 we had product, you know, for a lot of these.

21 Q Right.

22 A And some of those customers were even sort of
23 competitors of ours. But that's not that uncommon for
24 companies to buy and sell, even if they may compete. I
25 mean, I've had companies in the past that were customers,

1 competitors, and suppliers.

2 So depending on the market and the relationship, it's
3 not that uncommon to have -- to help each other out.

4 Q Okay. I'm a little worried I haven't covered the
5 three accounts enough. Let's talk about this a little
6 more. The West Carrollton, we looked at the invoices for
7 West Carrollton. And I believe those are in the books,
8 notebook three. And if you can either look at the -- I
9 believe the West Carrollton is 127.

10 When were those orders placed?

11 A Those orders were placed -- I believe all of those
12 sales orders were booked with EFS by May of 2008.

13 Q Okay. And those were the deals that your
14 brother-in-law, Steve Norvell, had agreed to fund?

15 A Yes.

16 Q And you had a commitment to him that -- in exchange
17 for him funding those, he would receive what?

18 A I believe we had kind of like a profit split. After
19 the cost of film, and freight, and duties, and commissions
20 to Curt Ottberger [phonetic], there would be some money
21 left over. And we had a profit split on that.

22 Q Okay. And we, also, looked at an e-mail you had sent
23 to John about West Carrollton that was dated July 20th,
24 2008. Do you remember that?

25 A 2009.

1 Q You sent it to him in 2009?

2 A Yes.

3 Q What was contained in that e-mail?

4 A So that e-mail was a quote from Eastern Films to West
5 Carrolllton in July of 2008 trying to secure business for
6 2008 and 2009.

7 Q Okay. And I believe that's exhibit -- Plaintiff's
8 Exhibit No. 19. And let's just take a look at that real
9 quick.

10 A 19?

11 Q 19. Look at it. There's an e-mail and then there's
12 an attachment. What is the attachment?

13 A The attachment is the quote that I sent West
14 Carrolllton in July of 2008.

15 Q Okay. And does this quote, also, confirm existing
16 orders?

17 A Yes.

18 Q And, in July of 2008, did you have existing orders
19 with West Carrolllton?

20 A I believe we had open -- yes, open sales orders and
21 purchase orders.

22 Q That had been placed earlier in the year?

23 A Yes. That had not yet been filled.

24 Q Okay. Now, Lamborn, what were you doing with
25 Lamborn? What was the deal with Lamborn?

1 A Well, I had a relationship with Lamborn going back to
2 the 90s. It was one of the flex duct accounts that I
3 developed with Interfilm. And in 2006 and 2007, I
4 believe, I had done a fair amount of business with Lamborn
5 importing film. And I had worked with a company called
6 Triton. Triton was a distributor. It was kind of a
7 fairly young company that had relationships with Chinese
8 suppliers.

9 So we kind of teamed up in some of the flex duct
10 business in the U.S. And I think in the case of Triton,
11 they would, actually, buy and import the film, and I would
12 get a commission. There may have been some orders where
13 I, actually, bought and took possession of the film. And
14 so I had a relationship with Lamborn.

15 And the relationship -- my relationship with Triton
16 became a bit strained because they had missed some ship
17 dates. They had kind of overcommitted and put me in a
18 tough spot with Lamborn. There had been a container or
19 two where there had been a quality issue where Lamborn
20 wanted untreated film and we shipped them some treated
21 film.

22 So I wasn't real keen on continuing with Triton, but
23 I wanted to maintain the Lamborn business. And, at this
24 time, I think Mike Myers had left PCFI and was kind of
25 working on his own. And he had a relationship with

1 Polyasia.

2 So we started working on developing -- kind of
3 re-establishing business with Lamborn.

4 Q Okay. And when was that deal being put into place?

5 A That deal -- we would have started trying to put that
6 deal into place in -- sometime early the first quarter,
7 second quarter of 2008.

8 Q Okay. And then Modular Metal, what were you doing
9 with Modular Metal?

10 A Modular Metal was, again, another company that I had
11 known for many years. I used to call on them directly.

12 Modular Metal was an interesting company because
13 there was one guy who kind of ran the show there. He
14 wasn't the owner, but he was kind of the general manager.
15 And he was pretty picky about who he bought from. He was
16 very much into relationships. And even though I knew him
17 and had called on him many times, I think by 2007, I
18 hadn't really been doing much business with him. But Mike
19 Myers had a relationship with a guy named Dave McGill,
20 who, also, sold adhesive into the flex duct industry.

21 Q Right.

22 A McGill had this very strong relationship with Mike
23 Beam at Modular Metal. They were both into Nascar. They
24 were friends. They hung out together. And McGill had
25 lost his job with the adhesive company. And so he was

1 trying to make a living. And Mike Beam with Modular was
2 sympathetic to him. And he wanted to help him out and
3 said, Hey, if you can find a source of polyester, I'll
4 give you my polyester orders.

5 So McGill, who didn't really have a background in
6 film, talked to Mike. He said, Hey, can you help me find
7 film? Mike talked to me. I had a supplier called Edward
8 Cider at the time. And Edward Cider and I had started
9 talking about a product that they bought and slit and sold
10 into the shingle release market. The shingle release
11 market is similar to flex duct, but we thought it might
12 work with flex duct.

13 So we qualified that product in probably the end of
14 2007. And they were pushing for kind of a volume
15 commitment from Modular.

16 Q So for all three of these deals, you had already
17 engaged -- by July of 2008, you had engaged in discussions
18 with vendors, or distributors, or manufacturers?

19 A Yes.

20 Q You had funding in place?

21 A Yes.

22 Q You had the customers in place?

23 A Yes.

24 Q These did not require any slitting?

25 A No.

1 Q They didn't -- they would not even -- they would not
2 even arrive at the CCC warehouse?

3 A Or Eastern Films.

4 Q Or Eastern Films?

5 A Most of that was drop shipped right to the customer.
6 I believe in the case of Modular, it may have -- I don't
7 know that I brought any of that into the warehouse. I
8 think all of that went from the vendor to the customer.

9 Q And, again, all of those deals had been put into
10 place pre-July 2008?

11 A Correct.

12 Q Even though there may be sales orders or some
13 invoices that were issued after that point; correct?

14 A Correct.

15 Q Now, Exhibit No. 12, this is where John got a call
16 from a guy name Himey. Who's Himey?

17 A Himey was the purchasing guy for Lamborn.

18 Am I on the right exhibit?

19 Q It should be 12, Plaintiff's Exhibit No. 12.

20 A Yeah.

21 Q Do you remember anything about -- does this e-mail
22 refresh your memory about what happened then?

23 A Yes. CCC had started to supply Lamborn with some
24 clear film primarily. And I think, at this point, Eastern
25 Films was still getting orders from Lamborn on clear film

1 and some small fill-in metalized orders. CCC was filling
2 the orders, but couldn't really bill Lamborn because CCC
3 didn't yet have a UL file. So --

4 Q Stop there. What's a UL file?

5 A A UL file is an underwriters laboratory file for a
6 recognized component. So in order to sell a flex duct
7 manufacturer film, they need to either have your company
8 in their UL file, or you need to have a UL file that says
9 UL has approved your product.

10 Q Okay. And Eastern Films had a UL file?

11 A Eastern Films had a UL file, yes.

12 Q And CCC did not?

13 A Correct.

14 Q And so is that what this call is related to?

15 A It looks like Himey had gotten an invoice from CCC,
16 but called John to say that CCC had not been set up as a
17 vendor. And John talked to him about setting them up as a
18 vendor.

19 And Himey had mentioned some two-inch and eight-inch
20 clear that he had ordered from me previously. And John
21 said, What's that? The eight-inch and two-inch clear had
22 been orders that were booked -- this is in August. I
23 believe that order had been booked in May of 2008. So
24 this was a container that was either in transit or just
25 delivered.

1 Q Okay. Now, I want you to look at Defendant's Exhibit
2 No. 8. Can you identify -- what is Defendant's Exhibit
3 No. 8?

4 A This looks like an e-mail from me to John in June of
5 2008, giving him a breakdown of customers that I had sold
6 through EFS in 2007 and 2008, and then a list of customers
7 that could go from Eastern Films into CCC.

8 Q Okay. And hold out discussion of Lamborn. But did
9 all of those go from EFS through CCC?

10 A Yes, with the exception, I think, of Plant Growers.

11 Q What happened to Plant Growers?

12 A Plant Growers, I don't think we did any more business
13 with them. That was a guy -- I remember now. That was a
14 guy who wanted to buy film for hydroponics. And it was
15 kind of an oddball, real small rolls, something we
16 couldn't convert at CCC.

17 So I think I may have gotten a couple orders with him
18 previously, but that one kind of fizzled.

19 Q We've got Lamborn listed twice in 2010 and 2013.

20 A Right.

21 Q Now, did you bring those Lamborn orders to EFS? Did
22 you start running -- after you had wound down your
23 obligations, did you run those accounts through CCC?

24 A Yes. Lamborn started running through CCC in maybe
25 June or July of 2008. I'm not sure when the first order

1 started running through.

2 Q What are these question marks beside the second
3 Lamborn entry?

4 A That may have been just not entirely sure of how much
5 business we could get on the clear side of Lamborn. I
6 think I had estimated maybe we could do 20,000 pounds.

7 Q But you weren't sure about that?

8 A Right.

9 Q But that's not a reference to the import business?

10 A No.

11 Q Is that a different product?

12 A The import business was primarily eight-inch
13 metalized.

14 Q Okay. So, now, we're back to the 2010 discussion. I
15 apologize for the diversion. So markets change and sales
16 go up for CCC; right?

17 A Yes.

18 Q Do you recall how much by way of distributions you
19 got that year?

20 A In 2010?

21 Q Yes.

22 A I remember in early 2010, John and I started taking a
23 bit less every month out of the company. We had bought
24 some equipment and talked about trying to get that stuff
25 paid off. And we had started taking a bit less. I'm not

1 sure exactly what I took out that year. It would be on a
2 sheet somewhere.

3 Q What about rent? Was there ever a -- at some point,
4 did rent increase?

5 A At some point, rent increased to \$2,500 for John.

6 Q Okay.

7 A And we had a conversation.

8 Q And did you agree to that increase?

9 A Yes.

10 Q Did you think that was fair?

11 A I thought it was fair.

12 Q Okay. And this time, is John funding the purchases
13 of film?

14 A Yes. John's lines of credit are funding the purchase
15 of film, the inventory, the AR, everything that a line of
16 credit would fund in a business.

17 Q Okay. And from a standpoint of your relationship
18 with John, how well you got along with each other, the
19 management of the company, how were things in 2010 between
20 you and John?

21 A I think in 2010, things were great. I mean, we
22 were -- our -- we were -- the business was growing rapidly.
23 We were making good money.

24 That may have even been the year we went backpacking
25 in the Grand Canyon with our kids. I don't remember if

1 that was 2009 or 2010. It may have been 2010. I think we
2 were just -- we were all thrilled that the business was
3 doing so well.

4 Q Were you doing anything else on the side? Other than
5 through CCC, were you earning any income in, let's say,
6 2009 and 2010? Were you earning any income in addition to
7 the CCC income?

8 A Yes. In 2007 -- maybe late 2007, early 2008, I
9 started repping a little bit for a scrim company.

10 Q What is scrim?

11 A Scrim is a fiberglass netting that's used to
12 reenforce things like cement board, and wall board, and
13 industrial wipes. And so I had started repping for a
14 company called Duetex. And in June of 2008, they wanted
15 me to have a more significant involvement with that. And
16 so I started, you know, repping for them more.

17 Q Okay.

18 A And --

19 Q How long did you do that?

20 A I did that through early 2010.

21 Q Okay. And, again, that was with full knowledge and
22 agreement with John?

23 A Yes. As a matter of fact, at some point, when we
24 were looking to add some people to our company, add some
25 expertise, we, actually, interviewed some Duetex employees

1 to potentially hire them, my former boss and then an
2 engineer that had worked for Duetex.

3 Q Now, did EFS sell any product during 2010?

4 A In 2010, I believe EFS sold two small orders of scrim
5 reenforced laminate.

6 Q Okay. What is scrim reenforced laminate?

7 A Scrim reenforced laminate is, also, a -- also, can be
8 referred to as a vapor barrier. And it can be
9 comprised -- there's lots of versions of it. But it can
10 be comprised of paper and film, paper and foil, foil and
11 film. It could have scrim in it. It's usually a
12 three-or-four-ply structure. And that was a product that
13 CCC really didn't carry or market.

14 Q When you say "really didn't carry," did they carry it
15 or not?

16 A We didn't carry it. Now, looking back, you know,
17 after the fact, I did see where we had sold that once
18 before.

19 Q Once before, one transaction?

20 A Once or twice. I think there was one transaction in
21 2008 or 2009. And then there was a transaction, I think,
22 where, actually, Eastern Films sold the product and the
23 money went back to CCC. I think that was that check you
24 showed us this morning, the 11,400.

25 Q Okay. And so how much were these transactions with

1 the scrim reenforced laminate?

2 A There were -- like I said, there was three or four
3 total. I think the -- maybe the highest sale was \$5,000
4 or \$6,000. The smallest one was \$800 or \$1,600.

5 Q \$800, is that the side deal that John Gandis
6 testified to this morning?

7 A Yes. That was one of them.

8 Q Okay. And did you and he have a conversation about
9 that?

10 A We did.

11 Q Did it happen at Starbucks?

12 A The first conversation we had -- because we,
13 actually, talked about two of these deals. The first
14 conversation, John came by the office, as he did pretty
15 regularly for meetings. And he brought some invoices that
16 had come -- I don't know if they came over the fax or the
17 mail. And these were invoices related to this
18 transaction. And he asked me about them.

19 And this was at the time when he and I had started to
20 take a reduced check from the company. My Duetex income
21 had kind of gone away. And so I -- I don't know if my
22 wife had maybe stopped working at that point. So --

23 Q And why did she stop working? Voluntarily?

24 A No. She had worked for a congressman who had gotten
25 voted out of office.

1 Q Okay.

2 A So her job went away. So, you know, our income had
3 taken quite a hit. And so I was kind of looking for some
4 ways to supplement my income. And, you know, as I had
5 done for several years with the Duetex, I was kind of
6 looking for something that might replace Duetex at some
7 level.

