

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable D. Garrison Hill
Circuit Court Judge

Unpublished Opinion No. 2018-UP-078 (S.C. Ct. App. filed February 7, 2018)

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

vs.

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

JOHN GANDIS AND ANDREA COMEAU-SHIRLEY, ... Third-Party Plaintiffs,

vs.

CAROLINA CUSTOM CONVERTING, LLC,
..... Third-Party Defendant and Counterclaim Plaintiff,

vs.

DAVE 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, ... Petitioners.

APPENDIX TO PETITIONER CAROLINA CUSTOM CONVERTING, LLC'S
PETITION FOR A WRIT OF CERTIORARI
(Volume 2 of 5)

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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

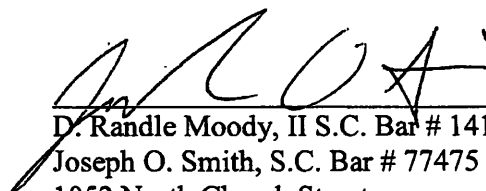
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June 21, 2016

VIA FEDERAL EXPRESS

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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

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App. 513

22661

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In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court

D. Garrison Hill, Circuit Court Judge

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SC Court of Appeals

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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 II

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1 all of the data on both computers and the Blackberry?

2 A Yes, I did.

3 Q All right. After that?

4 A Yes.

5 Q Not before?

6 A Correct.

7 Q And, according to your testimony, you erased
8 everything, put it on another computer, and then put the
9 CCC information back; right?

10 A That was my intention, yes.

11 Q So we'll never know for sure what you erased, will
12 we?

13 A Other than the fact that you got all of that back
14 through discovery.

15 Q Well, perhaps, we did and, perhaps, we didn't. You
16 erased all of the Eastern Films e-mails on your computer;
17 right?

18 A No. That's not correct.

19 Q Well, you erased everything, but the CCC data?

20 A There were Eastern Films e-mails in the CCC data.

21 Q Well, you erased everything you could, but the CCC
22 data?

23 A Well, that was the information I felt they were
24 entitled to keep.

25 Q And your attorney before you did that -- advised you

1 not to do that, didn't he?

2 A I don't know that he advised me.

3 Q All right.

4 A I think their attorney advised me, but I don't know
5 that my attorney advised me about that.

6 Q Well, he told you about the letter?

7 A Sure.

8 Q All right. Look at Exhibit No. 78. You've got all
9 the CCC data because you downloaded it, according to you,
10 onto another computer and then erased everything on the
11 company computers; right?

12 A Yes.

13 Q And this is two days later. Two days later, Renee
14 McGarel e-mails you with a spreadsheet. And she took
15 CCC's selling costs, film costs, and did her own
16 spreadsheet to see how y'all could do with their sources
17 of supply; right?

18 A Yes.

19 Q And it was your plan to go to Filmtech, take that
20 information -- and, of course, you would have told her the
21 CCC sources of supply because you had it on your computer,
22 didn't you?

23 A (There was no response.)

24 Q Didn't you?

25 A Filmtech knows every supplier in this industry, so

1 did CCC.

2 Q Well, if you look at it, the very first one, selling
3 price for the first things above 45, the costs to CCC was
4 above 15, but they were getting it at above 10.

5 Do you see that?

6 A It appears that way, yes.

7 Q So they were getting a little better deal?

8 A It looks like it.

9 Q And the very next one, selling price a buck 80, CCC
10 was getting it for a buck 26, but they were paying a buck
11 40.

12 Do you see that?

13 A Yes, I do.

14 Q And, of course, you knew who the cheaper source of
15 supply was. And if you had gone to Filmtech, it was your
16 intention to tell them to get the cheaper film, contact
17 the customer and try to take the business?

18 A We may have used the cost based on B grade film. And
19 Mark McGarel was probably using an A grade cost.

20 Q All right. 801. Exhibit No. 801. You've been gone
21 for a couple of months. You e-mail your buddy, Steve
22 Norvell, on March the 9th. And y'all are talking about
23 doing a deal through Fresh Water; right?

24 A Yes.

25 Q And this is, of course, a customer you supplied for

1 several years through CCC. Second paragraph; right?

2 Another note, I have an opportunity to fill an order
3 for a customer I supplied several years through CCC.

4 Do you see that?

5 A Yes.

6 Q The Filmtech deal hadn't worked out; right, for
7 whatever reason?

8 A Right. Right.

9 Q So you went back to Steve and said, Let's see if we
10 can't do some deals; correct?

11 A Sure.

12 Q Okay. Exhibit No. 802. This is March of 2012. Are
13 you with me?

14 A Yes.

15 Q You're e-mailing Steve?

16 A Yes.

17 Q You're still a member of CCC. And y'all are in
18 negotiations about them buying you out or the reverse;
19 correct?

20 A I'm not sure if we were still negotiating at this
21 point.

22 Q Well, you say in an e-mail, Thanks, Steve. See the
23 attached enclosure from Rogers & Brown. And then the last
24 couple of sentences, I just don't want CCC knowing my
25 business while we're in negotiations.

1 Do you see that?

2 A Yes. So, obviously, we were still talking.

3 Q You were still talking.

4 A Having communications.

5 Q You didn't want them to know it. You didn't want
6 them to know that if they paid you your price, it was your
7 intention to take the customers; right? That's why you
8 didn't want them to know?

9 A Say that again.

10 Q You didn't want them to know that if they paid you
11 your price, you intended to take the customers, if you
12 could?

13 A If they had paid me what I had last offered them,
14 they would have paid me for a non-compete. At this point,
15 there was none. And I was burning through my savings and
16 my kids college funds to pay my bills.

17 Q All right. June 18th. Exhibit No. 89. You filed
18 the lawsuit in April. We're in June. By then, you're at
19 Neologic. And I'm looking at Exhibit 89.

20 A Yes.

21 Q You're going to see the customers; right?

22 A I don't know that I had, actually, visited any
23 customers at this point.

24 Q Well, you're e-mailing the customers?

25 A Yes.

1 Q You had the company data. We've already talked about
2 that; right?

3 A I had company data, absolutely.

4 Q The company data would have had all the e-mails of
5 the customers. It would have had the prices. It would
6 have had what CCC sold. And if you look at this
7 particular e-mail, you contact a guy named Mark Middleton
8 at Royal Metal Products, and you talk about specific
9 products.

10 Do you see that?

11 A Yes.

12 Q And you had all the information about what CCC was
13 selling its customers, their pricing, their acquisitions,
14 costs, and specifications of the products, all the
15 products of CCC; right?

16 A Yes. Royal Metal was not a customer of CCC.

17 Q Well, you had it for everybody else; right?

18 A Sure.

19 Q All right. Exhibit No. 94. You move to dissolve the
20 company as part of your lawsuit. It's now September. Are
21 you at 94?

22 A Yes.

23 Q And you're talking to your accountant. And you're
24 talking about those QuickBooks that you know aren't right
25 as to inventory; correct?

1 A Hang on. I sent him financials.

2 Q And he says, I think your lawyer should bury them
3 with discovery requests or subpoenas.

4 Do you see that?

5 A Yes.

6 Q Did you tell him that you knew the inventory figures
7 were grossly overstated?

8 A Are the attachments on here? They're not.

9 Q Did you ever tell Ray that you knew the inventory
10 figures were grossly overstated? The attachments are not
11 on here.

12 A I had a lot of conversations with Ray about
13 QuickBooks and CCC's financial statements.

14 Q All right.

15 A I didn't put it in this e-mail, but he knew that the
16 books were a mess.

17 Q All right. Through the end of 2011, you got \$385,000
18 in distributions, the exact sum of money John Gandis got;
19 right?

20 A As distributions, right.

21 Q And you, also, got \$130,000 in loans that he didn't
22 get. Do you agree with that? You can call it whatever
23 you want. You got \$130,000.

24 A I agree there was a loan, and then that some of
25 those -- some of the money from that loan was paid to me in

1 the form of a check. My car was, also, on there, some
2 expenses.

3 Q You got \$130,000, which was characterized on the
4 books as loans, more than he did; right?

5 A Unless you include the rent, and interest, and other
6 things he got.

7 Q All right. But through the end of 2011, you had
8 gotten 382 plus 130?

9 A Yes.

10 Q Okay. Exhibit No. 100. Are you with me?

11 A Yes.

12 Q Exhibit No. 100 is an e-mail from you to Steve. And
13 this is December 2012. It had been almost a year; right?

14 A Yes.

15 Q And you're working for Steve at Neologic?

16 A Yes.

17 Q And you're doing the best you can to get the
18 customers at CCC?

19 A Well, that's not exactly correct.

20 Q Well, I'm not saying you did it. You're doing the
21 best you could to get the customers at CCC?

22 A In 2012, one of my dilemmas was earning a living, or
23 taking business from a company that I still owned. And it
24 was a daily decision. It was very challenging.

25 Q Let's see what your decision was on December the 3rd.

1 You e-mail your boss, Just a quick update. We have a
2 hearing this Thursday regarding the dissolution of CCC.
3 And that was the hearing before this Court and this judge
4 on December the 6th.

5 Do you recall that?

6 A Yes.

7 Q We have drafted our own dissolution order, which will
8 make it nearly impossible for John and Andrea to conduct
9 business once the dissolution order is in place.

10 Do you see that?

11 A Yes, I do.

12 Q Of course, that would have been a good thing. If
13 they couldn't conduct business and they couldn't compete,
14 you could get all the customers; right?

15 A Well, I could get my money out of the company for
16 sure.

17 Q You could get the customers, because they couldn't do
18 business. And you say, Andy, my attorney, thinks we ought
19 to make an offer based on the values they gave us in
20 their, obviously, manipulated financials.

21 Do you see that?

22 A Yes, I do.

23 Q And, of course, December the 6th, CCC shows up
24 willing to dissolve. Do you remember that? Were you at
25 the hearing?

1 A I was.

2 Q And, of course, Mr. Goldsmith was there. He gets up
3 before the Court and says, We're willing to dissolve. And
4 Mr. Arnold surprised everybody and said, y'all were going
5 to buy it or make an offer to buy it. Am I right about
6 that?

7 A I believe that was discussed.

8 Q Well --

9 A What was the date of the hearing?

10 Q December the 6th. What he said was -- and I'm going
11 to quote it on Page 7 of the transcript. If you'll get
12 your second book. It's Exhibit No. 102, Page 7.

13 Are you there?

14 A Yes.

15 Q What he said was, We don't want to cut the entity.
16 We think the business has value. Remember, we were here
17 not long ago because they didn't want to give us the
18 customer list because that customer list has such value.
19 Well, we agree.

20 Did you agree with him?

21 A That it has value?

22 Q Yeah.

23 A I agree that there's value in a customer base. I
24 don't know that the actual list has value. But there's
25 value in having customers.

1 Q Well, he said the list had value?

2 A Well, that's what he said.

3 Q And he says, And what we want -- well, actually, we
4 made an offer to purchase this business for almost half a
5 million dollars; right?

6 A Yes.

7 Q And what had happened is you had talked to Steve;
8 right?

9 A Yes.

10 Q Before this. And you said, Hey, I think we can pick
11 this thing up on the cheap. Let's buy it for the same
12 price they offered to sell to me for. Pretty much, that's
13 what happened?

14 A No. I think I calculated a price based on what
15 Andrea's financials were saying the business was worth.
16 And those were grossly understated.

17 Q Turn back one page. Turn back one page for me.

18 A In the transcript?

19 Q No. Exhibit No. 101, same book.

20 Are you there?

21 A Yes.

22 Q And Andy had sent an e-mail -- and I'm sure you saw
23 it -- a day before the hearing that said, My client will
24 agree to buy John and Andrea's interest, 55 percent,
25 \$442,000.

1 Do you see that?

2 A Yes.

3 Q With some terms; right?

4 A Yes.

5 Q And, of course, he goes to the hearing and,
6 essentially, confirms that. And the money was going to
7 come from Steve. Am I right about that?

8 A Yes.

9 Q And, after the hearing, you and Steve went out to the
10 plant and toured it?

11 A That's not correct.

12 Q Steve went out?

13 A No. I went out with my other brother-in-law, Eric.

14 Q You went out with Eric --

15 A Yes.

16 Q -- and toured the plant. Because Steve intended to
17 put up the money to buy it. Am I right about that?

18 A We wanted to make sure the assets were there.

19 Q And the assets were there; right? The machinery was
20 there?

21 A Yes.

22 Q Everything was as you thought; right?

23 A I don't know about that, but there were assets there.

24 Q And 103. Exhibit No. 103.

25 A Yes.

1 Q And what happened within a couple of days, y'all said
2 you would buy it for roughly a half million dollars. They
3 send you a term sheet for a half a million dollars?

4 A Yes.

5 Q And you never responded to that, did you?

6 A (There was no response.)

7 Q You never responded?

8 A I don't know if we did or not.

9 Q Well, is there a piece of paper anywhere where you
10 responded?

11 A Well, not in the exhibit book.

12 Q Well, what happened is Steve said, Let's don't buy
13 it. Let's just wait this thing out and steal it.

14 A Yeah.

15 Q Is that what happened?

16 A Sure.

17 Q Well, did you ever respond to their offer to sell?

18 A I don't know if we formally responded. I know we had
19 mediation within a couple days of this. And we discussed
20 this.

21 Q Well, you mention mediation. Didn't y'all say buying
22 it was off the table?

23 A Yes, we did at mediation.

24 Q All right. I want you to look at Andy's letter, Andy
25 Arnold's letter of 101, and the offer sheet of 103, and

1 tell me how they materially differ. Let's look at them.

2 101.

3 A Okay. 101.

4 Q Are you there?

5 A Yes.

6 Q Andy says 442. Do you see that?

7 A Yes.

8 Q They offered half a million; right?

9 A (There was no response.)

10 Q That is 103?

11 A Yes.

12 Q And you relayed that to Steve, didn't you?

13 A I don't know if I did or not.

14 Q Well, you talked to Steve about buying it?

15 A Yes.

16 Q Because y'all offered 442?

17 A Right.

18 Q And, of course, when you made the offer, you always
19 expect some dickering, don't you?

20 A That can be expected, yes.

21 Q And, of course, Steve, a very experienced business
22 man, knew there would be some dickering; right?

23 A I can't testify as to what he knew.

24 Q So they counter offered pretty close to y'all's
25 price, 442; right? They said 500?

1 A I mean, it's a different price.

2 Q A different price?

3 A Yes.

4 Q And y'all didn't respond, did you, in writing
5 anywhere?

6 A The terms had changed. The non-compete had changed.
7 And --

8 Q Well, did y'all tell them, hey, change the
9 non-compete a little bit, come back to 442, or let's meet
10 in the middle, anything like that?

11 A In trying to do due diligence with the books we
12 received from the other side, we, also, discovered that we
13 were being told that Zoi did not keep books, which was
14 alarming in and of itself. And we had purchase orders and
15 sales orders that had been issued by a set of QuickBooks
16 by Zoi.

17 So we didn't know what was going on with Zoi. It was
18 pretty concerning. And we felt going and buying this
19 thing with so much we didn't know was risky.

20 Q Well, didn't Andy's offer say -- his whole offer,
21 442, was contingent on Zoi, as well as CCC, contingent on
22 Zoi having a positive net asset value of -- do you see
23 that?

24 A Yes.

25 Q And that was his offer?

1 A Yes.

2 Q And they talk about Zoi in here. And after you got
3 their response to your offer, y'all did not discuss the
4 sale anymore. As a matter of fact, you told them it was
5 off the table. Am I right about that?

6 A Yes. At mediation, we told them it was off the
7 table.

8 Q Okay. So two years ago -- two years ago, you could
9 have dissolved the company. That's what Mr. Goldsmith
10 wanted to do, and y'all chose not to do it. And we're
11 here two years later; right? You could have done it?

12 A Could have done it.

13 Q Chose not to. That was your election. They wanted
14 to, you didn't; right?

15 A Yes.

16 Q And your whole lawsuit up to that point in time was
17 to dissolve the company?

18 A That's not correct.

19 Q Well, part of it; right?

20 A We had the option of dissolution or disassociation.

21 Q Well, you could have dissolved the company two years
22 ago. You could have discussed sale two years ago, but you
23 took it off the table; right?

24 A We did at that time, yes.

25 Q All right.

1 A Because we had a mediation coming up within a week.
2 And we thought we would be able to settle things that way.

3 Q Well, again, I think the evidence shows that you and
4 Mr. Norvell decided you didn't need to buy it. You could
5 get it without buying it. Is that true or not?

6 A Get it without buying it?

7 Q Get it without buying it.

8 A What would we get?

9 Q The customers.

10 A I didn't need to buy their customers. I know their
11 customers.

12 Q Let's look at 106.

13 Are you there?

14 A Yes.

15 Q A year later, January of 2013, you could have
16 dissolved it. You could have sold it. The litigation
17 continued for another year. You e-mail Steve about a trip
18 to 3M in Sanford, North Carolina. Do you see that?

19 A Yes.

20 Q And you would agree with me that while you're at CCC,
21 CCC had invested a huge amount of time and effort to
22 become qualified to sell Sanford, North, Carolina, film;
23 true?

24 A Tell me what they invested.

25 Q Time, effort to become qualified to sell to Sanford,

1 North Carolina, to the 3M plant there, film.

2 A Yeah. We made some effort to qualify --

3 Q You had hoped to sell them a million dollars a year
4 in film?

5 A Yes, we had.

6 Q And you drive up there, talk to them, let them know
7 about CCC. They were clueless. They didn't know anything
8 about it; right?

9 A I was contacted by 3M about some film they had for
10 sale in Sanford. And I was given Jeff Bell's name as a
11 contact, even though I knew him. And my meeting was set
12 up to go look at the film that they wanted to sell us.

13 Q Listen to my question. You drove to Sanford and let
14 them know about CCC. They were clueless. That's what you
15 told Steve?

16 A Yes.

17 Q And, of course, what you let them know was you had
18 sued them to dissolve them. They might not be in
19 business. They would be a very unreliable supplier;
20 right?

21 A What I let them know is why I was no longer at CCC,
22 why I was at Neologic, and that the company was involved
23 in a lawsuit.

24 Q Do you deny that you told them that CCC might be
25 dissolved?

1 A I told them that there had been a motion for
2 dissolution recently.

3 Q All right. Exhibit No. 107. Five days later. We
4 got this through discovery. You're printing out pallet
5 labels for a product at Neologic; correct?

6 A Correct.

7 Q And if you look at the pallet labels you printed out,
8 you printed out some of them with Carolina Custom
9 Converting on them, didn't you?

10 A Yes, I did.

11 Q And those were printed out; right?

12 A Yes, they were.

13 Q And you sent them to Christy?

14 A Actually, I think they were e-mailed to Christy in a
15 PDF.

16 Q PDF to Christy?

17 A Yep.

18 Q And you told her -- I'm looking at the first page of
19 107. You'll notice that four pallets are different
20 because they are not Act Pioneer.

21 Do you see that?

22 A Yes.

23 Q And those were the four that you wanted her to put
24 CCC pallet labels on; right?

25 A Yes.

1 Q And the reason you did that is you wanted the
2 customer to think they came from CCC, because CCC had been
3 qualified; right?

4 A That's not true.

5 Q Well, you say it's an accident. You just had an
6 accident. Is that what you -- your testimony is?

7 A When I was typing these e-mails -- these labels, this
8 was shortly after -- weeks -- maybe a week after we had
9 gotten CCC financials, Zoi financials. And I was spending
10 a great deal of time working on this lawsuit trying to
11 figure out what was going on with CCC's financials.

12 When I created these labels, I created four labels
13 for rolls that we brought in for stock. I must have had
14 CCC on my brain. I should have put Neologic on those. I
15 put CCC. I sent them to her. I didn't even realize it
16 had happened. And this film never ended up at a CCC
17 customer.

18 Q All right. We hear you. Exhibit No. 108. A couple
19 days later, you e-mail the guy at 3M; right?

20 A Yes.

21 Q Third sentence, Just to keep you abreast of the
22 situation, the Judge ruled on Monday denying my partners
23 request for dissolution. Do you see that?

24 A Yes.

25 Q Well, this is January the 16th, 2013. On December

1 the 6th, 2012, they wanted to dissolve, and y'all refused
2 to do so; right?

3 A We did not want to dissolve at that time. That's
4 correct.

5 Q All right. So -- well, the whole point of this
6 e-mail is you wanted 3M to think CCC was unreliable. Why
7 else would you tell them?

8 A Well, he asked me to keep him abreast of the
9 situation with the lawsuit. And that's what I was doing.

10 Q All right. Page 113 -- Exhibit No. 113. I'm sorry.
11 May of last year, an e-mail from you to Steve, Andy's
12 invoice. You say at the bottom, Hi, Steve, talked about
13 the invoice. We're pretty much done with Dixon Youth.

14 Now, let me stop for a second. You had hired
15 Catherine Stoddard; right?

16 A Yes.

17 Q And you had given her the QuickBooks that showed the
18 inflated inventory. And you never told her that the
19 inventory was grossly overstated, did you?

20 A Yeah. I think I, actually, probably did.

21 Q We'll find out.

22 A Okay.

23 Q We have a hearing this Friday, which we will make a
24 motion to dissolve CCC and Zoi.

25 Do you see that?

1 A Yes.

2 Q If we're successful, a receiver will be appointed and
3 the company shut down.

4 Do you see that?

5 A Yes.

6 Q Of course, the reason you're telling Steve that is
7 good news, shut them down, we can get all the customers;
8 right?

9 A There would have been a lot of benefits to having the
10 company shut down.

11 Q Yeah. What you say is, This motion should
12 significantly impact their case. Because they'll now have
13 to start paying their own attorneys fees. They will not
14 be able to service the customer base, which should help us
15 capture more of the CCC customer base.

16 Do you see that?

17 A Yes, I do.

18 Q That was good news for you and Steve, wasn't it?

19 A It's pretty obvious if they can't service the
20 customers, they're going to go somewhere.

21 Q Exhibit No. 114, three days later. You e-mail
22 somebody named Steve Talley at American Color Technology,
23 who was, also, a customer of CCC; right?

24 A American Color Graphics was their customer.

25 Q All right. And what you say down at the bottom, Hi,

1 Steve. I hate to do this, but I have to cancel the trip
2 next week. We had a hearing scheduled this morning to
3 dissolve CCC and Zoi. We're only allotted 15 minutes, so
4 everyone, including the Judge, agreed we need more time.
5 The Judge will try to see us next week. Good news is they
6 are not opposing dissolution.

7 And the reason you told Steve that is you wanted
8 Steve to believe that CCC was not long for this world and
9 he didn't need to be dealing with CCC; right? You had
10 been gone for a year?

11 A At this point -- first of all, this wasn't a CCC
12 customer. At this point, they weren't doing -- they
13 wouldn't have been doing business with CCC.

14 Q All right. May of 2013, last year, this lawsuit has
15 gotten protracted. There are lawyers everywhere,
16 subpoenas everywhere. You have responded to lots of
17 discovery by then, hadn't you?

18 A Yes.

19 Q You knew the rules; right?

20 A Yes.

21 Q You knew that if you had e-mails, you're not supposed
22 to destroy them. You knew that when Andy asked you to
23 produce a set of e-mails, you had to fairly look for them,
24 give them to him, and then he would decide whether they
25 needed to be produced; right?

1 A Yes.

2 Q Everybody knew those rules; right?

3 A Yes.

4 Q Exhibit No. 115. You e-mail Steve on June the 27th,
5 copy Julie Ann, and talk about the lawsuit. And, at the
6 bottom, shift delete after reading. You typed that,
7 didn't you?

8 A Yes, I did.

9 Q And it was your intention for Steve to delete that
10 e-mail so it would never see the light of day; right?
11 That was your intention?

12 A My understanding was that communication between us --

13 Q Wait a minute. You need to answer the question.

14 A -- related to the case --

15 Q Was it your intention --

16 A -- was privileged.

17 Q -- for Steve to delete the e-mail so it would never
18 see the light of day?

19 A Yes.

20 THE COURT: Which one is that?

21 MR. STEPHENSON: Exhibit No. 115, Your Honor. Down
22 at the bottom, shift delete after reading.

23 BY MR. STEPHENSON:

24 Q Exhibit No. 121. Are you with me?

25 A Yes.

1 Q On May 23, this year, you e-mailed Jim Bucks. Jim
2 Bucks is a salesman for CCC; right?

3 A Yes.

4 Q Jim Bucks doesn't have anything to do with Neologic,
5 does he?

6 A No.

7 Q And you sent him Andy's motion for summary judgment
8 because you wanted him to believe CCC wasn't long for this
9 world, correct?

10 A I wanted Jim Bucks to hear the other side of the
11 case, other than what he had been told by John and Andrea.

12 Q You wanted Jim Bucks to know CCC wouldn't be long for
13 the world. You agree with that?

14 A I wanted Jim Bucks and Curt Ogsburger [phonetic], the
15 other person I sent this to, to know there were two sides
16 to this case, other than what they had been told by the
17 Defendants.

18 Q All right. Let's look at Exhibit No. 124. 124 is a
19 chart entitled, Annual cash to and from members. Do you
20 see that?

21 A Yes.

22 Q At the top, it shows John's loans to the company over
23 the years. Do you see that?

24 A (There was no response.)

25 Q Do you see that?

1 A Is that funds in?

2 Q Yes.

3 A Yes.

4 Q And it shows the distributions that the company made
5 to the members by year. Do you see that?

6 A I do. But these numbers are very misleading.

7 Q Well, let me ask you about them. Do you agree that,
8 in 2008, John got \$10,000 in distributions and you got 48?

9 A No. I wouldn't disagree with that.

10 Q All right. And, in 2011, both of y'all got 84 in
11 distributions, and you got an additional hundred and four,
12 in 2011?

13 A Uh-huh.

14 Q And, in 2010, he got 99, you got 110, plus 25; right?

15 A That's what it says.

16 Q Well, do you dispute it?

17 A Well, I don't have any way of disputing it without
18 having the QuickBooks file in front of me. I mean, I'm
19 not disputing it. I'm, also, not disputing that he got
20 \$50,000 more than me in 2009, which you skipped over that
21 part.

22 MR. STEPHENSON: Your Honor, if we could take a
23 break, I think I can organize this and get through.

24 THE COURT: Okay. Let's take a 10-minute recess.

25 Thank you.

1 (WHEREUPON, a break was taken.)

2 THE COURT: Mr. Stephenson.

3 BY MR. STEPHENSON:

4 Q Dave, if you would, turn to Exhibit No. 131.

5 Are you there?

6 A Yes.

7 Q 131 would be purchase orders made before you left
8 CCC, a bunch of them?

9 A Yes.

10 Q And do you understand CCC believes that you
11 intentionally bought inventory that nobody needed so
12 they'd be hampered? Do you understand they allege that?

13 A Yeah.

14 Q You laugh?

15 A I do laugh.

16 Q Well, let's look at some of these. The very first
17 one, December 6th, you bought \$7,000; December the 7th,
18 you bought \$30,000; December the 13th -- and I'm flipping
19 through -- \$7,000; December the 16th, \$33,000. Do you see
20 that?

21 A I do.

22 Q And, of course, CCC says they didn't need this, you
23 were just buying it?

24 A Uh-huh.

25 Q December the 16th, \$14,000. December the 23rd,

1 \$46,000. Do you see that?

2 A I do.

3 Q December the 23rd, \$72,000; right?

4 A Yeah.

5 Q All right. And we've already talked about there was
6 an inventory reduction plan in place. The company is cash
7 strapped. And you had agreed that you don't buy a roll
8 unless you've got a home; right?

9 A That's impossible.

10 Q Okay.

11 A Let's go back.

12 Q Anyway --

13 A Let's go back to PO 828 from Torre. This is film --
14 by the way, since I have all the information, this film
15 was purchased from Torre, dropped, shipped to Packaging
16 Concepts the same and billed. So this PO, which they're
17 saying they didn't need, shipped to the customer from the
18 vendor and was billed the same day.

19 Q Let's flip forward to January the 9th.

20 Are you there?

21 A January the 9th. What exhibit?

22 Q January the 9th. That's one of the exhibits in 131.
23 They're in order. They're in date order.

24 Are you there?

25 A January the 9th, yes.

1 Q All right. You bought \$28,000 worth of film?

2 A Yes.

3 Q Yes or no?

4 A Yes.

5 Q And if we look back -- and I'm not going to make you
6 do it. But if you look back at Exhibit No. 72, you're
7 making plans with Mark McGarel to go work for him. You're
8 meeting with him, you're having dinner with him, same
9 time, within a day?

10 A Yes.

11 Q So you're talking about going to work for Mark
12 McGarel, take all the customers and prospects, but you're
13 buying massive amounts of film in the face of an inventory
14 reduction plan?

15 A It's not massive.

16 Q All right. Well, let's look at the next one, January
17 the 11th, \$44,000. Do you see that?

18 A Yes.

19 Q I'm going to read you your e-mail of the same day.
20 You buy \$44,000 worth of film on January the 11th. You
21 talk to Mark McGarel about leaving. And on January the
22 11th, you write Mark.

23 And this is Exhibit No. 72. Hi, Mark. Thanks for
24 dinner last night and the time you spent discussing our
25 business option; right? And within a day or two, you're

1 talking about going to work for him and taking all the
2 customers and prospects; right?

3 A We're having discussions, yes.

4 Q All right. So January the 12th, you buy \$6,000. And
5 then January the 16th, two days before you leave, you buy
6 \$10,000. And then you buy \$54,000 of 48-gauge clear pet.
7 The same day, you buy \$22,000 of film. Two days before
8 you leave --

9 A Yes.

10 Q -- right? And you thought you were going to work for
11 Mark McGarel?

12 A I had hoped, at some point, I would be working for
13 him, yes.

14 Q You had an inventory reduction plan?

15 A Yes.

16 Q You were supposed to have a home for every roll?

17 A That's not true.

18 Q Not true.

19 A You can't run a distribution company without
20 inventory. And, by the way, if you want to take the time,
21 I can tell you where all of this film was sold to and on
22 which date.

23 Q Well, maybe you will.

24 A Okay.

25 Q Exhibit No. 120.

1 A And, by the way, John and the accounting department
2 were copied on all of these. Can you show me an e-mail
3 where they said we don't need this, or one e-mail in 2012
4 after they locked me out where they said, why did Dave buy
5 all that film? There's not one.

6 Q Exhibit No. 120. One last series of questions and
7 we'll be through. 120. We sent you interrogatories. If
8 you look on the second page, the interrogatory was to list
9 every film transaction that you or an entity affiliated
10 with you entered into on November 7th through January 12th
11 that did not involve CCC; right? Do you see that? That's
12 the interrogatory?

13 A Yes.

14 Q And your lawyer gave you this and you answered it;
15 right?

16 A Yes.

17 Q You read it before he mailed it; right?

18 A Yes.

19 Q And, on Page 2, you list a few sales and you produce
20 the QuickBooks of EFS. And we've seen the QuickBooks;
21 right?

22 A I produced, I believe, a report from QuickBooks.

23 Q Okay. A spreadsheet from QuickBooks?

24 A Yeah.

25 Q And you list one, two, three, four, five sales.

1 Lamtec, a thousand, Lamtec, 2,500, Lamtec, 516, Flagship
2 360, and 1,200, all related to Horizon. And, by my math,
3 that totals about \$5,000. Would you agree?

4 A Yes.

5 Q Turn over to 127. Exhibit No. 127. After that, we
6 subpoenaed your checkbook; right?

7 A Yes.

8 Q And if you'll flip through one, two, three, the
9 fourth document. Horizon writes you a check for \$5,700;
10 right?

11 A Yes.

12 Q So we're already up to what you say they did; right?

13 A Yes.

14 Q And, if you go back, all these Myers Consultants
15 checks for 500, 750, a thousand, before that relate to
16 Horizon; right?

17 A I don't know if they do or not.

18 Q Well, that's what you were working with Mike Myers on
19 at the time; right?

20 A What I was working with him on --

21 Q Yeah. Then if you skip forward a little bit --

22 MR. ARNOLD: Hold on. Let him answer the question.

23 BY MR. STEPHENSON:

24 Q Go ahead.

25 A When -- you say I was working with Mike Myers on

1 Horizon?

2 Q You were or weren't?

3 A No.

4 Q All right.

5 A I may have borrowed money from Mike around the time I
6 was selling Horizon an order, but --

7 Q Well, you disclosed to us, roughly, 5,000. We've
8 seen the checks for up to 5,000. Skip forward to 10/16,
9 we've got another check for 6,000.

10 Do you see that?

11 A Yes.

12 Q So there were a number of deals that you didn't
13 disclose in the interrogatory. Am I right about that?

14 A Yes. I did not have this checking detail at the
15 time --

16 Q All right.

17 A -- that I did the interrogatories.

18 Q Well, it wasn't on your Eastern Films QuickBooks, was
19 it?

20 A No. I stopped -- I stopped keeping books --

21 Q As a matter of fact, Eastern Films dissolved --

22 A -- in 2009 --

23 MR. ARNOLD: Let him finish his answer.

24 MR. STEPHENSON: I'm sorry.

25 THE WITNESS: And I believe I did disclose yesterday

1 that there were other transactions beyond the two that you
2 mentioned to Horizon. I think there were three or four in
3 total.