8 And, you know, knowing that John still had this
9 Decotex company going that was apparently generating some
10 revenue for him, I thought I'm going to look for something
11 I can do outside the company that's going to generate some
12 revenue.

13 So John came by, showed me the documents and asked me
14 about it. And I said, Yes, I'm selling some laminate. I
15 said, you know, John, my income has taken a hit. I really
16 need to -- if we're at the level right now that this is
17 all CCC can pay us, then I've got to do something else.
18 I've got to feed my family.

19 And John said, Well, do you want to sell things
20 outside of CCC?

21 I said, John, I don't really want to, but I may have
22 to, you know.

23 And he said, Well, I don't have a problem with that
24 as long as it's not film. I don't want you selling film
25 outside of CCC.

1 So that was the end of that conversation.

2 Q Okay. And is scrim reinforced laminate film?

3 A Not really. I mean, it might contain film, one
4 layer, but it's really a product that we didn't carry. I
5 mean, we didn't market it. We didn't stock it. We didn't
6 try to go after the laminate business.

7 Q Okay. I want to show you -- and I put in front of
8 you the -- CCC's answers to interrogatories. I want you
9 to look on Page 6.

10 A Right here?

11 Q Yes. Okay. Now, the first on that list is -- this
12 is a list of ucert corporate opportunities. Califlex --
13 what was Califlex?

14 A Califlex was another flex duct company that I had
15 known for a long time. I had a good relationship with
16 them.

17 Q What did you sell Califlex?

18 A I sold Califlex polyester film. And this particular
19 order was booked in May -- I believe, May of 2008.

20 Q Okay.

21 A And I believe this was imported. So the container --
22 it takes two months or so for the container to come in.
23 So the container would have come in maybe in July.

24 Q And you would have invoiced it after that?

25 A Yes.

1 Q Chiefs AC Supply, what is that?

2 A Chiefs AC Supply is another small flex duct company
3 in Houston. Again, I've got a relationship that goes back
4 many years with them. And I had been supplying them with
5 product. I had some inventory on the floor, I believe. I
6 think I filled one more order out of inventory. CCC may
7 have, actually, filled part of that order.

8 Then after that, I think CCC filled whatever orders
9 were left. But the business with Chiefs kind of stopped
10 after that because they were in financial trouble. And we
11 didn't really want to continue selling to them.

12 Q So was that done with the full knowledge and
13 cooperation of CCC -- or John Gandis?

14 A Yeah. We talked about a lot of these orders that
15 were either pending orders or inventory I had. You know,
16 is this going to go through Eastern Films? Do I have half
17 the order and CCC is going to fill the other half for me?
18 Are they going to sell it to me? Am I going to resell it?

19 So there was a lot of this going on in the second
20 half of 2008.

21 Q So we're talking about the July, August, September
22 period of time?

23 A Yes.

24 Q All these transactions relate to that time period?

25 A Yes.

1 Q What about Dundas Jafine?

2 A Dundas Jafine was a company that I just started -- of
3 course, I knew about for many years, but had just started
4 getting some orders with. And I know at one point in July
5 or August, I had an order that I believe I filled part of
6 it, CCC filled the other half.

7 And then CCC, I think, filled subsequent orders. And
8 I don't know if that was related to the UL, or the fact
9 that since I had just kind of brought them in, we didn't
10 want to do a switch on them that quickly. We wanted to
11 get this film kind of qualified.

12 But I know of this -- and I've got a spreadsheet
13 somewhere. But of that \$89,000, a lot of that was billed
14 through Eastern Films. Dundas Jafine paid Eastern Films,
15 and Eastern Films reimbursed CCC.

16 Q Right.

17 A I think the check, actually, went to CCC, even though
18 it might be on the books as an Eastern Films transaction.

19 Q And we saw an e-mail earlier today, which was 142,
20 where you had cut -- where EFS had cut a check for
21 \$12,000. Was that related to one of these split orders,
22 or one of these orders that ran through EFS?

23 A Was that the 11,400?

24 Q That was a \$12,000 check. Do you remember that?

25 A I don't. I mean, there was a lot of them. There was

1 a lot of back and forth between Eastern Films and CCC
2 during this time.

3 Q How about Flextech?

4 A Flextech, I believe that this transaction was
5 polyester wire. Mike Myers had a relationship with
6 Flextech. And they were looking -- they had, actually,
7 asked Mike to help them find an alternative source of
8 wire.

9 Q So this wasn't film?

10 A No.

11 Q The Horizon Energy, is that the check we looked at
12 earlier?

13 A Yes. That's the check where I reimbursed CCC for
14 that amount.

15 Q Okay. Industrias Vermont?

16 A Industrias Vermont was -- this was, actually,
17 adhesive, some adhesive that I sold them.

18 Q Interflex Group?

19 A Interflex Group was a company that I had sold film
20 to, I think all polyester, maybe a little bit of
21 polypropylene. And I had been offered some Biax nylon
22 from another converter that was aged. It was quite old.
23 And I had a relationship with the guy at Interflex and
24 asked them if they could use it.

25 And, you know, I was kind of reluctant to do the

1 transaction because this was suspect material. And I,
2 certainly, didn't want to put CCC in a jam with some aged
3 inventory at this time. And so I think I ran this through
4 CCC -- or excuse me, through Eastern Films.

5 Q Would John have been aware of that?

6 A I don't think so.

7 Q How about J.P. Lamborn -- we've got J.P. Lamborn,
8 Modular Metal and West Carrollton, those are all the three
9 accounts you held out; right?

10 A Yes.

11 Q What is Technoflex?

12 A Technoflex is a flex duct company in Canada. And I
13 don't really recall. This order may have been filled from
14 some stock that I still had left in my warehouse.

15 Q And 12 is the 2010, 2011. Is that the reference to
16 scrim reenforced laminate?

17 A Yes.

18 Q And the total was 5,651.

19 A You know, actually, I think it was a little bit more
20 than that after reviewing the checks. But I believe
21 that's what they're referring to.

22 Q Okay. Did any of those transactions that EFS engaged
23 in violate the agreement that you had reached with John
24 Gandis?

25 A I don't believe so.

1 MR. ARNOLD: Your Honor, may we take a break? May I
2 take a break?

3 THE COURT: Absolutely. We'll take about a 10-minute
4 break.

5 Thank you.

6 (WHEREUPON, a break was taken.)

7 THE WITNESS: Andy, could we go back to something we
8 talked about earlier?

9 THE COURT: Yes, sir. Go ahead. Whenever you're
10 ready.

11 BY MR. ARNOLD:

12 Q I'd rather not. But is there something you want to
13 go back to that we discussed earlier?

14 A I guess not.

15 Q Well, go ahead, Dave. What is it? If you think you
16 need to clarify something --

17 A Yeah. I think I forgot to mention that when John and
18 I had the conversation about the laminate transaction, you
19 know, I had reminded him that I had rolled EFS customers
20 into CCC, and that he had yet to put any of Decotex in.

21 Q Right.

22 A And this is two years into the deal, you know. So he
23 still had a source of income outside. And that's when he
24 said, Well, do you want to sell things outside of CCC?

25 And I said, I don't really want to, but I know I may

1 have to.

2 Q Right.

3 A So that was all I wanted to clarify.

4 Q Okay. And that's at the end of 2010?

5 A Yes.

6 Q So let's talk about 2011. What was your relationship
7 like about this -- at this time with Andrea
8 Comeau-Shirley?

9 A I think by this time our relationship was a bit
10 strained. You know, early on after she came on board, you
11 know, we had some things that we agreed on.

12 I recall a meeting in Anderson once where I was down
13 there, and Andrea was up from Atlanta. She -- I think she
14 had, actually, brought her husband up because he was some
15 kind of a consultant. And he spent a day in the plant
16 talking to the employees trying to get his -- a feel for
17 what the employees thought about our business.

18 And I remember sitting in the office with John and
19 Andrea, and her husband comes in and he, basically, tells
20 John -- and Andrea and I were there, that these -- your
21 employees think this is a mess. You know, the way this
22 plant is run is a mess. And, you know, I think Andrea and
23 I kind of saw eye to eye on that and on -- sometimes
24 whether to buy used equipment versus new.

25 So there were some things we agreed on. But there

1 were a lot of things that we kind of bumped heads on. And
2 there was a time on two occasions where she tried to lock
3 me out of the accounting system, and John as well. And
4 that didn't go over well with me as an owner.

5 And so, you know, John and I made it very clear to
6 her that although we didn't need to have the right -- or
7 the ability to make transactions or change transactions,
8 we wanted the right to see everything in the books for the
9 company we owned. And that was not, you know, something
10 we were going to compromise on.

11 So, you know, little things like that had happened
12 that I think put a strain on my relationship with Andrea.

13 Q Having had the big year in 2010, when did you realize
14 you had a big tax liability facing you?

15 A Probably -- well, I mean, I knew there -- I knew it
16 was coming, but probably April-ish maybe. Maybe I talked
17 to my accountant and he had given me kind of an estimated
18 tax liability.

19 Q And do you remember what that was?

20 A Yeah. I want to say it was -- I believe my federal
21 tax liability was a hundred -- around 180. And it was,
22 actually, probably higher than that. And let me explain
23 for a second.

24 Andrea had sent me a K-1. You know, in 2008, my K-1
25 said 50 percent. And, in 2009, it said 45 percent. John

1 and I had both given five percent. Well, in 2010, I got a
2 K-1 that said 44 percent. And I didn't really pay that
3 much attention to it. I just thought it was -- I don't
4 know. I don't know what I thought. But I kind of now
5 know after reading her e-mails why that happened.

6 So -- but she had sent me a K-1. And I believe my --
7 the income that hit my K-1 was about five -- a little over
8 half a million dollars. And that's what I gave to my CPA.

9 And then there was an e-mail later from her that
10 said, Well, did you get the K-1 I mailed to your house? I
11 don't ever remember getting a K-1 mailed to my house. I
12 found the K-1 later when we got discovery for the hard
13 drive. And that K-1 was -- the income was about 600,000.

14 So I think all and all my tax liability for that year
15 was 200 -- maybe 200 plus. It was big.

16 Q Okay. How were you planning to pay that?

17 A Well, my understanding was that the company was going
18 to accrue cash to distribute to the owners to help with
19 our -- pay our tax liability. I mean, that's what was
20 represented to me early on. We got a distribution -- an
21 extra check in 2009 for taxes. And my assumption was that
22 would continue.

23 Q Okay. Did you have some discussions with John about
24 whether or not there was going to be a tax distribution?

25 A Yeah. We talked about it. We talked about, you

1 know, getting our inventory levels down.. We talked about
2 reserving cash, putting -- you know, putting cash aside
3 for distributions for taxes.

4 I think, at one point, we even had a -- I don't know
5 if we were using a money market account. But we had an
6 account on the balance sheet that said reserve for tax
7 distributions. And so we would put money in there on a
8 regular basis.

9 But what was happening was that when we needed to buy
10 film, we would dip into that. And that was because we no
11 longer had the lines of credit that John had stopped
12 providing to the company in April or May of that year.

13 So this business that had grown and been helped along
14 with these lines of credit now was trying to be
15 self-supportive. And even though we were trying to be
16 more cautious about our purchasing habits, it was still --
17 you still -- this business still requires a fair amount of
18 inventory. And it's hard to do that without outside
19 funding.

20 Q And John was looking for outside funding?

21 A We were.

22 Q Okay. Did you meet with any banks?

23 A I didn't meet with any banks with John. I believe
24 John met with a bank. Of course, he had a relationship
25 with Bank of America through his other companies and his

1 father. I, actually, met with -- when Steve came down to
2 the plant in 2010 --

3 Q Steve Norvell?

4 A Steve Norvell. He came down because John, and
5 Andrea, and I were talking about trying to get the West
6 Carrollton business. And I explained to them that my
7 brother-in-law had financed it in the past, and maybe he
8 would help us do that. So we exchanged some e-mails.

9 He came down to the plant and looked around. And he,
10 actually, recommended, I think, Jackie Lucas, which was
11 his BB&T banker. And I set up a meeting and asked John if
12 he wanted to attend the meeting at the Greenville office.
13 He said, No, you meet with him. I don't really need to
14 come up for that. Jackie Lucas was fairly interested in
15 having further discussions. But, you know, John kind of
16 said, No, Andrea is working with Bank of America and we
17 don't really need them.

18 Q Did you submit any information to Bank of America,
19 personal information?

20 A Yeah, yeah. We did a personal financial statement
21 and maybe tax returns. I'm not sure.

22 Q Now, CCC's business, I mean, what -- so you had a
23 banner year in 2010. What's going on in 2011?

24 A In 2011, the film had loosened up. I wouldn't say
25 the world was awash in film, but compared to 2010, it

1 seemed like it was. It was, actually, a bit more
2 normalized.

3 Q Right.

4 A But because of that, the cost of film and the selling
5 prices of film started to drop. And so, you know, we had
6 some inventory that was already on the books at a higher
7 price that we're now having to sell at lower prices.

8 So our margins are taking a bit of a hit. We lost a
9 couple of big accounts in 2011, several of them through
10 quality issues. One of them, which was sort of a, you
11 know, distributor, competitor of ours. As film loosened
12 up and they could buy film again from one of their
13 manufacturers, they just started buying from their
14 previous source. So they kind of went away.

15 I guess the thing that was most shocking to me was
16 that all the way up through August of 2011, of course, I
17 had access to the books. And as I'm looking at, you know,
18 the PNL, we're showing quite a bit of net income. I mean,
19 we're very profitable. As a matter of fact, in August,
20 our books showed a net income of positive \$800,000.

21 Now, I think there was a question in my mind --
22 everyone's mind that may not be completely accurate
23 because of inventory. But I still thought we were having
24 a decent year. Maybe not a 2010 year, but a decent year.
25 We were profitable.

1 Q Okay. And how were your sells to your customers
2 going? Are you above or below projections?

3 A Well, as the VP of sales, I had transitioned a lot of
4 my accounts to our reps. I viewed my role as more of
5 supporting them. And, of course, I was still heavily
6 involved in the vendor side, qualifying vendors and
7 purchasing.

8 So I had been transitioning accounts over to them.
9 So I couldn't really even tell you which accounts I was
10 personally managing at that time versus --

11 Q Okay.

12 A -- you know.

13 Q Did anybody tell you that your e-mail was going to be
14 monitored?

15 A No.

16 Q Do you recall the IT folks coming to the Greenville
17 office under some pretense other than setting up to
18 monitor your e-mail?

19 A I remember the IT folks coming once or twice to
20 Greenville.. You know, once may have been to help with a
21 connectivity issue to the server or -- but I don't -- I,
22 certainly, don't remember them coming to, you know,
23 archive e-mails or set up -- the whole idea of archiving
24 e-mails, I didn't find out about until we got discovery.

25 Q Had you ever seen an employee handbook?

1 A No.

2 Q Did you know that anybody was working on an employee
3 handbook?

4 A Not really. I mean, I think we had maybe -- we had
5 talked about having one and developing one. But I had
6 never seen one and didn't know if a draft existed.

7 Q So John and Andrea, neither one of them ever let you
8 know that your e-mail or anybody else's e-mail was going
9 to be monitored?

10 A Never.

11 Q Did they ever let you know that your personal e-mails
12 conducted on your CCC account would be read?

13 A Never.

14 Q When was the first time it was suggested to you --
15 well, let's step back. Wasn't there some point in time
16 where John and Andrea agreed, you know what, we're not
17 going to take distributions for a while?

18 A Yes.

19 Q Do you remember when that was?

20 A I believe it was in the spring of 2011. I remember
21 being at the plant in the downstairs office and -- which,
22 you know, we had meetings routinely. And I remember
23 Andrea explaining that John had made other arrangements
24 for income and that he could forego a monthly check for a
25 while. But that, at the end of the year, we'd catch

1 things up. And that because our capital accounts needed
2 to remain in balance on a pro rata basis that he was -- we
3 were going to classify, initially, part of my income as a
4 loan.

5 Because I think when that first started, I think John
6 and I were both getting about \$6,800 a month. And I
7 started getting an additional four that was classified as
8 a loan. And the idea was that at the end of the year,
9 John would get a check and my loan would be paid off, and
10 our capital accounts would remain in sync.

11 And then in 2011, I believe John stopped taking a
12 distribution or a check, whatever you want to call it,
13 completely. And I continued to get one. And I -- and
14 those were booked -- maybe from that point forward were
15 booked as loans.

16 Q Okay. Was there an interest rate discussed at the
17 beginning?

18 A 10 percent interest was discussed. But the way it
19 was explained to me is you're really borrowing against
20 your own capital account.

21 Q And when this started, what was the balance of your
22 capital account?

23 A Well, if this would have been in 2010 --

24 Q Early 2011.

25 A It probably would have been half a million dollars or

1 more.

2 Q So you had not overdrawn -- or at no time during your
3 tenure at CCC had you overdrawn your capital account?

4 A No.

5 Q When was the first time -- let me ask you. When did
6 you learn you had been removed as a signatory from the
7 checking account?

8 A In late 2011, maybe November or December. You know,
9 at this point, things are fairly tense. And I remember
10 having a conversation, you know, every time it came time
11 for me to get a check, it seemed like John had some new
12 document for me to sign trying to get me to, you know,
13 sign over my equity, or, you know, there was always a form
14 for me to sign. There was always some string attached.

15 And I remember having a conversation, it must have
16 been late in the year. Because I think this was after
17 they said you're not going to get paid starting in
18 January. And I remember having a conversation with my
19 accountant. And I don't know if I had an attorney at the
20 time. But my accountant said, Well, aren't you a
21 signatory on the checking account?

22 I said, Well, yes.

23 He said, Well, then as a member, you have a right to
24 do go down there and write yourself a check.

25 And so I called Bank of America and asked who was the

1 signatories on the checking account. And I was told that
2 John was the only signatory, even though when we had set
3 up the checking account in 2008, we were both signatories.

4 So John -- I think I called John about it and said,
5 What's going on?

6 And he said, Well, don't you remember, someone stole
7 checks out of our mailbox in 2008 or 2009, and we had to
8 get a new account.

9 And I said, Well, you, obviously, didn't put me back
10 on as a signatory.

11 And he said, Well, it was just an oversight, you
12 know.

13 So that's when I learned I was not a signatory.

14 Q When did you learn you had been removed from the
15 authorization to make wire transfers?

16 A When I read Andrea's e-mail from her hard drive in
17 the discovery process.

18 Q Okay. Now, when was the first time it was suggested
19 to you -- you mentioned this just a minute ago. That
20 beginning in -- in 2012, January 2012, that you would not
21 be -- you would no longer be receiving a distribution, or
22 an advance, or whatever you want to call it?

23 A It was sometime in the fourth quarter of 2011. I --
24 you know, that whole period, there was so much
25 correspondence going back and forth that it kind of blurs

1 together. I don't know if it was October, November,
2 December.

3 Q What were the choices you were given? Do you recall?
4 I know we've got some in e-mails, and we've reviewed
5 those.

6 A Yeah. One was stay on as a member and have no
7 guarantee of getting a monthly payment.

8 Q And would that have been a change in your original
9 agreement with John?

10 A Yes.

11 Q What was the other?

12 A The other two were sign over my equity, my interest,
13 in return for a -- I know Andrea had come up with some
14 plan to backdate my -- the sale of my equity to the
15 previous year and somehow wipe out my 2010 liability. I
16 didn't understand at all.

17 And then I think the third option was -- I don't
18 remember what the third option was. I know that I didn't
19 like any of the three options.

20 Q Okay. Now, these discussions -- well, let me -- what
21 impact did they have on -- what impact did this threat to
22 take away your monthly income have on you?

23 A Well, it was very stressful. You know, I knew that
24 we had a business to run and jobs to do. And there was
25 this constant tension of, you know, am I going to get a

1 check next month? Am I going to pay my mortgage? You
2 know, it was very stressful. And not to mention the fact
3 that I had a \$200,000 tax liability looming out there.

4 Q All right. Did you -- did this cause any
5 difficulties at home?

6 A Yeah, it did. You know, Julie was very concerned
7 with the fact that we had this -- by now, we had this -- I
8 think our CPA had confirmed what our liability was.

9 So we had this huge liability. I had been telling
10 her that year that we were accruing cash to make payments
11 to the members. And, now, there was this talk of buying
12 my interest and converting me to an employee, and, you
13 know, a lot of back and forth.

14 So it was very unsettling to Julie and to me. And it
15 was -- it caused a lot of tension.

16 Q And so we get the -- we have these exchanges that are
17 documented in the e-mails. And then you get to 20 -- to
18 December 2012?

19 A 2011.

20 Q 2011. And then you were sent this e-mail,
21 Plaintiff's Exhibit No. 163. Do you remember receiving
22 that?

23 A Yes. They had made me an offer. We had gone back
24 and forth, I think, with some offers. I had made them an
25 offer of what I thought my interest was worth. They had

1 come back with an offer. And I remember that the offer
2 that I got before this pro forma was particularly
3 troubling.

4 Number one, I thought the value that they had -- that
5 Andrea had put on my interest was considerably lower than
6 I thought it should be. And they had offered me an
7 at-will employment agreement with a five-year non-compete.
8 And everybody knows that an at-will employment agreement
9 is good for about a day.

10 So it became clear to me that their intention was to
11 possibly have me sign over my interest for a price and
12 then terminate me. So, now, I've got a five-year
13 non-compete, and a low value for my interest to be paid
14 out over time, and no way to earn a living since I had
15 been in the film business for 20 years. So it was very
16 troubling.

17 So I sent a number of questions -- I talked to my
18 accountant. And I sent a number of questions to Andrea
19 about some things that had just recently appeared on the
20 financials. And I asked her to send me, you know, what
21 balance sheet are you using to value my interest. And she
22 sent me these documents.

23 Q She sent you the documents -- the balance sheet
24 that's attached to Plaintiff's Exhibit No. 163?

25 A Yes.

1 Q In reviewing this, did you find anything that was
2 surprising, or troubling to you, or incorrect?

3 A Yes. Well, first of all, the most glaring thing was
4 the hundred thousand dollar preference on units that had
5 just appeared. And I remember sending Andrea an e-mail
6 that, basically, said, you know, what the heck is this?
7 And her comment was, John promised me that in 2009.

8 And I was like, Well, first of all, I don't know that
9 John can promise you that without my consent. And why is
10 it just now appearing on the books? Because this has the
11 effect of reducing my interest by \$45,000.

12 The other thing was the -- that the cash reserve for
13 tax distributions that shows up as a negative number,
14 essentially, makes the cash zero -- negative. So we have
15 negative cash. And although I understand the idea of
16 accruing for a future payment, the effect of putting a
17 negative number on the balance sheet reduced my -- this
18 reduced my interest by, you know, \$70,000.

19 Q And was there, actually, an account or -- that was
20 accruing where money was being deposited for a tax
21 distribution?

22 A You know, I think prior to this, we had a money
23 market account that was accumulating monies. But I don't
24 ever remember it being a negative number on the balance
25 sheet.

1 The other thing that popped up was this \$15,000
2 warrantee reserve, which I'd never seen before. There was
3 something in the -- oh, she had accrued quite a bit of
4 expenses, which was kind of the first time some of these
5 accrued expense had popped up. And she had an invoice
6 reserve of a hundred -- a negative inventory reserve.

7 Now, let me set a little backdrop for this. So this
8 is in December. And keep in mind that in August, our
9 books showed a net income of \$800,000. Okay. We knew we
10 had some inventory adjustments to make, you know, maybe
11 \$300,000 or \$400,000. Okay. But by the time this came
12 along, our PNL showed negative \$400,000. So in the space
13 of four months, our PNL had gone from positive 800 to
14 minus 400, a 1.2 million loss in four months. Okay.

15 So that's the backdrop. And I get this from her.
16 And then the fact -- you know, this pro forma equity.
17 Again, she's got the negative tax distributions payable on
18 there. She's got my loan, which was on the books as an
19 asset, and on here as a negative number.

20 Q And your loan should have been carried as an asset?

21 A It should have been carried as an asset of which I
22 owned 45 percent. I mean, if it's an asset and I own
23 45 percent of the company, I own 45 percent of that loan.

24 Q Did any assets that had previously been included on
25 prior balance sheets disappear from this balance sheet?

1 A Yes. We had a fixed asset account called building
2 repairs, building improvements maybe. There was a couple
3 subcategories. And that fixed asset account had -- it was
4 roughly \$208,000. It had the clean room, some office
5 renovations, and a new air conditioner. And all of a
6 sudden, it's gone. Okay.

7 Q From the balance sheet?

8 A From the balance sheet, yeah.

9 Q Did you ask about that?

10 A See, I'm trying to remember if I figured out where
11 that went at this time or later. I know later when I had
12 started digging a little further, I discovered that the
13 fixed asset account had been deleted, and that all of
14 those invoices had been put in the rent expense account.

15 And I, also, know that the only way to get rid of an
16 asset is to delete all of the transactions in that asset
17 account. You can't just say delete and then move it over.
18 You have to delete every transaction intentionally before
19 you can delete the account. And then you have to reenter
20 all of those transactions into rent.

21 So that had a \$60,000 impact on the balance sheet.
22 Because we got rid of \$30,000 of assets. We incurred
23 \$30,000 of expenses, which reduced the net income that
24 comes to the balance sheet. So that was a \$60,000 hit.

25 So all of these things are -- you know, are showing

1 up. And I think John said, you know, Do you want to get
2 together and talk about it? At this point, I was kind of
3 like there's way too much here to -- I was pretty hacked
4 off and very alarmed.

5 Q One more thing. What about the depreciation?

6 A Oh, yeah, yeah. So the depreciation that was on here
7 was -- the depreciation from the PNL that would have had
8 to bring our fixed assets down to 130,000 was accelerated
9 quite a bit more than the depreciation schedule we had
10 used in previous years.

11 As a matter of fact, the depreciation that this
12 balance sheets reflects is not even the depreciation that
13 Andrea, ultimately, put on the 2011 tax return. So she
14 just depreciated the assets down to, you know, 130,000.

15 So this -- all of this impact, all of this combined
16 probably had a \$400,000 impact on the -- you know, the net
17 asset value of the business. So it was shocking and
18 disturbing to me.

19 Q Now -- but didn't they say they would use the numbers
20 from this balance sheet to accept an offer from you so
21 they were going to -- you could either buy or sell at this
22 number?

23 A I -- after this -- I got this. I may have made one
24 more attempt at an offer, or, you know, something that I
25 would accept. And I sent them another e-mail at a reduced

1 value with an employment agreement. And I believe it was
2 that number that they came back with.

3 I remember John called me, it was New Year's Eve,
4 Christmas Eve, it was that weekend. And he said, By the
5 way, you know, John and Andrea -- or Andrea and I would
6 take a buy out. I want to say the number was 350. And he
7 said, But you've got to buy the building. Part of the
8 deal is you've got to buy the building, you know. And I
9 want to say he may have put a value on that of \$150,000 to
10 \$175,000.

11 Q And what did you think about that?

12 A Well, I thought, you know what, maybe this is an
13 opportunity to come up with a plan to get out of this
14 mess, to maybe stay in the business. If they want to get
15 out of the business, I'll stay in the business. Maybe I
16 can find someone to come in and either buy the company or
17 buy them out, something.

18 Q Were the same -- the terms being offered to you, were
19 those their terms as well in terms of payment?

20 A No. The other difference was that Andrea wanted her
21 money, her hundred thousand dollars cash up front. And
22 there were no escrows. So, whereas, I was going to be
23 paid out over time, they, essentially, wanted their money
24 pretty quick.

25 Q And isn't it true that you were not -- strike that.

1 You had been told that there wasn't enough money to
2 pay you for your January distribution; right? Right?

3 A Yes. As a matter of fact -- okay.

4 Q And -- but then what did they tell you they were
5 going to do with your car? You and John had purchased
6 cars through the business; right?

7 A At the beginning of 2010, John approached me about
8 buying a company car. And he said, you know, Your car is
9 getting kind of old. And why don't we buy a company car.
10 The company will own it. You can expense your insurance,
11 your repairs. It's a company car. You drive it most of
12 the time. But if we're going to go on sales calls, we'll
13 have a nice car to drive. So we bought a car. And if I'm
14 not mistaken, originally, it was put on the books as a
15 company asset.