4 BY MR. STEPHENSON:

5 Q Disclosed yesterday?

6 A Yes.

7 MR. STEPHENSON: Okay. I may be through.

8 (Pause.)

9 MR. STEPHENSON: That's it.

10 CROSS-EXAMINATION

11 BY MR. FARRAR:

12 Q Mr. Wilson, I just have a few questions for you.

13 A Okay.

14 Q Yesterday, I heard your testimony about your role
15 with inventory, and you repeated it several times. Are
16 you trying to tell me and the Court that, basically, you
17 just purchased inventory and you weren't in charge of
18 maintaining or overseeing it?

19 A Yes.

20 Q Okay. And so when the physical inventories were
21 taken, you weren't the person who led them? Before
22 Mr. Higgins was involved, you weren't the person who led
23 them?

24 A Before who was involved?

25 Q Mr. Higgins was brought in.

1 A You know, early on, we were all kind of involved in
2 those.

3 Q You were in charge?

4 A I don't know that I was in charge.

5 Q You didn't tell people you were in charge of it?

6 A I don't recall if I told people I was in charge of
7 inventory.

8 Q Isn't it true that you were not only the purchaser,
9 but you were the dean, the God, the Lord, whatever word
10 you want to use. You were over and in charge of the
11 inventory at CCC, weren't you?

12 A No.

13 Q When you bought inventory, you told Joy Whitten what
14 to book, didn't you?

15 A In the early years, yes. Before we hired Bill Shaw,
16 I did all the buying. And I told Joy what to order.

17 Q And when you sold it, you told Joy what to take out
18 of inventory, didn't you? You were in charge of telling
19 her what went in and off the books of QuickBooks, weren't
20 you, as far as inventory?

21 A No. I mean, if she was going to place -- enter a
22 sales order, if she had questions, she would ask me, for
23 sure.

24 Q You didn't give her the numbers to put in the
25 inventory?

1 A When?

2 Q At the beginning, 2008 and 2009?

3 A I mean, 2008, 2009, we all wore a lot of hats.

4 Q That's not what I asked you, Mr. Wilson.

5 A I don't know what I did in 2008 or 2009. I can
6 barely remember what we did in 2011.

7 Q You seem to remember a lot of other things.

8 A Yeah, I do.

9 Q It's really amazing how you pick what you want to
10 remember, isn't it?

11 A Yeah, it is.

12 Q So you had administrative sign on on the QuickBooks,
13 didn't you? You didn't sign on as Dave Wilson, you signed
14 on as administrator early on, didn't you?

15 A Do you mean in 2008 when we first started?

16 Q You know you did that, Mr. Wilson. Don't put a date
17 on it. You know at some point in your career at CCC, you
18 signed on as the administrator, didn't you?

19 A I don't know.

20 Q You don't. Okay. You didn't tell Ms. Stoddard that,
21 though, did you, that you had administrative sign on
22 rights, did you?

23 A I haven't had administrative sign on rights since
24 Andrea got involved with our company.

25 Q So that's your testimony. Since 2008, you haven't

1 had administrative sign on rights --

2 A No. Since she got involved in our company --

3 Q -- when --

4 A -- and I'm not sure when that was --

5 THE COURT: Wait a minute. Y'all are going to have
6 to slow down and let everybody finish.

7 BY MR. FARRAR:

8 Q When did she get involved with your company?

9 A Well, she was involved loosely in 2008.

10 Q So your testimony to the Court is you didn't have
11 administrative sign on rights after she got involved in
12 2008?

13 A My testimony is that, at some point after Andrea got
14 involved, she took over accounting. She was the admin.
15 John and I had print and view privileges.

16 Q When was that?

17 A I don't know when that was. I know it was -- I know
18 from 2010 forward, neither John nor I had administrative
19 rights. Andrea alone had administrative rights, contrary
20 to her testimony.

21 Q What testimony? She hasn't testified.

22 A Well, to her affidavit.

23 Q What affidavit? I'm not asking that, Mr. Wilson.
24 You're welcome to put your case up through Mr. Arnold.
25 Okay.

1 A Okay.

2 Q In fact, Andrea came in to help give some business
3 structure because you were a salesman; right? You weren't
4 a businessman, were you?

5 A Well, I've been a businessman. I've been a salesman.

6 Q A failed business; right?

7 A I've had a failed business.

8 Q And so it helped you to bring in somebody with some
9 business acumen, didn't it?

10 A Sure.

11 Q And you were good with that until all of a sudden she
12 started doing things you didn't want to do. Wasn't that
13 true? She started putting controls in that you didn't
14 want in place; correct?

15 A Now, Andrea and I didn't see eye to eye on a lot of
16 things.

17 (WHEREUPON, Defendant's Exhibit No. 179 was marked for
18 identification only.)

19 BY MR. FARRAR:

20 Q I'm going to show you a document marked as
21 Defendant's Exhibit No. 179. Is this an e-mail from you
22 to John?

23 A Yes.

24 Q And down below, you'll see an e-mail from Andrea to
25 you and John; correct?

1 A Yes.

2 Q And in that e-mail, Ms. Comeau-Shirley is saying
3 we're going -- we're trying to ship towards the structure
4 of a company that's capable of a much larger company;
5 correct?

6 A Yes.

7 Q And she said, Along those lines, you will receive
8 periodic information, but we're not going to let you and
9 John get in and play around in QuickBooks. Right? That's
10 what she's saying, isn't it?

11 A Yes.

12 Q And then you respond, I'm not going to respond to her
13 today because I would say something I might regret later.
14 I don't want to mess up your vacation. But you need to
15 call me when you have time over the next two days.

16 And what's the next line you write?

17 A Who the blank does she think she is?

18 Q Blank. You don't use the word "blank," though, do
19 you?

20 A No, I didn't.

21 THE COURT: We can read it.

22 MR. FARRAR: All right.

23 BY MR. FARRAR:

24 Q And you go on to say, I'm not a member of this sales
25 team. Isn't that contrary to what you were telling us

1 earlier? You said you were just a sales person. Now,
2 you're saying I'm the guy who buys all the film; right?

3 A Andrea changed my rights and John's rights to
4 QuickBooks so we couldn't see financials. And I had a big
5 problem with that as a 45 percent owner. And I made it
6 clear to John. And you don't have the e-mail where John
7 responded to Andrea and told her to change it back.

8 Q Because John was in charge; right? He was the chief
9 executive officer; right?

10 A He was the president.

11 Q And chief executive officer. He was the one who had
12 the ability to tell her to change it back. And she did,
13 didn't she?

14 A She did change it back after both John and I insisted
15 that she do so.

16 Q Earlier --

17 A By the way, if I had administrative rights, why would
18 I need her to change it back? I would have changed it
19 back myself.

20 Q Do you know if she knew you had administrative
21 rights?

22 A What's that?

23 Q Do you know if Ms. Shirley knew you had
24 administrative rights?

25 A I know that Ms. Shirley knew she was the only one

1 that had administrative rights.

2 Q Okay. We'll get to that when she gets up. Okay.

3 A Yeah.

4 Q Now, earlier, Mr. Stephenson was talking to you about
5 the \$200,000 purchase. And you said 350 is not the same
6 as 200; right? They countered and said, We'll sell it to
7 you for 350. Do you remember that?

8 A Can you repeat that?

9 Q All right. I'm trying not to go back and find the
10 exhibits. I'm not trying to put my hands on it real
11 quick. But there's an e-mail that says, basically, CCC
12 would buy your interest for \$200,000. And you said, Or
13 we'll sell it to you. And they said, \$350,000. Do you
14 know why the difference between 200 and 350 was?

15 A (There was no response.)

16 Q Why their interest would be higher than yours in that
17 regard?

18 A Maybe because of the loan.

19 Q Yes. Thank you.

20 And the e-mails that we've seen where you say that
21 inventory is misstated by 300,000 pounds and it's
22 overstated by \$400,000, did you share that information
23 with Ms. Stoddard?

24 A I believe I had many conversations with Ms. Stoddard
25 and told her the inventory has been out of whack.

1 Q Did you say to her you knew it was overstated?

2 A I don't recall every conversation I had with
3 Ms. Stoddard. We had -- we talked a lot about the
4 inventory. It was a big issue.

5 Q And if she recorded her notes and plan as she's
6 required to professionally, we'd know whether you talked
7 to her about that, wouldn't we?

8 A I'm not going to testify as to what her
9 responsibility is as an accountant.

10 Q But she didn't record -- you didn't record what you
11 told her, did you?

12 A Did I record it?

13 Q Did you write down what you were telling her?

14 A No. If I'm having a conversation, I don't write it
15 down.

16 MR. FARRAR: Thank you.

17 MR. CAMPBELL: Just a moment, Your Honor.

18 THE COURT: Yes, sir.

19 (Pause.)

20 CROSS-EXAMINATION

21 BY MR. CAMPBELL:

22 Q Dave, one quick question. You testified earlier
23 about the West Carrollton and Lamborn deals that Steve
24 financed?

25 A Yes.

1 Q Just so the record is clear. Your arrangements with
2 Steve with respect to those deals were in place before you
3 ever received a check from CCC that we've been talking
4 about?

5 A Yes. The West Carrollton deal had been in place
6 since, I think, 2007.

7 MR. CAMPBELL: Okay. Thank you.

8 THE WITNESS: Yeah.

9 MR. ARNOLD: I've got some follow-up, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. ARNOLD:

12 Q And Steve is not a member of EFS, and was never a
13 member of EFS?

14 A No.

15 Q Let's start -- let's just start at the top. John was
16 supposed to meet with the lawyer and work with him on
17 organizing the company; right?

18 A Yes.

19 Q And your understanding is he was going to organize
20 the company consistent with your discussions; correct?

21 A Yes.

22 Q And you never had any discussions about it being a
23 term company?

24 A No.

25 Q Let's look at -- since you've got the big book, let's

1 look at 115, the infamous shift delete e-mail. In looking
2 at the e-mail, 115, you're notifying Steve -- well, tell
3 me what you're notifying Steve of at the bottom part of
4 that e-mail.

5 A That I had gotten served with a new lawsuit, and that
6 Neologic was named as a defendant.

7 Q Yep. Okay. And so there had been a new lawsuit
8 filed?

9 A Yes.

10 Q And this was in 2013; correct?

11 A Yes.

12 Q And that lawsuit, for the first time, alleged trade
13 secrets cause of action; right?

14 A Yes.

15 Q And, for the first time, it alleged a civil
16 conspiracy cause of action; right?

17 A Yes.

18 Q And so it alleged a lot of things that had not been
19 alleged for the over a year that we had been litigating
20 this case; right?

21 A Yes.

22 Q And Neologic was a defendant?

23 A Yes.

24 Q Now, what was your understanding about the
25 discoverability of this e-mail?

1 A My understanding is that if we were joint
2 co-defendants, or co-plaintiffs, or whatever in a lawsuit
3 that we -- our conversations about the case were
4 confidential and privileged.

5 Q Okay. But you later found out -- well, later, you
6 were asked to gather e-mails in response to discovery
7 requests made to Neologic. Beau Campbell asked you --

8 A Yes.

9 Q Right?

10 A Yes.

11 Q And did you find this e-mail?

12 A Yes.

13 Q And did you give this to Beau?

14 A Yes.

15 Q And Beau produced it?

16 A Yes.

17 Q Now, we've requested e-mails -- I'm going to show you
18 a response -- or Defendant John Gandis to the Plaintiff
19 David Wilson's second set of requests to produce. I want
20 you to read request number three.

21 A Number three?

22 Q Number 23.

23 A For the time period beginning January 17, 2012, and
24 continuing to present date, all e-mails, correspondence
25 between John Gandis and Andrea Comeau-Shirley, which

1 contain references to this litigation and/or which contain
2 the terms Dave Wilson, Zoi dissolution, and/or Neologic.

3 Q And what was their response?

4 A Gandis objects to this request because it seeks
5 documents that are protected by the attorney-client work
6 product privilege and the joint defense privilege.

7 Q So they asserted a joint defense privilege when we
8 asked for documents between John and Andrea?

9 A Yes.

10 Q Did we ever get a single document produced by John
11 Gandis in response to this?

12 A Not one.

13 Q We filed a motion to compel; is that right?

14 A Yes.

15 Q It's pending. So the only party to this action to
16 produce correspondence discussing the lawsuit with a
17 co-defendant is you; isn't that right?

18 A Correct.

19 Q Let's look at -- real quick, we've done this a number
20 of times. But a couple of e-mails we haven't seen. This
21 idea that you were supposed to be dedicating your full
22 time and you were conducting these side deals. Let's look
23 at our book. And you can leave that open because we'll
24 come back to this one.

25 A Okay.

1 Q 21. Okay. Now, here we have an e-mail, Plaintiff's
2 Exhibit No. 21. And, in the second paragraph, this is
3 from Andrea to you and John; correct?

4 A Yes.

5 Q And what's the date of this e-mail?

6 A January 18, 2010.

7 Q Read that second paragraph.

8 A In our meeting, we identified several issues that we
9 are facing in 2010, including retaining Minova, completing
10 the Blake acquisition, i.e. contract modification and
11 final enhancements, completing Dave's transition toward a
12 full-time CCC, preparing our company for the economic
13 rebound growth, and adding additional financial
14 capabilities. I am working on documenting our meeting and
15 completing the forecast.

16 Q Okay. So, at the meeting, one of the things you
17 discussed was your completing your transition in 2010 to
18 full-time CCC?

19 A Yes.

20 Q Okay. Let's look at 22. This is another e-mail.
21 This is Plaintiff's Exhibit No. 22.

22 A Yep.

23 Q And who is this from?

24 A From Andrea to me.

25 Q And what's the date?

1 A June 29th, 2010.

2 Q Can you read the second paragraph?

3 A As you recall, we sent you \$20,000 in April, that
4 should have covered your catch up and your Q-1, first
5 quarter payment, presuming you had been paying your own
6 quarterly payments on safe basis from prior year.
7 Obviously, the world is much more complicated than that
8 since you had two jobs and still had some wind-down
9 activity from Eastern Films that muddled your tax world in
10 2009.

11 Q So your wind-down activity in 2009 was a secret to no
12 one, was it?

13 A No.

14 Q And to the extent that anybody is saying otherwise is
15 a fabrication, isn't it?

16 A Yes.

17 Q Now, let's go to the December 12th -- or December 6th
18 hearing where they had made a motion on the pleadings to
19 dissolve the company. Do you remember that?

20 A Yes.

21 Q You may or may not remember this. Do you remember
22 having discussions authorizing me to negotiate an order of
23 dissolution with the Defendants?

24 A Do I remember a discussion with you --

25 Q Well, do you remember authorizing me to enter into a

1 discussion -- a negotiation for an order of dissolution
2 with the Defendants?

3 A Yes.

4 Q Do you remember the name Skip Hale?

5 A Yes.

6 Q Skip Hale was going to be the receiver?

7 A Yes.

8 Q And we exchanged proposed dissolution orders. Do you
9 remember that?

10 A Yes.

11 MR. ARNOLD: I've got e-mail correspondence, if Your
12 Honor would like to see it, since I've kind of been put in
13 the middle of this.

14 BY MR. ARNOLD:

15 Q We couldn't reach terms on the order of dissolution.
16 Do you recall that?

17 A Yes.

18 Q And so we opposed dissolution; right?

19 A Yes.

20 Q Probably a big mistake?

21 A Probably, yeah.

22 Q Probably.

23 A Probably.

24 Q But we didn't know what we didn't know. What was
25 that term sheet?

1 A Defendant's No. 103.

2 Q Good job. Look at number eight of their counter
3 proposal. Do you see that?

4 A Yes.

5 Q Read number eight.

6 A Between now and closing, all activities associated
7 with the current litigation will be suspended.

8 Q Okay. We had some outstanding discovery, did we not,
9 at that time?

10 A I believe so.

11 Q And we were concerned about what we didn't know; is
12 that true?

13 A Yes.

14 Q And so we opposed dissolution; correct?

15 A Yes.

16 Q Now, let me show you a document. What is that
17 document?

18 A It's a motion for judgment on the pleadings.

19 Q And when was that filed?

20 A (There was no response.)

21 Q What's the date on the second page?

22 A May 20 of 2013.

23 Q So five months after opposing dissolution, we had
24 gotten additional information; correct?

25 A Yes.

1 Q And we decided to file a motion for judgment on the
2 pleadings; correct?

3 A Yes.

4 Q And we were asking for the exact same thing that they
5 had asked for five months earlier. Do you remember that?

6 A Yes.

7 Q Do you remember they indicated they were going to
8 consent to that motion?

9 A I vaguely do, yes.

10 Q Okay. They opposed that motion. Do you recall that?

11 A Yes.

12 Q Okay. So they were for it, before they were against
13 it?

14 A Yes.

15 Q I hope at this stage I'm beating a dead horse, but
16 let's just make sure. Plaintiff's Exhibit No. 19. What
17 is Plaintiff's Exhibit No. 19 again?

18 A This is a quote to West Carrollton from Eastern Films
19 that was dated July 14th of 2008, revised on 7/17 of 2008,
20 and e-mailed to John Gandis on October 30th of 2009.

21 Q Okay. And so if you were trying to hide the West
22 Carrollton deal, you did a pretty lousy job. Wouldn't you
23 agree?

24 A Yeah.

25 Q And is this the same proposal? All those e-mails we

1 heard back and forth between you and Steve Norvell, is
2 this the proposal they related to?

3 A Yes.

4 Q And you had produced this information in 2009 without
5 objection from John?

6 A Yes. And I had, also, sent an e-mail to John and
7 Andrea telling them that I had imported, roughly, 15
8 containers in 2008, and that my brother-in-law had
9 financed it, and maybe he could help us finance it again.
10 And Andrea, actually, exchanged correspondence with Steve
11 about that topic.

12 And, by the way, the rep that handled West Carrollton
13 for me, I brought him into CCC as a rep.

14 Q Well, let's look at Exhibit No. 150. That's in
15 notebook three. Now, it starts at the bottom. Do you see
16 the bottom here, 150?

17 A Yes.

18 Q And that's an e-mail from who to who?

19 A From me to Andrea.

20 Q Okay. What's the date on that?

21 A May 21st of 2009.

22 Q Okay. Turn the page.

23 A Yes.

24 Q Read the first sentence, please.

25 A I met with one of my old customers this week. In

1 2008, I imported, roughly, 15 containers of metalized film
2 to Ahlstrom, formerly known as West Carrollton Parchment.

3 Q Okay. So there was, again, no hiding the West
4 Carrollton deal?

5 A No.

6 Q Now, remember the little spreadsheet they pulled out
7 that showed all your customers? We went through this
8 yesterday.

9 A Yes.

10 Q Their Defendant's Exhibit No. 8. It had a list of
11 the accounts that you were going to bring over. Do you
12 recall that exhibit?

13 A Yes.

14 Q Did that have West Carrollton on it?

15 A (There was no response.)

16 Q Well, let's look at Defendant's Exhibit No. 8, if you
17 don't recall. It should be here.

18 A Well, there's two different attachments.

19 Q What are the attachments?

20 A Well, the first attachment is just an overview of
21 Eastern Films sales in 2007, and year to date 2008.

22 Q Okay.

23 A West Carrollton is on that. And then on the
24 spreadsheet showing what was going to go to Eastern Films
25 to Carolina Custom, West Carrollton is not.

1 Q And Modular Metal was not?

2 A No.

3 Q And the Lamborn import deal was not included in that?

4 A Correct.

5 Q And let's just -- once again, did you and John have a
6 conversation in which you made it clear that there were
7 three accounts that were not part of the deal?

8 A Yes.

9 Q Let's look at our Exhibit No. 85. This is one of my
10 favorites.

11 A Got it.

12 Q Do you see it?

13 A Yes.

14 Q Look at the bottom. Is this an e-mail that John
15 Gandis forwarded to Andrea?

16 A Yes.

17 Q And what was -- read the e-mail. You can look on the
18 second page, because he's forwarding.

19 A Yeah. It looks like he's forwarding an e-mail from
20 Mark to me, Mark McGarel to me. And then John says, Not
21 that I want to get all weird, but Filmtech is a
22 competitor/supplier to us. Nothing like Pilcher or
23 Inerfil (Transil Wrap). Filmtech is a metalizer and the
24 owner is a friend of Dave's. I think that I know why Dave
25 may have sent this, but maybe not. What if Dave filled

1 this out because he wants to give this guy an opportunity
2 to buy us? If Filmtech has the money, great. If not, I'm
3 afraid that Dave may be showing this guy something that
4 could hurt CCC. Mike Myers was repping Filmtech, at
5 least, that was what Dave told me once. Dave has been
6 missing all day except for this a.m. Maybe he has driven
7 there. Filmtech is in Tennessee.

8 I went to look back at the e-mails to determine if we
9 had ever given Dave the expiration time on the offer. You
10 sent him an e-mail that said January 7. That's Saturday.
11 I think that I told him Friday verbally over the phone. I
12 don't think that anything will be done tomorrow. So I
13 guess I just have to prepare myself for all of the guilt
14 tripping I will get when he misses another deadline.

15 Q Okay. Now -- so John knew about your discussions
16 with McGarel because he was reading your e-mails?

17 A Yes.

18 Q Just as an aside, one of the things that they wanted
19 required was that you purchase the building?

20 A Yes.

21 Q Read this area here, what's Andrea saying to John?

22 A He doesn't have the authority to create a binding
23 non-disclosure between us and a competitor. This is
24 stupid on his part. He hurts us, particularly because a
25 competitor will want the customer but without the burden

1 of our building.

2 Q They wanted to unload the burden of the building on
3 you?

4 A Yes.

5 Q And that was part of the deal?

6 A Yes.

7 THE COURT: What number was that?

8 MR. ARNOLD: That was 85.

9 BY MR. ARNOLD:

10 Q Now, that January 7th date was approaching. Do you
11 remember that?

12 A Yeah.

13 Q And they had been threatening to cut off that pay for
14 several months, weren't they?

15 A Yes.

16 Q I want you to look at Exhibit No. 49.

17 A Yes.

18 Q And this is from Andrea to John while they're
19 threatening you with compensation; right?

20 A Yes.

21 Q And after she tells John we should make certain he
22 signs and returns this note they were going to give you.
23 What does she say right here?

24 A The fact that he really needs the cash is just the
25 motivation we need to ensure that he doesn't spend the

1 next three weeks debating over which option he elects.

2 Q Wow. So they wanted to make sure that you knew the
3 time was ticking; right?

4 A Yes.

5 Q Patience, grasshopper, patience. Do you remember
6 that?

7 A Yes.

8 Q There's a cake in the oven that's baking. Do you
9 remember that?

10 A Yes.

11 Q Did you feel squeezed?

12 A Yes. I felt under a lot of pressure during this
13 period. Tom didn't want to hear --

14 Q Tom didn't start to hear what you had to say about
15 the PO's that have belatedly become an issue. But let's
16 look at their Defendant's Exhibit No. 131.

17 A Yes.

18 Q Now, when you learned they were making this
19 allegation, what did you do? When you learned they were
20 making an allegation that you made purchases to hurt the
21 company, what did you do?

22 A Do you mean after I stopped laughing?

23 Q After you stopped laughing, yeah.

24 A I went back in the CCC books and I printed out every
25 purchase order that had been cut for the two months prior

1 to me leaving. And then I went through all the e-mails
2 and confirmed that every purchase order that had been cut
3 had been sent to the vendor with a copy to me, a copy to
4 John, and a copy to the accounting department.

5 Q And you prepared a spreadsheet?

6 A And I prepared a spreadsheet?

7 Q And I don't have it right now, so I apologize. But
8 can we go through these?

9 A Sure.

10 Q Do you recall --

11 A Yes.

12 Q What happened to the first order?

13 A The first order, we had customers that bought PVDC
14 film. And in the past, we had been buying kind of a
15 surplus product from American Trading. And it was cheap,
16 but it was fraught with potential quality issues. And we
17 really wanted to move away from that.

18 So, right about this time, we had started talking
19 with a company called Futon. Jun Lee, a guy that I had
20 known 10 years, he had a source of A-grade PVC. And we
21 were planning to purchase a container of that. But we
22 needed product to use for orders while we waited on that
23 container to come in.

24 Q Okay.

25 A And that container is one of the next orders.

1 Q Okay. So that's what this relates to?

2 A Yes.

3 Q This purchase went to John Gandis?

4 A Yes.

5 Q It went to accounting?

6 A Yes.

7 Q Did anybody object to paying for this purchase?

8 A No.

9 Q The next page. BPR Plastics.

10 A BPR Plastics. This would have been surplus film for
11 the flex duct market. We had a number of flex duct
12 customers that used 48-gauge polyester. And we had to
13 keep a pretty good stock of that product.

14 Q Yep.

15 A And because of -- you know, flex duct is a fairly low
16 margin business anyway. We had to use the cheapest film
17 we could find when it was available.

18 So we didn't have the luxury of waiting until we got
19 an order and then trying to find film to fill the order.
20 We had to make sure we had inventory in stock to fill the
21 order.

22 Q Do you know how long this stayed on the shelves at
23 CCC?

24 A I know that when I went through all of these purchase
25 orders, most of this product moved anywhere from -- I

1 mean, one of these they started using it the day it came
2 in, and it was consumed almost immediately. But almost
3 all of these products were consumed within 30 to 60 days
4 of it.

5 Q And if they dispute that, they've got access to
6 QuickBooks?

7 A Sure.

8 Q And they can -- they've got access to information.
9 If this information is wrong, they can produce it?

10 A Well, I mean, a classic example is PO 828, which was
11 bought from Torre, metalized VOPP. So this was ordered at
12 the exact width that Packaging Concepts used.

13 Q Yeah.

14 A And I remember because I couldn't find this purchase
15 order in their inventory. Okay. And I thought that was
16 odd.

17 Q Right.

18 A So I just asked Bill, I said, Bill, is there any
19 reason why a purchase order would not show up in the
20 inventory? And he said, Well, if it was drop shipped to a
21 customer, it would maybe not hit the inventory.

22 So I went back in QuickBooks and saw that, in fact,
23 the day that this was ordered, and shipped, and paid for,
24 it shipped to Packaging Concepts and was billed. So this
25 never even hit the plant. It went right to our customer

1 and was billed. But, apparently, we didn't need that.

2 Q And we've got Torre on the next page?

3 A Yes. This would have been film for DEMCO.

4 Q How do you know?

5 A Well -- or Brodart, actually. 142-gauge, F7S and FA6
6 are general purpose films. So this would have been used
7 for, actually, a number of customers. Brodart -- what's
8 the other one I'm thinking of? We had a number of
9 customers use this product.

10 Q Next?

11 A Abbott Packaging. This would have been metalized
12 film that we would have bought for flex duct orders.
13 Again, kind of like the BPR invoice, we had to keep a
14 stock of metalized film. And this is a product that's not
15 available necessarily when you need it. You buy it when
16 it's available.

17 Q What's the next one?

18 A Colan?

19 Q Yeah.

20 A Colan was kind of a new supplier we had just made
21 contact with. And as we were wanting to expand our
22 business and flexible packaging, we needed an A-grade
23 48-guage film. And we had been negotiating some pricing
24 with Colan. And we ordered a container from him.

25 Q And I'm going to save the Court a little time. But

1 if we go through every one of these -- the SKC bill,
2 that's the bill that Bruce Hotmer put together?

3 A Yes.

4 Q He was here to testify about it yesterday?

5 A Yes.

6 Q And John didn't want to pay him a commission on that.
7 Do you remember that?

8 A Yes.

9 Q That e-mail?

10 A I can point out two others here.

11 Q Okay.

12 A PO 844 was cancelled prior to me leaving, by the way.
13 This was film that we -- metalized film was something that
14 we sometimes had a hard time getting enough of. And so if
15 we could buy it already metalized, it was ideal. But,
16 sometimes, we had to buy clear film and send it out to be
17 metalized.

18 So MJW had some clear film, wide web that they wanted
19 to sell at a decent price. So we sent a PO to them. And
20 we were going to have them drop ship it to Roll Back,
21 which is the PO on the next page.

22 Q Okay.

23 A So these purchase orders were cancelled because we,
24 subsequently, found film from Abbott Packaging.

25 Q So all the merchandise, the film purchased with these

1 purchase orders moved off the shelves at CCC; right?

2 A Yes. I mean, I don't know if every single pound, but
3 the majority of it was sold, yeah.

4 Q In 60 days?

5 A Well, most of it within 60 days.

6 Q 90?

7 A Yeah. As a matter of fact, I did an analysis.

8 Because I wanted to see what the trend was prior to me
9 leaving, about that time and after. And the average
10 purchase volume for an eight-month period spanning my
11 departure was about 140 a \$150,000, I think on average.

12 Q Is that per month?

13 A Yeah.

14 Q Okay.

15 A So what you'll, actually, see -- and I've got -- I
16 mean, I've got charts, if you want to see them. But what
17 you'll, actually, see is that after I left, purchases as a
18 percentage of sales, actually, went up. So they're buying
19 film at a higher rate compared to sales after I left than
20 prior to me leaving.

21 Q Well, let's look at that. Let's look at Plaintiff's
22 Exhibit No. 168. This is something received in response
23 to a subpoena. Do you know who JBF RAK is?

24 A Yes.

25 Q And do you recognize the signature on this page?

1 A Yeah. It's John's.

2 Q And tell me what this document shows.

3 A This looks like a report from JBF. It looks like it
4 might be a report from JBF showing purchase orders or
5 invoices that have been issued to them from CCC.

6 Q And we've got one, two, three, four in April 2012;
7 right?

8 A Oh, yes.

9 Q How much was the first order that John placed?

10 A 51,000.

11 Q What was the second order that he placed?

12 A 54,000.

13 Q And is this all part of the inventory reduction plan?

14 A I guess.

15 Q What about the next order he placed?

16 A 46,000.

17 Q What about the next order he placed?

18 A 47,000.

19 Q Next order?

20 A 57,000.

21 Q He's about to set a record. What's the next order?

22 A 83,000.

23 Q What's the next order?

24 A 49,000.

25 Q And the next order?

1 A 49,000.

2 Q And all within a span of how many months?

3 A Three months.

4 Q And you're accused of violating this sacred inventory
5 reduction plan; right?

6 A Yes.

7 Q Do you think John Gandis took the belt from you?

8 A Yeah.

9 Q And you were asked whether or not you had received
10 more money than John Gandis?

11 A Yes.

12 Q If you don't include rent and interest?

13 A And \$30,000 of assets that were given to him.

14 Q Yes. Is that true that you received more money from
15 him if you exclude those three things?

16 A If you take those out, cash, yeah, cash payments.

17 Q One last thing. Tom asked you if -- and he showed
18 you these October and November e-mails. And he said,
19 Weren't you still receiving distributions during this
20 time. And your answer was, Yes.

21 But that's not true, is it? You weren't receiving
22 distributions?

23 A No. I was receiving loans.

24 Q Loans.

25 A Yeah.

1 MR. ARNOLD: I don't have anything else.

2 MR. STEPHENSON: Nothing further.

3 THE COURT: All right. Thank you, sir.

4 MR. ARNOLD: Your Honor, I think we have agreed --
5 first of all, I would like to make sure that the Bradshaw
6 report is part of the evidence in this case. I think we
7 agreed to that.

8 THE COURT: Okay.

9 MR. ARNOLD: So just before we rest our case, I would
10 hand this up. And I think this would be a joint exhibit,
11 although they printed it. They can get --

12 MR. CAMPBELL: You can make it a Court's Exhibit as
13 far as we're concerned.

14 MR. ARNOLD: Okay.

15 (WHEREUPON, Court's Exhibit No. 1 was marked for
16 identification and admitted into evidence.)

17 MR. ARNOLD: I have an evaluation expert who is
18 unable to testify today. We've agreed that she can be
19 called out of time. So she will testify tomorrow, or
20 Friday.

21 MR. FARRAR: Subject to my motion.

22 MR. ARNOLD: Subject to his motion.

23 And I believe with that, we rest.

24 MR. WILLIAMS: Can we agree that motions for directed
25 verdicts can be made after your expert?

1 MR. ARNOLD: I'm happy to argue it all whenever we
2 start arguing.

3 THE COURT: That's fine.

4 MR. WILLIAMS: Thank you, Your Honor.

5 MR. FARRAR: Your Honor, we call Del Bradshaw.

6 MR. ARNOLD: Can I take a five-minute break?

7 THE COURT: Yes. Sure. We'll take five minutes.

8 (WHEREUPON, a break was taken.)