16 Sometime later, I don't know if it was months or --
17 sometime later, that car loan shows up in my capital
18 account. So even though the company is making the
19 payment, it's getting dinged to my capital account. So
20 it's not really a company car. It's Dave Wilson's car.
21 And, you know, I didn't contest it at that time, but it
22 wasn't what John and I had discussed. Andrea, obviously,
23 came up with her own plan for how that car should be paid
24 for.

25 So, at the end of 2011, I believe the balance on that

1 car loan was \$18,000. And I remember having a
2 conversation with John because December 1st was around the
3 corner. We were negotiating. John was talking about me
4 not getting a check. And I said, I'm going to need a
5 check next week.

6 And he said, We just don't have the money.

7 And I said, John, I have access to the books. We
8 have \$180,000 in our checking account. We have less
9 payables than we've ever had. Our AR is high. We're in
10 the best cash position we've been in in a long time. So
11 don't tell me we cannot afford to pay it.

12 And he said, Well, the money that's on there, we're
13 saving that in case we have to buy you out.

14 I said, Well, if you pay me a check in December,
15 wouldn't that just come out of what you buy me out for?

16 Well, I don't know. I'll have to talk to Andrea.

17 So I then learned that that month, in December, they
18 wrote a check to Lexus Financial for \$18,000 to pay off
19 the car that we still had three years to pay on.

20 Q And what happened to your capital account?

21 A Well, so my loan -- not my capital account, but my
22 loan increased by \$20,000.

23 Q So you didn't get the cash. You got the car, but you
24 wanted the cash?

25 A Yeah. I can't pay my mortgage with a car.

1 Q And you -- and so that was not done with -- in
2 discussions with you?

3 A No. It caught me by surprise.

4 Q So -- now, at some point in time, you thought you
5 were going to get yourself out of this mess by maybe
6 trying to buy them out?

7 A Yes.

8 Q So what did you do?

9 A So I told John -- when John called me and said they'd
10 be willing to sell their interest, I said, Great. I'll
11 start talking to some people. You know, I've got some
12 people that might be interested, my brother-in-law being
13 one of them.

14 And I started working hard to put some information
15 together to see if someone would be interested in buying
16 our business or buying someone's interest, you know, that
17 we could come up with a solution, because we were at
18 logger heads.

19 Q So who did you approach?

20 A I approached my brother-in-law first, I believe. He
21 had a buddy named Anthony Bowman, who was, apparently,
22 looking at investing in something. And Steve thought that
23 maybe Anthony might be interested. I sent him some
24 information. And they looked at it and came back and,
25 basically, said -- you know, Steve was so busy with his

1 company, he said, I don't have time to get into the film
2 business. And Anthony declined.

3 I sent some information to Julian Crawford, who's a
4 CPA guy that I used to work with at Duetex. He was now
5 out of Duetex. And I said, Do you know anybody who --
6 investors who might want to come in and buy a business.

7 He said, I'll look.

8 And then I approached Mark McGarel of Filmtech.

9 Q Now, who -- what is Filmtech?

10 A Filmtech is a metalizer. So, you know, the company I
11 worked for in the past that deposits aluminum.

12 Q Yeah.

13 A That's what they do. That's their primary business.

14 Q Are they a competitor?

15 A Filmtech could be considered a competitor. But they
16 could, also, be considered a supplier. And they could,
17 also, potentially be a customer. You know, like I said,
18 these -- if you're in the film business, you could be one
19 of all three.

20 Q Right. And did you send Mark McGarel any
21 information?

22 A Yes.

23 Q What did you send Mark McGarel? I think we've looked
24 at it.

25 A I sent Mark McGarel financials. I sent him an

1 overview of kind of the products, you know, a list without
2 customer names. I'm trying to remember. Because I sent
3 him information on more than one occasion.

4 Q Did you get non-disclosure agreements from all of
5 these folks?

6 A I did.

7 Q Now, with Mark McGarel, some of the information you
8 supplied McGarel came after he decided he didn't want to
9 buy CCC; right?

10 A Yes.

11 Q And then you were talking about employment?

12 A Yes. So my first meeting with McGarel, I believe,
13 was here in Greenville. And I said, you know, Here is
14 where we are. And are you interested in maybe buying the
15 company, or buying out John and Andrea?

16 And he looked at the financials. I don't know that
17 he gave me an answer that night. But he, subsequently,
18 came back and said, I'm not really interested in buying
19 the company. He goes, you know, I've got slitters. I've
20 got sources of film. I've got a building, you know. I
21 don't really need that. But, you know, if you're looking
22 to get out, maybe, you know, you can come work for me.

23 And so, at this point, we're in January. I hadn't
24 received a check. Remember, they cut it off in January.
25 So, now, I didn't get a paycheck, or whatever you want to

1 call it. I'm really getting panicked now. Steve had
2 backed out. Julian Crawford hadn't found anything. I'm
3 thinking, you know, going to work for Mark McGarel may be
4 my only way of paying my bills.

5 Q Now, did you provide him any information that was
6 harmful to the business of CCC?

7 A I don't believe any of it was harmful.

8 Q Now, apparently, he shared that information with his
9 wife, because we saw an e-mail from her with some
10 information on it?

11 A Yes.

12 Q Did you know he was going to do that?

13 A No.

14 Q Did you have discussions with her about a job?

15 A No. I've never met her.

16 Q Okay.

17 A At some point, Mark told me he had another company
18 called Packaging Industries that was kind of -- kind of
19 like a scrap brokering-type company. It was separate from
20 Filmtech. He had put it in his wife's name. I don't
21 think she operates it, but it was in his wife's name.

22 And he had a guy that was repping in that company.
23 And he was -- and Packaging Industries was, basically,
24 doing things that kind of Filmtech wasn't in, kind of a
25 non-mainstream type of business. And so I guess he shared

1 that with his wife, or maybe she just e-mailed it back.

2 I'm not sure, but I've never talked with her.

3 Q But, at one point, you told Mark McGarel that if you
4 went to work for him, you would take all of your customers
5 and prospects, and compete in earnest with CCC. Did you
6 tell him that?

7 A Sure. I didn't have a non-compete. I didn't have a
8 non-disclosure. And my thinking was if CCC buys me out
9 and does not execute a non-compete or non-disclosure, I'm
10 free to go compete. I mean, I know all the customers. I
11 know all the vendors. I know how to buy film. Mark knows
12 how to buy film.

13 Q Did he ever make you an offer?

14 A I made him an offer. I made him an offer of what I'd
15 like to get to be -- you know, come on board. And he
16 declined. He wanted me to come on board as maybe a
17 commissioned agent. I think we had another meeting. And
18 it became clear to me that he wasn't really committed to
19 having me join his organization. So that was --

20 Q So you were -- did you have any other possibilities
21 as of the day that John Gandis showed up at the office to
22 ask you to leave?

23 A No.

24 Q Let's talk about that day. First of all, did you
25 ever tell your lawyer that you were resigning?

1 A No.

2 Q That you were ready to resign?

3 A No.

4 Q Now, if you had gotten an offer from Mark McGarel,
5 would you have resigned?

6 A I don't know that I would have resigned. I think
7 what I would have done is gone back to CCC and said, you
8 know, buy me out. If you want to buy me out, here's the
9 price. If you want a non-compete, here's the price.

10 Q And you, actually, did that on March the 5th of 2012?

11 A Yes.

12 Q And we reviewed that offer earlier. So tell me -- so
13 John shows up?

14 A John had come by the morning before, I believe. We
15 had talked. We had kind of talked about sales. It was
16 not a tense conversation, you know. Things had happened
17 between me, and John, and Andrea over the last few days.

18 Andrea had, once again, cut me off from the
19 accounting system. She had limited my view to sales only.
20 She didn't like the questions I asked about her balance
21 sheet, so she cut me off from that.

22 John came by. We talked. We may have talked about
23 having a sales meeting later that week. And then I
24 believe it was that afternoon I talked with Clayton.

25 Q Clayton?

1 A Clayton Jennings, my attorney. And I said, Go back
2 to them with another offer. You know, I'll take a lower
3 amount because this is -- by this time, I'm now two weeks
4 into January, and hadn't gotten paid. So I'm getting
5 pretty nervous.

6 And so Clayton, apparently, made a phone call to
7 Zamer. Within 15 minutes, my -- the Greenville office was
8 cut off from the server in Anderson. And I called Clayton
9 and I said, What the hell? The service just got cut off.
10 And he sent an e-mail to Zamer and said, I think it's odd
11 that within 15 minutes of me having a conversation with
12 you that my client's access was cut off. And so that was
13 the end of that day.

14 The following day, still no access to the Greenville
15 server. Bill and I were at work. I want to say at 2:00
16 in the afternoon maybe, I'm working. John walks in
17 unannounced. He hands me a letter and says, you know,
18 We've accepted your resignation.

19 And I said, I don't know why you've accepted
20 something I haven't tendered. I haven't resigned.

21 And he says, Oh, yes, you have. Here's our
22 acceptance.

23 And I said, Well, I'm not leaving. I said, I'm not
24 your employee. I'm an owner. You can't lock -- you can't
25 force me to leave my office.

1 He said, Well, I thought you'd say that, so I brought
2 a cop. So he opens the door and in walks a cop.

3 And I said, Sir, I don't know what he's told you, but
4 I'm -- I own 45 percent of this company. I'm not his
5 employee.

6 And the cop said, Listen, I'm just here to keep the
7 peace.

8 And I said, Well, if you don't believe me, talk to my
9 attorney.

10 So the cop got on the phone with my attorney, maybe
11 after the cop talked to Andrea and said, I don't know who
12 you are. And he gets off the phone with my attorney and
13 he says -- looks at John and says, you know, You're right.
14 He's an owner. I don't have any authority here other than
15 to keep the peace. You guys really need to get your
16 attorneys involved, you know. We had been doing that.

17 So, at that point, a locksmith shows up. He starts
18 to change the locks.

19 And I said, Buddy, don't be changing the locks on my
20 office.

21 And he says, Well, I'm just doing what I was told to
22 do.

23 So I called the landlord and I said, you know, My
24 partner is here with a locksmith changing the locks on my
25 office.

1 He goes, Listen, I --

2 I said, Does he have the legal authority to do that?

3 He said, Well, you both have the rights. I don't
4 want to get involved. Get your attorney involved.

5 So I'm on the phone with my attorney. And he's like,
6 Well, just stay in your office, you know. He can't make
7 you leave.

8 So the locks are being changed. I start gathering
9 stuff and head to go my car.

10 Q What did you gather?

11 A I gathered my computers, some files, tax returns,
12 bank statements, whatever that was handy that I could
13 grab.

14 Q Why were you taking all that information with you?

15 A Because I knew if I didn't have it, I'd never see it
16 again.

17 Q And so -- now, these computers, who bought the
18 computers?

19 A That's a good question. I know that the computer --
20 the desktop computer that was in the Greenville office was
21 mine I brought from EFS. The laptops, I don't know if I
22 bought them, if CCC bought them, if I was reimbursed. I
23 really don't remember.

24 Q Okay. So you took the computers. You took the
25 files. You left. Did you ever return?

1 A Well, I came back after a couple trips to my car and
2 the door was locked. And the door opened. I started to
3 go in and the cop stopped me and said, you know, I don't
4 have time to be here. And I don't really want to leave
5 you two here without me. So I think you both just need to
6 leave and call your attorneys.

7 So I get in the car heading to I don't know where. I
8 go to call my wife. And my phone is cut off. So I'm
9 like, that's nice, now I can't call my wife. I don't
10 remember how I got ahold of her. I told her what
11 happened. A short time later, my wife's cell phone is cut
12 off. My kids cell phones are cut off. So --

13 Q Now, your kids were -- did John Gandis, and his wife,
14 and his family have cell phones through the company?

15 A Yeah. We all had -- as a matter of fact, I had a
16 family cell phone plan that I had had for years and the
17 company would reimburse me for that. And I think just
18 several months earlier in 2011, John had talked me into
19 let's just put all that into the company name. Since the
20 company is paying it, we'll put it in the company name on
21 one plan. So we did that.

22 Q Okay. When did you learn that your health insurance
23 had been terminated?

24 A We got a letter in the mail, I think, in February,
25 maybe March. And it said, Your insurance has expired.

1 The premium hasn't been paid. So I was like, okay, I
2 guess we no longer have insurance.

3 Q Did you not have insurance?

4 A No. My wife was unemployed. We had no insurance.
5 But we could buy -- and I think Clayton may have
6 communicated with the other side and said, you know,
7 You've cut off my client's insurance. Then we got
8 something back saying you can buy Cobra for \$1,600 a
9 month, or whatever it was. I didn't have money to pay it,
10 you know. I didn't have money to pay my mortgage, much
11 less health insurance.

12 And one thing that's interesting is, you know, prior
13 to January of 2012, our insurance premiums went against
14 our capital accounts. So even though the company was
15 making the payments, we were paying that as owners.

16 Q Right.

17 A You know, as soon as I left, the insurance premiums
18 for John and Andrea became an expense. It didn't ding
19 their capital account. So that changed. The rent
20 tripled. They gave everyone in the company a pay raise.
21 They couldn't afford to pay me. They had plenty of money
22 to give everyone a pay raise, and had plenty of money to
23 pay off my car, and had plenty of money to triple the
24 rent.

25 Q And hire lawyers?

1 A And hire lawyers, yeah.

2 Q Now, what did you do with these computers?

3 A So I had the computers. I knew that, number one, I
4 had personal information on there that I wanted to keep,
5 and didn't want them to have. Andrea, two months earlier,
6 had changed the mailing address for Eastern Films without
7 my knowledge, which is a federal offense. I caught her on
8 that. And she had fessed up to it and came up with some
9 lame excuse.

10 I had very low trust in my partners. And I'm sure
11 that was mutual. But I knew that I needed the information
12 about CCC to prove what had happened, to prove what I had
13 done for the company, you know. There's an e-mail we got
14 off of Andrea's hard drive shortly after I left where John
15 says, Are we going to have to prove he was never an owner?

16 She says, No, we'll just start a new company.

17 So that was the kind of thing I was concerned about.

18 Q Right.

19 A So I knew I needed this information. Let me --
20 things they've accused me of in this lawsuit, I can refute
21 because I have that information.

22 Q So what did you do with the computers? What did you
23 do?

24 A So I took the information off.

25 Q How did you take the information off?

1 A I copied it to another computer. I erased the
2 computers. I took the CCC files and e-mails, put them
3 back on my CCC computer, and gave it back to them.

4 Q Okay. What did you do with your Blackberry? You had
5 a Blackberry you took with you.

6 A Yeah. The Blackberry I had -- of course, I had a lot
7 of personal information on there, bank accounts,
8 passwords, you know, my kids social security, things you
9 don't want people having. So I just reformatted the
10 Blackberry and made sure there was nothing on it.

11 Q Now, let's look real quick at Defendant's Exhibit --
12 this is in the big white notebook, maybe the one in front
13 of you. Let's look at 79. So you delivered your
14 computer. You reloaded -- you took all of your stuff off,
15 transferred it; right?

16 A Yeah.

17 Q And you attempted to reload all the CCC information
18 back onto that CCC computer?

19 A Right.

20 Q Now, if you're looking at -- then you delivered that
21 to whom?

22 A I delivered that to Nexsen Pruet's office in
23 Greenville.

24 Q Okay. And then we found out later through discovery
25 that they sent that to a computer forensics lab?

1 A Right.

2 Q Who discovered that you had ran an eraser program?

3 A Correct.

4 Q Did you run an eraser program?

5 A Yes, I did.

6 Q Let me get you to look at Page 5 of that forensics
7 computer lab. Do you see number 52?

8 A Yes.

9 Q Does that indicate that there were e-mails found on
10 that computer?

11 A Yes.

12 Q How many does it say are in the inbox?

13 A 9,000.

14 Q How many are in the sent?

15 A 10,000.

16 Q Do you see below that sent folders in 53?

17 A Yes.

18 Q How many in that?

19 A 17,000.

20 Q How many deleted?

21 A Zero.

22 Q Are you sure you loaded everything back from CCC?

23 A That was my intention was to get everything back on
24 it.

25 Q You got 40,000 e-mails back on it?

1 A Yeah.

2 Q And then you returned it?

3 A Yes.

4 Q And then what did you do with that information?

5 A It resides on my computer today.

6 Q Did you use it to compete with CCC?

7 A No. I used it to -- I used it to prove my case in
8 this lawsuit.

9 Q Let's look at -- let's see. Give me one second.
10 Because I'm looking from theirs, I guess. It's in book
11 two. Let's look in book two, 132.

12 MR. WILLIAMS: 135.

13 MR. ARNOLD: 135. Excuse me. 135. Going once.
14 There was another one, though, with the mouse.

15 MR. STEPHENSON: 132.

16 BY MR. ARNOLD:

17 Q We're back to 132, Dave.

18 A Okay.

19 Q And you're going to have to watch out for the light.
20 Okay. This is a list of sales by customer for Neologic
21 distribution. Do you recognize this document?

22 A Yes.

23 Q Did you help prepare this document?

24 A I think my involvement was just telling Beau and
25 Julie which accounts were CCC accounts.

1 Q These were former CCC accounts?

2 A Yes.

3 Q So when you left -- we're looking at 2012. That
4 would have been the first year you left?

5 A Yes.

6 Q Did you use any of CCC information that you had in
7 your possession to call on, solicit, or obtain the
8 business of any of those customers?

9 A No.

10 Q Now, what were your net sales -- what was Neologic's
11 net sales in 2012?

12 A Well, I think the net sales -- well, it's -- is it
13 132?

14 Q That's what it looks like to me.

15 A 132,000.

16 Q Yes. And let's talk about who's ASG, Inc.

17 A ASG is a company called American Sales Group.
18 They're a little distributor in Fountain Inn. They sell
19 cardboard tubes, cardboard boxes. And they sell -- I
20 think they have one account that they sold film to.

21 Q And how long had CCC been doing business with them?

22 A I'm not sure how long CCC had been doing business
23 with them. But I sold them -- they were one of our
24 accounts at Palmetto Custom Films.

25 Q So you knew them from --

1 A Oh, yeah.

2 Q The next one, Flexease. Were they an EFS account?

3 A They were an EFS account, and an Interfilm, and a
4 PCFI account, and an Alterac account.

5 Q So they go all the way back?

6 A I've known them for 20 years, yeah.

7 Q Okay. What about Griff Paper and Film?

8 A Griff Paper and Film, I mean, again, they're a
9 distributor. They're really probably a competitor of CCC.
10 I -- you know, I've known Griff for eons. But Griff was,
11 actually, a vendor to Eastern Films before CCC. They sold
12 me some film.

13 Q Okay.

14 A I don't know that CCC ever sold them anything. If
15 they did, maybe a very, very small amount.

16 Q Okay. Well, we've got Horizon Energy. We've heard
17 about them.

18 A Yep.

19 Q That was an Eastern Films customer?

20 A And a PCFI customer.

21 Q Okay. Imperial Manufacturing Group, Inc. Who is
22 that?

23 A Imperial is a flex duct manufacturer in Canada. They
24 were one of CCC's larger customers. I called on them. I
25 don't believe I sold to Imperial through Eastern Films,

1 but I called on them. And I, actually, sold -- they
2 bought a company called Bowflex out of Quebec. And I sold
3 to Bowflex companies -- and companies prior.

4 So then they bought Bowflex. I continued to call on
5 Imperial. I don't think I, actually, sold to Imperial
6 through Eastern Films, but I called on them for years.

7 Q Industries Vermont?

8 A Industries Vermont is a flex duct account in Mexico.
9 And I had sold to them through Eastern Films. I think
10 that may have been the first time I sold to them.

11 Q What, Eastern Films?

12 A Yeah.

13 Q And then Valencia Specialty Films?

14 A Well, that's Bruce Hotmer, who was here today.

15 Q So, in 2012, every account you sold through Neologic
16 had been a customer of either EFS or one of your prior
17 entities or employers?

18 A Yep.

19 Q Now, by 2013, the information on your computer
20 relating to CCC, how helpful would that have been a year
21 removed for competition purposes?

22 A Well, the pricing would be completely obsolete. I
23 know all the customers. I know most of the contacts.

24 Q Okay. Well, Elliott Shultz?

25 A Elliott Shultz. I sold to Elliott Shultz through

1 Eastern Films.

2 Q Engineered Laminates?

3 A Engineered Laminates was, actually, Bruce's customer,
4 Bruce Hotmer's customer.

5 Q And that was your contact with them?

6 A Yeah.

7 Q What is this next one?

8 A Filtrosmallas?

9 Q Yes.

10 A Filtrosmallas was a customer that CCC picked up in
11 2011, I think, prior to me leaving the company, in Mexico.
12 It's not a large company, not a large customer, but they
13 bought some film. And I made contact with them. They --
14 and when they responded, they said that they were -- they
15 had not been doing business with CCC. They had left them
16 due to poor quality.

17 Q Flagship Converters?

18 A Flagship Converters was -- I've known Flagship for
19 20 years. They were a customer of mine at Palmetto Custom
20 Films. They were a customer of mine at Eastern Films and
21 a supplier. And we did business with them at CCC as well.

22 Q Who's next on the list? You've done Flexease and
23 you've got Graphics?

24 A Graphics is a -- also a film distributor. They do a
25 lot of sheeted film and, typically, buy direct from

1 manufacturers. I don't know that CCC sold Graphics prior
2 to me leaving the company.

3 Q Lamborn, that's one. We've heard enough about
4 Lamborn. You did business with them at EFS?

5 A Yeah.

6 Q Peppertree Air?

7 A Peppertree Air is a flex duct company in Canada. The
8 owner's name is Perry Phil. He used to have a company
9 called Flexmaster Canada. And I've known Perry for
10 15 years. I called on him at Interfilm, at PCFI. I don't
11 think I sold -- well, I didn't sell to Peppertree because
12 that was a new company for him.

13 Q What about Plastic Packaging Technologies?

14 A Plastic Packing Technologies is a large packaging
15 convertor. They've got a plant in Kansas, a plant in
16 Columbus, Ohio. I did not sell to them through Eastern
17 Films.

18 Q But you didn't start doing business with them until
19 when? 2014?

20 A 2014, yeah.

21 Q Supply One?

22 A Supply One was a customer of CCC. They're sort of
23 like ASG in that they distribute a lot of products,
24 actually, mostly non-film products. They do bags. They
25 do cardboard. They do boxes, all kinds of packaging

1 supplies.

2 But they had a customer who they wanted to supply
3 silicone-coated film to. And CCC supplied Supply One with
4 silicone-coated film that they, in turn, sold to their
5 customer called Flint up in -- up near Thomasville, North
6 Carolina.

7 And so when I left CCC, I maintained contact with
8 Tripp Gentry, who was their rep and my main contact. I
9 mean, he and I were kind of friends. And he brought a
10 couple of opportunities to me that CCC was not doing, some
11 wide embossed film, a couple of real funky projects that I
12 tried to take a stab at. But we just didn't -- we weren't
13 able to make a go of it. And then he was kind of
14 complaining to me about how CCC was having some problems
15 getting film, silicone-coated film --

16 MR. STEPHENSON: Your Honor, I've let it go on a long
17 time, but he can't testify to what somebody else said.

18 THE COURT: Sustained.

19 BY MR. ARNOLD:

20 Q So did Supply One Rockwell reach out to you in
21 January of 2013?

22 A In January, Tripp sent me an e-mail and said, I need
23 film. Can you --

24 MR. STEPHENSON: Your Honor, hearsay.

25 THE COURT: Sustained.

1 MR. STEPHENSON: And back door, maybe through the
2 front door.

3 BY MR. ARNOLD:

4 Q Were they doing business with CCC in 2013, Supply
5 One?

6 A Well, I don't know.

7 Q But they contacted you?

8 A They contacted me.

9 Q Okay. And then, of course, we've got Valencia?

10 A Right. That's Bruce Hotmer.

11 Q And so is it fair to say that every one of those,
12 with maybe the exception of Supply One, that you had a
13 prior relationship before you even joined CCC?

14 A I think the exception would be Supply One, Plastic
15 Packaging Technologies, and Filtros.

16 Q And did you need any of CCC's trade secrets, if any
17 such exist?

18 A No. If I know a company name and I know they buy
19 film, with a phone call, I will know what they buy, who
20 they buy from, hopefully, what they're paying, how much
21 they buy, what with, everything I need to put a quote
22 together.

23 Q How have you been funding this litigation?

24 A Debt to my brother-in-law.

25 Q How much do you owe?

1 A 180 and climbing daily.

2 Q Have you taken on a second job?

3 A Yes.

4 Q What else do you do besides sell film?

5 A I work on Saturday nights and Sunday nights from 7:00
6 until 2:00 a.m. driving a forklift.

7 Q And who do you do that for?

8 A Bosch Rexroth in Fountain Inn, South Carolina.

9 Q How much do you get paid for doing that?

10 A 11 bucks an hour.

11 Q How many hours a week do you work -- a month do you
12 work? Do you work every weekend?

13 A I work every weekend. About, I'd say, 50 hours,
14 maybe. I make about 500 bucks a month.

15 Q How do you plan to pay Steve back?

16 A Hopefully, by getting my interest out of CCC.

17 Q Now, a big issue has been made about an offer -- or
18 discussions and an offer in December 2012. Do you recall
19 that?

20 A Yes.

21 Q Now, you realize you've been sued for conspiracy to
22 dissolve CCC; right?

23 A Yes.

24 Q And that conspiracy to dissolve CCC is alleged to
25 have been funded by the debt that you're incurring; right?

1 A Yeah. But I don't know that we were sued for
2 conspiracy at that time.

3 Q We weren't, but we've been sued since.

4 A Okay. Yeah.

5 Q So -- but. In 2012, who was trying to dissolve CCC?

6 A I believe the first mention of dissolution was by
7 CCC.

8 Q Okay. Well, it really wasn't by CCC, was it, because
9 they weren't a party?

10 A It was John and Andrea, I guess.

11 Q So you considered, perhaps, buying the company or
12 having someone help you buy the company?

13 A Yes.

14 Q And you had been made a low ball offer -- had seen a
15 low ball evaluation; correct?

16 A Correct.

17 Q And so almost as a strategic move, you thought, well,
18 I'll offer to buy them at that price; right?

19 A Yes.

20 Q What was the response to that offer?

21 A The response was a counteroffer for \$60,000 more than
22 we had offered, a shorter non-compete. I think some of
23 the other terms had changed.

24 Q During the process, did you conduct due diligence, or
25 did you look at financial statements?

1 A Well, yeah. We had received, I believe, a QuickBooks
2 file and some records from the other side, some inventory
3 sheets maybe. The -- one of the things that was
4 concerning is that we were told Zoi did not have -- keep
5 books. And there was no Zoi in CCC's books. I don't know
6 how you manage a business without a set of books.

7 But the thing that alarmed us was that through some
8 of the e-mails we had received, there were attachments
9 with purchase orders and sales orders that were issued out
10 of -- for Zoi that were issued out of QuickBooks. And we
11 know that because when you look at the metadata, it says
12 PDF. It was, clearly, printed to a PDF from QuickBooks.

13 So here we are getting -- we know there's QuickBooks
14 because we've seen the documents. But we're being told,
15 Oh, we don't keep books. So, yeah, we didn't know what we
16 didn't know.

17 Q So you decided now -- actually, Steve Norvell decided
18 or reconsidered or said, Look, I'm not paying for this?

19 A Right.

20 Q But if he had agreed to fund it, would you have went
21 through with that transaction?

22 A Probably, yeah.

23 Q Now, quickly, about Zoi. How did you find out about
24 Zoi?

25 A So this would be August of 2012. I was -- you know,

1 I had been gone from CCC now for seven months, I guess. I
2 get up one morning and I go to my LinkedIn page. And, you
3 know, it tells you who's looked at your page. And I see
4 that there's a guy named Steve Elvin who had looked at my
5 page. And I was like I'll see who Steve Elvin is.

6 So I clicked on Steve Elvin and it says he's a member
7 of -- or he's employed by Zoi Films, Anderson, South
8 Carolina. And I'm like, you know, Anderson is not that
9 big. I think I would know if there's another film company
10 in Anderson. And, by the way, John's daughter's name is
11 Zoe. Could that be a coincidence?

12 So I go to the -- I type in Zoi Films. I go to the
13 website. There it is, Steve Elvin, Brian Cunningham,
14 regional sales manager. He's got my old cell number, the
15 one I had for 10 years that they took when they locked me
16 out. He's got my cell phone number. So I'm pretty sure
17 there's a connection. And then I think I contacted you.