9 THE COURT: All right. Yes, sir.

10 THE COURT REPORTER: Raise your right hand and place
11 your left hand on the Bible.

12 WHEREUPON,

13 DEL BRADSHAW,

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

15 DIRECT EXAMINATION

16 BY MR. FARRAR:

17 Q Del, we're going to -- I think everybody in the
18 courtroom knows why you're here. So I'm not going to
19 spend a lot of time going through the background, unless
20 Your Honor requests that.

21 But what I want to do is start at the back and work
22 our way forward. And so if you'll go to your Exhibit No.
23 20, which is --

24 MR. FARRAR: How did we label that, Court's Exhibit
25 No. 1?

1 THE COURT: I think so, yes, sir.

2 MR. FARRAR: We left that up there for him. And,
3 Judge, you're welcome to look at that.

4 BY MR. FARRAR:

5 Q Exhibit No. 20 is a capital account normalization;
6 correct?

7 A That's correct.

8 Q And what this shows is for every year from 2008
9 through 2013, essentially, what the capital accounts were
10 for Wilson, Gandis, and Comeau-Shirley; correct?

11 A Yes.

12 Q And what you did was you made normalization; correct?

13 A Yes.

14 Q And we talked about in your deposition that
15 normalization can fall under several categories; correct?

16 A That is correct.

17 Q And normalization might be something that wouldn't
18 recur every year; correct?

19 A Under the normal definition of normalization, that's
20 correct, yes.

21 Q And normalization, in this instance, could, also,
22 include anything which you deemed appropriate to normalize
23 or smooth out the earnings of a balance sheet to make it
24 consistent; correct?

25 A The normalizations could be additional adjustments

1 that we -- after reviewing the Judge's order, we felt
2 those particular items should be identified for purposes
3 of normalization.

4 Q And, for instance, you made adjustments without
5 making a decision as to whether or not they should or
6 should not have been there. You just took out something
7 that looked like it favored one party over the other?

8 A Yes, in accordance, which we think was with the
9 Judge's order.

10 Q Absolutely. And you're not making a ruling. You're
11 not telling the Judge this is inappropriately in there.
12 You're just saying we're calling your attention to it,
13 taking it out so we can make a consistent opinion --
14 consistent balance sheet; right?

15 A Identified and removed, yes.

16 Q And, for instance, one example would be rent?

17 A Yes.

18 Q You took the rent increase; right?

19 A Yes.

20 Q Just -- the rent went up after Mr. Wilson left;
21 right?

22 A That is correct.

23 Q And they accrued that rent; correct?

24 A I think that, in 2011, the rent was, actually, paid
25 and then accrued after that point.

1 Q Once it became a dispute, to your knowledge?

2 A Yes. It was in dispute.

3 Q And so -- but there's still rent being paid -- the
4 same rent that was paid prior to Mr. Wilson leaving, you
5 didn't take that out; right?

6 A We adjusted the rent back to the amount that was
7 being paid prior to Mr. Wilson leaving. And that was, I
8 believe, \$30,000 per year.

9 Q Okay. And, in doing that, if I turn to the fourth
10 page of your exhibit, No. 20, what you have there at the
11 end of 2013 normalized shows a total equity balance of
12 87,209; correct?

13 A Yes.

14 Q And when you divide that among the participants at
15 that time having normalized or adjusted all the things you
16 took into account, you showed Mr. Gandis with a negative
17 \$52,206 equity balance; correct?

18 A Yes.

19 Q And you show Mr. Wilson with a positive 144,113;
20 correct?

21 A Yes.

22 Q And you show Ms. Comeau-Shirley with a negative
23 4,696; correct?

24 A Yes.

25 Q Now, you normalized and took out payments, salary

1 payments, or payments that they accrued for Mr. Gandis and
2 Ms. Shirley to run the business during 2012, 2013, didn't
3 you?

4 A Yes, we did.

5 Q So nowhere in that number does it account for -- give
6 them credit for keeping the business alive during that
7 time; is that correct?

8 A No. It does not.

9 Q So they didn't take a salary; right?

10 A No. At this moment in time, it was accrued. And,
11 again, part of the Judge's order was to identify those
12 payments. And we treated that as an add back just to see
13 what the earnings or losses of the company would be
14 without the owners compensation.

15 Q And, in fact, to your knowledge, sitting here today,
16 Ms. Comeau-Shirley has not been paid a dime since 2011,
17 has she?

18 A Yes. I believe that's correct.

19 Q And she doesn't have the rent source or anything
20 else, does she?

21 A No.

22 Q And if you look back to this document -- we're
23 probably going to hear some testimony from other experts
24 talking about the proper year to do an evaluation. And
25 this isn't jumping off point, because the Judge is going

1 to have to make the decision to put back what was
2 normalized; correct?

3 A Yes.

4 Q And one of the steps that was in your order to
5 normalize was to take into account any sales on the side;
6 right, something that favored one over the others?

7 A I'm not sure it was worded exactly that way, but I
8 think it was to identify.

9 Q Okay.

10 A If any event, you could. And, of course, we do not
11 have the necessary information to be able to identify.

12 Q So assuming -- and Mr. Arnold won't agree with this
13 assumption. But just assuming that, in fact, Mr. Wilson
14 had sold something during 2007, 2008, 2009, 2010, 2011 to
15 somebody that should have been a CCC sale, you weren't
16 aware of that. So you didn't add that back in or
17 normalize that number; correct?

18 A We did not. And had we become aware of that, I think
19 for our report purposes, we would have identified that for
20 the Court to make that final decision.

21 Q Just to tell him, hey, look at this; right?

22 A Yes.

23 Q And so if I go to 2011 year end, which is on Page 2
24 of 4 of Exhibit No. 20 -- and we can go through this
25 tediously. But maybe I can get there quickly. Those

1 numbers that are identified there with the equity
2 balances, they assume that -- the numbers on the
3 financial -- on QuickBooks at the end of 2011 were correct;
4 is that right?

5 A After our adjustments.

6 Q After your normalization; right?

7 A Yes.

8 Q After your adjustments. But you didn't -- there
9 were, for instance, inventory -- there was an accrual for
10 inventory; right?

11 A Yes.

12 Q For bad inventory; right?

13 A Yes.

14 Q And you took that off, didn't you?

15 A We did.

16 Q As an adjustment to let the Court decide?

17 A We did, yes.

18 Q And you weren't saying it was or wasn't -- in fact,
19 inventory probably wasn't right on the books at the end of
20 2011, was it?

21 A I'm sorry.

22 Q Inventory was not correctly stated at the end of
23 2011, regardless of the adjustment?

24 A On the QuickBooks, it was not, no.

25 Q Okay. And it would be a mistake to use the 2011

1 balance sheet value for inventory, because nobody knew
2 what it really was then; right?

3 A At that moment in time, I do believe no one knew
4 exactly what it was.

5 Q Okay. And so it would be difficult to go back and
6 say, in 2011, here is the value of the company, wouldn't
7 it?

8 A It might be difficult to say. And, again, I think
9 that I covered this in the deposition with regards to that
10 inventory reserve. To be able to test that and, at least,
11 give some opinion on that would require an additional
12 amount of time. And, at this moment, since it was a
13 disputed item, we decided to leave that for the Court to
14 make a decision. We'll be glad to assist if the Court
15 needs us to assist with that particular matter.

16 Q And -- thank you.

17 And so we all understand the accounting of this, I
18 think -- I know you know it. I'm dangerous thinking I
19 know it. I'm not sure how many other people do. But if
20 the inventory number is, actually -- there should be an
21 accrual for bad debt, bad inventory. That's an expense
22 that year; correct?

23 A The way the entry would have been posted --

24 Q Yes.

25 A -- it would have been to decrease inventory and

1 increase cost of sales.

2 Q So it would have decreased the profit and loss in
3 2011, but it, also, would have increased the balance
4 sheet?

5 A That's correct.

6 Q Right. So the company would be worth less; right?

7 A Yes. And it directly affects equity.

8 Q And you talked to Mr. Higgins, who became the
9 warehouse manager, didn't you?

10 A Yes.

11 Q You have a degree of reliability, faith in him;
12 right?

13 A I do.

14 Q He's pretty much a neutral in all of this; right?

15 A Yes, absolutely.

16 Q And he, eventually, got the inventory in shape,
17 didn't he?

18 A He did.

19 Q But it really took a while, didn't it?

20 A From our conversations with him, I think his first
21 few months there was just becoming acclimated to what was
22 occurring. And then spreadsheets he developed manually or
23 maybe continued to develop as he became more comfortable
24 with -- and more knowledgeable with the company. Yes, it
25 took him a while to get a grasp of that.

1 Q And that would, basically, just be the numbers there?

2 That's not saying what's in the QuickBooks; right?

3 A That is -- his inventory accounting is manual.

4 Q So it would have -- somebody would have to take back
5 and translate it to the QuickBooks; correct?

6 A Yes, they would.

7 Q And that wasn't happening regularly to begin with
8 when he was there. He was still trying to get a grip on
9 what was, actually, in the building; right?

10 A Yes. That's correct.

11 Q Now, with one exception -- and let's call it the
12 loading dock sale. Did you see any indicia fraud in the
13 accounting records of CCC?

14 A We did not.

15 Q Okay. And the one exception, the loading dock sale,
16 I want to make sure I understand that. As I understand
17 it, sometime at the end of 2010, there was a large
18 shipment, a large sale recognized and recorded on the
19 books of CCC that was reversed in 2011; is that correct?

20 A Yes.

21 Q And, as you dug into that, what you, essentially,
22 found was there was really no sale. That was an attempt
23 to inflate the books and records for 2010?

24 A For 2010 -- an attempt to decrease the profit for
25 2010.

1 Q And do you know why that happened?

2 A No.

3 Q And I think you had told me when we were talking
4 earlier there's no material discrepancies in the inventory
5 results. When you get to 2013, everything is shaken out.
6 It's just a matter of timing; right?

7 A What we did is that we took the physical inventories
8 for each of the years, 2010, 2011, 2012, and 2013. These
9 were the actual counts of the inventory and the value of
10 the inventory. And we adjusted our financials -- or their
11 financials, the current QuickBooks as we call it, to the
12 actual physical inventory that's at the end of each year.

13 Q And you saw the timing flow for certain years. But
14 when you finished in the year of 2013, you're fairly
15 comfortable within a material range that the inventory is
16 correct?

17 A Based upon the physical counts, yes. We were not
18 there to inspect the physical counts except for 2013.

19 Q But we talk about Mr. Higgins was doing those; right?

20 A Yes.

21 Q And so you're comfortable with him?

22 A And we saw firsthand as to how he, actually,
23 performed his duties. And he was very meticulous at the
24 counts and would even have employees to count twice and,
25 perhaps, three times in the event that there was a

1 discrepancy.

2 Q And I'm not trying to walk you out to a test
3 function. I know that's what you were concerned about.
4 Basically, as a result of seeing him do that and what you
5 did with your inventory accounting, you're comfortable
6 there would be no significant reason to go back and do any
7 further breakdown of the inventory counting; is that
8 correct, as far as the values in 2013?

9 A I'm not sure that it would accomplish anything more
10 than what we have at this moment in time.

11 Q And that, also, includes there being -- and I don't
12 want to get -- but there would be a lower cost of market
13 you could go to. But there really is -- that would be --
14 in cost benefit matters, it wouldn't help any, would it?

15 A For purposes of the inventory reserve, a test cost to
16 market would be fairly tedious. It results in looking at
17 each individual inventory item and determining a ceiling
18 or a floor for those items, hovering around a replacement
19 cost value. So I do not at this moment in time -- due to
20 the amount of time it would take, we decided not to do
21 that.

22 Q Now, looking at a few of the normalizations for the
23 adjustments. I think that we decided that the salaries
24 and wages, which were accrued but not paid, for running
25 the business in 2012, 2013 -- 2012 looks like about a

1 hundred -- and this is on Exhibit No. 38; correct? 38 is
2 a kind of busy schedule?

3 A It is.

4 Q It took me a while to figure out where everything
5 was. But when you look at that, the salaries in 2012 that
6 you took out had been accrued, but not paid; right?

7 A 2012?

8 Q Yes.

9 A It was accrued, not paid.

10 Q And that looks to be 104,250; correct?

11 A That's correct.

12 Q So that's something that John and Andrea are saying
13 we're entitled to. We haven't paid ourselves yet. But
14 we've been running the business while Dave has been
15 competing with us and so we think we ought to get paid;
16 correct?

17 A That was an accrual. We did not try to justify that
18 number. We just determined it was an accrual to the
19 owners. And we identified that as a point in my report.

20 Q And you identified it as such. What I said, you're
21 not agreeing with me, you're just saying that's what it's
22 on there for; right?

23 A That's correct.

24 Q And that number in 2013 went to 108,000; right?

25 A Yes.

1 Q So, basically, John and Andrea recorded 108,000 -- or
2 what they thought they were entitled to for running the
3 business that year; right?

4 A Yes.

5 Q Okay. Now, one of the things -- and I don't want to
6 necessarily pull it out. But you're aware one of the
7 issues is the December 31st, 2011, balance sheet that was
8 provided to Mr. Wilson, aren't you?

9 A I believe that was December the 27th.

10 Q Thank you.

11 I got that wrong.

12 Thank you. It's the precision of accounting that
13 made me leave the industry.

14 And I asked this question, and I think I can get to
15 the heart of it real quickly. It was open and obvious
16 that Andrea had recorded an accrual for what she thought
17 she was entitled to; right?

18 A Yes.

19 Q It wasn't hidden in there?

20 A No.

21 Q And, along those lines, I think I asked you this.
22 Over the course of the time that you saw what Andrea had
23 done in 2008, 2009, through 2013, would you have done that
24 amount of work that she did for just the 10 percent
25 interest in CCC?

1 A Probably not.

2 Q Now, I don't know that I follow this. In your
3 deposition, you said something to the effect -- I was
4 asking you about attorney's fees, CCC paying its
5 attorney's fees, and whether that was appropriate or not.
6 You took those out; right?

7 A Yes.

8 Q And you said they're probably tax deductible to CCC;
9 correct?

10 A , Any of the fees that would be related to CCC as being
11 a Defendant in this particular lawsuit, yes.

12 Q Okay. And so to the extent you need to, you're
13 leaving it to the Court to say whether the attorney's fees
14 payments are correctly included; right?

15 A Yes.

16 Q You're leaving it to the Judge to say whether or not
17 the rent increase is correctly recorded; right?

18 A Yes.

19 Q You're leaving it to -- I haven't covered this one.
20 Mr. Gandis put in money; correct?

21 A Yes.

22 Q I forget the number, 250,000, something around that?

23 A There were loans advanced even prior to the end of
24 2011 and repaid. And then after 2011, there was
25 additional loans.

1 Q And you took the adjustment of that and moved it --
2 you didn't take it out, but you moved it from a loan
3 balance CCC owed to being an equity infusion; right?

4 A No.

5 Q What did you do with it?

6 A No. It's still treated as a loan.

7 Q Oh, I'm sorry. You took the interest off, the
8 accrued interest?

9 A The accrued interest, yes.

10 MR. FARRAR: Okay. I'm sorry.

11 Thank you.

12 Your Honor, I think the parties would agree that this
13 work was done between Mr. Tiffany and Mr. Bradshaw. And
14 if he needs to refer to Mr. Tiffany before we go any
15 further --

16 MR. ARNOLD: He probably should be sworn, but other
17 than that.

18 THE WITNESS: I believe that the interest was removed
19 for any accrual relating to an owner.

20 BY MR. FARRAR:

21 Q Either way?

22 A Yeah.

23 Q That was going to be my next question. They
24 recognize the loan of 130,000 approximately that
25 Mr. Wilson owed CCC; correct?

1 A Yes.

2 Q And they were accruing interest that he should have
3 paid on that?

4 A Yes.

5 Q According to them; correct?

6 A Yes.

7 Q And you took that out, too?

8 A I removed that.

9 Q All right. Now, both of those removals have the
10 impact -- I'm not saying they're wrong or right. That's
11 what the Judge said. But the impact of removing or
12 adjusting both of those numbers is to increase the book
13 value of the company; right?

14 A It would increase the equity, yes.

15 Q And make Mr. Wilson's share bigger; right? Anybody's
16 share?

17 A Increase the earnings or decrease the loss, but it
18 would increase the equity, yes.

19 Q And those are two more things you're leaving the
20 Court to decide, whether or not the loan by Mr. Gandis is
21 entitled to interest, or whether it's not, and whether or
22 not the loan that Mr. Wilson has to the company should pay
23 interest or not; correct?

24 A That's correct.

25 Q I think we can do this fairly quickly. But you

1 looked pretty hard at Zoi, and whether or not Zoi was
2 probably kind of wrapped into CCC, didn't you?

3 A Yes.

4 Q And it was, wasn't it?

5 A Yes.

6 Q You're not at all uncomfortable about the fact that
7 anything from Zoi was outside of CCC?

8 A Absent transactions outside of Zoi of which we -- Zoi
9 that we did not see. But, yes, we're comfortable that all
10 the activity that went through the bank account for Zoi
11 has now been consolidated into CCC. There was some minor
12 adjustments that we have that's noted in our report. But
13 we made those adjustments to reconcile.

14 Q Those weren't material?

15 A No.

16 Q Okay. And you're not here, nor will you testify, as
17 to the value of CCC, are you?

18 A No.

19 Q Okay. You never saw anything in any of the records
20 that called Andrea Comeau-Shirley the chief financial
21 officer, did you?

22 A Directly, no, I did not.

23 Q And since you were deposed, have you had any
24 discussions with anybody, particularly with any machine
25 appraisers as to whether or not there's a concern about a

1 going opinion of CCC?

2 A No, I have not.

3 Q There could be a going concern opinion; is that
4 correct?

5 A If you were looking at those deeper.

6 Q Let's frame going concern. Is that in the
7 attestation function?

8 A Well --

9 Q I'm trying not to get you in an attestation role, so.

10 A But in any event that a financial statement were
11 issued with the losses that they've incurred since 2011
12 with maybe continuing losses through now, yes, there would
13 potentially be a going concern.

14 Q And a going concern is without cash infusion from an
15 outside source, the company might not last for a year; is
16 that correct?

17 A For one year, yes. It is, typically, judged on an
18 annual basis, the date that you issued the financial.

19 Q And so I don't put you in -- tip you over to that
20 side of the equation -- because that's a distinctly
21 different side of what you did; correct?

22 A Distinctly different, yes.

23 Q So I don't move you on that side of the equation --
24 if a reviewer of the financial statement in 2011 had
25 seen -- you had seen an audited financial statement in 2011

1 for CCC that had a going concern opinion, knowing what you
2 know today, would you have been surprised?

3 A The difficulties -- there's difficulties with issuing
4 going concerns. The company was profitable for 2008,
5 2009, 2010. A substantial loss in 2011. Knowing that we
6 had some market issues, we may have had a very tough time
7 of deciding whether or not to issue a going concern. And
8 more than likely, it would not have been a going concern
9 at that moment in time.

10 Q But it could have been trending that way?

11 A It could be trending.

12 Q I think you told me Ms. Shirley is a very competent
13 tax accountant; is that correct?

14 A Yes. I believe she is.

15 Q And you, also, told me, I believe, Mr. Gandis had
16 told you -- Mr. Gandis had told you that Andrea was -- he
17 had discussed Andrea being paid for services, too, hadn't
18 he?

19 A I believe that that was a disputed issue when we
20 talked with -- excuse me, Mr. Gandis?

21 Q Yes, I'm sorry, Mr. Gandis. He told you that; right,
22 not Mr. Wilson?

23 A Yeah. I believe that was part of the conversation,
24 yes, that there was an agreement with regards to that,
25 which was disputed by Mr. Wilson.

1 Q And so the record is clear, your report, which is
2 Court's Exhibit No. 1, that's not all you did; correct? I
3 mean, you've got mounds and mounds of paper, and computer
4 data, and things like that; right?

5 A Yes. We have hundreds of pages, and worksheets, and
6 papers.

7 Q And pursuant with your professional obligations, you
8 planned what you were going to do before you did it;
9 right? You got instructions on what to proceed with, and
10 you planned it; correct?

11 A Yes.

12 Q And you left a trail; correct?

13 A Yes.

14 Q And we can go back and see what you're doing at all
15 times; correct?

16 A Yes.

17 Q And you didn't destroy any of the documents you were
18 working on; correct?

19 A No, sir.

20 Q And that's an AICPA creed; right?

21 A It's, certainly, part of our professional conduct.

22 Q And for everybody; right?

23 A Yes.

24 MR. FARRAR: Just one minute, please.

25 (Pause.)

1 MR. FARRAR: Your Honor, that's all I have.

2 Thank you very much, Mr. Bradshaw.

3 CROSS-EXAMINATION

4 BY MR. ARNOLD:

5 Q Good morning -- good afternoon.

6 When you accepted this assignment in October/November
7 of 2013, did you anticipate you would not be done until
8 August 2014?

9 A No, sir.

10 Q Did you expect that the fees resulting from this
11 examination would hit six figures?

12 A No.

13 Q And I believe you've stated that most of the
14 disputes, in your opinion, arise -- in this case about the
15 financials arise from the fact that the tax returns and
16 financial statements did not match?

17 A That was some of the misunderstanding, yes.

18 Q Right. And because the financials were -- in this
19 case, QuickBooks, was not locked down, that was part of
20 the problem?

21 A In our opinion, yes, that was part of the problem.

22 Q And what -- tell me what a CPA is supposed to do
23 after reconciling the tax return to QuickBooks?

24 A At the end of the process of preparing the tax
25 returns, any type of adjustment or reclassification would

1 be posted to the general ledger. And a permanent copy of
2 that general ledger -- this being the QuickBooks -- would
3 have been locked down, would have been stored as a
4 permanent record for tax returns and, actually, financial
5 statements as of that period ended.

6 Q Okay. And, again, in this case, the tax returns and
7 the financials didn't match?

8 A No. They did not.

9 Q If you had been doing the QuickBooks and the tax
10 returns for CCC, would you have locked down the QuickBooks
11 when you got through with the tax reconciliations?

12 A If I had been doing it, yes, I would have. If we
13 were engaged as a third-party accountant, we would have
14 provided the information to their accounting department to
15 record their entries and lock down a permanent
16 accountant's copy of the QuickBooks.

17 Q Why do you want a permanent copy?

18 A You -- for various reasons, but none more importantly
19 than the Internal Revenue Service where you are, actually,
20 matching the tax return to what you did with your
21 financial statements.

22 And, secondly, if you have various types of items
23 that may be deductible for accounting purposes that's not
24 deductible for income tax purposes, you want a record of
25 those particular interests. And, in this particular case,

1 as you can see in our reconciliation as part of our
2 report, that was not done.

3 Q Why would somebody -- why would a highly competent
4 CPA not lock down the books?

5 A I can't fully answer that question. But I believe
6 that Ms. Shirley believed that her accountant's working
7 papers were sufficient to justify any type of IRS audit,
8 or any other type of inquiry. The only problem was you
9 did not have a set of financial statements that matched.

10 Q The only problem, that's kind of -- again, that was
11 kind of a big problem?

12 A In our overview of this, yes. There was a lot of
13 confusion with regards to the tax returns and the
14 financial statement.

15 Q And I understand what Ms. Shirley told you. And did
16 you rely a whole lot on what Ms. Shirley told you in the
17 absence of documentation?

18 A We interviewed, obviously, all the parties. And we
19 can rely on certain things where the parties have agreed.

20 Q Right.

21 A And, no, we didn't rely fully on everything that we
22 were told.

23 Q Okay. Did you rely on her working papers -- her work
24 papers?

25 A For reconciling to QuickBooks, yes, we did because we

1 got close.

2 Q Okay. But if there -- if the Judge had heard
3 evidence of ulterior motives related to the manner in
4 which the accounting was handled, are there parts of your
5 report that he might question more than others?

6 A If there were -- you know, there was thousands of
7 transactions. And, obviously, we can't look at every
8 single transaction. If there were a transaction we can
9 look at, then perhaps. If there were transactions outside
10 of the company that we would not have had knowledge of --

11 Q Right. Okay. Now, if you don't lock down
12 QuickBooks, that means you can make changes in 2010, in
13 2011, after the taxes are filed; correct? You can always
14 make changes if it's not locked down?

15 A We believe that's what happened.

16 Q That is what's happened, isn't it?

17 A And you saw in our reconciliation that we still had
18 differences, even after finding most of the reconciling
19 items. And we believe that those differences occurred as
20 a result of just transactions that did occur in the prior
21 period after the tax return that -- after the date in
22 which Ms. Shirley used the QuickBooks to prepare the tax
23 return. And if an entry were made in that previous
24 period, no one knew until such time as you attempted to
25 reconcile.

1 Q So, again, without a lock down, the financials are
2 always -- can always evolve?

3 A Yes, it can.

4 Q And if you had someone, hypothetically, wanting to
5 perpetrate a fraud financial -- with the financial
6 records, would it be easier without a lock down version of
7 QuickBooks than with a lock down version of QuickBooks?

8 A I'm not sure I can answer that question. Although we
9 did have those unreconciled items in our report. So if it
10 had been more significant, maybe we would have looked
11 further, and maybe we would have been able to find the
12 precise transaction that made that up. But it would be
13 easier in which to identify if we had a lock down version
14 of the QuickBooks.

15 Q Okay. So if you had a lock down version and there
16 was fraud, it would be easier to find it?

17 A If there were fraud or some sort of intent, I believe
18 that it would be traceable.

19 Q And fraud, I think the way you used the term in your
20 deposition was just the intent to conceal?

21 A I assume that I made that statement.

22 Q Is that pretty close to your view?

23 A Intent to deceive or conceal, yes.

24 Q Right. And the whole idea of financial records
25 would -- actually, I think one of the things you testified

1 to in your deposition was that small business owners want
2 accurate financials; right?

3 A We believe that, yes.

4 Q That's how they make business decisions?

5 A Yes.

6 Q And they want accurate financials, whether it regards
7 cash, or inventory, or whatever?

8 A Yes.

9 Q And, in this case, you found the interim financials
10 to be wholly unreliable?

11 A Yes.

12 Q So, essentially, whoever was driving the CCC bus was
13 driving blind from a financial standpoint?

14 A With the way the interim financial statements,
15 actually, ended up in 2011, they were not reliable.

16 Q Fair enough.

17 A Yeah.

18 Q You don't want to talk about driving the bus. I
19 think it's your belief that Ms. Shirley, as an owner and
20 CPA, was held to a higher standard than would a regular
21 bookkeeper employee; correct?

22 A Yes. And just to look at it from Mr. Wilson's
23 standpoint and Mr. Gandis' standpoint, they're lay people
24 when it comes to accounting. So I think part of the deal
25 as having an owner and a CPA, they're looking for a higher

1 level of service.

2 Q Sure. And you were asked would you have done all of
3 this work for \$86,000, whatever she's received, or 10
4 percent owner?

5 A 10 percent owner.

6 Q And you said probably not. But if you had agreed to
7 do all the accounting for a 10 percent interest, you would
8 have fulfilled your obligation; right?

9 A I understand that's a disputed item.

10 Q But you would have honored your obligation if you had
11 made one?

12 A If my agreement was that I would become a 10 percent
13 owner and I'd take care of the accounting, yeah, that's
14 what I would do.

15 Q But you probably wouldn't have done that, would you?

16 A I think I would have probably had had an
17 understanding in writing.

18 Q Okay. And you, also, testified that you probably
19 would have engaged a third-party accountant to do this
20 work?

21 A Based on my role and based upon my understanding with
22 my partners, it's entirely possible that I would have had
23 a third-party accounting firm.

24 Q Because there can be conflicts or appearances of
25 conflict?

1 A A fine line.

2 Q There's a fine line, isn't there? I think you
3 testified to that two or three times in your deposition
4 about a fine line between being an owner and a CPA.

5 Now, once again, you were asked whether or not you
6 would have done this work for a 10 percent membership.
7 Let's look at it another way. Based on the work you saw,
8 would you pay a hundred thousand dollars for the
9 accounting work done in this case?

10 A We know that there was involvement with regards to
11 Ms. Shirley and the accounting. From, at least, our
12 observations and review of certain things that were done,
13 and accruals, and the tax returns, obviously, that's a
14 fair amount of work, it appears to us, that was done.

15 Q Right. And she received 10 percent ownership?

16 A At least, from an oversight standpoint as well as a
17 physical standpoint of preparing tax returns.

18 Q Do you know how much time she spent writing e-mails?

19 A No, sir.

20 Q Should she be compensated for writing e-mails to John
21 Gandis advising him about exit strategies with Dave
22 Wilson? Would that be part of what she should
23 legitimately be able to charge for?

24 A I'm not sure I can answer that question.

25 Q Okay. I just wanted to ask it, really.

1 And in companies that you are personally -- because
2 you have a -- have side businesses.

3 A Yes.

4 Q You personally make sure that the financial records
5 are locked down in those businesses?

6 A Yes, sir, I do.

7 Q Okay. There was some normalizations that you made.
8 The attorney's fees were one; right?

9 A Yes.

10 Q And if those attorney's fees are rightfully the
11 attorney's fees of CCC, then those should be, I guess,
12 added back after your normalization?

13 A If they're determined to be CCC fees, in our opinion,
14 that's a deductible item with the company defending
15 itself, and rightfully should be a deductible item.

16 Q Now, in terms of if the legal fees incurred by CCC
17 were, actually, for and in furtherance of the individual
18 objectives of the managing member and his cohort, would
19 that be a deductible on behalf of CCC, or would that be
20 income to the members pursuing that litigation?

21 A If it's directly related to one of the members, I
22 believe it should be outside the parameters of CCC.

23 Q Okay. Now, another thing you normalized, you found a
24 pretty sweet deal that Cliff Gandis got in this case,
25 didn't you?

- 1 A Referred to as the Zoi --
- 2 Q The Zoi loan.
- 3 A Yes.
- 4 Q Okay. And exorbitant, I think, is the way you
- 5 described the interest rate?
- 6 A Yes, I did.
- 7 Q Yes. And he loaned Zoi a hundred and 30 grand?
- 8 A I believe that's correct.
- 9 Q And that loan was for what, a three or four-month
- 10 period?
- 11 A A short period of time.
- 12 Q And he received how much?
- 13 A Approximately 33,000.
- 14 Q Did you calculate the return on that? I can't do the
- 15 math. It would be the stock market, wouldn't it?
- 16 A It's phenomenal.
- 17 Q Phenomenal.
- 18 A And these are the types of situations business
- 19 appraisers run into from time to time where it would be a
- 20 normalizing type item. And this is -- we're not saying
- 21 that it was not legitimate. It may be deductible simply
- 22 because of the fact of the financial position that the
- 23 company was in.
- 24 Q Sure.
- 25 A That's the only money they could secure at the time.

1 But it was to a related party.

2 Q Right. Rent?

3 A Rent.

4 Q Let me ask you this. Have you ever went to the
5 landlord of one of your clients and said, I don't think
6 you're charging my client enough rent? Have you ever done
7 that?

8 A I don't recall.

9 Q Wouldn't that be pretty unusual?

10 A In my particular world, yes, it would be unusual.

11 Q Yeah. And, as a CPA, you have certain fiduciary
12 obligations to your client; right?

13 A Yes.

14 Q And going to the landlord to tell them that they
15 should be charging your client more rent would be a breach
16 of that fiduciary duty. Don't you believe so?

17 A I don't think that I would do that, no.

18 Q But would it be a breach of your fiduciary duty?

19 A It would probably be something that I wouldn't be
20 very comfortable doing.

21 Q Okay. Now -- and if there is going to be an
22 agreement for rent between related parties, should there
23 be an agreement?

24 A Mr. Arnold, there should be. I've been doing this
25 work for 43 years now. And a lot of the small businesses

1 sometimes don't attend to detail. And this may be one of
2 those instances where, yes, an agreement should have been
3 prepared, regardless of whether it's related parties, but
4 it wasn't. But we find that very often in most small
5 businesses.

6 Q Let's look at your report. Do you have that in front
7 of you?

8 A Yes.

9 Q Let's look at Exhibit No. 29. Now, in 2011, rent was
10 raised from \$2,500 to \$6,000 for CCC; is that correct?

11 A In 2011?

12 Q I'm sorry. 2012. /

13 A 2012, yes.

14 Q \$72,000 in rent?

15 A Yes.

16 Q Now, what I'm really interested in, though, is at the
17 bottom of Exhibit No. 29. Now, let's look at 2010. You
18 have a little notation at the very bottom. Do you see
19 that? It's pretty small.

20 A Yes.

21 Q Tell me what -- tell us all what this little
22 calculation you've done here --

23 A Summarizing the amounts that was charged into rent in
24 2010.

25 Q Okay. What is this McGee Heating and Air?

1 A That would have been some improvements to the
2 building.

3 Q Do you know whether or not that was agreed upon by
4 the parties?

5 A I do not.

6 Q Would expensing an item as rent without disclosing
7 that to a member qualify as an intent to conceal an
8 increase in rent?

9 A Well, it's disclosed in the QuickBooks. And, I mean,
10 it's very easily accessible as the amount. And with it
11 being included in rent -- and I think Mr. Gandis,
12 obviously -- one of his companies -- is the owner of the
13 building that would have been included, obviously, in his
14 tax return as well.

15 Q Well, or the landlord, M-Tech?

16 A Yes.

17 Q But how would Dave learn about that?

18 A This was prior to 2011. My assumption would be at
19 this moment in time, because we do not know, is that
20 Mr. Wilson was aware of it.

21 Q Okay. Let's look at -- on the back page of -- this
22 is your last page, Page 404.

23 A Yes.

24 Q We've got some more. We've got Lowe's, Home Depot,
25 hardware store, office remodel?

1 A Yes.

2 Q Are these all items that were once -- and we've got
3 the air conditioner here again. We've got another air
4 conditioner it looks like. \$11,000, is that what that is?

5 A Yes.

6 Q And these are items that had previously been carried
7 on the books of CCC that were removed and expensed as
8 rent?

9 A Yes.

10 Q That doesn't seem dishonest to you if one of the
11 members doesn't know that's taking place?

12 A Well, we don't know that they didn't know.

13 Q Okay. But if they didn't know, that's dishonest?

14 A If they didn't discuss or didn't know how this was
15 being treated, that could be a problem.

16 Q That could be a problem. Okay. I'll take that. And
17 you took, I believe, the increased rent -- the rent
18 increased to \$72,000 in 2012. And you took that excess of
19 2,500. And what did you do with it?

20 A The excess over 2,500?

21 Q Yes.

22 A That was removed from the expense side.

23 Q Yep.

24 A Okay. And it was charged against Mr. Gandis' capital
25 account.

1 Q Okay.

2 A No effect on the other two partners.

3 Q I won't be much longer.

4 Let me show you what's been marked as Plaintiff's
5 Exhibit No. 163. This is the 12/27/2011 balance sheet.
6 Now, in your normalized balance sheet, which is I believe
7 Exhibit No. 38 --

8 A Yes.

9 Q -- you removed reserve for tax distributions; is that
10 correct?

11 A It was never on the QuickBooks.

12 Q It's wasn't on the QuickBooks?

13 A No.

14 Q How did it end up on this?

15 A Well, we believe that this was -- originally was the
16 QuickBooks, perhaps, downloaded to an Excel spreadsheet
17 and this particular balance sheet was prepared.

18 Q Okay. So this reserve for tax distributions was
19 never in QuickBooks?

20 A Not to our knowledge, no.

21 Q But a separate document was created and this was
22 added?

23 A Yes.

24 Q Interesting. So that resulted in a reduction in the
25 value of the company if you were valuing it based on this

1 pro forma?

2 A It would reduce equity, yes.

3 Q Okay. Now, the inventory reserve, you really don't
4 have an opinion about whether or not this was reasonable
5 or not, this \$101,000 reserve. Because it would take more
6 time and money to test that?

7 A Yes.

8 Q But isn't it true that there was a lot of inventory
9 that was removed by Ms. Shirley during the fall and into
10 December of 2011?

11 A There was.

12 Q Okay. And so there was an attempt already to take
13 care of whatever inventory problems there had been?

14 A Yes.

15 Q Okay. And whether they were -- they did it all or
16 not, you really don't have a firm opinion on that?

17 A Well, my opinion is, obviously, in the report.
18 Because we believe what those particular transactions were
19 was to true up the inventory.

20 Q Okay.

21 A And based on our findings of the lack of accounting
22 for waste, it's the -- the adjustments were reasonable in
23 our opinion.

24 Q But waste -- what's the difference between waste and
25 scrap?

1 A Well, scrap could be a combination of inventory
2 purchased for resale. You may buy something for \$0.30 a
3 pound and sell its for \$0.50 a pound. Or you could have
4 something in your warehouse that's, perhaps, not the best
5 of quality that could be sold as scrap, or then -- then
6 waste is, actually, a byproduct of your manufacturing
7 process.

8 Q Now, that's over my pay grade. Okay. So we're just
9 going to move on to preference on units. But, again, the
10 bottom line is you'd have to do more testing to really
11 drill down on that inventory number?

12 A To determine the accuracy of the \$101,000, yes.

13 Q So you just removed it?

14 A Yes.

15 Q Now, preference on units?

16 A Yes.

17 Q Ms. Shirley told you that there was an agreement
18 between the parties to pay her an extra hundred thousand
19 dollars?

20 A I believe that was part of our belief, yes.

21 Q Did she tell -- and when I say the parties, that
22 means an agreement between she, John Gandis, and Dave
23 Wilson?

24 A It was my understanding that there had been a
25 discussion as a result of the additional work that was

1 being done by Ms. Shirley that there would be additional
2 fees over and above her 10 percent interest.

3 Q Okay. And so that was her representation to you?

4 A Yes.

5 Q Did -- what did John Gandis tell you about the
6 hundred thousand dollars?

7 A This is an interview that probably was between my
8 partner, Mr. Tiffany, and I that we had over the course of
9 the engagement with Mr. Gandis. And I don't,
10 specifically, remember exactly the conversation that I had
11 with that --

12 Q Hold on. There's a lot of exhibits. 19, is that
13 her -- yeah: Exhibit No. 19 is --

14 MR. STEPHENSON: Which -- 19?

15 MR. ARNOLD: I'm sorry. His report, my problem. His
16 report, his Exhibit No. 19 attached to his report.

17 BY MR. ARNOLD:

18 Q And that is an invoice from Namaste Financial
19 Services; correct?

20 A Yes.

21 Q And do you recall when Andrea Comeau-Shirley told --
22 the period of time she told you that promise was made to
23 her that she would get an extra hundred grand?

24 A Well, the invoice states from 2008 to 2011.

25 Q But if we have an e-mail where she represented that

1 promise was made to her in 2009 or 2010, how would that
2 legitimately be for periods of time before that?

3 A It would depend on the agreement of the parties.

4 Q Okay. Now, she, also, had \$5,000 individual
5 invoices; isn't that right?

6 A Yes.

7 Q And --

8 MR. ARNOLD: Let me mark this as Plaintiff's Exhibit
9 No. 178.

10 (WHEREUPON, Plaintiff's Exhibit No. 178 was marked for
11 identification only.)

12 By MR. ARNOLD:

13 Q I show you Plaintiff's Exhibit No. 178. Do you
14 recognize this document?

15 A We've seen this detail in the accounting records of
16 CCC.

17 Q And this is somebody booking 50 grand in accrued
18 expenses for accounting?

19 A Yes.

20 Q And the first invoice is dated 1/31/2012?

21 A Yes.

22 Q When was that entered?

23 A September 12th.

24 Q And then the one for February, when was that entered?

25 A September 12th.

1 Q I mean, actually, 13 seconds later?

2 A Right.

3 Q And we could go through this. But every few seconds,
4 somebody was entering backdated invoices into QuickBooks
5 creating an additional obligation of \$50,000 to
6 Ms. Shirley?

7 A Yes. And it's, again, based on an accrual
8 accounting. It's not necessarily when it's entered, it's
9 when the services had been incurred.

10 Q That's right.

11 A And, in this particular case, the Namaste services
12 were being incurred on a monthly basis.

13 Q \$5,000 a month. How much work is that?

14 A In our world, that's a fair amount of work.

15 Q And she's got her own accounting practice, doesn't
16 she?

17 A That is my understanding, yes.

18 Q I mean, CCC is not her only customer or client;
19 right?

20 A That's my understanding.

21 Q Did Ms. Shirley, also, tell you that Zoi was a
22 wholly-owned subsidiary of CCC?

23 A Yes.

24 Q Did you see articles of organization that identified
25 CCC as the organizer for Zoi?

1 A We visited the website in Georgia.

2 Q Yeah.

3 A Where the articles of organization would have been
4 found.

5 Q Right.

6 A And it did list CCC as the owner.

7 Q Let me show you what's been -- let's see, where's
8 the -- one second -- Zoi articles of organization. 139.

9 Is this what it looked like?

10 A Yes.

11 Q Okay. Now, does this contain reference to CCC?

12 A It does not. It's just showing the organizer.

13 Q So the ones that are up there now are different than
14 the ones I just showed you that showed CCC as the -- or
15 the member?

16 A I believe that is correct.

17 Q Finally, and I hate to end on a -- such a dull topic.
18 But your normalizations relied, again, on the financial
19 records of CCC; correct?

20 A Yes.

21 Q And so you just took the value of the equipment that
22 was on the balance sheet?

23 A Yes.

24 Q And if a qualified appraiser valued those assets at
25 higher -- a higher value, would that be appropriate to use

1 in valuing CCC as an ongoing concern in 2011?

2 MR. FARRAR: Your Honor, I object. He's already said
3 he's not here to value.

4 MR. ARNOLD: I'm not asking him to value it. I'm
5 just asking him whether or not that would be something --

6 MR. FARRAR: That's an evaluation service you're
7 asking him.

8 MR. ARNOLD: Well, let --

9 THE COURT: Rephrase.

10 BY MR. ARNOLD:

11 Q You've got a normalized balance sheet, and that's
12 Exhibit No. 38?

13 A Yes.

14 Q And you have certain values on there for certain
15 assets?

16 A Yes, sir.

17 Q And equipment is among those assets?

18 A Yes.

19 Q You didn't have an independent appraiser value those
20 assets?

21 A No. In normal accounting terms, they're recorded at
22 historical costs, what they were originally purchased for.

23 Q Okay. But if we were looking to value the company
24 for a sale, then someone might want to have that equipment
25 valued by a qualified appraiser?

1 MR. FARRAR: Your Honor, I'm going to object again.
2 He's still asking valuation opinions. He's not up there
3 as a valuation expert.

4 THE COURT: He's not here as a valuation expert.

5 MR. ARNOLD: Okay.

6 BY MR. ARNOLD:

7 Q It is not fair market value on that?

8 A It is not fair market value, yes.

9 MR. ARNOLD: And I give credit to Steve for that
10 question, and get me out of that. I'll sit down, Your
11 Honor.

12 MR. FARRAR: I just couldn't stand it any more,
13 Judge. I'm sorry.

14 THE COURT: That's very collegial of you.

15 MR. FARRAR: Well, it's not that big of a deal.
16 Because we're going to talk to those people tomorrow.

17 REDIRECT EXAMINATION

18 BY MR. FARRAR:

19 Q Bouncing around on you a lot. Okay. And I
20 apologize. Do you recall what your hourly rate is in this
21 engagement?

22 A Mine is \$300 an hour.

23 Q Okay. So \$5,000 a month, \$300 an hour, how many
24 hours is that, roughly?

25 A (There was no response.)

1 Q 16?

2 A Yeah. It would be about 16.67.

3 Q So that's not a lot of work for you in a month, is
4 it, 16 hours?

5 A It depends on the engagement. But, no, you can have
6 that much time involved. But it wouldn't be necessarily
7 on an ongoing basis, unless you're hired for that
8 particular purpose.

9 Q Right. But Mr. Arnold asked you questions about
10 \$5,000. That's a lot of work. If Ms. Shirley got \$250 an
11 hour, that's 20 hours; right?

12 A Yes.

13 Q That's just the math; right?

14 A Yes.

15 Q Okay. There are no IRS issues here, are there, that
16 you're aware?

17 A To my knowledge, they have not been notified of any
18 type of examination, or any type of correction.

19 Q And when you talk about lock down -- boy, that word
20 was used a lot. When you talk about lock down, you,
21 actually, had archive work papers from Ms. Shirley that
22 you could work off of, didn't you?

23 A We did.

24 Q So the question is not whether or not you can go back
25 and get comfortable with your numbers. You got

1 comfortable with what your report is; right?

2 A We did. And it was fairly extensive work, again,
3 agreeing the work -- the papers to the financial
4 statements as much as we possibly could, which we did, I
5 think, materially.

6 Q But there's no nefarious thing about locking down.
7 We'll talk in a minute about backdating entries. Okay.

8 We'll talk about her 5,000 a month. Did anyone ever
9 tell you in the course of this that she had been given
10 legal advice to put those records on -- to put that charge
11 on the books in order to give notice to the public she
12 took -- had an interest in?

13 A No.

14 Q Okay. In fact, you said where they were
15 unreconcilable issues because you couldn't tell the timing
16 issues of them, you made an entry; is that right?

17 A Yes.

18 Q To normalize it?

19 A Yes.

20 Q And it wasn't material at all, was it?

21 A Overall, no.

22 Q I didn't even ask you anything about it, did I, to
23 begin with?

24 A No.

25 Q Now, going to the issue regarding the capital

1 improvements. Do you remember you got asked about the air
2 conditioner?

3 A Yes.

4 Q CCC is going to pay for that one way or the other,
5 aren't they? They're either going to pay on the amortized
6 basis of the rent; right? It's going to get included
7 somewhere -- if they put it on their books, they're going
8 to amortize it, they're going to expense it; right?

9 A Typically, leasehold improvements would be --
10 depending on the agreement with the landlord, it's either
11 going to be paid by the tenant or it's going to be paid by
12 the landlord. In this particular case, it was paid by the
13 tenant.

14 Q That wasn't that unusual in your experience, was it?

15 A No.

16 Q Now, the \$101,000 inventory accrual, I thought we
17 covered this, but Mr. Arnold confused me. My fault. And
18 you're not saying that the number doesn't belong. You
19 just don't know what amount; right?

20 A That's correct. There could be some. But in the
21 years from 2011 forward, most of that reserve, or bad
22 inventory, or a price reduction, which I believe that
23 Ms. Shirley was attempting to adjust for that price
24 reduction, all of that would have washed out more than
25 likely in 2011 and 2012. Okay.

1 Q Okay. Now, you were asked questions about you -- not
2 charged enough rent -- and I think he's trying to,
3 basically, pick on Ms. Shirley being a CPA. Ms. Shirley
4 is a CPA, but she didn't serve in a distinctly CPA
5 function on much of this stuff, did she? It could have
6 been a bookkeeper?

7 A Well, I think from our observation, again, going back
8 to the fine line, I believe that Mr. Wilson and Mr. Gandis
9 expected a higher level of service with her being admitted
10 as a partner. That's my belief.

11 Q That's yours, isn't it? I've got to find the other
12 one. I've got to find the Court's Exhibit.

13 I'm going to show you a document marked as 179. This
14 is Ms. Shirley talking about limiting the access in
15 QuickBooks to Mr. Wilson. That's not unusual, is it, to
16 have the financial people have access to everything in
17 QuickBooks; right?

18 A It's been my experience the lesser amount of access,
19 the more integrity over the accounting records.

20 Q And you see the response from Mr. Wilson. You can
21 read that to yourself. We don't need to read it in court.
22 And you can read the first three lines of it.

23 That's really what I want to focus on, his reaction
24 to being told that. He doesn't sound particularly
25 enamored with that, does he?

1 A No.

2 Q So going back to not charging enough rent. You were
3 asked if, as a CPA, would you be breaching your fiduciary
4 duties if you told somebody to charge more rent. As the
5 CPA, if you knew what the deal was and one side was doing
6 it and the other one wasn't, wouldn't you feel obligated
7 to say, hey, let's make sure we're doing it right?

8 A I think -- I don't believe I can answer that question
9 fully. I just wouldn't engage in that particular type of
10 advice or correspondence with a tenant and a landlord.

11 Q But if you're an owner and you know the deal is to
12 pay X, wouldn't you agree that's the deal and you'd want
13 the records to reflect that?

14 A Restate that, please.

15 Q If you're an owner, one of the three owners, and you
16 know what the deal is, and it's not being reflected, don't
17 you think you would want to do that?

18 When Mr. Gandis tells Mr. -- when Mr. Wilson tells
19 Mr. Gandis, yes, you're entitled to rent and they take
20 more building, isn't it something, as an accountant,
21 you're relying on -- we have to rely on the accountant on
22 both of the equations, don't we? We have to rely on the
23 accountant to say, well, you're taking more rent -- more
24 space, you need more rent; right.

25 A Well, if there's more space, obviously, more rent

1 would be part of that. This would still be something
2 that -- if there's no agreement, then there would need to be
3 some sort of agreement amongst the parties.

4 MR. FARRAR: Excuse me for just a second, please.

5 (Pause.)

6 MR. FARRAR: That's all.

7 MR. ARNOLD: If I can ask one or two questions here.

8 RE CROSS-EXAMINATION

9 BY MR. ARNOLD:

10 Q You mentioned you saw nothing -- no IRS problems
11 here?

12 A I have not been made aware of any type of examination
13 notices or any corrections.

14 Q When was the last time CCC filed a tax return?

15 A Approximately September of 2012 for 2011.

16 Q Might the IRS be a little concerned if they found
17 that out?

18 A I'm reasonably comfortable someone has been getting
19 notices.

20 MR. ARNOLD: Okay. We'll leave it at that.

21 MR. FARRAR: That's all we have, Your Honor.

22 Thank you, Mr. Bradshaw.

23 EXAMINATION

24 BY THE COURT:

25 Q Mr. Bradshaw, have you been paid?

1 A We have been paid about two-thirds of our -- or half
2 of our last bill that we sent.

3 Q And you were appointed by this Court to do this work;
4 right?

5 A That is correct.

6 Q And the order required the payment to be made on what
7 terms to you?

8 A I believe that date was August. The date of the last
9 bill -- I apologize for not remembering precisely, but it
10 was within 30 days of the last bill that I submitted.

11 Q And has that time expired?

12 A It has expired.

13 Q Would you pay your bill under those conditions?

14 A If I were ordered to pay, yes, I would.

15 Q Who has not paid?

16 A Mr. Wilson.

17 THE COURT: All right. Thank you.

18 FURTHER EXAMINATION

19 BY MR. ARNOLD:

20 Q Mr. Wilson contacted you, did he not?

21 A He did. And we have attempted to call back -- and I
22 understand the trial was going on -- and he has not
23 responded to our phone calls.

24 Q Okay. But he did contact you to make arrangements?

25 A He did.

1 MR. FARRAR: Your Honor, we ask that Mr. Bradshaw be
2 excused.

3 THE COURT: All right. Thank you, sir.

4 MR. FARRAR: Do you want to take the next witness, or
5 a lunch break?

6 THE COURT: We'll take a lunch break and resume at
7 2:15.

8 Thank you.

9 (WHEREUPON, a lunch break was taken.)

10 THE COURT: Yes, sir.

11 MR. FARRAR: We call Andrea Comeau-Shirley.

12 THE COURT REPORTER: Ma'am, if you'll place your left
13 hand on the Bible and raise your right hand.

14 WHEREUPON,

15 ANDREA COMEAU-SHIRLEY,
16 after first having been duly sworn, testified as follows.

17 THE COURT REPORTER: Please be seated.

18 DIRECT EXAMINATION

19 BY MR. FARRAR:

20 Q Good afternoon.

21 A Good afternoon.

22 Q You're Andrea Comeau-Shirley; right?

23 A Yes.

24 Q The Andrea we've heard a lot about in the last couple
25 of days?

1 A Yes.

2 Q You live in Atlanta.

3 A Yes.

4 Q Tell me where you went to college.

5 A University of Georgia.

6 Q And what was your degree in?

7 A Masters in accounting with an emphasis in taxation.

8 Q And take me briefly through your employment since the
9 University of Georgia?

10 A I left and went to Atlanta and worked at Arthur
11 Anderson and Company. I was there for 12 years. I went
12 to work with one of my Venture Capital clients in 2000.
13 Unfortunately, the Venture Capital market dried up. And I
14 ended up forming my own firms after that.

15 Q And one of those firms is An Honest Day Financial; is
16 that correct?

17 A Yes.

18 Q And you're married?

19 A I am, 28 years.

20 Q Your husband's name?

21 A Michael.

22 Q Let's just jump right in. How did you meet -- or do
23 you recall the first time you met John Gandis?

24 A I had lunch with him and his father in late 2007.

25 Q Was this related to this business?

1 A No. They were --

2 Q This business being CCC?

3 A No.

4 Q They were talking about something else?

5 A They were talking about a new deal that Cliff was
6 going to fund, and start up, and bring his son in on.

7 Q And in the course of that, did you give advice with
8 regard to a checklist for LLC formation?

9 A To them, yes, I did.

10 Q And that was tailored toward the father-son
11 relationship?

12 A Yes, it was.

13 Q When is the first time you met Dave Wilson that you
14 recall?

15 A In May of 2008, I received an invitation from John to
16 come up and meet with him and his new partner to talk
17 about the questions they had.

18 Q And what was this about?

19 A This was about them forming and documenting their
20 partnership.

21 Q And what was the nature of the business?

22 A They were in a film business at this point. And it
23 seemed like a good partnership between the two of them.

24 Q And one of them brought what expertise?

25 A Dave had experience in sales, warehousing. John had

1 experience in the chemical industry, and mechanical
2 engineering, and things as such. So it kind of brought a
3 science and -- science and sales together.

4 Q Okay. And you went and had lunch with them; right?

5 A Yes. And it was a long lunch.

6 Q A long lunch. So it lasted longer than you
7 anticipated?

8 A Much longer than I anticipated.

9 Q And what was being talked about and tossed about
10 during that lunch?

11 A It was an open-ended question and answer session
12 where we could talk about where they were at, some of the
13 questions they had, the kind of things they could expect
14 if they were in business together.

15 Q Let's talk about that. During the course of your
16 career, had you had the opportunity to counsel small
17 businesses?

18 A Yes, often.

19 Q And had you had the opportunity --

20 A But not this small, honestly, but, yes.

21 Q But you had had the opportunity to counsel start-up
22 businesses?

23 A Yes.

24 Q And what are the basic rules of a start-up business
25 as far as what you might anticipate?

1 A You can expect -- basic rules, 80 percent of them
2 fail. Many of them end marriages, high suicide rate.
3 It's rough.

4 Q And so, in fact, when you were talking to them, did
5 you offer to talk to their spouses?

6 A Yes, on more than one occasion.

7 Q And what was the purpose of that?

8 A It was to make sure that the family was ready to
9 endure the rigors of a start-up enterprise.

10 Q And did either of them take you up on that?

11 A Yes. John took me up on that.

12 Q What did Dave say?

13 A Dave said he had been through two businesses before
14 and that his family knew what was involved in starting up
15 an enterprise.

16 Q Generally, what do you tell your clients about a
17 start-up industry and expecting to get money out of it?

18 A Generally, I say that money is going to be tight.
19 And that owners should put in sweat equity, and expect to
20 defer the benefits until it stabilizes.

21 Q During that first meeting, was there a discussion
22 about each contribution and how the organization would be
23 arranged, or was it -- did you talk about that during that
24 first lunch meeting?

25 A Yeah. I mean, we talked about a lot, yes.

1 Q Do you remember -- and there were subsequent
2 meetings. So it's kind of hard to figure out which
3 meeting you heard it in?

4 A That's true, very true. Several meetings, a lot of
5 calls.

6 Q During the period of this time -- and we won't peg it
7 to that one meeting, but during the initial period of time
8 of your involvement, did you hear what each of their
9 ownership -- what their position ownership would be? Who
10 would have controlling interest, if anybody?

11 A Yes, I did.

12 Q What did you hear?

13 A What I heard is it's 51/49, 51 Gandis.

14 Q Having control?

15 A For control and vote on management decisions.

16 Q I don't understand because the K-1's, I think, showed
17 a 50/50?

18 A Yeah. It was going to be 50/50 on current cash flow.
19 And there's a little deferral that we'll talk about, I'm
20 sure, later on. But it was effectively, by the time it
21 was all said and done, they'd be even on cash flow on a
22 current basis, but 51/49 on decisions.

23 Q And we heard earlier Dave talking about the meeting
24 where you were discussing about him paring out or carving
25 out companies. Do you remember hearing him say that?

1 A Yes, I do.

2 Q Did you ever hear a name of a company mentioned as
3 far as what he was going to carve out?

4 A No. I did not.

5 Q Did you remember the discussion -- tell me the
6 process of that discussion, what you heard. Not
7 necessarily every word because I know you can't remember,
8 but, generally, what was the conclusion in that
9 discussion?

10 A Well, the conclusion was they had -- they were in a
11 morphed stage when I met with them. Each of them was
12 winding down a business. John was winding down M-Tech.
13 Dave was winding down Eastern Films.

14 They had formed in November of the year before. They
15 were doing things together already. And they were trying
16 to figure out how to kind of create a deadline date, and
17 be together, and know what they were going to do.

18 Q And were there sales that Dave had that weren't going
19 to be included in the relationship?

20 A He asked to have -- have what he called an import
21 opportunity left out, yes.

22 Q And what did you understand that to be?

23 A Well, I tried to get him to explain it to me so that
24 I could understand what that meant. And what I soon
25 realized is he wasn't talking about a customer by name.

1 It was about a buying opportunity.

2 So I asked him, I said, Well, can you explain in a
3 way where we can write it down and be easily understood
4 what you're going to buy that's imported versus what
5 you're going to buy domestically? Because all the
6 opportunities will be coming into your office. And you'll
7 be the one picking and choosing which ones go onto the
8 import line and which ones go into CCC.

9 Q Basically, cherry picking?

10 A Cherry picking. Well, that was the risk. And Dave,
11 didn't want to cherry pick. He was in.

12 Q Because he told you that he wanted this business to
13 go?

14 A Yeah.

15 Q And he was going -- for a period of time, he was
16 going to get a guaranteed payment?

17 A He was going to get a preferential distribution is
18 how it ended up working out. But, yes.

19 Q And that was because he was rolling his business into
20 this; right?

21 A Yeah. He had earned some commissions on accounts.
22 And he wanted to see that stay flat until the company got
23 stable on positive cash flow.

24 Q Well, Mr. Arnold showed us this Exhibit -- get
25 Plaintiff's Exhibit No. 21 in front of you, please. That

1 would be the binder.

2 A The blue binder?

3 Q No. The bound binder.

4 A I'm sorry. 21?

5 Q Yes. 21. Do you have it?

6 A I do.

7 Q But, you know, we've talked and we've heard about
8 this showing in 2010, January of 2010. And you're saying
9 something about him transitioning towards full-time CCC,
10 doesn't it?

11 A Yes, it does.

12 Q That means you knew he was doing other stuff then;
13 right?

14 A Absolutely, I knew what he was doing.

15 Q What was he doing?

16 A John had told him that he could work at Duetex, which
17 did scrim. And that they were complimentary buyers, that
18 people who bought scrim, also, bought polyester film. So
19 Dave doing this was just, basically, doubling up on sales.

20 Q And so that's what you're talking about there; right?

21 A Absolutely.

22 Q And you heard about another e-mail. I'm not going to
23 go through and dig through every one of these e-mails.
24 Mr. Arnold will probably do that because he enjoys that
25 more than I do.

1 A Okay.

2 Q You heard about another e-mail similar to that,
3 didn't you?

4 A Yeah. The one about winding down EFS, muddying your
5 tax position.

6 Q That's the same thing, isn't it?

7 A Actually, it's not Duetex, although that's in there.
8 It will muddy your tax position. And the year before,
9 Dave had film. And we did a barter sale with him, which
10 is a noncash transaction.

11 So he had a sale that didn't have any cash. And we
12 had a barter sale. And that was going to muddy up his
13 situation. And that was the last thing that was supposed
14 to be in EFS.

15 Q Okay. Now, you understand that Dave wasn't supposed
16 to sell in competition to CCC; right? We just said that.

17 A Yeah. He was in.

18 Q Did you hear him acknowledge that?

19 A We discussed this at length. Because Dave is a good
20 negotiator. So he tried hard to explain how he could keep
21 it separate. And, in the end, he agreed that you can't
22 really write it down in a way.

23 Q Well, speaking of Dave being a good negotiator,
24 that's going to lead me to another topic. The first time
25 you sat down and listening to Dave and John talk during

1 that lunch, did you happen to make an evaluation as to
2 negotiation skills?

3 A Yeah.

4 Q Tell me what you evaluated.

5 A What I observed is -- which is great. Dave is a good
6 negotiator. He's two steps ahead. And John is a nice guy
7 and could easily get taken advantage of.

8 Q Okay. Did you ever hear anybody say Dave was
9 guaranteed a preferred distribution for the life of LLC?

10 A Never.

11 Q As long as he remained an employee, he was, though;
12 right?

13 A I'm sorry?

14 Q Was he entitled to one as long as he remained an
15 employee?

16 A No.

17 Q And what was envisioned for that preferred
18 distribution, how long?

19 A There was a discussion about a short period of time.
20 And I believe three years is what was agreed upon.

21 Q Would you have ever personally taken an ownership
22 interest in a company where someone was guaranteed a
23 preferred distribution for a lifetime?

24 A No.

25 Q It wasn't you; right?

1 A I wouldn't have asked for it.

2 Q So, as I understand, you had this lunch. And then
3 they asked you for the new checklist, didn't they, another
4 checklist?

5 A Actually, John had gotten a lot of understanding
6 about how to put his deal together with his dad. So John
7 asked me for a checklist, yes.

8 Q And that's Defendant's Exhibit No. 7; is that right,
9 the blue binder. That's where you talked about that;
10 right?

11 A Yeah. I mean, I had to modify the one he had been
12 working with. Because the first one was written for a
13 father-son. And so when I delivered to him the second
14 one, I incorporated information that I had heard in that
15 first meeting.

16 Q And this is you and Dave having a communication;
17 right -- I mean, you and John? Sorry.

18 A Yes, sir.

19 Q And let's look at Plaintiff's Exhibit No. 3.

20 A 3?

21 Q 3. That's in the bound book.

22 A Yes.

23 Q And I believe we started almost the testimony with
24 this. But this is like, don't -- you know, get your
25 thoughts together before you go to Dave, et cetera, et

1 cetera. Do you remember that?

2 A Yeah. It says, I suggest you complete the
3 questionnaire alone. John needed to decide what he was
4 going to bring to the table. Have his mind made up so he
5 could put an offer in front of Dave.

6 Q Was it intended to hide something from Dave?

7 A No. As a matter of fact, I think it later on says,
8 Dave will come in in the next round.

9 But you have to think through good times and bad
10 times. And the two of them had only talked about good
11 times in that first meeting. There's bad times in a
12 start-up enterprise.

13 Q Now, Plaintiff's Exhibit No. 10 while you're there.
14 This has -- talks about drafting paragraph language,
15 doesn't it?

16 A Actually, it talks about developing the language for
17 a preferred return section of a partnership agreement.

18 Q Did you ever develop that?

19 A It became unnecessary.

20 Q Because?

21 A Because it moved from a complex commission ratio to a
22 flat \$8,000 per month.

23 Q So what you're saying is there was some point
24 where things were going to be accounted for with what Dave
25 was bringing in, and he was going to be paid some ratio.

1 And, otherwise, he'd make an earning?

2 A Yeah. It was originally going to be a customer -- an
3 identified customer ratio complex calculation. And,
4 finally, Dave came forward and said, I'll just take a flat
5 number. We seized on that. In theory, that was great.

6 Q So, again, the deal evolved and, finally, as you
7 understood it, John Gandis had 51 percent control of the
8 company; correct?

9 A It started that way. It didn't evolve to that.

10 Q What did it evolve to?

11 A I sure hope it's 51/49. I've always thought it was
12 51/49.

13 Q Look at Plaintiff's Exhibit No. 58. You'll see this
14 I'm sure with Mr. Arnold later.

15 A What is it?

16 Q 58.

17 A I'm missing a book.

18 Q I'll bring it to you. I want to make sure that's the
19 right one before I get there.

20 Plaintiff's Exhibit No. 58 is entitled strictly
21 confidential -- and we'll go back and talk about this in
22 context when we start talking about what's happening in
23 November and December of 2011.

24 A Okay.

25 Q What I really want to call your attention to is the

1 last sentence on the fourth page, right before your
2 signature.

3 A Yes.

4 Q What does that say?

5 A It says, Here is where your 51 percent vote means
6 everything.

7 Q Is that all it says?

8 A Please cast it wisely.

9 Q And so that's just you and John; right?

10 A Yes, it is.

11 Q Nobody else is seeing that; right?

12 A No.

13 Q You wouldn't have to write that if you were trying --
14 if you were trying to stage with somebody else, you might
15 say that you're trying to say, hey, I think he's got 51,
16 let's prove it by written e-mail; right? But this is just
17 to John; right?

18 A Correct.

19 Q And so from 2007 to 2011, you believed and you still
20 believe here that he has 51 percent control, don't you?

21 A Yes, I do.

22 Q Okay. Did you ever hear Dave say that John had
23 control?

24 A Yeah. We discussed it in that meeting. You have to
25 talk about who's going to be responsible for what in the

1 natural course of things, and what to do in the case of a
2 disagreement. And it's most important in a two-member
3 deal.

4 Q It morphed from a two-member to a three-member,
5 didn't it?

6 A It did.

7 Q You got involved?

8 A I did.

9 Q Tell me about that.

10 A Well, at some point in the course of these
11 conversations, they asked me about --

12 Q They?

13 A Oh, I'm sorry. Both of them. We were together.
14 Yeah, we were all together. And they asked me about the
15 kind of work that I did, and do, and what I could bring to
16 the equation.