18 Q What did the website look like? Did they have any
19 pictures on the website?

20 A Yeah. They had some -- actually, had some fairly
21 nice pictures of converting equipment which was not
22 theirs.

23 Q Whose was it?

24 A I have no idea. It wasn't theirs, though.

25 Q So that's -- and then you had me contact --

1 A Yeah. Everything else on the website, the
2 capabilities, the products, it all mirrored CCC.

3 Q Now, since you have left and you've been out in the
4 marketplace, do people ask you -- when you show up saying
5 I'm a Neologic film salesperson, do they say what happened
6 to CCC?

7 A Sometimes, yeah.

8 Q What do you tell them?

9 A Well, I try to tell them the truth.

10 Q Have you ever told them it was in the process of
11 being dissolved?

12 A If at the time it was, I would have, yes.

13 Q Okay. And what was the -- was the purpose of telling
14 them that information to hurt CCC?

15 A No. The purpose was to explain to people who knew
16 that I had started CCC why I'm no longer there, and why
17 I'm with another company.

18 Q Was the purpose of you bringing this lawsuit to hurt
19 CCC?

20 A No.

21 Q What was the purpose of you bringing this lawsuit?

22 A To get the value of my interest that I feel I'm
23 entitled to.

24 Q And is that really all you're asking this Court for?

25 A Well, I'd like to get some legal fees back for a

1 lawsuit I shouldn't have had to file, yeah.

2 Q And how much has CCC spent in legal fees?

3 A Based on the information they gave us, they've spent
4 well over \$200,000, which, by the way, is three times the
5 amount they could have bought me out for in February or
6 March of 2012.

7 Q Do you think that that money that has been spent on
8 this lawsuit should be returned by the individual members
9 to CCC?

10 A I think it should.

11 MR. ARNOLD: Can I have one second, Your Honor?

12 THE COURT: Sure.

13 (Pause.)

14 MR. ARNOLD: I think that's it, Your Honor.

15 THE COURT: All right, sir.

16 MR. STEPHENSON: Your Honor, I think ours will be an
17 hour and a half or so. And it will be probably shorter if
18 I start in the morning and I can get organized.

19 THE COURT: Okay. That sounds reasonable. We'll
20 just start tomorrow morning at 9:00 a.m.

21 Thank y'all.

22 MR. FARRAR: Judge, we have the same admonition about
23 talking to the lawyers or family members.

24 THE COURT: Family members?

25 MR. FARRAR: Well, we don't want them to get indirect

1 information. They're all sitting in the courtroom.

2 MR. ARNOLD: Nobody is going to do anything improper.

3 THE COURT: Okay. Well, just because there's a break
4 doesn't mean you can talk to your lawyer about your
5 testimony.

6 THE WITNESS: Right.

7 THE COURT: Okay. Thank you.

8 See you in the morning.

9 (WHEREUPON, the proceedings were concluded at
10 approximately 5:05 p.m., to be reconvened on
11 Wednesday, October 1, 2014.)

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS)

2012-GS-23-02887)

DAVID WILSON, INDIVIDUALLY)
AND DERIVATIVELY ON BEHALF OF)
CAROLINA CUSTOM CONVERTING,)
LLC,)

PLAINTIFF,)

vs.)

TRANSCRIPT OF RECORD)

JOHN GANDIS, ANDREA)
COMEAU-SHIRLEY, ZOI FILMS,)
LLC, AND CAROLINA CUSTOM)
CONVERTING, LLC,)

DEFENDANTS,)

VOLUME II

CAROLINA CUSTOM CONVERTING,)
LLC,)

COUNTERCLAIM)

vs.)

DAVE WILSON, STEVEN NORVELL,)
NEOLOGIC DISTRIBUTION, INC.,)
AND FRESH WATER SYSTEMS, INC.)

COUNTERCLAIM)

DEFENDANTS.)

September 29 and 30, 2014
October 1, 2, and 3, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness

(DW) - Denotes Defense Witness

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All Exhibits were retained by the Clerk of Court for Greenville County.

1 WEDNESDAY, OCTOBER 1, 2014

2 MR. STEPHENSON: We call Dave Wilson, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. STEPHENSON:

5 Q Dave, if you would, pick up the Defendant's Exhibit
6 book. And we're going to talk about a few documents in
7 there. It's volume one.

8 Have you got it?

9 A Uh-huh.

10 Q The very first exhibit, do you see the articles of
11 organization for CCC? Do you see that?

12 A Yes.

13 Q And, at the bottom, it says, This is a term company.
14 Do you see that?

15 A Yes.

16 Q There's not a document anywhere that says this is an
17 at-will company, is there?

18 A Not that I'm aware of.

19 Q And, of course, you say you never saw it, but it was
20 available for you to look at. You knew a lawyer had
21 formed CCC, and you had to know there were documents to
22 form the organization; right?

23 A I knew that John was taking care of that. I don't
24 know if I knew, at this point, that a lawyer was involved.
25 But, yes, I knew John was filing documents.

1 Q You knew documents had been filed to form CCC?

2 A Correct.

3 Q And, at one point, you, through your attorneys, claim
4 that this was an at-will LLC. Be fair with the Court.

5 Back in 2008, you didn't know the difference between term
6 or at-will as far as LLCs were concerned, did you?

7 A As I told you in my deposition, I'm not sure when I
8 knew the difference between term and at-will.

9 Q So you relied on the lawyer to form the LLC. And it
10 was much like when I bought my house, I don't know metes
11 and bounds, but I rely on the lawyer to draw the deed
12 right; right? That's what happened?

13 A I relied on my partner to organize the company.

14 Q Okay. If you would, turn to Exhibit No. 8.

15 A Yes.

16 Q A central question in this case is what was the deal?
17 And we've talked about that for two days now. This is an
18 e-mail you sent John Gandis early on, June of 2008; right?

19 A Yes.

20 Q And y'all were talking about a way to pay you \$8,000
21 a month, because that's what you had been living on in
22 2007; right, about \$8,000 a month?

23 A Correct.

24 Q That's what you wanted was \$8,000 a month; right?

25 A Correct.

1 Q And you made it clear that, John, I've got to live
2 out of this, so I'm going to need \$8,000 a month. I want
3 to be 50/50 with you, but I've got to have \$8,000 a month.
4 And that \$8,000 a month would replace what I earned in
5 Eastern Films; right?

6 A Yes.

7 Q All right. And you sent him this spreadsheet.
8 Nowhere on this spreadsheet does it say anybody's
9 excluded, "yes" or "no"?

10 A Not on the spreadsheet, no.

11 Q Nowhere does it have an asterisk that says Horizon is
12 not included, Lamborn's not included, West Carrollton is
13 not included, Modular Metal is not included. Nowhere on
14 this spreadsheet does it say these customers are not
15 intended to roll into CCC, all of them, because that's the
16 way I earn my money and I made \$7,000 out of -- I mean,
17 \$8,000 a year out of it last year. And in return for
18 that, I'll be guaranteed a preference for \$8,000 a month;
19 right? That was the deal; right?

20 A Is there a question?

21 Q Yeah.

22 A Okay. Well, can you repeat the question?

23 Q Well, nowhere on here does it say any of the
24 customers are excluded, does it?

25 A Not on the spreadsheet, no.

1 Q And the \$8,000 that you came up with was a figure
2 that Eastern Films paid you through all the customers;
3 right?

4 A \$8,000 was an amount that I thought was fair for
5 rolling in a select group of customers.

6 Q All right. Well, let's look at Exhibit No. 10.
7 Y'all are still talking about this. You've talked about a
8 number of ways to get you money, because you had to live
9 out of it.

10 One of the ways was to exclude the three customers,
11 and you were going to get commission off of those. Do you
12 remember that? Y'all affirmatively talked about that
13 earlier on. We'll carve them out and I'll get commission.
14 We won't include those; right?

15 A Commission on which accounts?

16 Q The three customers.

17 A We never talked about commission on three customers.

18 Q All right. Well, let's look at this. This is your
19 e-mail to John on June the 24th, a week before you
20 received the first \$8,000 check. And I'm looking at the
21 second paragraph, third sentence, If I have to focus all
22 my efforts in the film business on CCC. And you, clearly,
23 said all of your efforts, not part of your efforts;
24 correct?

25 A I said all, yes.

1 Q And nowhere in this e-mail does it say anything about
2 carving anything out in the film business, does it?

3 A Not in this e-mail.

4 Q So this e-mail says in return for the \$8,000, you
5 were going to focus all of your efforts in the film
6 business on CCC; correct? That's what the e-mail says?

7 A That's what the e-mail says.

8 Q Now, all of these thousands of e-mails -- you heard
9 this yesterday. Is there a single e-mail anywhere that
10 says you're carving out anything in the film business?

11 A Other than the one from John to Andrea.

12 Q Well, that was early on, wasn't it?

13 A It was during this time period.

14 Q Well, let's look at that, from John to Andrea.
15 You're talking about Exhibit No. 7. Do you see that?

16 Go back to Exhibit No. 7. Is that what you're
17 talking about, the e-mail back and forth to John and
18 Andrea? Do you see that?

19 A Yeah. I think there may have been another one, too.
20 But I think this addresses --

21 Q Well, you weren't party to this, but this shows what
22 John thought early on; right? And I'm looking at Page 5.
23 Do you see that?

24 A (There was no response.)

25 Q Do you see that?

1 A I see Page 5.

2 Q And E, early on, he says, Needs to be minus the
3 three. Everything in the industry product category goes
4 to the LLC, first right of refusal on every single
5 contract opportunity new or old. And if we refuse, he can
6 pursue independently.

7 That's what y'all were talking about before you
8 agreed to focus all of your efforts on CCC; right?

9 A The words in green, I believe, are Andrea's. So this
10 is her suggestions to John.

11 Q Well, that's what they talked about?

12 A Apparently.

13 Q And that's before your e-mail, isn't it?

14 A (There was no response.)

15 Q Right?

16 A Yes.

17 Q All right. If you'll pick up the spiral bound
18 notebook and look at Exhibit No. 3.

19 MR. GOLDSMITH: Tom, you may want to say Plaintiff or
20 Defendants on those last three.

21 BY MR. STEPHENSON:

22 Q Those were all Defendant's Exhibits. This is your
23 notebook, Exhibit No. 3.

24 Are you there?

25 A Yes.

1 Q This may be the e-mail you were talking about. This
2 is June 2nd between John and Andrea talking about your
3 deal. And if you'll turn over to the third page.

4 THE COURT: What number is it now?

5 MR. STEPHENSON: Three.

6 MR. GOLDSMITH: Plaintiff's Exhibit No. 3.

7 THE COURT: Oh, okay.

8 MR. STEPHENSON: It's in the Plaintiff's notebook.

9 THE COURT: I thought you meant book three.

10 MR. STEPHENSON: Are you there?

11 THE COURT: Yes.

12 BY MR. STEPHENSON:

13 Q Do you see the sentence in the first paragraph,
14 Dave -- that says, Dave is in favor of moving his accounts
15 over. Do you see that?

16 A Yes.

17 Q Into the CCC column and collecting a salary for a
18 period of time until we can get things going. Do you see
19 that?

20 A Yes.

21 Q And down below that, there are three accounts that
22 Dave imports that do not, currently, go through CCC. Dave
23 agrees that all future orders, even if they're imports,
24 should be run through CCC. Do you see that?

25 A Yes.

1 Q And you told him that in two of the cases you might
2 not derive any income, and they could easily go away. Do
3 you see that?

4 A (There was no response.)

5 Q And this is June the 2nd before the deal's been cut?

6 A John is saying that in two of the cases I don't think
7 he has derived any income.

8 Q But, of course, the only place he would get that
9 knowledge would be from you; right? Because he doesn't
10 even know who the three accounts are.

11 You, also, see just above that -- and this is June
12 the 2nd, before the deal has been cut, he said, Maybe CCC
13 should not pay the salary portion that the three accounts
14 cover. Do you see that?

15 A (There was no response.)

16 Q And this is June the 2nd. And if we look at your
17 e-mail, June the 24th --

18 MR. ARNOLD: I object. Can he answer the question?

19 MR. STEPHENSON: Yeah.

20 BY MR. STEPHENSON:

21 Q Can you answer the question? Do you see that?

22 A I see a conversation between John and Andrea.

23 Q Well, you're the one that brought up the conversation
24 between John and Andrea. I just want to make clear what
25 the conversation was.

1 So, on June the 2nd, John thinks if you're going to
2 retain three accounts, two of which might not bring
3 anything, maybe CCC should not pay a salary on the three
4 accounts. And that was June the 2nd. Do you see that?

5 A I see it.

6 Q And then on June the 24th -- and, now, I'm looking
7 back at Exhibit No. 10, 22 days later, you say --

8 Are you there?

9 A What exhibit are we on?

10 Q 10.

11 A Okay.

12 Q The middle of the page. If I'm to focus all of my
13 efforts --

14 Do you see that?

15 A Yes.

16 Q And by then, y'all had settled on the \$8,000 a month.
17 Do we agree on that?

18 A (There was no response.)

19 Q Are you there?

20 A I am. I'm looking for the \$8,000 a month.

21 Q Well, \$8,000 a month is not here. But y'all had
22 agreed on \$8,000. And you're going to focus all your
23 efforts on CCC; correct?

24 A We had discussed \$8,000 a month, yes.

25 Q All right. If you go to Exhibit No. 19.

1 Are you there?

2 A Yes.

3 Q You had received two checks for \$8,000 a month. You
4 told John that you were going to focus all of your efforts
5 on CCC. Do you agree with that?

6 A I -- yes. I agree that I had received checks, and I
7 had made that comment.

8 Q All right. And on August the 28th, at Exhibit No.
9 19, you e-mailed Steve Norvell, your brother-in-law, and
10 you say, I got a call this morning from my rep who handles
11 West Carrollton. He got a call --

12 A I'm sorry. What exhibit are you on?

13 Q 19.

14 MR. FARRAR: Defendant's Exhibit No. 19.

15 BY MR. STEPHENSON:

16 Q Defendant's Exhibit No. 19.

17 A Yes.

18 Q I got a call this morning from my rep who handles
19 West Carrollton. He got a call from West Carrollton. And
20 they told him the MetTech [phonetic] business was back on
21 the table. Do you see that?