17 And so I explained to them that I work with clients.
18 Some of them are fee, some of them are equity, some are
19 fee plus equity. I could do any one of that with them.

20 Q And so did they both give up five percent of their
21 ownership?

22 A Yeah. Well, five --

23 Q Did they offer you control?

24 A No. I was really clear that I didn't want to be
25 making a recommendation in an area that a management

1 decision needed to be made and them having a disagreement
2 and me be the tie breaker. I mean, that's silly. If
3 you're the little guy in a deal like that, you are the
4 dictator. I didn't want to be the dictator.

5 Q So what was your deal then? What was your
6 arrangement?

7 A So my arrangement is --

8 Q Explain it.

9 A My arrangement is 10 percent of current cash flow and
10 some amount at the exit, which they would determine
11 depending on how well our exit was.

12 Q They're saying you're making that part up.

13 A I'm surprised. I remember the conversation in the
14 parking lot where we went over and talked about it, talked
15 about what the current fees would be. And I remember Dave
16 saying to me, If I'm making good money at the end, I don't
17 care how much you get.

18 Q It seems kind of silly that you didn't get something
19 in writing. Why would you trust this man, you hadn't met
20 him?

21 A You're right.

22 Q Who did you trust?

23 A I trust John Gandis and the Gandis family. I've
24 worked with the Gandis family since the 80s.

25 Q So that's where you had your comfort; correct?

1 A Yeah. And, actually, the two of them appeared to be
2 good friends. We were talking about forming a company
3 where we vacationed together as families. We were talking
4 specific sites to vacation together. We were talking
5 about a family atmosphere, summertime picnics. I mean,
6 this is the dialogue we were having. They, without me,
7 were talking about leaving this company to their kids.

8 Q You say John's a nice guy. Did John defer a lot in
9 the beginning?

10 A Yes.

11 Q Why was that?

12 A I think some of it was inexperience in the customer
13 relationship. And you, certainly, don't want to, you
14 know, have too many heads in the room. I mean, if you're
15 negotiating how to set something up and you have two
16 people talking on one, that messes it up. And on top of
17 that, he was running the factory.

18 Q Look at Exhibit No. 14, Plaintiff's Exhibit No. 14 in
19 the binder. This covers several things. But the thing
20 that's been talked about before now is the fact that
21 there's rent being accrued backwards; is that correct?

22 A Yeah. I've heard that mentioned.

23 Q What is that really?

24 A Well, what's going on is that -- at this particular
25 point, what's going on is they've got -- I got a call from

1 John. They've got a creditor. I can't remember if it was
2 Mitsubishi off the top of my head. My eyes aren't that
3 good. I apologize. And he had to get a financial
4 statement to them. And they both knew the financial
5 statements were horrible.

6 So I was just giving them advice on how to get things
7 accurate as quickly as possible so they'd have November
8 statements.

9 Q And did CCC owe John Gandis rent?

10 A Yeah. I mean, they had talked about -- and I
11 remember being upstairs around the table and -- the wood
12 table that we were talking about that John would get fair
13 rent. And John said he was taking out a small piece to
14 help fund it early on.

15 And I said, Well, you can defer, if you want, early
16 on. I said, But you're going to get fair rent. And what
17 he said to me was, you know, that I promised Dave a
18 priority out of cash. And so I'm going to only take the
19 minimum I need.

20 Q So what's the impact of going back and accruing it
21 later?

22 A That's trying to get it right to the deal so that
23 when Mitsubishi sees what the company looks like, it sees
24 what it should have looked like if John hadn't been being
25 so nice.

1 Q I'm going to ask this question in two parts. What
2 shape was CCC in when you arrived? And, by that, I mean
3 operationally and accounting. So let's talk about
4 operationally first.

5 A Okay. Operationally, it was in this morphed state as
6 I described to you. I mean, it was -- you know, it was
7 where you expect a start up to be. It was sloppy. It was
8 a lemonade stand. The two of them had some experience
9 they were bringing to bear, but not systems, not controls.
10 And it showed in the accounting records. They were worse.

11 Q The QuickBooks was terrible, wasn't it?

12 A They knew it.

13 Q That's why they got you in there to help?

14 A Well, actually, originally, they didn't ask me to
15 help with the accounting. They asked me to help with the
16 strategy, and making sure that they could get a successful
17 start. But they did ask me to give Joy some hints.

18 Q Okay. Well, let's go back and talk about your
19 compensation.

20 A Yeah.

21 Q The 10 percent, what did they tell you that was for?

22 A Well, before -- because, like I said, it just
23 morphed. The conversation morphed, you know. I could do
24 fee. I could do whatever.

25 Q You hadn't decided?

1 A I had not. It took a long time to decide.

2 So on the original offer where they came back in,
3 they said we'll give you 10 percent. I said, All right,
4 guys, for 10 percent, this is what I'll do. I'll do your
5 tax return every single year. I'll do four strategic
6 meetings. And I'll take a couple occasional phone calls.
7 And that's what you can get for 10 percent.

8 Q Is that what it ended up being?

9 A No. Very quickly, very quickly, a couple of phone
10 calls turned into tons of phone calls, and lots of extra
11 stuff. And I said, Wait a minute, guys. Let's be clear.
12 Either you have to agree or pay me. And I don't care
13 which way. I don't. Just don't call if you need it.

14 Q And you got called a lot, didn't you?

15 A I got called a lot by both of them.

16 Q And, in fact, for a while, you were getting along
17 with Dave, weren't you?

18 A Yes.

19 Q But your eliminating analogy is probably good, isn't
20 it? It was the eliminating analogy you were trying to put
21 some financial control in there, weren't you?

22 A Yeah. I mean, it's a weird blend of you've got to
23 put enough controls in place so that you don't die, just
24 enough sugar to make it taste good, right, but not so
25 much.

1 So you have to put -- you've got to -- and this is
2 it. You've got to let a company and somebody like Dave
3 have some flexibility to go and run so you can grow fast.
4 But you can't then come back into this courtroom and say,
5 oh, because I wasn't running like IBM from day one, it's a
6 problem. You have to let that level of flexibility be all
7 the way throughout the department. But you just can't
8 make mistakes and take unnecessary risks. So I tried to
9 identify unnecessary risks.

10 Q And when you were trying to implement or suggest
11 controls, what were the reactions you were getting from
12 both of these gentlemen?

13 A Well, I mean, I can't say without exception Dave
14 rejected them. But more often than not, that's where the
15 resistance would come.

16 Q John bristled, but he tried to do it?

17 A Yeah.

18 Q Did it get to a point where, finally, John suggested
19 maybe a way to get Dave to agree to things? And let me
20 back up, Dave would disagree with you just for the sake of
21 disagreeing, wouldn't he?

22 A Well, it appeared that way a couple of times.
23 Because the counter proposals he would put forward just
24 didn't make business sense. And there was even a time
25 when they were in agreement on something they were

1 chatting about and John said Andrea said, and Dave said
2 what does Andrea have to do with that? And then the thing
3 stopped.

4 And so John said, I'm not sure what he's got going on
5 right now. And he thought it was sort of temporary. But
6 he said, How about if you just send the stuff to me and
7 I'll deal with Dave.

8 Q And you needed to explain to John what you were
9 talking about; right, so he could --

10 A Well, that was the other point is John said, you
11 know, some of this stuff is beyond me. So if you're going
12 to have me be the one that's having the conversation,
13 you've got to write it down and tell me the why so I can
14 handle the questions when they come.

15 Q And they led to some of these e-mails; right?

16 A Regrettably.

17 Q Regrettably because, quite frankly, you documented
18 the entire thing and Dave didn't, did he?

19 A Yes. Well, I didn't erase anything.

20 Q Well, let's talk about inventory. And we're going to
21 get a little dull, as if we haven't been already. Okay.

22 A Fair enough.

23 Q But I want to talk about accounting for this film
24 inventory so we all understand it. Because it does
25 matter, doesn't it?

1 A It sure does.

2 Q And as I understand John's analogy the other day, his
3 children tell people that his daddy makes big rolls into
4 small rolls; correct?

5 A That's correct.

6 Q What I want to do, instead of doing that, is carpet,
7 because it's going to serve us a couple of times.

8 A No problem.

9 Q And if you're laying a roll of carpet in a 15-foot
10 wide hall --

11 A Right.

12 Q -- and it's a 16-foot long piece of -- roll of
13 carpet.

14 A Right.

15 Q You've got a foot that's trimmed off all the way
16 down, don't you?

17 A You sure hope so.

18 Q And that doesn't have any value, does it? Well,
19 minimal value; right?

20 A Well, not to the person who bought the carpet.

21 Q Let's just assume you're the carpet --

22 A Layer.

23 Q You buy the 16-foot roll. And you get a job to go
24 lay 15-feet long all the way down the hallway?

25 A Correct.

1 Q You really only sold 15 feet for the hallway; right?

2 A Well, you hope in a pricing situation you sold the
3 full 16, but yes, you've only sold 15 feet.

4 Q As this was going on, did you see where the pricing
5 situation was accounting for the scrap as part of that --

6 A Well, this is a problem with QuickBooks. QuickBooks
7 will only take inventory off the books equal to what you
8 sold to the customer. So only the 15 goes off the books
9 and the dollar stays there. And it looks like you still
10 have inventory that's sellable.

11 Q So if you buy a 16-foot piece of carpet, and it's a
12 thousand dollars a foot, you've got a \$16,000 asset. If
13 you sell 15 of them putting it in, your books still show
14 you've got a thousand dollars; right?

15 A That's correct.

16 Q And so that's the genesis of one of the problems
17 relating to the inventory issue, isn't it?

18 A Yes, sir.

19 Q And what you want is you want the person in charge of
20 the inventory, or the person in charge of the sales, or
21 the person in charge of the purchasing to realize what
22 they have and say we need to take out that foot?

23 A Yes.

24 Q Or we need to sell that foot for dirt cheap and just
25 get something back out of it and take a loss on it; right?

1 A Right. So part of the problem in the first years was
2 these guys thought they could sell that foot, so they kept
3 them.

4 Q Could they?

5 A Theoretically, I'll honor them in the sense of saying
6 yes. But, practically, you can't roll one foot by one
7 foot by one foot down a hallway and make money if I keep
8 your carpet analogy going.

9 Q And so if, in fact, you're returning this one foot of
10 unused carpet, for that year, your profits are overstated;
11 right?

12 A Correct. If you haven't written it off, you think
13 you've made more money than you really made. But you're
14 out that money.

15 Q And the book value is overstated; right?

16 A Correct.

17 Q And that could go on for years as it continues to
18 accumulate; right?

19 A It could.

20 Q And it, actually, went on for years through 2010,
21 didn't it?

22 A Yes.

23 Q In 2010, Mr. Higgins got hired; right?

24 A Yes.

25 Q Could Mr. Higgins right the wrong, turn the ship,

1 whatever phrase you want to use in a year?

2 A No. I think it took us longer than that to get the
3 systems and inventory in place.

4 Q Even if Mr. Higgins counts that, that doesn't mean
5 it's changing QuickBooks; right?

6 A No. No. It's -- there are two separate systems. So
7 the inventory -- the physical inventory is an issue Dave
8 brought up early. So we worked on improving that so he
9 could sell better. But just because you get the physical
10 better doesn't move into QuickBooks. That's a
11 ridiculously cumbersome process in QuickBooks.

12 Q It's not a robust program to handle accounting and
13 inventory, is it?

14 A No, not really.

15 Q Whose idea was it to use that?

16 A It was there when I got there. And Dave used it at
17 his previous company.

18 Q Did you suggest something else might be worthwhile?

19 A At one point, I suggested Peach Tree, which is a
20 little better, and still in the same price range.

21 Q And they said?

22 A They were on QuickBooks. They knew how to use it.
23 And they didn't want to start training people over again.

24 Q Speaking of being on QuickBooks, did there come a
25 time when you learned that the admin function -- the admin

1 function was for the top person using QuickBooks, wasn't
2 it?

3 A Well, no. When I got there, everybody was using
4 admin. And it was the only user that was there.

5 Q And how long -- did you know that when you got there?

6 A No.

7 Q Were you surprised to find out people were in the
8 admin meaning of the books?

9 A Not really. It's a small company. I think it's fair
10 to say in a small company that happens.

11 Q But if you go back and look at the footprints, you
12 don't really know who admin is that did anything in the
13 books; right?

14 A Not on any particular day.

15 Q And was one of your goals to do some segregation
16 duties, which is accounting 101, isn't it?

17 A Yes, sir.

18 Q One of your goals was to say, hey, this is your
19 function, this is my function, let's all take our
20 functions and do them properly. And we'll be responsible
21 to each other; right?

22 A I tried to, yes.

23 Q And so along that line was -- one was try to narrow
24 down the people who could, actually, control what went
25 into the system; right?

1 A Yes.

2 Q Did Mr. Wilson go into the system often?

3 A They all were in the system often. And they were --
4 they would leave it up overnight. That's often how you
5 could tell who was in. Because you would call the next
6 morning and say whichever one of you is logged in, log out
7 so the other person could use it.

8 Q And let's go back and talk about Dave's role.

9 A Okay.

10 Q He said that he was, basically, a purchaser, and that
11 he didn't have that much involvement in inventory. Do you
12 agree with him?

13 A Not in the least.

14 Q Tell me why.

15 A Because Dave controlled sales. Dave controlled
16 pricing. Dave controlled marketing. He was it at first.
17 I mean, that's silly to say you control yourself.

18 He bought the inventory. He decided how much to buy,
19 when to buy it, at what price, and who to buy it from at
20 the very beginning. He prepared the Excel spreadsheets
21 when they came in, and then often would e-mail Joy a set
22 of instructions on how to record it in the books.

23 Q So he wasn't, actually, entering into QuickBooks, but
24 he was telling the bookkeeper how to enter it?

25 A I think there was a little bit of all that going on.

1 But, clearly, when Joy was there, she became a help to
2 them.

3 Q And when Joy asked for the paperwork, what happened?
4 When she said, Dave, send me the original paperwork --

5 A Well, originally, Joy, being a secretary, she didn't
6 know to ask for paperwork. I started asking for
7 paperwork. And the paperwork just never came.

8 Q But would it be fair to say in 2008, 2009, Dave's
9 function control was 90 percent of the operation?

10 A Absolutely. 90 percent of it was underneath him.
11 You're not going to -- a start up is not going to bust and
12 fail based on whether or not they've got too much paper in
13 the room by the printer.

14 Q And, prior to 2012, would you characterize the
15 inventory account to being capable to matching with the
16 book count precisely?

17 A I will say this, you could get the QuickBooks to
18 match the inventory. You have no idea if the inventory
19 matches what's really in the warehouse.

20 Q And that wasn't a surprise to anybody, was it?

21 Look at Exhibit No. 38.

22 Are you with me?

23 A Yeah. I'm there.

24 Defendant's or Plaintiff's? I'm sorry.

25 Q Let me make sure. Look at Defendant's Exhibit

1 No. 138.

2 A Sorry. Yes.

3 Q Are you with me?

4 A I am with you now.

5 Q This is an e-mail thread exchange between Dave Wilson
6 and John Gandis; is that right?

7 A It appears to be so.

8 Q On September 12th, 2011, Dave Wilson is writing John
9 Gandis at the bottom of that?

10 A Okay.

11 Q Saying the alarming thing is that QuickBooks is off
12 over 300 pounds from Excel. Isn't that what it said?

13 A It does say that.

14 Q Would you have known it was that much without him
15 telling you?

16 A Well, I would have known it would have been off. I
17 wouldn't have been able to quantify it. He had,
18 obviously, done the math. And he did that often, reached
19 in and tested.

20 Q In fact, he reached in to look at QuickBooks because
21 he wanted to get his distribution, didn't he?

22 A Well, I can't say that's the only reason, but it was,
23 certainly, one.

24 Q Tell me what the impact of that would be.

25 A Him getting his distribution?

1 Q Well, in terms of looking at QuickBooks?

2 A Well, what we observed is on days when cash got high,
3 at the beginning of the month, that's the day Dave asked
4 for his check.

5 Q Did he ask for a check regardless of whether you owed
6 creditors?

7 A I don't believe that he looked at the payables list
8 or the -- no.

9 Q He didn't care about it, did he?

10 A Never.

11 Q Tell me his order of payment out of this business.

12 A Dave, whatever else y'all want to do.

13 Q He didn't feel an obligation to pay the employees?

14 A They're -- we never did miss a payroll. But there
15 was a time when cash was tight. And that was an issue.

16 Q Okay. Did he feel an obligation to pay the creditors
17 before he paid himself?

18 A No. Dave said the purpose of a business was to take
19 care of its owners. We said, we agree with you. But we
20 just agree that the owners come after the employees,
21 vendors, then owners. And this is a point of contention
22 all the way throughout until the end.

23 Q Because?

24 A Because Dave wanted to be first. And we couldn't
25 agree on a definition of distributable cash flow that took

1 into account amounts that were still due the parties and
2 checks that had not yet been cut, but needed to be cut.

3 Q Look at Defendant's Exhibit No. 54. We're going to
4 talk about this for a number of reasons. But turn to Page
5 2, if you would, please.

6 A I'm there.

7 Q The first thing I want to talk to you about is do you
8 see in there where Dave says, She is going to be shocked
9 when she, finally, realizes our inventory is, at least,
10 \$400,000 lower than what QuickBooks says it is.

11 What would he get out of a shock to you?

12 A I don't really understand she's going to be shocked,
13 because everybody knew this. I mean, the amount might
14 have been -- the amount might have been -- but you're -- I
15 mean, off every day. Every day, you're off. Because
16 we -- it took four days to count inventory. You cannot be
17 shut down a week or a month to count inventory so you can
18 get your QuickBooks right. It's just off.

19 Q Well, let's talk about what happens -- you do shut
20 down at the end of the year for a physical --

21 A Absolutely.

22 Q You, actually, did a perpetual inventory count where
23 you tried to roll four or five --

24 A That's what Higgins did when he arrived. He started
25 out with a perpetual account to get cleaned up in time for

1 a year-end physical.

2 Q That really wasn't in order to get you a good number.
3 That was just to get it in order to get a good number;
4 right?

5 A Yeah. Because everybody knew there were lots of
6 mistakes in the Excel spreadsheet.

7 Q Now, let's talk about it and we've heard about it.
8 But I want to talk about the impact of the shortage in the
9 glut.

10 A Okay.

11 Q Okay. When there was a shortage, CCC and Dave had
12 contacts that helped him buy material; right?

13 A Correct. In 2010, yes.

14 Q And nobody else could get it; right? Perhaps, nobody
15 else could get it?

16 A No. Look, to his credit, Dave got it.

17 Q And what did that entail? Could you call -- does
18 that mean he could order whatever he wanted, or he had to
19 take other things?

20 A What Dave told me is that his guy said to him, I'll
21 sell you everything on my list if you buy everything. And
22 the way Dave secured that is he agreed to pay a five cent
23 premium for that.

24 Q And so you're paying a premium --

25 A Or maybe not five cents, but something.

1 Q You're paying some premium for it?

2 A Yes.

3 Q And to use my carpet analogy, you're buying the
4 purple shag carpet, also?

5 A Yes.

6 Q When you open these containers during the shortage
7 year and you were getting this material in and it got
8 opened, were there products in there that CCC had never
9 sold before?

10 A Correct.

11 Q And were you able to sell all of those products as
12 first run products, or did what you couldn't use go out as
13 scrap?

14 A Well, by the time we were working on it seriously --
15 because that was one of the issues, they weren't working
16 on it seriously. We did everything we could to get
17 anything above scrap. But, in the end, most of it went to
18 scrap.

19 Q Well, how long were the effects of the buying binge
20 felt?

21 A They're being felt today.

22 Q Why is that?

23 A Because if you read that same document you were just
24 at, it says, Have a plan for every roll. And so to the
25 extent rolls were bought where there was no plan, and

1 there was no known customer, and there was -- or the sizes
2 were wrong -- you know, that PVDC truckload he talked
3 about, we're selling that at a loss because the film got
4 bought too wide. You have to have a roll for the plan,
5 so -- or a plan for the roll. I'm sorry.

6 Q Well, he thinks he did that. Did he do that?

7 A It would appear not.

8 Q All right.

9 A Actually, he admitted that you couldn't -- or he
10 couldn't.

11 Q Look at Defendant's Exhibit No. 140.

12 A Okay.

13 Q Look at Page 2 of that exhibit at the top.

14 A Okay.

15 Q This is Dave writing you and John in late September
16 of 2011; correct?

17 A Correct.

18 Q He's talking about the impact of the glut?

19 A Yes.

20 Q It might not be a glut, but things freed up --

21 A Yeah. I don't think we knew at that time. I didn't
22 know.

23 Q But you know the customers you had during the
24 shortage year, 2010, were returning to their traditional
25 vendors?

1 A Yeah. I mean, this was terrible. Bank of America
2 had said they liked what they saw. They were going to
3 give us a loan. They wanted us to get independent --

4 Q If what -- what did you have to do to get Bank of
5 America to give you a loan?

6 A You had to be paying your bills on time, be
7 self-sufficient, and managing your inventory.

8 Q What does that mean, self-sufficient?

9 A Being self-sufficient means paying your own bills
10 with your own money.

11 Q Not borrowing money?

12 A No. They very explicitly said no more -- they didn't
13 want to see any more member loans.

14 Q I really want to go back to Exhibit No. 140.

15 A Yes.

16 Q Now, 140, at the top of the page, it says, To give --
17 this is September now. To give you a snapshot of what
18 we've been facing in the market, sell it price for
19 48-gauge pet [phonetic] in January were well north of
20 \$2.00 per pound and as high as 235?

21 A Right.

22 Q We're now into competitive pricing for 48-gauge in
23 the 140 to 160 range?

24 A Correct. I mean, that's a huge loss.

25 Q If you do the math on that -- my math on 140 is 60

1 percent of 235?

2 A Correct.

3 Q If you're selling at 140, what's happening to your
4 product margin?

5 A You've either got little to none. You might even be
6 selling at a loss. And while Bank of America didn't say
7 it, meeting your budget is, also, an expectation.

8 Q I mean, but in early 2011, you were awash with cash,
9 weren't you?

10 A No.

11 Q You were awash with sales, weren't you?

12 A We were awash with sales in April. We were two
13 million over budget on sales. And Dave was telling me
14 that 2011 was going to be 2010. I mean, we were excited.

15 Q And then jump ahead about four or five months.

16 What's he telling you to plan on the sales there?

17 A At some point, he tells me to drop the sales to
18 10 percent of the number he had given me before.

19 Q Drop by 10 percent?

20 A No. Drop them to 10 percent.

21 Q So he's asking you to revise the budget for the last
22 half of the year -- the last third of the year, and drop
23 the sales projections by 90 percent?

24 A Yes. I was flabbergasted.

25 Q And was he meeting his budget requirements then,

1 budget sales forecast?

2 A No.

3 Q He was missing pretty badly, wasn't he?

4 A He was missing worse of all with them.

5 Q He saw the iceberg, didn't he?

6 A I think he did, yeah. He -- I would ask what was
7 going on with his accounts and he would say, we're not
8 selling to so and so anymore. I can't pick a name that I
9 can recall. I don't have that good of recall.

10 So I would go look at the budget. And he would have
11 had it budgeted at zero. That wasn't what the issue was.
12 It was the sales on his budget, he wasn't making them.

13 Q Get Plaintiff's Exhibit No. 60 in front of you.

14 A Plaintiff's Exhibit No. 60.

15 Q Are you on 60 yet?

16 A I am, sir.

17 Q All right. Keep your finger on that and let's talk
18 for a second. I heard Mr. Arnold talk about how much cash
19 there was and -- in 2011, we were making big money. In
20 2010, we were making big money. And we're reserving it,
21 it wasn't getting paid out. What does that tell you?

22 A It's just telling me that he doesn't understand yet
23 the difference between making a sale and having cash.

24 Q So if you've got money, you don't have cash?

25 A Well, you do, but then it's what you do with it. So

1 if you immediately turn around and put it into equipment
2 and put it into inventory, you don't have cash anymore.
3 What you've got is inventory.

4 Q When you say put it in inventory, you just mean
5 paying bills; right?

6 A No. I mean buying more inventory.

7 Q That was the plan, wasn't it?

8 A Actually, no, it wasn't the plan. The plan was an
9 inventory reduction plan.

10 Q That's right. That's right. Because you were
11 supposed to -- everybody had agreed; right?

12 A Yes, we met. We met as a company. We met as owners
13 in the start of 2010. We had a series of meetings at the
14 beginning of 2010. It involved getting financing.

15 Here we are in 2011. We had this plan. We are going
16 into the office. Dave was coming in from Greenville. And
17 we were looking at the inventory sheets and roll by roll
18 trying to come up with plans.

19 Q And how was that progressing?

20 A It just wasn't moving.

21 Q Is that because the market fell hard?

22 A Actually, no. I came up at Dave's request and met
23 with him in the spring and brought inventory sheets --

24 Q Of 2011?

25 A 2011. And so -- he had asked for the meeting. So

1 the first part of the meeting was what he wanted. But, at
2 one point, we talked about inventory. And I said, Dave,
3 you're supposed to be selling this old stuff. He said,
4 Well, I am. And I said, But not buying two more.

5 Q How did Dave get money out of the company?

6 A Dave got money out of the company from distributions,
7 which is, basically, on a pro rata basis as us, loans.
8 And, later on, we discovered from personal expenses on the
9 credit card.

10 Q Tell me about what. We haven't talked about yet,
11 have we?

12 A No, not really.

13 Q Tell me what happened there.

14 A Well, at some point, we begin to observe -- we really
15 are observing this in 2011. He's charging in milage on a
16 trip, plus the gas on a trip, three car fill ups on the
17 same day, tires for his car. I think John caught him one
18 time where there was a car rental charge that was on the
19 bill and he had written it in as a business expense. But
20 John happened to know he had taken his family on vacation
21 that week.

22 Q Did Dave seem to think that was okay?

23 A Well, Dave said in his -- when he had Eastern Films,
24 that's how he ran his company.

25 Q What was your response to that?

1 A Well, the very first time I discovered it was,
2 actually, when he had taken his wife out to dinner one
3 time. And I noticed the description. Actually, the girls
4 noticed the descriptions. I'm in Atlanta. I can't see
5 paperwork. Okay. But they noticed it.

6 So I called Dave and I asked him about it. And
7 that's when he explained it to me. And I said, So what's
8 your plan here, that we all just charge our lunches and
9 our dinners with our spouses and at the end of the year,
10 we tally them up and figure out if we're 45/45/10? I
11 said, That makes no sense. You do what you want in your
12 company. And, as an owner, you report whatever you want
13 over there. But this stuff shouldn't be going in our
14 company. It's a start up. We can't afford this stuff,
15 one. And that stuff is not proper, two.

16 Q So did you believe he stopped?

17 A Yes.

18 Q But you subsequently discovered --

19 A No.

20 Q In fact, Del Bradshaw -- you're aware of Del
21 Bradshaw's report. He didn't normalize that expense, did
22 he? He left it in?

23 A He left that in, yes, he did.

24 Q He said that's something that should be returned;
25 right?

1 A He didn't say anything with regard to anybody's
2 stuff.

3 Q Yes. By this time -- and we're talking sometime in
4 2011. What did you think was happening with regard to
5 Dave selling to outside customers of CCC?

6 A Dave was supposed to not be selling to outside
7 customers long before 2011.

8 Q Well, do you remember the other day John said
9 something about Dave selling \$800, and everybody over here
10 laughed? Do you remember that?

11 A Yeah.

12 Q To an accountant, how does that hit your ear?

13 A It's appalling.

14 Q Why?

15 A Because you steal a million dollars \$800 at a time.

16 Q You don't steal one time. That gets attention;
17 right?

18 A That gets attention. It's one at a time. I mean,
19 look at our company. You referred me to this sheet. By
20 the time Dave was asking this question, every dollar that
21 had been generated that wasn't sitting in the warehouse,
22 except for \$70,000, had been distributed out. I mean, we
23 didn't have money.

24 So somebody taking \$800, you know -- the real issue
25 with it, Mr. Farrar, isn't that he took \$800. It's that

1 John had caught him a couple of times before. Okay. And
2 every time, it had been an excuse about how it fit into
3 this exception. You asked me if there were exceptions,
4 and I said yeah, there were. Okay. Yeah, there were.

5 So every time he caught it, Dave tried to explain to
6 John how it fit in the exception, acknowledged it was a
7 misunderstanding, and they went on. This time, when Dave
8 got caught, he didn't even apologize. He just scoffed at
9 it and said, It's Christmas. That change in attitude is
10 significant. That's frightening.

11 Q So that's happening at the end of 2010?

12 A That's the end of 2010.

13 Q But you're still going gang busters. And all of a
14 sudden, that starts going off the rails in the summer of
15 2011, doesn't it?

16 A Correct.

17 Q And, at this time, you're going to try to talk to
18 Bank of America; right?

19 A We had already been talking to Bank of America. And
20 Bank of America had said they wanted to see our year-end
21 numbers before they finalized the terms.

22 Q And you needed to get your balance sheet looking
23 better; right?

24 A Yeah.

25 Q Before that, both John and Dave had gone and talked

1 to the banks; right?

2 A I understood that four different meetings had
3 happened. That two of them had not really gotten much
4 beyond the first phone call. And after that, each of them
5 had had a meeting with a bank.

6 It was, also, my understanding that they were small
7 local banks. So I didn't realize until yesterday that
8 Dave had had an opportunity to meet with BB&T. Because I
9 would have attended that meeting with him.

10 Q So each of these banks would require the balance
11 sheet getting cleaned up and stronger; isn't that correct?

12 A I'm sure they gave them feedback, yes. And I had
13 been giving them feedback to that same effect.

14 Q Let's talk about that. You heard Mr. Bradshaw talk
15 earlier about this sale off the dock. Do you remember I
16 called it that?

17 A Yeah, I do.

18 Q Can you describe to the Court what that is?

19 A What happened --

20 Q What happened?

21 A What happened was at the end of the year when we were
22 doing our physical and we're trying to get an accurate
23 count of what's in the warehouse -- okay. Four containers
24 of film were taken out of the warehouse so they'd be
25 counted off as sold.

1 So a sale got booked and inventory was reduced, which
2 was kind of consistent with the advice I had been giving
3 them. But that was not the advice I was giving them.

4 Q You told them the balance sheet needed to look
5 better; right?

6 A I told them the balance sheet needed to look better.

7 Q You didn't tell them to do it deceptively, did you?

8 A I sure didn't. And when I called that vendor in the
9 spring -- because I don't really get involved in that
10 stuff until stuff gets old. When you have 90 days of
11 vendors not paying you big bills, I'm calling. And the
12 answer I'm getting is they know what's going on.

13 Well, I interpreted that as something -- you know,
14 something's going on with him being able to pay, which I'm
15 nervous. But I didn't find out that it was a false sale
16 until after the film had come back and the girls were
17 struggling with how to figure out how to get all that
18 stuff back onto our books.

19 Q So the impact of that would be the end of 2010 the
20 balance sheet would look stronger, wouldn't it?

21 A Yeah.

22 Q But, in reality, it wasn't?

23 A No, it wasn't.

24 Q And it came back in 2011. And when that happened --

25 A And it came back right in time for the glut.

1 Q So when that happened, you had to amend the tax
2 return, didn't you?

3 A I did amend the tax return.

4 Q But did you know anything about that sale?

5 A Not when it happened.

6 Q Who was in charge of sales at that time?

7 A Dave was.

8 Q Who do you think did that sale, that "sale"?

9 A I understood it was Dave's idea.

10 Q Okay. Would you have counted that sale if you had
11 known -- if he had come to you ahead of time and said
12 that's to qualify our balance sheet up?

13 A We would have counted the truckloads outside in the
14 containers. That's what you do.

15 Q And that would have decreased your profit and
16 weakened your balance?

17 A It would have changed the results, yes.

18 Q There came a time when you started writing a series
19 of e-mails to Dave about his options, and how he could
20 handle his tax issues, and all that?

21 A Correct.

22 Q Do you remember that?

23 A Yes, I do.

24 Q I just want to talk big picture about that.

25 A Okay.

1 Q Why did you start writing those e-mails?

2 A The first e-mail was written because I was told
3 that -- I'm sorry. I've got the hiccups. Dave asked if I
4 could eliminate his tax bill. Now, that's his prior year
5 tax bill.

6 Q Dave asked you?

7 A That's what I was told. But it was at -- the
8 request, actually, came from John.

9 Q Let's jump ahead for just a second. Is that what
10 really happened? Did Dave ask John to ask you, to your
11 knowledge?

12 A I just learned that John, being a nice guy, had heard
13 Dave complaining all year about this tax burden. He was
14 worried about Dave. We -- in April, there was supposed to
15 be a big check that came in. It just kept going into
16 film.

17 So he had had a meeting with Dave that day, and came
18 back and asked me that question and said, you know, I met
19 with Dave.

20 I said, Dave doesn't want my help.

21 He said, Yes, Dave asked me to see if you knew of
22 something. And I did.

23 Q So you started writing fairly intricate tax planning
24 about how to make it work; correct?

25 A Unfortunately, the first e-mail wasn't all that

1 intricate, but, yes.

2 Q Eventually, it evolved that way; right?

3 A Yes, sir.

4 Q And, looking back on it, do you see how Dave might
5 have thought that all of a sudden, you might have had some
6 other agenda?

7 A Yes, I do. I mean, if I hadn't asked for that help
8 and then I got offered a really low price out of the blue,
9 and it wasn't couched into -- here is a way to get rid of
10 your tax bill and still let you have the participation you
11 want on this exit. It was just like I had. I'm not
12 afraid of a deal. He's got that deal with Norvell right
13 now. This -- this -- I thought I was helping him. I
14 thought I was taking that tax burden off of his shoulders.
15 And I had to talk John into putting it on his.

16 Q And, you know, I don't mean to go into this, because
17 I imagine we'll see it through Mr. Arnold. But there's
18 one e-mail in there that talks about, no, he doesn't
19 understand. Do you remember that?

20 A I do.

21 Q What did that mean?

22 A Well, I'm glad he did, but Dave went and talked to
23 his CPA, who said it was a bad idea. Okay. They came
24 back with some retort about how it was a bad idea.

25 And what I'm, basically, saying, Your Honor, this is

1 an idea at Arthur Anderson we brought to millionaires, a
2 really sophisticated tax strategy. It's not run of the
3 mill stuff. We would have probably charged a client
4 \$25,000 to do it. I, actually, called Ray, his CPA, when
5 it got messed up. I gave him the --

6 Q Andrea --

7 A I'm sorry. I apologize. But --

8 Q What did the no, he didn't understand mean? That's
9 what I --

10 A It meant that this is how -- this is the stuff that
11 had to be in place for the tax strategy to work. It was
12 going to get rid of his 2011 bill, his 2010 bill, and be
13 sustainable on a tax return.

14 Q But he didn't understand he had to be at risk on it;
15 right?

16 A He did not understand that.

17 Q Isn't that what you meant?

18 A Yeah, the whole note, everything.

19 Q And so during this period of time, not only those
20 e-mails, but everything else is erupting in late 2011;
21 correct?

22 A Yes.

23 Q And what did you find out in October of 2011 about
24 your husband?

25 A Well, in October of 2011, we found that he had a lump

1 on his neck, a big lump.

2 Q And was it subsequently biopsied?

3 A Yes.

4 Q And what was it?

5 A Stage four neck cancer.

6 Q And this is happening in October through December;
7 correct?

8 A Actually, this is -- I mean, I'm still upset about
9 this. Okay. We hear that it's just fat. It's a lump, et
10 cetera, just like doctors do, get tests. Okay. All my
11 grandparents died of cancer. Michael's dad died of
12 cancer. Okay. On my mom's side, people died of cancer.
13 Okay.

14 At the end of that time period, I'm hearing the "C"
15 word. Okay. I lost my only child. Okay. I'm worried
16 I'm going to spend the rest of my life alone.

17 So I tell my clients I'm not working in December.
18 I'm not doing anything. I'm taking three weeks off. I
19 don't want to do anything. Everybody else gave me space.
20 Not these two, not these two.

21 Q So you were spending a lot of time masterminding this
22 when you were more worried about your husband, weren't
23 you?

24 A Look, this balance sheet that we're going to talk
25 about in December, I worked all of those three weeks. I

1 worked the day before Christmas. I worked the day after
2 Christmas. Okay. There could be mistakes in there. This
3 is normally a multi-month process. They had to have a
4 number.

5 I was trying to get this thing back on footing again.
6 And by getting this on footing, again, I mean, them on
7 footing again. Because it had gotten tense. It had
8 gotten off path and it didn't need to be.

9 And, honest to goodness, I'm upset because I think
10 that I have come up with a proposal to get rid of the tax
11 bill and still let him participate. That's my
12 perspective. Again, he didn't ask for it. So I
13 understand, to him, it looked different. But from my
14 perspective, I thought I had saved the financial
15 situation, and deferred when he would get his case, and
16 took that tax burden off him. I thought that's what I had
17 done.

18 Q And among the options that you were talking about,
19 one was for Dave to stay in the company and be an owner;
20 correct?

21 A Look, that was always an option. Every single run.

22 Q We'll look at e-mails about that.

23 A Yeah.

24 Q But that was the first option on the page, wasn't it?

25 A Yes.

1 Q Stay and be an owner. But, ethically, what did you
2 need to do if you want to be an owner? Make sure who got
3 paid?

4 A Employees first, vendors next, owners last. And even
5 then, only on the provision that you still have enough in
6 the company for the remaining vendors to get paid.

7 Q And you were okay -- if he was okay, you were okay
8 for him to stay in there; right?

9 A Yes.

10 Q In fact, it didn't help you to not be associated with
11 the person that had the purchasing contacts?

12 A Look, I know you've asked me about Dave and us being
13 tense. And I know this was a tense time. But we were
14 working on a five-year plan. He needed to be there. He
15 needed to be there.

16 Q Do me a favor, while we're talking about this, let's
17 look at Defendant's Exhibit No. 66, Page 2, paragraph
18 four. This is from Mr. Norvell to Anthony Bowman and
19 copying Dave Wilson; right?

20 A Yes.

21 Q Are you with me?

22 A I am now.

23 Q Do you see where it says, Gandis and Comeau-Shirley
24 recently offered a -- offered to buy out Dave's share and
25 price term -- the buyer would, also, be willing to accept

1 the reverse role; right?

2 A That was the intention, yes.

3 Q And isn't it a fact that you were always ready to buy
4 or sell this company?

5 A Yes.

6 Q Your interest?

7 A Yes.

8 Q Now, we're going to hear a lot about you were going
9 to force that building on them, aren't we?

10 A That was not my intention. And I may have worded
11 this wrong due to the time of what was going on. But the
12 intention was that all the assets were in that building,
13 all the film was in that warehouse. Okay.

14 So either you have to negotiate a lease or you just
15 go with the building. And John said he would give it to
16 him at practically nothing. Dave had asked for \$700,000.
17 I mean, these numbers were astronomical for his share.

18 So we turned around and said you can have the
19 majority piece, plus the building for 500. That seemed
20 like it should be a no-brainer close. It wasn't intended
21 to say you must take the building. And I get how McGarel
22 says the building would be a burden to him. I agree.

23 Q To McGarel, it would be a burden?

24 A To McGarel, it would be a burden. So if a third
25 party would have come in, we'd have said you don't have to

1 have the building. But Dave didn't have a building, and
2 CCC was in a building. It could cost as much as \$75,000
3 to move that stuff to another location. Getting a
4 building and having it in place, it seemed like a
5 reasonable offer. It wasn't intended to be a must do.
6 Although, that doesn't mean that's not what my words say
7 at some point. But that's really after we find out
8 somebody else is out there.

9 Q Look at Exhibit -- Plaintiff's Exhibit No. 59.

10 A 59.

11 Q You know, the problem with writing all of these
12 e-mails is we get to pick and choose what we read out of
13 them.

14 A I know. And I can't keep up. So I apologize. I
15 can't memorize it all.

16 Q Well, apparently, only one of us is able to, and I
17 give him credit for that.

18 But Exhibit No. 59. I look at the paragraph, I know
19 Dave. What's that say?

20 A Wait a minute. Which book?

21 Q Plaintiff's Exhibit No. 59 in the binder.

22 A I'm sorry. I opened the wrong 59. I know Dave --

23 Q I didn't say which paragraph it is. I know Dave --
24 what does it say?

25 A Plaintiff's Exhibit No. 59, the first page?

1 Q Yes. Do you want me to read it to you?

2 A If you don't mind -- oh, I know Dave wants to be a
3 partner. And I support him in that goal, but --

4 Q Okay. You can keep reading, but we need to come to a
5 consensus on how the business is going to be managed;
6 right?

7 A Yeah. This is about cash flow.

8 Q But what's the opening of that, I know Dave wants to
9 be a partner?

10 A Yes.

11 Q And?

12 A I support him.

13 Q And that's an e-mail from you to John; right?

14 A Yes.

15 Q That's not for anybody else; right?

16 A No, sir.

17 Q You don't need to be staging that, do you?

18 A No. Look, we say, we completely agree with you. The
19 cash generated by the company is the owners. Where we
20 disagree is when the cash will be distributed. In my
21 mind, this was the last thing being negotiated. It was
22 just the priority of cash.

23 Q Look at Defendant's Exhibit No. 68.

24 Are you there?

25 A I am here. This is Andy's favorite or second

1 favorite e-mail.

2 Q He did say this is his favorite, didn't he?

3 Patience, grasshopper, patience; right?

4 A Yes, sir.

5 Q But doesn't that e-mail -- this is an e-mail between
6 you and John Gandis; right?

7 A Yes, it is.

8 Q It's not staged for anybody, is it?

9 A No.

10 Q And don't you say in there, We need to remember we
11 don't care if he's a partner or not, only he cares?

12 A That's correct.

13 Q You don't care whether he stays a partner or not
14 because he causes problems, but he brings the skill set,
15 too; right?

16 A Look, I'm thrilled he's talking to Clayton Jennings.
17 Because I'm hoping Clayton is going to bring it back to
18 stable. I hope Clayton helps us get this done. We want
19 him as a partner, or whatever he wants. I don't want -- I
20 shouldn't force it on him. Whatever he wants, we were
21 trying to help.

22 Q The impact of you doing all this, and telling your
23 clients your husband has cancer, and having other things,
24 did you lose clients?

25 A Yeah. I lost one of my biggest clients. They were

1 okay with putting up with the disruption with the cancer.

2 But this for two more years, they're --

3 Q It didn't fly?

4 A It didn't fly.

5 Q And you don't have a big cadre of clients, do you?

6 A No, I don't.

7 Q A small group; right?

8 A Yeah, a very small group.

9 Q What makes you think Dave resigned?

10 A I got a phone call from our business attorney,
11 Mr. John Zamer of Jones Day, who said he had gotten a
12 phone call from Clayton Jennings. Okay. That's odd,
13 attorney to attorney.

14 And he said that Dave saw no future together, no way
15 forward, and he was going to deliver a discounted offer.
16 And so he -- it just made no sense, no way forward. How
17 else are you supposed to interpret that? No future
18 together.

19 Q Okay. You heard testimony earlier about Dave telling
20 John he would shut down the company and put all of these
21 employees out around the holidays, didn't you?

22 A Yes.

23 Q Did you hear something like that, or did John tell
24 you?

25 A John called me to ask me what was Dave talking about.

1 Dave had said he would disassociate. And when he
2 disassociated, the company would be put out of business
3 and all of these guys would come back from the holidays
4 without a job. And John panicked and said, Find out from
5 the lawyer what does he mean.

6 Q And that led to more of a flurry of activity, didn't
7 it, to keep that from happening?

8 A But --

9 Q Go ahead.

10 A No. I'm just saying --

11 Q You're horrible people. The next year, you were
12 dissolved, weren't you?

13 A Look, there's a world of difference. We spent three
14 months getting ready to file that dissolution order for
15 the Court. You've got employee law you have to deal with.
16 You've got all kinds of stuff you have to deal with --

17 Q That's not my point.

18 A I'm sorry.

19 Q You were willing to kick the people to the curb the
20 next Christmas is what he's going to say, isn't it?

21 A Well, there's a world of difference between
22 dissolving in an organized fashion and an unorganized
23 fashion.

24 Q You, also, knew you were going to have to move
25 something else if you sold, didn't you?

1 A Yeah.

2 Q If it dissolved; right?

3 A Yes.

4 Q Now, you gave them a balance sheet on December 27th,
5 2011?

6 A Yeah.

7 Q And you tried to hide all of those fees in yours,
8 didn't you? You had them right on the front page, didn't
9 you?

10 A I did everything I could to explain what I had done.
11 Even in an e-mail, this is what you can expect to see.

12 Q And Dave, actually, responded to you in the next few
13 days and he said, Why are you charging these fees; right?

14 A You know, he had consulted with Ray. I mean, I
15 really am grateful for this. There's -- here's somebody
16 who's supposed to know what they're looking at. And, yes,
17 he asked a series of questions. And we answered
18 questions. And then there were no more questions.

19 Q Let's answer them for the Judge. How did you pick
20 \$5,000 a month?

21 A What I was advised by counsel is --

22 Q Did you do it as a result of counsel?

23 A I did it as a result of counsel.

24 Q And why did you book it?

25 A Because I was told --

1 Q Now, was it as a result of counsel?

2 A Yes, it was.

3 Q I don't want you to talk about what his lawyers told
4 you?

5 A Okay.

6 Q Did you book it as a result of counsel?

7 A Yes, I did.

8 Q You knew you were trying to give proof to somebody
9 because there were people looking at buying the company;
10 right?

11 A Yes.

12 Q And you didn't want to have the -- be accused of
13 fraudulently stating or claiming something after the fact;
14 correct?

15 A That's correct. Look, my fee was never supposed to
16 be paid until there was an exit event. And this was the
17 first potential exit event that had happened. This would
18 be the first time it would show up. We had not yet agreed
19 upon what I would get.

20 So I went to John. I showed him what the range was I
21 could get. And I said, Look, I'll take a hundred. So I
22 booked a hundred. And I described it as preference on
23 minority, which I thought would trigger a memory.

24 Q But it didn't, did it?

25 A It sure didn't.

1 Q Did you consider the amount reasonable?

2 A I considered the amount a really good deal.

3 Q We listened to Mr. Bradshaw. He said that would be
4 what for him? 16.67 hours?

5 A He's earned that much in just this short period of
6 time. I put four years in.

7 Q But you don't think you were -- in fact, you could
8 have justified putting double that much in there, couldn't
9 you?

10 A All right. If I could just explain it this way,
11 because I think this is kind of key. Cash is everything
12 to partners.

13 So if Dave gets 20, John is supposed to get 20,
14 because they're supposed to be even. If -- in the end,
15 I'm going to get even, too. And I'm not saying that was
16 the agreement, but that was what I asked to be my
17 potential, then I can get as much as 20, also. Okay. 20,
18 20, 20.

19 If -- Dave's ahead because we've lent him money, so
20 he's at 35. Okay. This was going to be one of your
21 questions. Dave's ahead and he's at 35. On a current
22 basis -- and John is still at 20. He's still owed 15 on a
23 current basic.

24 So that's why that tax distribution number got booked
25 up on the balance sheet. Because what I was trying to do

1 was get down to a target net equity number that you would
2 go 45/45/10, and he could understand it.

3 Q And you knew you weren't doing it in QuickBooks, you
4 were doing a separate sheet; right?

5 A I think I did most of it in QuickBooks. But, at this
6 point, I couldn't tell you what was in and what was on the
7 Excel.

8 Q Well, you, certainly, cheated them on the air
9 conditioning, didn't you?

10 A I didn't intend to.

11 Q What happened there?

12 A Okay. What happened was they made some improvements
13 to the building. Okay. It was the landlord. I said,
14 This is the kind of stuff the landlord, typically, pays
15 for. John, you've got to pick this up in income. And
16 we're going to expense it. We had a boom year.

17 So all the instructions in the past from Dave had
18 been to do everything you could to get the lowest taxable
19 income number possible.

20 Q And that was the legal way to do it; right?

21 A That was the legal way to do it.

22 Q And the fact of the matter is if the business kept on
23 going, he was going to pay it either way; right?

24 A He's going to pay it either way. He's either going
25 to get a reduction in one year, three years, seven years.

1 And let's just be frank. That air conditioner is
2 never going to be worth its original cost. That's the ,
3 best answer. The time value deduction on the deduction is
4 worth more to him than the stuff's worth today.

5 Q And he's still an owner, so he's getting a deduction
6 today?

7 A Correct.

8 Q There's an e-mail I think -- that this is not going
9 to be easy to sneak it by him. Do you remember that?
10 Bucks e-mail?

11 A Yeah.

12 Q 39. What's that? 39? See if that's it.

13 Plaintiff's Exhibit No. 39. Yeah, that's it. I
14 don't think sneaking things by him will be easy. You're
15 trying to sneak things by Dave, aren't you? That's what
16 the implication was.

17 A That's how you read it if you want to read it -- but
18 if you read the whole thing in context, what's going on is
19 that Bucks had had a --

20 Q Bucks? He's a person?

21 A I'm sorry. Yes. Jim Bucks. I probably shouldn't be
22 that colloquial. Jim Bucks had a stale account. Tony,
23 our house account person, made a sale on it. And when
24 Bucks discovered it, he wanted his commission. And I'm
25 pretty much trying to say you're going to have to be

1 straight with him about when an account gets sufficiently
2 stale, it's out there. And I point out right above that
3 what the issue is.

4 I mean, if there's an issue on the door, they'll call
5 Bucks to discuss it, rather than Dave. I mean, what
6 you're saying is sneak it off of Bucks onto Dave's team.

7 Q So you weren't trying to cheat Dave?

8 A No. As a matter of fact, if you read the next
9 page -- and Dave and I set up meetings. And he's going to
10 meet just himself. That's John, me, and Tony mand then
11 invite Bucks to a different one. I mean, Dave's in on the
12 same -- we're all having the same conversation here.

13 Do you see that right up there at the top of the next
14 page?

15 Q Thank you.

16 A Subject, guarding existing customers. Good ideas.
17 I'm just making sure. Okay.

18 Q You changed the address for EFS and CCC from
19 Greenville to Anderson, didn't you?

20 A I sure did.

21 Q Why?

22 A Because for the second time that year, I had received
23 a phone call from Kimberly Cook telling me that if we
24 didn't have Greenville's phone bill paid by the end of the
25 day that our sales office was not going to be able to

1 receive phone calls.

2 So the bills were being received at one location and
3 forwarded to us. They had come late two times in a row.
4 I thought it was a good idea to just flip so they would
5 come to us. And if anything extra came, we'd send it over
6 to Dave, instead of waiting for him to come by and bring
7 it in.

8 Q But you weren't monitoring other sales because there
9 weren't any other sales, were there?

10 A I had no idea that there would be anything on Eastern
11 Films, except for stuff that was related to CCC. And when
12 Dave asked about it, I said, There's no secret. It's me.
13 It's me.

14 And, just for the record, no mail ever got moved.
15 Because the mail guy asked him about it the day before
16 they implemented it. And Dave said it was an error. So
17 nothing ever got changed.

18 Q Now, we heard earlier about Dave saying that this has
19 cost him financially. Has this cost you financially?

20 A It sure has.

21 Q It's cost you the amount of time you have just spent
22 getting ready; right, just like him?

23 A Just like him.

24 Q And it's cost you in terms of what you've accrued to
25 me, my firm; right?

1 A I've paid you, and I owe you.

2 Q Between those two, it's over \$150,000, isn't it?

3 A It's an awful lot of money.

4 Q And that's not CCC, is it?

5 A No. This is me --

6 Q CCC has never paid --

7 A This is me. Yeah. This is me, my money, not what's
8 going on in the company. The company's obligation, which
9 is to be determined as separate -- this is just me paying
10 this bill.

11 Q This is Andrea Comeau-Shirley who's written the check
12 to Smith Moore Leatherwood?

13 A Yes, sir.

14 Q And we've already heard Mr. Bradshaw say you haven't
15 gotten any money out of CCC since 2011, have you?

16 A No, sir. I -- no. I'm the one who honored what I
17 thought was the original deal. I've paid for my gas. My
18 phone bill -- Dave talked about personal phones. I paid
19 for my own business calls.

20 MR. FARRAR: Your Honor, may we take a break?

21 THE COURT: Sure. We'll take about 10 minutes.

22 Thank you.

23 (WHEREUPON, a break was taken.)

24 MR. FARRAR: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. FARRAR: That's all I have.

2 Thank you very much.

3 Please answer Mr. Arnold's questions.

4 MR. ARNOLD: I wasn't quite expecting that.

5 THE COURT: Sir?

6 MR. ARNOLD: I said I wasn't quite expecting that he
7 was done.

8 THE COURT: Sure.

9 CROSS-EXAMINATION

10 BY MR. ARNOLD:

11 Q Let me see. Let's make sure you have everything you
12 need.

13 A I have three of your books up here.

14 Q Well, let's start with number one. I want to talk to
15 you a little bit about some of your testimony you just
16 gave. You indicated -- I want to establish some kind of a
17 timeline. You, and Dave, and John had a meeting?

18 A Yes.

19 Q I think you said it was in May?

20 A I believe so.

21 Q Okay. And what was discussed at that meeting about
22 the three accounts?

23 A Nothing about the three accounts. What was discussed
24 was about import opportunities.

25 Q Okay.

1 A What wasn't discussed was the fact that he had signed
2 a partnership agreement with Steve Norvell the next month.
3 It would have been a perfectly logical time to bring it
4 up.

5 Q Okay. So, anyway, when did -- did he bring up
6 imports during that meeting?

7 A Yes. Yes. We talked about it.

8 Q And is that the meeting where he conceded that, you
9 know, it was a bad idea and he wasn't going to do imports
10 on the side?

11 A Yeah. I heard him say that he agreed that there
12 wasn't a way that he could logically define what would be
13 cherry picking and what wouldn't be. And that's the word
14 used, cherry picking.

15 Q Okay. So he agreed at that May meeting that he was
16 all in?

17 A He wasn't going to cherry pick.

18 Q Well, did he say he was all in? All his accounts,
19 everything --

20 A No. We talked about winding down. And I tried to
21 work that out with him and say, basically, if you've got a
22 binding sales order that was done before the deal. He
23 said he needed that. He had some payables left at Eastern
24 Films. He needed to collect those receivables. And that
25 once those -- he said once those receivables were

1 collected, the payables would be satisfied and he would be
2 fine. He made no mention of inventory still on hand.

3 Q So, at the May meeting, he indicates that the three
4 accounts -- well, he doesn't mention the three accounts.
5 He says everything's in. He'll put everything in. He
6 can't cherry pick?

7 A Correct.

8 Q Okay. The -- if you'll turn to Exhibit No. 4.

9 A Yes.

10 Q Would you identify that document?

11 A It's an e-mail from me to John.

12 Q And what's the date?

13 A June.

14 Q And June comes after May?

15 A Yes, sir.

16 Q Okay. And you're talking about a priority allocation
17 in this e-mail? You mention it?

18 A Yes, absolutely.

19 Q And then you send him -- then we've got the
20 partnership opportunities document attached to that;
21 correct?

22 A Partnership structuring issues, yes.

23 Q Right. And then on Page 5 of that?

24 THE COURT: Are you still on four?

25 MR. ARNOLD: Yes. But it's on page -- the attachment

1 to the e-mail, Page 5.

2 THE COURT: Okay.

3 BY MR. ARNOLD:

4 Q E, is there a non-compete provision? And what's the
5 answer?

6 A John writes, Needs to be minus the three. So John
7 and he had a conversation separately, yes.

8 Q So this --

9 A But consistent with what he said to me, everything in
10 our industry goes through the LLC. Because Dave did say
11 that he had stuff -- in that first meeting, he said he had
12 stuff that was outside of the film industry. He did say
13 that, no denying it.

14 Q Well, but you don't mention in your reply that, hey,
15 remember, Dave said that he's not going to cherry pick.
16 And those three accounts --

17 A You don't need to. Because if you're going to define
18 what a partnership is and you're going to define the
19 purpose to sell film in this industry, you don't need to
20 say that stuff, not in this industry is excluded. That
21 would be like saying excluding your dentistry business.

22 Q And then right below that, he -- John says, There are
23 three accounts that Dave wants to retain something of it?

24 A Just give me a second. Are you still on E?

25 Q Yes. Do you see that?

1 A Yes, I do.

2 Q Did John attend the same meeting you attended in May?

3 A There were several meetings and several phone calls.

4 Q Okay. So --

5 A And they had more meetings than I did, just so I am
6 clear.

7 Q Okay. And so in July --

8 A Yes.

9 Q -- is it your -- by July, is it your understanding
10 that they have a partnership, and that the three -- that
11 there are no hold out accounts? Is that your
12 understanding by July?

13 A Honest to goodness, if you're going to phrase the
14 question that way, I'd like to rephrase it. By May, it
15 was my understanding that everything in this industry was
16 in a partnership that they were already in together.

17 Q Okay. Well, let's look at Plaintiff's Exhibit No. 8.

18 A Okay.

19 Q Do you see, Ask the lawyer?

20 A Where --

21 Q Now, this is an e-mail --

22 A Yes, I do.

23 Q This is an e-mail from you to John?

24 A That's correct.

25 Q And this is July 14th, 2008?

1 A Yes.

2 Q Okay. Can you read, Ask the lawyer?

3 A Ask the lawyer if your entity is already legally
4 formed. If they need two initial members, make one with
5 yourself along with Decotex, and we'll add Dave through an
6 amendment. Yes.

7 Q So Dave, you, and John have had a meeting?

8 A Or more than one.

9 Q More than one. But you don't even know that there's
10 been an entity formed back in November of 2007; right?

11 A We talked about that date in that May meeting, so it
12 meant something. It did.

13 Q My question is, did you know that an entity had been
14 formed in November of 2007 where they were already
15 partners?

16 A I cannot tell you at what point I learned that fact.
17 I just can't give you a date. . .

18 Q Would you, at least, agree with me?

19 A Yes. At this point, I'm asking them to confirm.

20 Q You're asking John to confirm?

21 A Yes. Because John sent me the e-mail.

22 Q And then you indicate if they need two members --

23 A Yes.

24 Q -- it should be John and Decotex?

25 A No. What I, actually, say is they need an agreement

1 post haste. Here is how you can, basically, sign an
2 agreement with yourself, have it done, submit it to a
3 supplier so that they can see you're validly formed in a
4 day. Because he's saying he needs it by Friday.

5 I mean, we've been talking since May. There's no way
6 we're going to finish everything up and get it drafted to
7 the level that this thing needs by Friday. So this is how
8 you get it done. This happens all the time. You start
9 out with two, you take one out.

10 Q Well, why don't you just start out with Dave and
11 John? That's the deal.

12 A It was originally, yes, it was.

13 Q Originally? It was the deal always?

14 A Okay.

15 Q So why are you suggesting that John form an entity
16 with Decotex?

17 A I'm not certain how to say anything different than
18 what I've already said.

19 Q Okay. Is it -- so there was no agreement reached at
20 any May meeting, was there?

21 A I believe that partnerships come together in
22 piecemeal, bit by bit by bit, and then get documented.

23 Q Let's look at exhibit -- well, Exhibit No. 4. We're
24 back to the document we were looking at where he tells you
25 that there are three -- John tells you there are three

1 accounts that Dave wants to retain something over?

2 A Yes.

3 Q John, also, tells you --

4 A I'm in the same place, or what page do you want me
5 on?

6 Q I'm going to tell you.

7 A Okay. I'm sorry.

8 Q On Page 1, Exhibit No. 4, the attachment, Page 1,
9 item 1-C. What are the ownership percentages?

10 And John says?

11 A I'm cool with 50/50.

12 Q And then on Page 6 -- Exhibit No. 6, second page.

13 A Plaintiff's Exhibit No. 6?

14 Q Yes.

15 A Okay.

16 Q Second page, e-mail from John Gandis to Dave Wilson,
17 third paragraph.

18 A Yes.

19 Q What does John tell Dave he understands that you are
20 doing?

21 A I understand what she's trying to do is to assign a
22 value like equity to the book of business to write into
23 the agreement so that we can -- are shown as 50/50
24 partners.

25 Q 50/50?

1 A Okay.

2 Q And then let's look at Plaintiff's Exhibit No. 13.
3 And this is an e-mail from you to John Gandis in August?

4 A Okay.

5 Q And if you'll turn to the very last page of that
6 exhibit. Can you tell me what you told John?

7 A I'm trying to get you two into a 50/50 partnership as
8 quickly as possible, 50 of the upside and 50 of the risks.

9 Q So a 50/50 partnership?

10 A Yes, sir.

11 Q And that's what you were told it was going to be?

12 A Yes, sir.

13 Q Okay.

14 A From a cash flow perspective, yes.

15 Q Well, from a cash flow perspective. If that was all
16 it meant, why did you change Dave's K-1 to reflect a 44
17 percent interest? Was that 2010? Why would you do that?

18 A First, I don't think that I delivered that to Dave,
19 John might have. Because what happened is I came across
20 the original Stewarts Tolling document and it said 51/49.
21 And I asked him, Did I mess this up?

22 Q What did he tell you?

23 A He said that he was going to keep current
24 distributions 50/50, and asked if there was a one percent
25 difference, could they handle it later.

1 And I said, Yes, they could.

2 He said, Then that's fine.

3 Q And that was -- that would have been related to the
4 2010?

5 A Yes.

6 Q That was when you prepared the 2010 K-1?

7 A I think the K-1 that was filed with the IRS showed
8 him the same percentage he had before.

9 Q But you prepared one that showed 44 percent after you
10 had a conversation with John?

11 A I prepared one for John so he could see the
12 difference.

13 Q Let's look at Plaintiff's Exhibit No. 25.

14 A Okay.

15 Q Maybe this is what you're referring to. Look at the
16 bottom paragraph. Now, this is an e-mail from you to John
17 Gandis?

18 A Okay.

19 Q March 10, 2011?

20 A Yes.

21 Q It says, Also, when I was cleaning up the drive, I
22 found your first memo about your partnership with Dave
23 that said you guys were 51/49, rather than 50/50. Did you
24 change the 50/50 at some point, or have I been making an
25 error and you are still 51/49.

1 Did you read that?

2 A Yes, sir.

3 Q So you were unclear whether or not they were 50/50 or
4 51/49 in March of 2011; right?

5 A No.

6 Q Okay. You weren't unclear?

7 A What I was unclear about was -- yes. All right.
8 Fair enough. I'll give that you.

9 Q So you were unclear?

10 A I will give that you.

11 Q But you were crystal clear in your recollection that
12 in May of 2008 --

13 A Yes.

14 Q -- Dave abandoned any claim to those three accounts?

15 A I told you, we didn't talk about three accounts. We
16 talked about India and China import. That's not a
17 customer relationship. That's a vendor relationship.
18 It's the opposite side.

19 Q Okay. So Dave never said he was folding those three
20 accounts into CCC in your presence?

21 A Dave said that he would not cherry pick, and that
22 everything in the industry would go through CCC.

23 Q Let's look at 26. Here's another e-mail from you to
24 John, March 10th, which is the same day.

25 A Okay.

1 Q It's about an hour later. And you say, I can send
2 you the paperwork with the 51/49 notation. We should
3 clarify this before April 15th as part of the partnership
4 agreement update when we put the other things into place?

5 A Correct.

6 Q What other things were you putting into place?

7 A I had asked John Zamer of Jones Day to draft a
8 paragraph that addressed a paragraph what you do when a
9 partner's doing a side deal.

10 Q And that was what that was in reference to?

11 A Yes, sir.

12 Q And then down below -- and you're, also, proposing
13 for the first time that you want to be able to observe the
14 Greenville office remotely?

15 A Yeah. When you find a partner steals from you,
16 laughs about it, you've got two choices. You do nothing
17 and let it continue, or you try to put some extra
18 securities in place. So we tried to put some extra
19 securities in place.

20 We contacted a lawyer and asked to have draft
21 language put in. The intention was to say we want you to
22 stay, but we don't want you doing anything on the side.
23 And if you do, there will be consequences.

24 Q Can you point me to that e-mail?

25 A What e-mail?

1 Q The e-mail where you informed Dave of all this?

2 A Of what?

3 Q That you caught him in this side deal, and that now
4 you're going to have to monitor him closely? Did you --

5 A No. If somebody is working on the side and they're
6 smarter than you already, you, certainly, don't let them
7 know that you put the extra security in place.

8 Q Because you don't want to stop them. You want to
9 catch them; right?

10 A The partnership agreement was supposed to get put in
11 front of him very shortly and put him on notice.

12 Q Okay. Who was drafting the partnership agreement?

13 A John Zamer wrote the paragraph.

14 Q Now, I thought you didn't want to be a dictator?

15 A I don't know what your question is.

16 Q Well, let me ask you this. Who's idea was it to
17 put -- get John Zamer to write a new partnership agreement?

18 A Probably John's.

19 Q Probably?

20 A He was furious.

21 Q Okay. Well, let's go back a little ways. You say
22 that that December was not the first time he had caught
23 Dave. Isn't that what your testimony was, he had caught
24 him other times?