22 A Yes.

23 Q And nowhere on this e-mail is John copied; right?

24 A Correct.

25 Q You did this strictly between you and Steve; right?

1 A Correct.

2 Q And it's back on the table. This is not a pending
3 order. It's back on the table. Am I right about that?

4 A Yes. We had an opportunity to secure additional
5 business, future business.

6 Q All right. Exhibit No. 20.

7 Are you there?

8 A Yes.

9 Q You were getting your mail at Eastern Films
10 Solutions, 200 West Warehouse Court in Taylors, South
11 Carolina. And that's the warehouse you closed and you
12 moved in the office in Green Gate Office Park; right?

13 A That's not correct.

14 Q Well --

15 A I moved into Green Gate in January of 2009.

16 Q 2009. You moved into Green Gate in January of 2009.
17 But the mail for this deal was directed to Steve Norvell
18 at his office. Am I right about that? I'm looking at
19 Exhibit No. 20.

20 A The Carolina First?

21 Q Yes. That's his address, isn't it?

22 A (There was no response.)

23 Q 85 Commerce Center Drive, Greenville, South Carolina?

24 A Yes. That was Steve's e-mail -- that was his
25 address.

1 Q The next exhibit, Exhibit No. 21. Steve is getting
2 the checks on these side deals you're doing; right?

3 A Yes.

4 Q At his office?

5 A Yes.

6 Q Exhibit No. 22. In November, he's getting the checks
7 at his office; right?

8 A Correct.

9 Q And that continued throughout the time y'all did
10 these side deals, didn't it?

11 A If you want to call them side deals, yes, it
12 continued.

13 Q Well, look at Page 35 of Exhibit No. 22.

14 Are you with me?

15 A Page 35 of Exhibit --

16 Q It's the third page of Exhibit No. 22.

17 MR. FARRAR: The page number is at the bottom.

18 THE WITNESS: Oh, yes.

19 BY MR. STEPHENSON:

20 Q And this is November of 2008. And you've gotten
21 \$8,000 in July, August, September, October. And John
22 started getting \$5,000 in November. And Steve is signing
23 the checks for Eastern Films; right?

24 A (There was no response.)

25 Q That's his signature, isn't it?

1 A Yes.

2 Q He's got signatory authority for Eastern Films;
3 right?

4 A Yes.

5 Q All right. Exhibit No. 25. Are you there?

6 A I am.

7 Q This is another e-mail between you and Steve. You
8 have told John Gandis that you are directing all of your
9 efforts to CCC, but you e-mail Steve about Lamborn
10 business. Am I right about that? That's what this is?

11 A Yes.

12 Q And that's, clearly, film. Whether you call it
13 export, it's film; right?

14 A Yes.

15 Q Second paragraph, I have another financing
16 opportunity; correct?

17 A Yes.

18 Q So this was a new deal?

19 A These were orders that were placed in July of 2008.

20 Q Another financing opportunity. You're importing it
21 with Mike. That would be Mike Myers who showed up
22 yesterday?

23 A Correct.

24 Q And it would be an easy eight to 10 for Steve; right?

25 A Correct.

1 Q And a lot more than that for you and Mike?

2 A Correct.

3 Q All right. And nowhere is there any written evidence
4 that John Gandis knew about any of this, is there?

5 A I don't know that there's written evidence, but I
6 would contest that he didn't know about it.

7 Q All right. 26. I'm going to tell you -- and I think
8 you've seen this before. We subpoenaed this from the
9 bank. Some of the loan documents with the bank had Steve
10 Norvell as a member of Eastern Films, didn't they?

11 A If you say so.

12 Q Well, what does that say? Steven B. Norvell, a
13 member. Do you see that?

14 A Yes, I do.

15 Q He signed checks; right?

16 A Yes.

17 Q He got the mail?

18 A Yes.

19 Q He put up the money?

20 A Yes.

21 Q All right. Exhibit No. 27 in the Defendant's book.
22 Do you see that?

23 A Yes.

24 Q Exhibit No. 27 is something we got through discovery.
25 And it is for something called Commerce Films. Do you see

1 that?

2 A Yes.

3 Q Commerce Films didn't exist, did it? There was no
4 such entity as Commerce Films; right?

5 A I don't believe so.

6 Q It was a made up entity, because you didn't want
7 people to know who the real entity was. Am I right about
8 that?

9 A No, you're not.

10 Q Well, let's see. Let's look at Exhibit No. 31.

11 THE COURT: No. 31?

12 MR. STEPHENSON: No. 31.

13 BY MR. STEPHENSON:

14 Q We're now 10 months into the deal; right?

15 A Yes.

16 Q And this is an e-mail from you to John; right?

17 A Yes.

18 Q And you've gotten your \$8,000 each and every month;
19 right?

20 A Yes.

21 Q And you're talking about whether they're guaranteed
22 payments or distributions. And then you say in the fourth
23 paragraph, The payments I received last year was,
24 basically, a salary, which I required since I was taking
25 my customers and putting them into CCC.

1 Do you see that?

2 A (There was no response.)

3 Q Are you there?

4 A What paragraph?

5 Q The fourth paragraph. The payments I received last
6 year was, basically, a salary which I required --

7 A Yes.

8 Q -- since I was taking my customers. And it doesn't
9 say again, 10 months later. It doesn't say some of my
10 customers. It doesn't say part of my customers, a slice
11 of my customers. It says my customers; right?

12 A Yes.

13 Q And down in the next paragraph, you talk about the
14 plan for distributions. And you say -- and I'm looking at
15 the one, two, three, fourth sentence, I think we need to
16 have a plan for distributions that we both agree on that
17 makes sense for us to operate the company without debt.

18 Do you see that?

19 A Yes.

20 Q So y'all had talked about as far back as 2009 that
21 the plan was to operate this company, let it stand on its
22 own and not have debt. Those are your words; right?

23 A Those are my words.

24 Q All right. Turn to Exhibit No. 40. Are you there?

25 A Yes.

1 Q Exhibit No. 40 is an e-mail from Andrea to you on May
2 the 4th. And I think it, actually, starts on the back and
3 you e-mailed her. Do you see that?

4 A Yes.

5 Q You e-mailed her. And this is midway through 2010.
6 And y'all are talking about inventory. And you said,
7 Inventory is a great concern to you, but this was one of
8 the big problems at PCFI. Did we do a physical?

9 Do you see that?

10 A Yes.

11 Q You knew inventory was a huge issue as far back as
12 mid-2010. Am I right about that?

13 A Yeah. Inventory is always a concern.

14 Q And if you look on the first page, you had a cash
15 crunch in 2010, too, even though that was y'all's biggest
16 year. Do you see that?

17 A And that's why we had a cash crunch.

18 Q All right. We talked about Commerce Films for a
19 second. If you could go back to Exhibit No. 12 in the
20 book.

21 Are you there?

22 A Yes.

23 Q Four paragraphs from the bottom, beginning with four.
24 Do you see that?

25 A Yes.

1 Q And this is your e-mail to Steve on July the 14th.
2 And this is strictly between you and Steve. Nobody saw it
3 but you and Steve.. And you said -- and you're talking
4 about West Carrollton, the new opportunity at West
5 Carrollton?

6 A Yes.

7 Q For this work, we need to set up a company account
8 other than Eastern Films. Commerce Films will work.

9 Do you see that?

10 A Yes.

11 Q And, of course, your intent was to hide it. You
12 didn't want anybody to know it was Eastern Films, did you?

13 A I didn't want one individual to know.

14 Q All right. You wanted to hide it?

15 A I did not want Mark Tullis [phonetic] to know.

16 Q Let's jump to 2011. You had the great year; right?
17 We're in 2011.

18 A Yes.

19 Q That's the critical year. Exhibit No. 49. 2010, you
20 knew inventory was a problem. And on September the 7th,
21 2011, you e-mailed John, Are we doing a physical or just
22 discussing inventory? Because you know QuickBooks are way
23 off; right?

24 A Yes.

25 Q You knew that throughout 2010; right?

1 A Well, this is 2011.

2 Q Well, in 2011 -- you knew it in 2010, too?

3 A Yes. There were times when QuickBooks and the
4 spreadsheets did not match.

5 Q Did y'all use QuickBooks at PCFI?

6 A Yes.

7 Q And, of course, you had the same problem, because
8 it's hard for QuickBooks to keep up with film; right?

9 A Yes.

10 Q Because when you trim film, it's like trimming a rug.
11 If you trim off and leave a foot, it's useless to anybody.
12 The foot stays on the books unless you adjust it; right?

13 A Unless you adjust it, yes.

14 Q And you knew that?

15 A Yes.

16 Q And you knew that QuickBooks was off?

17 A Yes.

18 Q And you managed inventory more than anybody else?

19 A That's not correct.

20 Q Well, you had more experience with the inventory of
21 film more than anybody else. You've done it at PCFI?

22 A Yeah. I had more film experience than anybody.

23 Q You did it at Interfilm when you got out of high
24 school practically; right?

25 A Correct.

1 Q All right. Exhibit No. 50. October the 12th, down
2 at the bottom, I'm very concerned about how we handle
3 inventory and how this impacts our financials. Waiting
4 until year end to reconcile inventory, in my opinion, is
5 irresponsible.

6 And then you go on to say that you know for a fact
7 that our QuickBooks is overstated to the tune of 300,000
8 or more. Do you see that?

9 A Yes.

10 Q So you, clearly, knew that in October; right?

11 A Yes.

12 Q And if you ever gave anybody the QuickBooks and said
13 it was an accurate indication of inventory, you would have
14 known that's not true; right?

15 A If I had given someone QuickBooks?

16 Q And said this is an accurate indication of inventory.
17 You knew that QuickBooks was not accurate?

18 A Yes.

19 Q All right. You couldn't pay your taxes. You were
20 worried about your taxes; right?

21 A Yes.

22 Q You had had all of these side deals in 2008 and 2009;
23 right?

24 A I had transactions in 2008 and 2009.

25 Q You made a lot of money?

1 A That's questionable.

2 Q Well, you made money?

3 A I made money.

4 Q You had to pay taxes on those deals. And there's no
5 proof anywhere that John knew about it; right?

6 A There's no written proof.

7 Q There's no e-mail anywhere that you said, part of my
8 tax problem is all the money I earned in 2008 and 2009 on
9 the side, is there?

10 A I didn't have a tax problem related to 2008 and 2009.

11 Q Well, you had earnings in 2009?

12 A Yes.

13 Q The tax man had to be paid in 2010, April of 2010
14 when you filed your tax return?

15 A Yes.

16 Q Did you file your tax return on time in 2010?

17 A I think probably in 2010, I would have filed an
18 extension.

19 Q You filed an extension because you had your earnings
20 from CCC, and you had your side deals. And it was a
21 problem, wasn't it?

22 A Well, the CCC income was definitely a problem.

23 Q And in 2011 through October, you had gotten
24 distributions of \$12,000 a month. Am I right about that?
25 By then, it had been bumped to \$12,000?

1 A I believe so.

2 Q So it had gone from eight to 12?

3 A I believe so.

4 Q Y'all had had an argument because you wanted more
5 distributions; correct? John had indicated that he might
6 not be able to continue the distributions because the cash
7 wasn't there in his view; right? And you had a quarrel
8 with that?

9 A Yes.

10 Q But he had made all the distributions through
11 October; correct?

12 A Correct.

13 Q Would you look at Exhibit No. 52? Y'all had had some
14 back and forth about a way to solve your tax problem, part
15 of which was caused by your side deals?

16 A That's not true.

17 Q Well, you had to pay taxes on your side deals, didn't
18 you?

19 A Yes.

20 Q Did you accrue for taxes, or did you just pay them at
21 tax time?

22 A For --

23 Q The side deals.

24 A I don't recall what I did in --

25 Q All right. Well, let's see what you said --

1 A -- 2009.

2 Q Y'all had gone back and forth and they had,
3 basically, proposed three options. One, leave everything
4 as it was. You get the same distributions as everybody
5 else, although they might not continue in 2011. Because,
6 in John's view, the company was not doing well enough to
7 continue it. Modify your situation, or become an
8 employee. That's the three solutions he proposed to you.
9 Am I right about that?

10 A I believe so, yes.

11 Q And that continued throughout 2011; right?

12 A What continued?

13 Q Those three options.

14 A Well, those options were made late in 2011.

15 Q All right. He never, in 2011, refused or indicated
16 you couldn't remain as a member and do just like he was
17 doing, receive the same distributions he would receive in
18 2012, did he?

19 A I don't believe so.

20 Q All right. Well, in Exhibit No. 52 in paragraph 3,
21 one of the things you told John you were going to do was
22 design and disassociate. And by then, you had talked to
23 an attorney; right?

24 A I don't know that I had an attorney in October.

25 Q Well, you told him that in your view, the LLC had

1 30 days to set up a purchase plan. And if they couldn't
2 buy your shares, the company is to close, assets
3 liquidated, and funds dispersed. That's what you told
4 him?

5 A I told him that that was an option available.

6 Q All right. Exhibit No. 54. October of 2011, a back
7 and forth between you and John commenting on Andrea's
8 e-mail. Andrea's comments are in blue, yours are in red.
9 Am I right about that?

10 A Yes.

11 Q On Page 2, back to inventory. The top paragraph in
12 red, which is your comments. Am I right about that?

13 A I believe so.

14 Q There is no chance of sales being what they were last
15 year. Selling prices have dropped by \$0.50 per pound, and
16 several of the large customers we sold to no longer buy
17 from us; right?

18 A Yes.

19 Q These are your observations?

20 A Sure.

21 Q 2011 is going to be a tough year?

22 A Well, it's going to be not as good as 2010, for sure.

23 Q She is going to be shocked when she, finally,
24 realizes our inventory is \$400,000 lower than what
25 QuickBooks says it is; right?

1 A Yes.

2 Q So you knew QuickBooks was grossly overstated; right?

3 A Yes.

4 Q And you had known that in 2010 and all of 2011. But
5 it had gotten much, much worse, according to you, by
6 October; right?

7 A We still had a discrepancy between Excel and
8 QuickBooks, yes.

9 Q And in paragraph 3, one of Andrea's suggestions was,
10 Y'all have got to do something about this inventory, got
11 to reduce inventory. And you had an inventory reduction
12 plan and we've talked about that for two days. Am I right
13 about that?

14 A We did.

15 Q And the inventory reduction plan had two elements,
16 get rid of existing inventory as best you could and not
17 buy new inventory unless you needed it; is that true?

18 A Yes.

19 Q And Andrea says you will need a plan for every roll;
20 right?

21 A That's what she said.

22 Q And you agreed we need a plan for every roll; right?

23 A I said that -- yes. I said that would be ideal.

24 Q And you, along with a couple other people, managed
25 inventory. Am I right about that?

1 A I managed purchasing.

2 Q All right. You managed purchasing. Okay. You
3 decided what inventory to purchase?

4 A Yes.

5 Q All right. Paragraph 55.

6 A Do you mean Exhibit No. 55?

7 Q I'm sorry. Exhibit No. 55 in the Defendant's book.
8 At the bottom of the page, y'all had gone back and forth.
9 You needed more money. You needed more distributions.
10 And you, certainly, didn't need them to be reduced,
11 according to you, and John proposed three options. At the
12 bottom, one, we can leave the ownership structure
13 unaltered. You could rise and fall with the other
14 members; right?

15 A That was an option he had proposed, yes.

16 Q Second, the company could buy you out. And, third,
17 they would modify your interest and try to ease the tax
18 burden; right?

19 A Yes.

20 Q And none of those were requirements. These were all
21 three options. Am I right about that?

22 A Yes.

23 Q Okay. Paragraph 57. There has been a lot of talk
24 about not being able to continue the distributions. There
25 was all this angst back and forth. You had threatened to

1 disassociate and, in your view, cause the closure of the
2 company. And John gives you \$12,000; right, and closes
3 \$12,000? He authorizes a distribution of 12 more
4 thousand?

5 A Yes.

6 Q He didn't have to do that?

7 A Well, I would argue that he did if he was going to
8 honor the agreement that we had.

9 Q Well, he didn't get \$12,000. You're the only one
10 that got any money, am I right about that, of the members?

11 A Correct. And there was never any agreement that he
12 would get money.

13 Q Well, this has been going on now since 2008. You had
14 access to all the books, you testified yesterday. You got
15 all of these e-mails. And I, certainly, don't see
16 anything to where you objected to his getting money where
17 you thought that wasn't the deal?

18 A It didn't have anything to do with the deal. Whether
19 he got money out of the company or not was not necessarily
20 part of the deal. The question is whether I was
21 guaranteed a payment and he wasn't.

22 Q Well, did you ever object to John getting
23 distributions, too?

24 A No.

25 Q All right. Paragraph -- I mean, Exhibit No. 62.

1 December the 1st. It would be fair to say that y'all were
2 at each other's throats to some extent?

3 A Things were strained at this time, yes.

4 Q Things were strained. And you wanted in paragraph 1,
5 \$770,000, at a minimum, for your interest if you were
6 going to sell out; right?

7 A Correct.

8 Q This is what you told them?

9 A Correct.

10 Q You wanted 350 at closing; right?

11 A Correct.

12 Q Paragraph 5, you wanted an employment agreement for
13 not less than five years with a guaranteed monthly salary
14 of \$12,000. So you wanted \$770,000, but you wanted to
15 continue the \$12,000 you were getting each and every month
16 guaranteed for five years; right?

17 A If I was going to continue to work there, I wanted to
18 be paid for working there.

19 Q And you wanted a bonus commission and phantom stock
20 agreement in addition to that; right?

21 A That was proposed, yes.

22 Q That was your proposal. They couldn't do that -- or
23 wouldn't do that, to be fair. And you indicated that you
24 had people that might want to buy their interest. Because
25 John made you a proposal and you said, John, you wouldn't

1 sell yours for that amount; right?

2 A A month later, yes.

3 Q A month later. And John said, Yes, I would. I'll
4 sell for what I'm offering to buy yours at; correct?

5 That's what he told you, words to that effect?

6 A Yeah. But I don't know that what he wanted for his
7 interest and Andrea's interest was the same as what they
8 had offered me.

9 Q Well, let's look at Exhibit No. 64.

10 Are you there?

11 A Yes.

12 Q By then, you told John, yeah, I think I can buy you
13 out. I've got a group of investors. And you're talking
14 about Steve; right?

15 A Steve was one potential, yes.

16 Q And they said they would; right?

17 A Yes.

18 Q And down at the bottom, they had offered you \$200,000
19 or to sell out themselves. Do you see that? You'll need
20 to find a way to flush this out quickly as our offer of
21 \$200,000 expires on January the 7th. Down at the bottom.
22 Do you see it?

23 A Yes.

24 Q And you didn't accept that; right?

25 A Right.

1 Q You told them you wanted to buy them out. Am I
2 right?

3 A Yes.

4 Q Okay. That didn't happen, did it?

5 A What didn't happen?

6 Q You're making an offer to buy them out in 2011 or
7 early 2012?

8 A Correct.

9 Q All right. Go to Exhibit No. 69.

10 A By the way, I believe the offer that John wanted for
11 buying him out -- he and Andrea out, was \$350,000, plus
12 the building.

13 Q Okay. But you never made an offer?

14 A Correct.

15 Q The money was roughly the same that they were
16 offering you?

17 A I think it was somewhere in the neighborhood.

18 Q All right.

19 A Different terms.

20 Q Different terms, but about the same money?

21 A Plus the building.

22 Q Of course, y'all are bickering on the terms back and
23 forth. About the same money and you never bought anything
24 where you didn't bicker over terms. Am I right about
25 that, especially something like this?

1 A There's always negotiation, yes.

2 Q Exhibit No. 69. They know you're talking to a group
3 of investors shopping the company. They're glad to sell.
4 But they send you an e-mail on January the 6th where
5 Andrea says, Before we go much further, your answer on
6 sharing company information with any third party is not in
7 line with our thinking.

8 They believe information is an asset of the company,
9 not of any equity holders. And they want permission
10 before you share it with anybody. Because they're
11 concerned about a competitor having their competitive
12 information. Would you agree with that, that's what they
13 told you?

14 A Yes.

15 Q Okay. At the bottom, this is January the 9th. Next
16 page. Actually, the e-mail starts at the top and goes to
17 the bottom. And you e-mailed Andrea back starting at the
18 bottom on January 6th at 1:43, Hi, Andrea -- copied to
19 Zamer and Clayton Jennings, everybody had lawyered up;
20 right?

21 A Which page are we on?

22 Q We're on Exhibit No. 69 at the bottom. Exhibit
23 No. 69 at the bottom.

24 Are you there?

25 A Yes.

1 Q And you say, Hi, Andrea. Turn the page. Very good
2 points, her admonition not to share company information
3 with a competitor. You wouldn't do that.

4 But the fourth sentence down, And if I was to leave,
5 I am no -- under no legal obligation to keep the
6 information confidential.

7 Do you see that?

8 A Yes.

9 Q So it was your view that if you left, you could take
10 all the information and share it with whoever you wanted
11 to. That was your view?

12 A That was my view.

13 Q And you made a counteroffer to them at the bottom.
14 Do you see it?

15 A Yes.

16 Q \$250,000, \$5,000 at closing, existing loan forgiven,
17 which was \$130,000. So if you add the 250 to the 130,
18 that's 380. You get the operating loss. Do you see that?
19 I'm still on Page 2. Do you see that?

20 A Yes.

21 Q So you get all the loss. So you would have no
22 income. So I think you add another hundred thousand
23 dollars to your offer. An employment agreement for three
24 years, and salary of \$12,000 a month guaranteed for one
25 year. Are you there?

1 A Yes.

2 Q Next page. You get your car, bonus packages, and a
3 personal guarantee from John and Andrea; right?

4 A Yes.

5 Q That was your demand on January the 6th; right?

6 A Correct.

7 THE COURT: What's the number on that one again?

8 MR. STEPHENSON: That is 69, Your Honor. It starts
9 at the bottom and -- Dave's comments start at the bottom,
10 go to Page 2, and over to Page 3.

11 BY MR. STEPHENSON:

12 Q Now, we know now, don't we, Dave, at the same time,
13 you were talking to Mark McGarel; right?

14 A Yes.

15 Q And, of course, maybe you, initially, talked about
16 his acquiring the company. But before you left, it
17 morphed into you going to work for him; right?

18 A Yes.

19 Q And, if you would, look at Exhibit No. 74. Are you
20 there?

21 A Yep.

22 Q January the 16th, at noon. You leave on the 18th.
23 You met with John that morning; right?

24 A I believe so.

25 Q And you told Mark McGarel, I look forward to the

1 opportunity to join. Y'all had gotten pretty close,
2 hadn't you, to cutting a deal? You thought you were
3 going?

4 A Well.

5 Q This indicates you thought you were going on January
6 the 16th?

7 A I was strongly trying to encourage him in that
8 direction.

9 Q All right. And what you told him is you wanted the
10 \$8,000?

11 A Yes.

12 Q Because that's what you needed. That's what you had
13 before you joined CCC through EFS. You wanted the \$8,000.
14 And you say, My goal will be to move as much of the
15 business I manage at CCC to Filmtech as quickly as
16 possible. And you managed all the business; right, all of
17 it?

18 A I managed all sales, yes.

19 Q You, also, wanted to bring perspective business that
20 CCC had been working on or qualifying over the last six
21 months. Am I right about that?

22 A Yes.

23 Q All right. Well, let's stop a minute. You're
24 talking about John and Andrea buying you out for hundreds
25 of thousands of dollars. You made them an offer?

1 A Yes.

2 Q And, at the same time, you're talking about going to
3 work for a guy and taking all the business. So I guess
4 your plan was sell it at the highest possible price, go to
5 work for McGarel, and then steal it?

6 A By the time this e-mail was written, John and Andrea
7 had rejected my offer and said, We are going to continue
8 under our new operating plan, which, apparently, they
9 hadn't shared with me. And that I would not be getting
10 paid for several months. And there was no guarantee I
11 would get paid in the future.

12 Q Well, we'll see about that. You understand John
13 didn't find this out until months later; right?

14 A (There was no response.)

15 Q Right?

16 A Unless this is one of the e-mails he intercepted.

17 Q 75. You and Mark McGarel had talked about you going
18 to work for him, you take all the business, and all the
19 prospects at noon. Same day at 5:00, you e-mail him a
20 spreadsheet of your budget for the coming year; right?
21 This is CCC's budget with a spreadsheet attached?

22 A Which exhibit?

23 Q This is Exhibit No. 76. Customer one, 92-gauge
24 Corona, the widths that were budgeted, the pounds per
25 month, you hoped to sell them, what CCC had purchased,

1 what they were going to sell it for, what they bought it
2 for; right?

3 A Correct.

4 Q And, of course, your hope was to go to work for Mark
5 McGarel and take all of these customers for which CCC had
6 budgeted to Filmtech. That was your hope?

7 A That was my hope. If I was bought out and had no
8 non-compete, that would have been my plan.

9 Q All right. So if you were bought out, they paid you
10 for your interest, your hope was to be bought out, take
11 the money, go to Filmtech, and then steal all the
12 customers; right? That's what you said.

13 A If I had no non-compete and was not prevented from
14 competing, I would have competed, yes.

15 Q All right. 77.

16 Are you there? Exhibit No. 77.

17 A Yes.

18 Q You leave on the 18th. We'll talk about that. And
19 on the 19th, CCC has its lawyer fax your lawyer; right?

20 A Yes.

21 Q And Clayton would have talked to you that day, I'm
22 sure?

23 A Possibly.

24 Q And he advised you of this letter. You don't deny
25 that Clayton Jennings called you and said, I've got this

1 letter and here's what it says?

2 A No, I don't. I mean, I -- I don't deny that.

3 Q And he would have done that immediately, because it
4 was pretty hot and heavy then. You had the telephone with
5 him. You had the cops there. You had Zamer involved.
6 You walked out with the computers, and it was tense. And
7 then he gets this letter. He would have called you
8 immediately. Am I right about that?

9 A He would have contacted me, yes.

10 Q He would have contacted you. And the letter does two
11 things. The letter says, according to CCC, what you took,
12 which was two computers and a Blackberry; right?

13 A Yes.

14 Q And on the computers and Blackberry was all sorts of
15 company information. And you admit that; right?

16 A Yes.

17 Q And the lawyer says you should not destroy, copy,
18 sell, or use any of the property, including the computer
19 data. And you would have known that on or about
20 January 19th. Do you agree?

21 A Yes.

22 Q After you got that, you erased all the computers and
23 the Blackberry. Am I right about that?

24 A After I transferred the information, yes.

25 Q After you were advised of Exhibit No. 77, you erased

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY
Circuit Court**

D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2015-000476

Case No. 2012-CP-23-02887

RECEIVED
JUN 22 2016
SC Court of Appeals

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC,
Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting,
LLC, Defendants,

John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third-Party Defendant and Counterclaim Plaintiff,

v.

David Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,

Of Whom David Wilson, Neologic Distribution, Inc. and Fresh Water Systems, Inc. are the
Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the
Appellants.

PROOF OF SERVICE

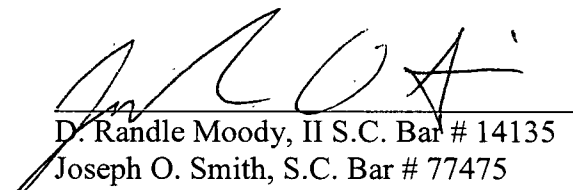
I certify that I have served the final Record on Appeal on all Counsel of Record by depositing a copy of it in the United States Mail, postage pre-paid, on June 1, 2016, addressed as follows:

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June 21, 2016

VIA FEDERAL EXPRESS

Hon. Jenny Abbott Kitchings
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RECEIVED
JUN 22 2016
SC Court of Appeals

Re: David Wilson v. John Gandis
Appellate Case No. 2015-000476
Lower Case No. 2012-CP-23-02887
RCCP 2209.0002

Dear Ms. Kitchings:

Enclosed please find the original and fourteen (14) copies of the **Record on Appeal** in the above-referenced matter. Also enclosed is a Proof of Service for the same. Because of the voluminous nature of the Record it is being sent to you in six (6) separate boxes. This is Box 1 and contains the original. The next five (5) boxes will contain the remaining 14 bound copies. Please file the enclosed documents in your usual manner.

If you have any questions or concerns, please do not hesitate to call. Thank you for your assistance.

With kind regards, I am

ROE CASSIDY COATES & PRICE

Ellen S. Griffin
Paralegal to Joseph O. Smith

Enclosures: (as stated above)

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