25 A Two times before.

1 Q When?

2 A Ask John.

3 Q I'm asking you.

4 A Before.

5 Q Before December 2010?

6 A Yes, sir.

7 Q What was -- what were those other occasions? What
8 was Dave doing on the side?

9 A I can't give --

10 Q You don't have a clue --

11 A -- you specifics. No, not that I don't have a clue.
12 I can't give you specifics.

13 Q Okay. Let's go to 58, Plaintiff's Exhibit No. 58.
14 This is an e-mail from you to John Gandis, November 2011?

15 A Yes.

16 Q Do you see the bottom where it says "what Dave is
17 asking for"?

18 A Yes.

19 Q Can you read that?

20 A What Dave is asking for is quite simply management
21 control.

22 Q When you formed your partnership with Dave, you asked
23 for 51/49 on decisions, and he agreed?

24 A Yes.

25 Q Your recall is back now that you've found this

1 document. You thought it was 50/50, then you said is it
2 51/49?

3 A What you fail to understand is if I had not confirmed
4 this with them on multiple occasions, I wouldn't have even
5 offered to be part of the deal.

6 Q But you didn't even know whether it was 51/49 or
7 50/50?

8 A I knew what the vote was. The vote is important.

9 Q Well, let's talk about decisions. Who was the first
10 person that was -- to suggest that Dave be restructured?

11 A John asked me to come up with a way to alleviate
12 Dave's issue where he doesn't have taxable income equal to
13 cash flow.

14 Q Who was the first person to come up with the idea
15 that Dave be restructured?

16 A That would probably be me.

17 Q Okay. But you didn't want to get in between the two
18 with your 10 percent interest. You wanted to leave that
19 to them. You didn't want to be in the middle; right?

20 A Not for management.

21 Q But for a business structure, you wanted to -- that
22 was the role you wanted, to dictate business structure,
23 not management?

24 A I didn't do anything but make recommendations. They
25 implemented or didn't implement.

1 Q You made a lot of recommendations, didn't you?

2 A Yes, sir.

3 Q Because you're the one that made the recommendation
4 that John never use the line of credit again to pay off
5 his taxes. That was your recommendation, wasn't it?

6 A Yes, it was.

7 Q And John agreed?

8 A John had decided in 2011, and the bank had requested
9 that the company be self-sufficient, they align. It's not
10 harmful to CCC. It's not harmful to Dave. And if we had
11 met the plan -- and we were supposed to have a banner
12 year. Dave's cash flow would have fixed itself.

13 Q That was your suggestion, wasn't it?

14 A Yes.

15 Q And you're the one who came up with the idea to spy
16 on Dave, didn't you? That was your idea?

17 A I can't recall. John or I, either one. It wasn't
18 really spying intentionally as you use the word. Because
19 I don't know what that means.

20 Q You don't know what spying means?

21 A Huh-uh.

22 Q Reading somebody else's e-mails without their
23 knowledge.

24 A Okay.

25 Q Does that fit?

1 A If that's what it means.

2 Q And you were wanting to keep that --

3 A What? What we tried --

4 Q -- information from Dave, that you were going to be
5 intercepting his e-mails?

6 A First of all, so that you understand, Dave knew when
7 the IT people came out there that they were out there. We
8 had spoken with Bill Shaw twice before. They asked to
9 touch Dave's laptop to make changes, and he refused. And
10 Eric Gurley reported back to us Dave's behavior and said
11 it was odd. And this was within two and a half months of
12 the \$800 check.

13 Q You were the one that proposed to John, to have CCC
14 employees do Decotex and M-Tech work. Wasn't that your
15 idea?

16 A No, sir.

17 Q You didn't prepare the job descriptions that you sent
18 to John and said, Let's have these folks do 15 percent of
19 their time on Decotex?

20 A I hope that what that says is referring to the
21 Decotex line reconciliation. But what I proposed to John
22 was the right staff with the right skill set, two and a
23 half people, none of which was implemented. It stayed
24 with Joy forever. We, eventually, brought Kimberly in.
25 But it was about you don't have the right strength,

1 you don't have the muscle. It was like they were asking
2 you to build a brick wall and hire plumbers and
3 electricians to do it.

4 Q It was your idea to raise the rent on CCC, wasn't it?

5 A The deal was market rent. And in 2009 and 2008, we
6 even shopped for a new building. And I ran numbers for
7 them on what they could afford. They were looking for
8 properties around the area. The market had a bunch of
9 depressed property.

10 Q Look at Exhibit No. 33, Plaintiff's Exhibit No. 33.

11 A Yes, sir.

12 Q And you say, You seem to have forgotten that I forced
13 you to raise the rent for CCC?

14 A That's correct. That's what it says.

15 Q A little dictatorial there, wasn't it?

16 A I have since learned that being the oldest of five
17 daughters is biting me in the butt.

18 Q It was your idea to move the assets off the balance
19 sheet and to classify them as deferred rent payments,
20 wasn't it? That was your idea?

21 A I believe that's current rent, currently taxable to
22 John, currently deductible by us.

23 Q That was your idea, wasn't it, to take the assets off
24 to reclassify them as an expense?

25 A Yes, sir.

1 Q That was your idea?

2 A Yes.

3 Q And John agreed; right?

4 A Yes, sir. He paid tax on it, yes, sir.

5 Q And it was your idea to start thinking of an exit
6 strategy for Dave Wilson. That was your idea, wasn't it?

7 A I know you're going to take me to the memo where the
8 exit strategy shows up. It's the only memo with exit
9 strategy. You will not find a memo wherein any of the
10 proposals that Dave is not still in CCC.

11 Q Well, let me ask you this while we're going through
12 all these e-mails. You didn't produce a one of these, did
13 you?

14 MR. FARRAR: I object, Your Honor. She did, too.

15 MR. ARNOLD: I don't think she did.

16 THE WITNESS: I think that's part of the reason why
17 my fees are \$150,000.

18 BY MR. ARNOLD:

19 Q Well, tell me why. Tell me how us having to get a
20 copy of your hard drive --

21 A That's fine. I'll answer the question.

22 Q Let me ask it.

23 A Go ahead.

24 Q How us having to get a copy of your hard drive to get
25 it imaged and searched, and we pay for it, how that cost

1 you money. Explain.

2 A I think I should rephrase your question, which is how
3 did we end up in a situation where there was a court order
4 involved. I don't know.

5 Q How many e-mails did you produce before that court
6 order?

7 A I thought I had arranged that Eric Gurley was taking
8 care of this. It was my understanding that that was being
9 taken care of.

10 Q How many e-mails did you produce before that court
11 order?

12 A I personally produced none, because I thought I had
13 hired the right professional. I was unaware at the time
14 that there was anything wrong.

15 Q It was your idea to remove Dave as the signatory from
16 the bank account, wasn't it?

17 A That's just -- Dave had never written a check, never
18 done a wire. When we made the change, it was just
19 safety -- internal safety control. It was nothing intended.

20 Q That was your idea, wasn't it?

21 A (There was no response.)

22 Q Yes?

23 A Actually, the e-mail that you're reading says, Leave
24 everything as it was originally. But on the wire, yes.

25 Q Was it your idea to remove Dave --

1 A Yes.

2 Q -- as a signatory?

3 A On the wire, yes.

4 Q On the bank account. So you're just going to take
5 credit for the wire, removing him from the wire? Well,
6 let's look at that e-mail real quick. That's 71.

7 A If you like, I'll just say yes, then we can move on.

8 Q I'm a glutton for punishment. So I'm going to look
9 at e-mail 71.

10 Money market account authorization. You were writing
11 Tiffany Charles. Do you know Tiffany Charles?

12 A Not personally.

13 Q And they were confused about why Dave was being
14 removed from the wire authority because he was an owner?

15 A Correct. And I write, As part of risk management, it
16 makes sense that only the people with the responsibilities
17 that include writing checks and sending wires would be
18 authorized to do those things. And this is just a
19 segregation of duties, accounting 101.

20 Q And you tell the bank what your duties are, you
21 manage the finances?

22 A Regrettable word choice, yes.

23 Q Because it's inconsistent with the position you've
24 taken in this case, isn't it?

25 A (There was no response.)

1 Q You managed the finances, didn't you?

2 A (There was no response.)

3 Q And you're responsible for entire mess that the
4 QuickBooks files turned into, aren't you?

5 A I think that the people who refused to implement my
6 recommendation plan to hire the right staff for the right
7 job should own the responsibility for the consequences of
8 their own decisions.

9 Q Now, you were just trying to help Dave. But the way
10 you came up to help Dave was you wanted him out, and you
11 wanted his interest?

12 A No. Actually, that's not what I proffered.

13 Q Well, let's look at e-mail No. 42?

14 THE COURT: Plaintiff's?

15 MR. ARNOLD: Plaintiff's Exhibit No. 42.

16 BY MR. ARNOLD:

17 Q And this is the one where you tell John what to tell
18 Dave. You said -- this is September the 20th --

19 A Yes.

20 Q -- 2011.

21 A Yes.

22 Q This is the day after you and John read the e-mail
23 between Dave and his wife. Do you remember that e-mail?

24 A Yes.

25 Q Okay. So the day after you read the e-mail, you had

1 been thinking about it and you have come up with this
2 little soliloquy he can deliver to Dave. Do you see that?

3 A I do.

4 Q Okay. But let's turn the page.

5 A Yes, sir.

6 Q And there's a framework for discussion only at this
7 time?

8 A Yes.

9 Q Look at number three. What does number three say?

10 A This is me and this is intended to be John. And Dave
11 will sign over his shares to me so that he is only taxed
12 on what he receives from CCC monthly. And we will modify
13 the LLC agreement to reflect the fact that Dave has
14 relinquished his shares effective the beginning of the
15 year.

16 Q Well, let's look then at number one. Because, there,
17 you're telling him we cannot propose something that is not
18 possible, or you put your family at risk?

19 A Yes.

20 Q So John is you and you're in paragraph one; right?

21 A Yeah. And then there's a heading that says,
22 framework for discussion, which is intended to be what
23 John would look at and write, yes.

24 Q Well, again, if you'll look at the very top. You end
25 the -- you end what John is supposed to tell Dave with a

1 quotation mark. Do you see that?

2 A Where?

3 Q Do you see that?

4 A No.

5 Q Well --

6 A Just give me a second. The one that starts, This
7 year has been tough on cash --

8 Q This is page --

9 A Page 1.

10 Q Page 2.

11 A Oh, I'm sorry. My apologies.

12 Q Exhibit No. 42.. And at the very beginning, the very
13 top of the page, you're telling John what to tell Dave.
14 And you end with that quotation mark. Do you see that?

15 A That I think we should convert to something that
16 works for you and lets us still work together.

17 Q End quote. And then you've got your framework for
18 discussion. And number three is Dave has signed his
19 interest over to me. Isn't that what that says?

20 A Yes. It does say that.

21 Q Is that another unfortunate word choice?

22 A (There was no response.)

23 Q Look down below at number four, When you flip Dave to
24 employee --

25 A Yes.

1 Q -- he needs to understand what he will bring home if
2 he does his part, and if Toni does her part, and if Buck
3 does his part?

4 A Right. And I talk about how Dave will get paid on
5 all of their work, not just on his work, but all of their
6 work. The complaint from Dave had been about the fact
7 that his cash and his taxable income were not aligning up.
8 That's what all this restructuring talk was.

9 Q Now, let's look at 46. This is an e-mail from you to
10 John Gandis?

11 A Yes, sir.

12 Q I'm not sure anybody is going to accuse you of being
13 a softie from this one, are they?

14 A No. But this is the first time you can accuse me of
15 being brief.

16 Q Well, you say, If Dave doesn't relent, we call his
17 loan --

18 A Yes.

19 Q -- and then either he comes up with 123,000 --

20 A Yes.

21 Q -- or he forfeits his membership interest?

22 A Yes. That's exactly why the tax strategy worked.
23 And this is part of what I tried to explain to Ray Harris.
24 It is, Dave, you didn't have to trust me, but if you could
25 have trusted Jones Day -- that's what I told him, a

1 lawyer, a big lawyer was going to take care of you.

2 Q Okay. Plaintiff's Exhibit No. 47. Let's look at
3 that one real quick.

4 THE COURT: What was the one right before that, the
5 one you were on before that?

6 MR. ARNOLD: That was 46.

7 THE COURT: 46.

8 BY MR. ARNOLD:

9 Q Exhibit No. 47. Is the big lawyer drafting the LLC
10 agreement? Is that who that is? Is it John Zamer?

11 A It wouldn't have been him for this planning idea.

12 Q Okay.

13 A It would have probably been out of their national
14 office.

15 Q Okay.

16 A This was freakishly sophisticated tax planning.

17 Q Okay. Well, I'm not even going to try to understand
18 it.

19 A I'm not even going to try to explain it.

20 Q Thank you very much.

21 A Because you would get me in another court case.

22 Q So, now, let's look at the bottom of that e-mail. As
23 for the LLC agreement, I am looking for our copy.

24 A Yes, sir.

25 Q And he may find -- and "he" is Dave -- may find that

1 if we never did execute the LLC agreement that you might
2 be able to take the position that he's not some flat
3 percentage?

4 A That's right.

5 Q I'll ask Zamer?

6 A That's right.

7 Q So you've got the bright idea if you can't find a
8 signed partnership agreement, you might be able to take
9 the position he's never been a partner at all?

10 A That does not say that.

11 Q Or, at least, he's not a 49 or a 45, or you can make
12 up whatever percentage you want to; right?

13 A It doesn't say that either.

14 Q Well, you tell me what you mean then.

15 A This e-mail was written four days after Dave had
16 delivered to us an e-mail that pretty much just said pay
17 me or I'm going to go home and sit at home and collect a
18 check, or I'm going to file some paperwork and take the
19 company to dissolution. So that's the framework this is
20 in.

21 So John is saying how in the world can he tear my
22 company apart. And I'm saying if he didn't sign this
23 document, maybe he doesn't have the power to destroy the
24 company like he thinks he does.

25 Q Okay. You're the one that prepared the 2012 pro

1 forma balance sheet, aren't you?

2 A Yes.

3 Q And you're the one that put your preference for units
4 on that balance sheet, aren't you?

5 A Yes.

6 Q Actually, what you did, as Del Bradshaw informed us
7 this morning, you, actually, didn't create a QuickBooks
8 report. You put it all in an Excel spreadsheet so you
9 could manipulate the numbers any way you wanted to; isn't
10 that right?

11 A I don't agree that was not in QuickBooks.

12 Q So you disagree with Del Bradshaw?

13 A I'm going to be very careful here, because I respect
14 him highly.

15 Q He says it wasn't ever in QuickBooks.

16 A If he doesn't recall it, I respect his memory.

17 Q You're the one who wrote the script for John when he
18 went to terminate Dave and lock him out of the office?

19 A I sure did. And I said, If Dave says he didn't mean
20 to go, take him for a sandwich, take him for a coffee, and
21 talk about it. I sure did write it.

22 Q You were the one who came up with the idea for Zoi
23 Films, weren't you?

24 A For the name, yes.

25 Q For the idea. Do we need to pull out --

1 A No, no. That's fine. Yeah, I had lots of ideas,
2 unfortunately.

3 Q Yes. And a lot of them were intended to squeeze Dave
4 out --

5 A No.

6 Q -- wasn't it?

7 A No, no. At one -- that's not fair. Honestly, at one
8 point, when we discovered he had Neologic, we contacted
9 Steve Potts and we said, Let's form an entity, but we
10 didn't do it.

11 At one point, we talked about doing a different kind
12 of film we'd never done before. And I went and met with
13 the vendor. And they asked me to give them the paperwork.
14 Because I was going to take it out to investors and I
15 needed pricing.

16 So I prepared paperwork, which is in your book. But
17 then we spoke to counsel and they said it might just not
18 be different enough, Andrea. And rather than be in this
19 courtroom and fight about it, we didn't do it.

20 Q In the e-mail you wrote to John on March 15th, 2012,
21 you said that the reason you wanted to create another
22 entity was so you didn't have to haggle with Dave W about
23 how much of the new stuff was his?

24 A That's correct, brand new stuff. It's like we had
25 never done before. That was the idea.

1 Q And you came up with the name Zoi Films?

2 A I came up with four or five names. And John picked
3 Zoi. Because I foolishly forgot that was one of his
4 daughters. I should have known better. But it means
5 life.

6 Q And you're the one who proposed that M-Tech be the
7 partner, the managing partner?

8 A At one point, yes.

9 Q And you're the one that when the bank documents went
10 to Bank of America --

11 A Yes. I wrote M-Tech in.

12 Q You altered that document, did you not?

13 A I did.

14 Q Now, I asked you in your deposition whether or not
15 you had -- if you remembered your communications with the
16 IRS?

17 A Yes.

18 Q And you told me you had no recollections of any
19 communications with the IRS. Do you remember that?

20 A I hope I didn't say that.

21 Q Well, let's look.

22 A No. I mean, I hope I didn't say I had no
23 communications with the IRS.

24 Q No. You had no recollection?

25 A I could not remember, specifically, what I had done.

1 Q Well, let's look at 135, Plaintiff's Exhibit No. 135.

2 A Yes.

3 Q And you communicate -- this came off your hard drive?

4 A Yes.

5 Q And you had just the week prior communicated with the
6 IRS --

7 A Yes.

8 Q -- to change the information you had originally
9 provided them?

10 A Yes.

11 Q You didn't want it discovered what you had done in
12 the formation of Zoi, did you?

13 A No. What I didn't want, after having been advised
14 that it needed to be a single member LLC, is I didn't want
15 them writing me for a partnership agreement. I figured it
16 was more likely than not that I said it was a two-member
17 entity. Because we were going to give members and others
18 an equity interest. So it was more likely than not that I
19 had originally said partnership.

20 Q And you are the one who proposed that John Gandis get
21 18 percent on money he loaned to the company. Wasn't that
22 your idea?

23 A I can't really recall if it was me or the attorneys,
24 because there was a note drafted.

25 Q Well -- and for the first time ever, you filed UCC

1 documents?

2 A Yes, sir.

3 Q To give John liens on all the assets and future
4 assets of CCC?

5 A Yeah. That's just a common collateral term. It
6 means that your debt -- up to the amount of your debt, not
7 one penny more has the right to reach those assets. If
8 you have a million dollars worth of assets and a \$10,000
9 UCC, you do not get access to a million dollars.

10 Q But that was never part of the deal. He had never
11 filed a UCC before, had he?

12 A Dave leaving was never part of the deal.

13 Q No, it was not.

14 A I agree. I absolutely agree.

15 Q And locking him out was not part of the deal, was it?

16 A (There was no response.)

17 Q Was it?

18 A It was the lawyer's advice. And I wasn't there.

19 Q Calling the cops wasn't part of the original deal
20 either, was it?

21 A It was the lawyer's advice. And I wasn't there.

22 Q I'll tell you, you're coming pretty close to waiving
23 your attorney-client privilege. Do you realize that?

24 MR. FARRAR: Is that a question that she should be
25 asked?

1 MR. ARNOLD: I said, Do you realize that.

2 MR. FARRAR: I didn't say it wasn't a question. Is
3 it a question she's capable of answering?

4 THE COURT: Let's just move on to something else.

5 BY MR. ARNOLD:

6 Q But you couldn't have accomplished any of this
7 without John Gandis, could you?

8 A Any of what, sir?

9 Q Raising the rent, restructuring Dave, locking him out
10 of the building, getting the UCC agreements, threatening
11 Dave never to get paid in January, February, or maybe
12 longer. You couldn't have done any of that without John
13 Gandis, could you?

14 A You need to read the December 4th e-mail from me to
15 Dave where I asked him to confirm that he has, in fact,
16 arranged financing for two months. That's all we talked
17 about.

18 And the purpose -- there's tons of e-mails where John
19 and I talk about sitting down, coming up with a cash and
20 operational plan, and meeting with Dave. It talks about
21 monthly statements for Dave. Okay. Dave never once wrote
22 back and said that he did not have his financing plan.

23 There's an e-mail where I write to John and say,
24 Please, confirm with Dave. It was two months cash
25 starting again in March. And the difference was going to

1 be for the first time ever, we were going to have a real
2 set of numbers and not just stuff spread across a
3 spreadsheet.

4 Q Why haven't you provided Dave with any financial
5 statements since 2013?

6 A What I have told the attorneys is that so long as
7 every time I produce something, he's going to argue that
8 it's fraudulent. Until he bothers to declare how he wants
9 something to be reported, we will fix it and do it that
10 way.

11 Q So you haven't provided -- you know we have requested
12 financials?

13 A And I have consistently said that until Del's report
14 came in, which just came in, you can't fix the old items.
15 And old item errors carry forward to the current error.
16 So you're off.

17 Q Have you and John had any discussions about CCC
18 filing bankruptcy if the Court orders CCC to buy out Dave?

19 A I have not.

20 Q Why shouldn't the Court order you and John to buy
21 Dave's interest?

22 A Because what's happened here is the same as if there
23 was \$10,000 in the bank. Dave walked out with some, let
24 the rest get spent widely, and now he wants back in to get
25 his share. He's gotten his share. There's no putting

1 that horse back in the barn. It can't be fixed.

2 He's got the trade secrets. He's got the
3 information. He's got a huge set of accounts. That can't
4 be undone. He knows about relationships that he's learned
5 about through this lawsuit. It can't be undone.

6 Q Did John Zamer tell you that, too?

7 A No, sir.

8 MR. ARNOLD: I don't have anything else.

9 REDIRECT EXAMINATION

10 BY MR. FARRAR:

11 Q Look at Exhibit No. 25, Plaintiff's Exhibit No. 25,
12 please, Andrea. Are you there?

13 A Yes, sir.

14 Q This is the e-mail you just talked about with
15 Mr. Arnold. And this is where you sent the e-mail to back
16 up the system; right?

17 A Yes, sir.

18 Q Did Dave allow his computer to be backed up?

19 A No, sir.

20 Q In fact, this was right after he had been caught
21 doing one of the off-the-books transactions; right?

22 A That's correct.

23 Q And he -- just like he took his computers and wiped
24 them clean and, in theory, put back everything that was
25 important, he wouldn't let you have access to those, would

1 he?

2 A No.

3 Q You just had to trust him, didn't you? And the level
4 of trust was waning, wasn't it?

5 A It was really thin at this point. It was fixable.

6 Q But he wasn't working -- trying to work the fix, was
7 he?

8 A No.

9 Q It was all about Dave, wasn't it?

10 A It was always about Dave. Dave wanted all the
11 upsides of an owner, and all the protection of an
12 employee, and all the priority of a top level executive.

13 Q And then go to page -- Mr. Arnold didn't point this
14 out to you. Exhibit No. 58. And the risk of this is
15 these are lengthy e-mails, aren't they?

16 A I'm sorry for that. I apologize.

17 Q And there's a lot you can cherry pick from even these
18 and read; right?

19 A Yes, sir.

20 Q Let's read 58, the last page of that exhibit, please.

21 A The last page?

22 Q Yes. Is there anything nefarious about you saying
23 Dave needs to understand that our company cannot sustain
24 our current levels unless Dave devotes a hundred percent
25 of the time to sales?

1 A Yes, nothing.

2 Q That's true, isn't it?

3 A It's absolutely true. And he has the right to look
4 at company information. There was always a plan to get
5 him company information. But that's not stuff he should
6 be doing while our customers are waiting for phone calls.
7 That's all that says.

8 Q And going back. I'm just bouncing around. I
9 apologize. But we're going to finish, I hope, in just a
10 minute. The not paying the line of credit, that whole
11 line of e-mails -- Mr. Arnold didn't show us an e-mail.
12 I'm not going to do it out of deference to him. But the
13 e-mail about paying down the line of credit is in March of
14 2011; right?

15 A Yes, sir.

16 Q And the reason we know that is because in there, you
17 say, If you need the money back in April, we'll just
18 borrow it back; correct?

19 A We had done that hundreds of times before.

20 Q Nothing wrong with that; right?

21 A Hundreds of times before.

22 Q And, in fact, you really didn't think you were going
23 to have to do that. Why didn't you think in March of 2011
24 you wouldn't have to hit that line of credit again?

25 A Because we were two million dollars over budget as of

1 that point in time. And life was fantastic. And we were
2 waiting on some huge cash number to come in.

3 Q And, yet, that's when the market turned right after
4 that; right?

5 A The market turned shortly thereafter.

6 Q And you were stuck with a big pile of purple shag
7 carpet; right?

8 A Yes, sir.

9 Q Who's Eric Gurley?

10 A He's the president and owner of the IT company who
11 John works with at CCC.

12 Q He's the one who, also, found out that Dave had taken
13 his computers and wiped them and put everything back;
14 right?

15 A No. That was, actually, Kenny McClean.

16 Q That's a different company?

17 A A different company.

18 Q Okay. So he was just your normal IT guy?

19 A He was the normal guy.

20 Q He wasn't the expert guy who was seeing what got
21 taken off?

22 A No.

23 Q Okay. My bad.

24 A But he is the person who I asked to have a copy of my
25 computer so that Mr. Arnold's request could be fulfilled.

1 Q And the reason it cost you thousands and thousands of
2 dollars is because there's a statute in Georgia which
3 requires you to protect records, isn't there?

4 A Yes.

5 Q And you had your other client records on here, didn't
6 you?

7 A Yes.

8 Q So I had to look at them all, didn't I?

9 A Unfortunately, yes.

10 Q And that cost you tens of thousands of dollars?

11 A Yes.

12 Q I don't know that we've got to talk about this, but
13 let's do it for the fun of it. Exhibit No. 42.

14 A In his book or --

15 Q In his book, Plaintiff's Exhibit No. 42. This is
16 where Mr. Arnold says you're going to take Dave's share;
17 right?

18 A Apparently.

19 Q And you draft something for John. And you slip back
20 and forth between first and third person, don't you?

21 A I call myself "we" all the time.

22 Q But you slip back here from first to third person?

23 A Okay.

24 Q Under oath, before God, did you intend for paragraph
25 three to mean to you, Andrea Comeau-Shirley?

1 A Not -- no.

2 Q Ever?

3 A No. At one point, when we were going for the Bank of
4 America loan, I told John that if Dave elected the option
5 that he was going to give up his equity and it would all
6 be deferred, I would give him my equity so that John would
7 be the 100 percent owner for the bank. Because most of my
8 participation was already deferred. And I thought that
9 would be a good faith effort to Dave to show that what was
10 good for him was good for me.

11 Q And Exhibit No. 46 where you said, No, he does not
12 understand?

13 A Yes.

14 Q Are you saying, no, he doesn't understand this is an
15 intricate tax thing, it's not really explained in one
16 word?

17 A Yeah. And, unfortunately, for me, I'm used to
18 working with very wealthy high net worth individuals who
19 don't want to understand. They just want to know they're
20 being taken care of and getting the best answer.

21 And, like I said, I wasn't going to be the one to do
22 the analysis. It was going to be a good firm.

23 Q And, finally, I think you've already said this, but
24 let's just make sure the record is clear. Andy Arnold
25 accused you of lot of suggestions, a lot of things. Did

1 you ever make suggestions of things that you thought they
2 should do that they didn't implement?

3 A We'd be here another week.

4 Q Just to talk about the ones that didn't get
5 implemented?

6 A Yes, sir.

7 Q And that's both of these men; right?

8 A Yes, sir.

9 Q Because both of them wanted to bring structure, and
10 neither wanted to go through what you have to do to get
11 there; right?

12 A It's painful.

13 MR. FARRAR: Thank you.

14 That's all I have.

15 MR. ARNOLD: I don't have anything else.

16 THE COURT: Thank you, ma'am.

17 THE WITNESS: Thank you.

18 MR. STEPHENSON: Your Honor, I have high hopes that
19 we can get through tomorrow. We've got three witnesses,
20 John to testify, Steve Norvell, and our expert.

21 And you've got?

22 MR. ARNOLD: Catherine Stoddard. And I think there
23 is a pending motion to exclude her testimony.

24 MR. FARRAR: Do you want to hear that tonight or
25 tomorrow morning, Your Honor?

1 THE COURT: Let me read your memo first.

2 MR. FARRAR: Yes, sir.

3 MR. STEPHENSON: Your Honor, if we are lucky enough
4 to get through tomorrow, what are your thoughts about
5 orders, briefs, argument?

6 THE COURT: Do you mean after the trial?

7 MR. STEPHENSON: Yes, sir.

8 THE COURT: I don't know. I don't think I'm prepared
9 to say right now.

10 MR. STEPHENSON: Okay.

11 THE COURT: You don't have to know right now?

12 MR. STEPHENSON: No, sir.

13 MR. ARNOLD: We're just thinking ahead.

14 THE COURT: Y'all are.

15 MR. STEPHENSON: We're thinking of Friday.

16 THE COURT: What?

17 MR. STEPHENSON: We're thinking Friday may, finally,
18 get here.

19 THE COURT: Yes, right. What's remarkable is how
20 y'all end right at 5:00.

21 MR. FARRAR: It's a skill set, Your Honor.

22 MR. STEPHENSON: When you get to be our age, you can
23 do it.

24 THE COURT: Well, I appreciate everyone's
25 professionalism and courtesies. And we'll see y'all in

1 the morning.

2 Does 9:00 suit everybody?

3 MR. STEPHENSON: Yes, sir.

4 MR. ARNOLD: Yes, sir.

5 THE COURT: All right. Thank you.

6 (WHEREUPON, the proceedings were concluded at
7 approximately 5:01 p.m., to be reconvened on
8 Thursday, October 2, 2014.)
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1 THURSDAY, OCTOBER 2, 2014

2 THE COURT: Yes, sir, Mr. Stephenson.

3 MR. STEPHENSON: Are you ready?

4 THE COURT: Yes, sir.

5 MR. STEPHENSON: We call Steve Norvell.

6 THE COURT REPORTER: Raise your right hand and place
7 your left hand on the Bible.

8 WHEREUPON,

9 STEVE NORVELL,

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

11 THE COURT REPORTER: Thank you.

12 You may be seated.

13 If you would state your name, and spell your last
14 name.

15 THE WITNESS: Steve Norvell, N-O-R-V-E-L-L.

16 DIRECT EXAMINATION

17 BY MR. STEPHENSON:

18 Q Mr. Norvell, you are Dave Wilson's brother-in-law; is
19 that correct?

20 A That's correct.

21 Q He is married to your sister?

22 A He's married to my sister, Julie.

23 Q And you're, also, the president of two companies
24 we've heard about, Fresh Water and Neologic; am I right
25 about that?

1 A Technically, yeah. I'm president of Fresh Water and
2 de facto president of Neologic.

3 Q And the reason you say that is your wife owns
4 Neologic, and she owns part of Fresh Water. We're not
5 going to argue about it, you're the boss?

6 A Yes.

7 Q And we all agree that CCC is a competitor to
8 Neologic?

9 A To Neologic Films?

10 Q Yes.

11 A Yes.

12 Q Neologic does some other things, but to the film side
13 of it, CCC is a competitor to Neologic.

14 A The primary purpose of Neologic is in the water
15 filtration business.

16 Q Yeah. But the film side of it, you're a competitor;
17 right?

18 A Yes. That's correct.

19 Q So when Dave left CCC, by March or April, you had
20 given him a job and y'all started up Neologic Film, I'll
21 call it?

22 A We created a division within Neologic, and that was
23 the film division, yes.

24 Q All right. And Neologic is paying Dave's legal
25 bills, and it's legal bills in this case?

1 A No. That's not correct. We are loaning him money.

2 Q All right. Neologic is, by way of a loan, paying the
3 legal bills in this case?

4 A Yes.

5 Q We agree on that?

6 A Yes.

7 Q All right. If you would, in your book --

8 A In addition to that, we're, also, loaning him money
9 for his personal living expenses.

10 Q Okay. If you would, there's two volumes up there.
11 Turn to Volume 2 and Exhibit No. 134.

12 A In the blue book?

13 Q Yes, sir, 134.

14 A Okay.

15 Q All right. We all agree that Fresh Water is not in
16 the film business. Neologic is partially in the film
17 business; right?

18 A Correct.

19 Q And I'm looking at the balance sheet for Neologic
20 ending December 31st, 2012. Do you see that?

21 A Yes.

22 Q And we agree that Neologic had gotten most of its
23 money from Fresh Water. Because it says due to Fresh
24 Water, FWS, \$104,000 at the end of the year; right?

25 A Not exactly. That's a misstatement on the

1 description where it says -- are you referring to --

2 Q Well, I'm looking at that. Liabilities and equity,
3 it says other current liabilities due to FWS?

4 A Right. That's not correct.

5 Q That's not correct?

6 A No. It's, actually, due to Emily Norvell.

7 Q Okay. Well, let's look at the next year --

8 A The reason for that --

9 Q Yeah. Sure.

10 A -- is the only funds -- Fresh Water Systems pays
11 distributions to the Norvell family trust. And from the
12 Norvell family trust, Emily makes contributions into
13 Neologic. But we -- there's a more efficient way of doing
14 it, and it files straight from Fresh Water to Neologic.
15 So it's, actually, a subordinate debt treated as equity.

16 Q All right. I'm not trying to make a big deal out of
17 this. But it comes out of Fresh Water, and goes into the
18 trust, and back into Neologic, or something like that?

19 A In a round about way. Fresh Water Systems makes the
20 money, and pays distributions to its shareholders.

21 Q And they loan --

22 A And then through another entity, Emily invests the
23 money into Neologic.

24 Q Let's look at the next year, 2013. Flip the page.
25 The same line, Due to Fresh Water \$400,000; right?

1 A That's correct.

2 Q And due to Dave and Julie 97. And that would be a
3 combination of legal bills and living expenses. You said
4 you paid their living expenses?

5 A Are you commenting on the due to Fresh Water --

6 Q Well, at the top, it says, Due to Dave and Julie 97.
7 That's an asset?

8 A That's correct.

9 Q A liability due to FWS, Fresh Water, 400?

10 A Yes.

11 Q All right. And then March 31st, 2014, the latest one
12 we have, we've got current liabilities due to FWS 833;
13 right?

14 A Again, the number is correct, but it's due to Emily
15 Norvell.

16 Q Due to somebody 833?

17 A Yeah.

18 Q Stockholders equity, a negative 250?

19 A That's correct.

20 Q So if we were to get a judgment against Neologic,
21 we're getting a judgment against nothing?

22 A We're losing money.

23 Q Okay. All the money has been advanced by Fresh Water
24 to the shareholders, and then back out to Neologic?

25 A We're investing in Neologic.

1 Q All right. The legal bills in this case, I believe
2 they've been recorded as overhead; right?

3 A No.

4 Q Well, do you recall when the 30(b)(6) deposition was
5 taken that you attended? You had two depositions. You
6 had one I took, and one he took. Do you remember that?

7 A I recall that, sure.

8 Q And do you recall you were there; right?

9 A Yes.

10 Q You gave testimony; right?

11 A Absolutely.

12 Q Julianne London gave testimony?

13 A Yes.

14 Q Right?

15 A Yes.

16 Q And she testified that the legal bills were recorded
17 as overhead?

18 A She did not testify to that. Julianne testified that
19 these were loans. But I think you might be referring to
20 on the check memo, she referred to it, for whatever reason
21 I can't explain, as overhead.

22 Q Well --

23 A But it's classified as a receivables and asset. It's
24 not an expense. It's not an overhead expense.

25 Q Well, I'm just going to read it to you. Because I

1 don't want to make a big deal out of it. It's on Page 18
2 of the 30(b)(6) deposition. And I can't tell whether
3 you're answering the question or Ms. London, but you were
4 there; right?

5 A Absolutely.

6 Q And Mr. Williams says, Neologic has made a credit
7 memo and referred to these legal fees as overhead. Tell
8 me about that. And she goes on to say, You consider this
9 an overhead expense?

10 Yes is what she said?

11 A I think you need to put her on the stand then.
12 Because I'm sure she would not agree to that statement.

13 Q Well, that's what was testified to in the 30(b)(6)
14 deposition?

15 A That's incorrect. That's not an overhead expense.
16 It's a loan.

17 Q Okay. I'm not worried about whether it's correct or
18 not --

19 A Okay.

20 Q -- that's what she said in the 30(b)(6) deposition.
21 Do you agree with that?

22 A I do not agree with that.

23 Q Okay.

24 A I think it's a misunderstanding.

25 MR. STEPHENSON: I'll just publish it, Your Honor.

1 I'm looking at the 30(b)(6) deposition of Neologic given
2 by Steve Norvell, Julianne Knight, and Dave Wilson. Page
3 18.

4 Question: Neologic has made a credit memo and
5 referred to these legal fees as overhead. Tell me about
6 that.

7 When it was brought to my attention -- answer --
8 that we would be paying these legal fees, I coded the memo
9 as overhead. So if I'm doing any analysis, I know what
10 type of expense it is versus cost of good sold, direct
11 expense of products being sold.

12 Question: So you consider this an overhead expense?

13 Answer: Yes. It's not a big deal.

14 THE WITNESS: I'd like to follow-up with that. If
15 it's an overhead expense, what's it doing on the balance
16 sheet? It's not an expense.

17 MR. CAMPBELL: Tom --

18 MR. STEPHENSON: Yeah.

19 MR. CAMPBELL: -- we will stipulate that she
20 testified that it was an overhead expense.

21 MR. STEPHENSON: Okay.

22 MR. CAMPBELL: If you will stipulate that it shows up
23 on the balance sheet as actual --

24 MR. STEPHENSON: Absolutely.

25 THE WITNESS: There we go.

1 Thank you.

2 BY MR. STEPHENSON:

3 Q Now, let's talk a little bit more about Fresh Water.
4 You're the boss of both. Bill Shaw is on the payroll of
5 Fresh Water -- I think we've got a bird in here. Bill
6 Shaw is on the payroll of Fresh Water, but works for
7 Neologic. At least, he was for a good period of time?

8 THE COURT: It's a Pigeon.

9 MR. STEPHENSON: Sir?

10 THE WITNESS: That's correct. Bill Shaw was hired as
11 an employee of Neologic, but Fresh Water, actually, hired
12 him and leased him to Neologic for economy.

13 BY MR. STEPHENSON:

14 Q Julianne London is the accountant for both?

15 A That's correct.

16 Q Several people split their time between both,
17 including an employee named Billar [phonetic] and Savvoy
18 or Savvy?

19 A Any employee that does contract work for Neologic is
20 treated as an expense to Neologic and a receivable, and is
21 paid off from Fresh Water.

22 Q All right.

23 A We don't comingle expenses, or funds, or anything
24 like that.

25 Q You're in the same building?

1 A We are. And Neologic pays rent for its space.

2 Q Both at 2299 Ridge Road?

3 A Yes. That's our location.

4 Q Now, let's talk about Neologic for a second. I'm
5 going to represent to you in your 30(b)(6) deposition, it
6 was testified that Neologic made \$230,000 in revenue for
7 film. Would you accept that? And that's on Page 205. If
8 I stated --

9 A If the books say that, yeah, I would accept that.

10 Q And the next year, 2013, you made \$672,000 in film?

11 A Made, no, no, no.

12 Q Revenue?

13 A Sold -- okay, yes.

14 Q Revenue. Not made --

15 A A huge difference.

16 Q Absolutely. Absolutely. Revenue.

17 A Yes.

18 Q I would, also, tell you in Exhibit No. 132, your
19 lawyers said that of the \$230,000 of revenue for Neologic
20 in 2012, 132,000 of it came from former customers of CCC.
21 Would you accept that?

22 A If the accountants put together a spreadsheet and
23 identified that, I would accept that.

24 Q The following year, which is 2013, you had \$672,000
25 in revenue, and 582,000 came from former customers -- or

1 about 80 percent former customers from CCC. Would you
2 accept that if I quoted the figures correctly?

3 A I would accept that.

4 Q All right. Let's talk about 2008 and 2009. And if
5 you could, look at the first book there.

6 A Okay.

7 Q Are you there?

8 A I am here.

9 Q All right. I believe your testimony is in 2007,
10 2008, and about half of 2009, you had no idea who John
11 Gandis was and no idea that your brother-in-law was
12 partners with him in a business called CCC; right?

13 A That's absolutely correct.

14 Q You had never heard of him?

15 A I don't think I've ever heard of John Gandis -- the
16 name Gandis until 2010.

17 Q All right. Until 2010. And for all you know --
18 knew, your brother still had Eastern Films, and you didn't
19 know he had a partner in 2007, 2008, and 2009?

20 A Absolutely.

21 Q All right. Well, let's look at Exhibit No. 12.

22 A I'd increase that from 2009 to, actually, 2010 as
23 well, I did not know he had a partner.

24 Q All right. You didn't know all the way to 2010. On
25 July 14th, we now know that David had started receiving

1 money from CCC. We now know that he was 49/51 or 50/50,
2 whatever, with John Gandis. And this is an e-mail from
3 Dave to you about West Carrollton. And you've done West
4 Carrollton with him before; right?

5 A I believe starting in 2007.

6 Q And I believe you said you thought you had a first
7 right of refusal on all West Carrollton business. That
8 was your deal with him?

9 A That was my understanding, yes.

10 Q All right. So, on July the 14th, he e-mails you and
11 he's got another West Carrollton deal or an update, it
12 says. And one, two, three, four, five, six paragraphs
13 down, he says, For this work, we will need to set up a
14 company or account other than Eastern Films. Since Mark
15 Tullius [phonetic] and James both know Eastern Films and
16 associate me with a company, we need to issues letters of
17 credit from another account. Commerce Films will work.
18 We'll just have to set it up with the bank and explain it
19 to Wes.

20 Right?

21 A That's what it says.

22 Q And Wes is the banker at Carolina First, it was then?

23 A That's correct.

24 Q It wasn't TD Bank yet?

25 A That's correct.

1 Q So he's wanting to hide the whole deal from somebody
2 and run it through a fake company called Commerce Films.
3 Because there was never a Commerce Films, there was never
4 an entity called Commerce Films; correct, to your
5 knowledge?

6 A You know, you're characterizing as we're trying to
7 hide or deceive. I think we simply -- I think Dave's
8 intention -- I don't want to speak words for him. But it
9 appears he may not want a competitor to know about a
10 transaction or his supplier to know about a transaction.

11 Q Well, he didn't want somebody to know about it?

12 A Mark Tullius, specifically, and James.

13 Q Well, we know that.

14 All right. If you would, turn to Exhibit No. 17.

15 Before I get there, I believe we can agree on a
16 couple of things. If you're partners with somebody, you
17 have a fiduciary duty to your partner. You would agree
18 with that?

19 A (There was no response.)

20 Q You've been partners before?

21 A In a formal partnership. Like I have supply
22 partners.

23 Q A formal partnership. If you're in a formal
24 partnership --

25 A Sure.

1 Q -- with somebody, you have a fiduciary duty to that
2 person?

3 A Absolutely, yes.

4 Q And they back to you?

5 A Yeah.

6 Q And if you're in business with them, one of those
7 duties would include not competing with them without
8 telling them. You would agree with that?

9 A I would agree with that.

10 Q And not taking opportunities that the partnership
11 could take for yourself, that would be wrong; right?

12 A Yes.

13 Q And if you had a partner, you would consider that to
14 be wrong; right?

15 A Without me knowing, yes, absolutely.

16 Q And, certainly, now that you've got Dave at Neologic,
17 you would not expect him to do any side deals in film,
18 because his loyalties are to Neologic. You would agree
19 with me there?

20 A I agree with that.

21 Q But here we are in August of 2008, and I'm looking at
22 Exhibit No. 17 in the Defendant's book. Not a big deal,
23 but y'all are talking about this West Carrollton deal.
24 And it starts at the bottom. Sometimes these e-mails go
25 from the top down. This one goes from the bottom up.

1 A Okay.

2 Q Hi, Steve. I had Ken call West Carrollton. And
3 Tamara told him she had already spoken with someone from
4 Eastern Films about open invoices.

5 Do you see that?

6 A I do.

7 Q And if you read at the top, you responded, Hey, Dave.
8 I did call Tammy to find out about the payments.

9 Do you see that?

10 A Yes.

11 Q So you called Tammy and represented to her that you
12 were with Eastern Films to check on the open invoices.
13 Because you wanted to be paid for the West Carrollton
14 deal. That's what happened?

15 A I don't know if I represented as Eastern Films, but
16 as a creditor of Eastern Films.

17 Q Well, she thought you were from Eastern Films.
18 Because Dave says he called Ken and Tamara told him she
19 spoke with someone from Eastern Films. And the someone
20 she spoke to was you?

21 A I think Tamara is probably meaning that she spoke to
22 somebody inquiring about Eastern Films.

23 Q All right.

24 A But I called as a creditor.

25 Q All right. Let's go to Exhibit No. 20.

1 A Exhibit No. 20?

2 Q Yeah.

3 A All right.

4 Q For these deals, y'all had opened up a new bank
5 account at Carolina First. And your banker was this guy,
6 Wes. And the mail started being sent to you at your
7 office, instead of to Eastern Films at its office; right?

8 A Yes. For this specific account, yes.

9 Q Okay.

10 A As I'm the authorized signer on this account, so I
11 wanted the banking statements to come to my address.

12 Q Okay. Exhibit No. 22, same book.

13 Are you there?

14 A Yes.

15 Q It goes to your address. This is October or
16 November. And if you look at the checks, third page
17 back -- are you with me?

18 A Yes.

19 Q We don't have all the checks, but we've got the
20 second check. It just so happens we have the second check
21 ever written on this account. I don't know who the first
22 check was. But the second check is signed by you; right?

23 A As are all the other checks, yes.

24 Q 1004 is signed by you where you pay the Norvell
25 family trust \$5,900?

1 A Yes.

2 Q The third is a check signed by you to Curt
3 Ossenberger for \$3,700?

4 A Correct.

5 Q So you're keeping the checkbook for this company?

6 A Yes.

7 Q You're paying the people that need to be paid.
8 You're making the deposits. You're calling the customer,
9 West Carrollton, and all the --

10 A Well, again, I'm financing the West Carrollton. So
11 all expenses related to the West Carrollton deal -- I'm
12 involved with it. So, of course, all of these are going
13 to be on here. Because these are the folks that -- or
14 vendors that participated in this deal.

15 Q Page 20 -- or Exhibit No. 23. This is December.
16 This is a letter from Carolina First to you at your
17 office. And it talks about a loan for \$350,000 to finance
18 these deals; right?

19 A Correct.

20 Q A letter of credit?

21 A Yes.

22 Q Turn the page. The bank -- somebody at the bank, at
23 least, believes that you're a member of Eastern Films,
24 LLC. I know you say you weren't, but the bank thinks you
25 are.

1 A The bank never thought I was. And, in fact, I would
2 encourage you to bring Wes Larry here. And he would agree
3 to that. I asked you that before in the deposition. I
4 don't know why he's not here today.

5 Q Okay. Well, looking at the third page of Exhibit
6 No. 23, they have you down as a member. And they have you
7 down as a guarantor. And, of course, they want you to
8 guarantee it because Dave --

9 A Of course, they want me to guarantee it. But they
10 know I'm not a member, never have, never was.

11 Q Dave didn't have any credit; right?

12 A If he did, he wouldn't need me.

13 Q He wouldn't need you. All right. Exhibit No. 24.
14 Are you there?

15 A I'm here.

16 Q This is December. And this is another deal. This
17 would not be West Carrollton. This would be J.P. Lamborn.
18 Do you see that?

19 Because it says in the second paragraph -- it's from
20 Dave to you on December the 10th. I have another
21 financing opportunity for us. I have four containers from
22 a customer, JP Lamborn.

23 Do you see that?

24 A I see that he's importing it through Mike.

25 Q Yep.

1 A Yes.

2 Q And it would be an easy eight to 10 for you?

3 A Yes.

4 Q And you did that, didn't you?

5 A It appears so, yes.

6 Q Exhibit No. 26. You know, these came out of the
7 bank's file. I know there may be a mistake.

8 A There's no mistake.

9 Q Somebody types you on there as a member?

10 A That's why I didn't sign it. I'm not a member. I
11 didn't sign it. There's no mistake. I'm a personal
12 guarantee -- guarantor.

13 Q Okay. Let's go up to Exhibit No. 34.

14 A Okay.

15 Q Are you there?

16 A I am.

17 Q 2009, you still don't know anything about CCC. You
18 don't know who John Gandis is from Adam's house cat.
19 You're doing deals with Dave. You agree with me that if
20 he had a partner, it was incumbent upon him to clear this
21 with his partner first. But you don't know all that
22 because you don't know anything about CCC or John Gandis;
23 right?

24 A I don't know anything about John Gandis or CCC.

25 Q All right. Well, Exhibit No. 34 --

1 A Unless there's a point if any of these deals needed
2 slitting. I mean, looking through all this discovery, I
3 don't know who John Gandis is --

4 Q You don't know he has a partner?

5 A I don't know the name, yeah.

6 Q You don't know he has a partner? You may have heard
7 of John Gandis. You may think --

8 A I have not -- I don't believe John Gandis --

9 Q You don't know he's a 50 percent owner -- or a major
10 owner of a company called CCC; right?

11 A Not in April of 2009.

12 Q All right. Well, if you'll look at 34, and you go to
13 the last page. Not a big deal. But this is Carolina
14 First. I don't know why it's attached here. I'm not
15 trying to trick you. I'll just point it out. It's dated
16 May 22nd, 2008. And you signed this document, which is
17 something related to a letter of credit.

18 All right. Let's go to Exhibit No. 38.

19 A As an individual.

20 Q As an individual. Exhibit No. 38.

21 Are you there?

22 A I'm here.

23 Q Dave e-mails you in July of 2009. We now know he's
24 been there -- he's been receiving money for a year. You
25 don't know about it. You've never heard of it. He never

1 told you; right? He never told you. Dave Wilson never
2 told you, did he?

3 A No. I don't believe so.

4 Q All right. Well, on July the 14th, he says, Steve,
5 LLC financing for Lamborn orders. Y'all are talking about
6 the plan.

7 And your deal then, if you look at the bottom, Steve
8 Norvell greater of \$5,000 or \$0.06 a pound. That's what
9 the deal had morphed into and you were getting \$5,000 for
10 financing it or \$0.06 a pound, whichever was greater?

11 A That's correct.

12 Q All right. And if you look on the last page of 38.
13 Are you there?

14 A I am.

15 Q Dave and Mike are splitting \$38,680?

16 A That's what it says.

17 Q All right.

18 A Yes. I didn't determine the split. That was from
19 Dave. And I just --

20 Q You're keeping the books?

21 A Yeah.

22 Q You've got the checkbook?

23 A Yeah.

24 Q You're writing the checks back out. So when Dave got
25 his share, you wrote him the check?

1 A That's correct.

2 Q All right. Well, let's talk about your interest in
3 CCC. I believe -- it's true, isn't it, you never had an
4 interest in purchasing CCC, never?

5 A I don't think that that's quite accurate. I recall a
6 conversation in December of 2012 where Dave had approached
7 me and something to the effect that, hey, if we can get a
8 great deal on CCC, would we be interested in that? And it
9 would be a way to facilitate a quick end to his ongoing
10 litigation. And I told him go ahead and proceed, if it
11 made sense. And I gave him the okay to push forward with
12 it.

13 And I didn't really -- I don't think he ever followed
14 up -- I don't recall him ever following up with me. And,
15 of course, it's a very busy time for me at the end of the
16 year. But that was the second time I expressed interest.
17 The first time he asked me in 2011, but I was not
18 interested in it. And we talked about it, but there was
19 no interest in 2011.

20 Q Well, you talk about 2011. Look at 99.

21 A Look at 99, yeah.

22 Q I'm sorry. I'm reading it upside down. 66.

23 A Okay. I'm there.

24 Q You're at 66?

25 A Yes.

1 Q In 2011, you had a buddy named Anthony Ballman. And
2 Dave was looking at acquiring CCC. You weren't really
3 interested in it, but you thought Anthony might be. So
4 you put Dave and Anthony in touch with each other; right?

5 A Yeah. Anthony was in retirement and looking to put
6 together some investors and buy some manufacturing
7 concerns. So I thought that Anthony might be interested.

8 Q You weren't really interested. But you said, Dave,
9 I've got a buddy that might be, a friend of mine, retired.
10 He's got some money. And Anthony looked at it and for
11 whatever reason, he decided not to pursue it, too?

12 A Yes. That's right.

13 Q Is that fair?

14 A Yes. That's fair.

15 Q Down at the bottom of 66, you e-mail him on
16 January 2nd. Hey, Anthony. Good to catch up with you.

17 Then on the next page, you introduce Dave. You tell
18 him the ownership. You tell him about the building. And
19 you say in paragraph four, Gandis and Comeau-Shirley
20 recently offered a low ball offer to buy Dave's share at a
21 price and terms the buyer would, also, be willing to
22 accept in reverse roll.

23 Do you see that?

24 A Yes.

25 Q That was your understanding that whatever price they

1 gave him, they would, also, take back in 2011?

2 A Yes.

3 Q All right. And that --

4 A Wait. Wait. 2008?

5 Q Well --

6 A You said 2008.

7 Q This is January the 2nd of 2012.

8 A Okay.

9 Q So this would have happened at the end of 2011, first
10 of 2012?

11 A Oh, okay. Sure.

12 Q Do you agree?

13 A I agree.

14 Q So they were willing to take whatever price they gave
15 him. That was your understanding?

16 A That was my understanding.

17 Q Now, we talked earlier about whether you really ever
18 were interested in CCC. You said you briefly looked at
19 it. But you would agree with me, you never came up with a
20 price, never?

21 A Me, personally, I don't recall coming up with a
22 price. But if Dave came up with a price that made sense,
23 I would have supported that.

24 Q You never looked at any numbers?

25 A I don't remember looking at any numbers.

1 Q Well, let me give you a copy of your deposition.

2 MR. CAMPBELL: I think if you'll go up there, it's
3 already on the --

4 BY MR. STEPHENSON:

5 Q Do you see your deposition up there?

6 A This one?

7 Q Yep.

8 MR. CAMPBELL: No, Steve. It's the red bound.

9 THE WITNESS: Okay. Got it.

10 BY MR. STEPHENSON:

11 Q If you would, turn to Page 118.

12 Are you there?

13 A Yes.

14 Q Are you there?

15 A Yes.

16 Q All right. 118, Line 9. And I'm taking your
17 deposition.

18 Steve, did there come a time where you looked at
19 acquiring CCC?

20 Answer: That I looked into it. I briefly considered
21 it.

22 Question: Did you, actually, consider it enough to
23 come up with a price?

24 Not that I'm aware of.

25 Question: Did you ever even look at any numbers?

1 Not that I'm aware of. After Dave approached me and
2 throughout was at CCC -- no, I think it was PCFI.

3 Then you started thinking about PCFI, because you did
4 consider a price of buying PCFI. That would be Dave's
5 prior company; right?

6 A Did I consider it? He asked me and I considered it
7 for about a nanosecond.

8 Q Well, at the bottom of Page 18. Question: After
9 thinking about it, you never offered to buy CCC or even
10 considered buying CCC?

11 Answer: I would never consider buying CCC.

12 Do you see that?

13 A What date is this?

14 Q This is the deposition I took from you --

15 A Okay.

16 Q On October 15th --

17 A Okay. I guess I forgot about the conversation that
18 Dave approached me in December of 2012. So I'm sorry. I
19 misstated.

20 Q This was your testimony under oath one year ago;
21 correct?

22 A Mr. Stephenson, I do a lot of deals. I've got a lot
23 of transactions. It's hard for me to keep track of all
24 these years and all these deals.

25 Q I'm sure it is. I'm sure it is. Let's read the rest

1 of it.

2 A We're talking PCFI. We're talking EFS. Now, we're
3 talking CCC.

4 Q Picking up on Page 119. Follow along with me --

5 A On which page?

6 Q 119.

7 A Okay.

8 Q Answer: I would never consider buying CCC.

9 Line 2. Question: In sitting here today, you would,
10 certainly, remember it if you did, especially if it was
11 2011 or thereafter?

12 Well, actually, now come to think about it, Dave may
13 have approached me thinking that, hey, we're not getting
14 along, maybe do like a Chinese book type of deal. Would
15 you be interested in helping finance it, buy John out?
16 That might have happened.

17 Question: But it never got beyond that?

18 No.

19 You never made an offer or got into the numbers or
20 even into a range of what you might pay for it if you did?

21 Answer: Not that I recall.

22 Right? Have I quoted it right?

23 A You've quoted it excellently.

24 Q Question --

25 A But I don't remember -- I remember authorizing Dave

1 if the deal made sense, he could pursue it --

2 Q Well, you've been in the trial --

3 A But I didn't look at any numbers --

4 THE COURT: Wait. Let each other finish.

5 BY MR. STEPHENSON:

6 Q You've been in this trial for most of it, for three
7 days. You've talked to Dave. I think you know where I'm
8 going. But this was your testimony in October of last
9 year; correct?

10 A What do you mean I talked to Dave?

11 Q You've talked to Dave about this case. You've sat
12 here?

13 A I don't -- what are you insinuating?

14 Q Well, I'll show you what I'm insinuating. Page 119.

15 Question: At the bottom, Line 18. This was more or
16 less a quick conversation between you and Dave?

17 Answer: That he initiated and I had no real interest
18 in it.

19 Do you see that?

20 A My interest was getting -- helping Dave along and
21 getting this thing behind him. If it meant buying a
22 company at a good deal just to get it behind us, I would
23 do it. That's why you have settlements out there. The
24 insurance company will sometimes think it's cheaper just
25 to settle, even though you're innocent, than to continue

1 on through interrogations, and depositions, and court
2 proceedings.

3 Q All right. Follow me. Page 126 --

4 A It was a business decision.

5 Q Page 126.

6 A Okay.

7 Q Line 5. I want to quote this accurately. I don't
8 recall when I received information or what information
9 received. I'm not interested in CCC, nor was I really.

10 Did I quote it correctly?

11 A I'm sorry. Did you say Page 122?

12 Q 126.

13 A 126.

14 Q I quoted it correctly. Turn to Exhibit No. 100.

15 A Exhibit No. 100.

16 We're done with this?

17 Q We're done with that.

18 A Okay.

19 Q Are you there?

20 A Yeah. I'm here.

21 Q This is December the 3rd, 2012, two years ago. Dave
22 e-mails you. I'm going to quote it and you tell me if I
23 quote it correctly.

24 Hi, Steve. Just a quick update on CCC. We're having
25 a hearing this Thursday regarding dissolution of CCC and

1 Zoi. We have drafted our own dissolution order, which
2 will make it nearly impossible for John and Andrea to
3 conduct business once the dissolution order is in place.
4 Andy, my attorney, thinks we should make an offer this
5 week to buy John and Andrea's interest based on their
6 values they've given us in their, obviously, manipulated
7 financials. He says a few more words.

8 And then down at the bottom -- and this is December
9 the 3rd. I'd like to discuss this with you. If they,
10 actually, took our offer, we'd have the whole company
11 super cheap. Again, I doubt they will take the offer, but
12 it will force them to explain devaluating our business.

13 Do you see that?

14 A I do.

15 Q And, of course, you talked to Dave after that?

16 A I must have.

17 Q And we know that you never really wanted to buy it.
18 You never came up with a price. You never agreed to put
19 up the money?

20 A You know, I don't think that's correct.

21 Q That's what you testified to?

22 A I testified in the deposition?

23 Q Right. Let's look at --

24 A You know, I consider a lot of deals. And at the of
25 the deal, if this deal made sense to get the litigation

1 for Dave over with, then we would have proceeded with it.

2 But it never came back.

3 Q Well, would you agree with me, according to this
4 e-mail, Dave wants to make a fake offer. He doesn't think
5 anybody is going to take it. This is strategic in nature.
6 This is not something he thinks anybody will take. And
7 you never went to the bank. You never did due
8 diligence --

9 A 500,000 -- I'm sorry.

10 Q You never did due diligence. And you never really
11 considered buying the company, did you?

12 A That's not correct. I don't need to go to the bank.
13 I'll answer your question. I don't need to go to the bank
14 for half a million dollars.

15 Q Would you turn to exhibit --

16 A And if the company was making a little bit of money
17 and if the assets were there in the form of inventory and
18 receivables and client equipment, if it was truly a value
19 play and it got the litigation over, yes, I would have
20 done it.

21 Q All right.

22 A Absolutely, yes.

23 Q Do you agree with me you've bought businesses before;
24 right?

25 A I've what?

1 Q You've bought businesses before?

2 A I have.

3 Q When you buy a business, generally, you make a
4 proposal, you get a counter offer, and you get into a
5 range. And there's some differences. And then you do the
6 deal, every time --

7 A That's pretty much --

8 Q -- pretty much every deal you've ever done?

9 A Agreed.

10 Q Somebody will set a price. The other guy gets close.
11 And you're not quite the same. So then you sit down and
12 hammer it out, every time?

13 A Yes.

14 Q Every deal you've ever done, you've never made an
15 offer and had it accepted. You dicker a little bit, go
16 back and forth, then you come up with a deal?

17 A That's not true.

18 Q Every deal you've ever done?

19 A That's not true. I have had deals go through on the
20 first offer.

21 Q Most of the time not?

22 A Most? Yeah, more than 51 percent. Yes, that would
23 be correct. Not the majority.

24 Q Well, let's look at Exhibit No. 101.

25 A 101. I meant overwhelming majority.

1 Q Huh?

2 A I meant overwhelming majority. Okay. 101.

3 Q You got an e-mail on December the 3rd. You know what
4 Dave wants to do. He wants to make it difficult for CCC
5 to do business. You've got Neologic?

6 A Am I in the wrong book? 101?

7 Q 101.

8 A December 3rd?

9 Q Yep.

10 MR. CAMPBELL: Book number two. The smaller of the
11 two.

12 BY MR. STEPHENSON:

13 Q That's the right one.

14 A All right. I'm seeing December 5th. I'm sorry.

15 Q Yeah. December 5th.

16 A Oh, all right.

17 Q You got an e-mail from December 3rd. You know what
18 Dave wants to do. He said he wants to make it difficult
19 for them to do business. Andy Arnold sends an e-mail to
20 CCC's lawyers saying, My client will agree to buy John and
21 Andrea for \$442,000. Do you see that? It's a very
22 precise number.

23 A I do see that. This is the first time I've seen
24 this.

25 Q That's the first time you've seen it?

1 A Well, it's not addressed to me.

2 Q I know that. So this wasn't a number you came up
3 with?

4 A No. Again, I gave Dave authority.

5 Q All right. Do you -- were you aware that the lawyers
6 for CCC were going to a hearing the next day, and they
7 were going to agree to dissolve the company, that Dave had
8 made a motion to dissolve the company, and they thought
9 they were headed to the hearing to dissolve the company.
10 And if it had been dissolved, we wouldn't be here today.
11 This case would have been over two years ago.

12 Do you understand that?

13 A I understand the case would have never got to this
14 point if they offered him a reasonable offer.

15 Q Well, do you understand that --

16 A I don't know what's going on December 6th.

17 Q Okay. You're not there --

18 A Or the -- I don't know anything about dissolution, or
19 what it means, or anything. I'm not an attorney. I'm not
20 really involved, other than helping out my brother-in-law
21 pay his rent, get food and shelter.

22 Q But you are -- or your family is an owner of
23 Neologic, who's now competing with CCC; right?

24 A Yes.

25 Q Competing for same work; right?

1 A I can't attest to that. I don't know who they're
2 bidding on or what they're working on.

3 Q Well, if they're a competitor and your competitor is
4 having a hard time, that's a good thing; right?

5 A I mean, if KFC is sending -- going to a bunch of
6 vendors and we're one of them and CCC is, yeah, that makes
7 us competitors.

8 Q Well, the next day I'm going to tell you that
9 Mr. Arnold showed up at the hearing. They thought they
10 were going to dissolve. And he says they didn't want to
11 give us the customer list because the customer list has
12 such value -- well, we agree it has value and we want --
13 actually, we made an offer to purchase this business for
14 almost half a million dollars therein.

15 You hadn't put up half a million dollars, had you?
16 Because you hadn't authorized any price and you didn't see
17 the e-mail before, did you?

18 A Again, if Dave would have come to me and -- which he
19 did --

20 Q You might --

21 A -- and asked me, which he did -- I remember the
22 conversation, but I don't remember the amounts. If there
23 was a valued play and it would have proved out through due
24 diligence against, then we would have proceeded.

25 Q Okay. Well, let's look at 103. You've already told

1 me that a great majority of deals you've done you make a
2 price, you get a counter that's close, and you hammer out
3 the terms; right? That's how it works?

4 A Yes.

5 Q And we've got a turn sheet. And this is dated
6 December the 9th, three days after Mr. Arnold says he's
7 made an offer. And they say they'll take \$500,000 in
8 term. You never saw this, did you?

9 A Not that I recall.

10 Q All right. You never even saw it. So --

11 A Well, I don't remember. I see a lot of documents
12 that I don't remember.

13 Q You don't recall. So if the dissolution had taken
14 place two years ago, this case would be over.

15 Do you understand that?

16 A (There was no response.)

17 Q Do you understand that there was a hearing on
18 December the 6th, where everybody was headed towards
19 dissolution. Your side changed its mind --

20 A Of course, I understand it.

21 Q I'm sorry?

22 A Of course, I understand it.

23 Q You're in competition with them. You've got
24 Neologic. Most of your customers came from CCC; right?
25 Did I --

1 A I don't know that. I don't know that.

2 Q Okay. You understand that we've looked for e-mails
3 to find what we believe is conspiracy, and your
4 brother-in-law deleted e-mails off the company computer
5 that will never be recovered.

6 Do you understand that?

7 MR. ARNOLD: I object.

8 MR. STEPHENSON: It's true.

9 MR. ARNOLD: I do not think there's any evidence in
10 the record that he's deleted e-mails that will never
11 be -- that can never be found. That has not been testified
12 to.

13 MR. STEPHENSON: The Judge will be the judge of that.

14 Page 1 -- Exhibit --

15 THE COURT: Excuse me. Let me rule on the objection,
16 if you don't mind.

17 MR. STEPHENSON: I'm sorry.

18 THE COURT: I sustain it.

19 Thank you.

20 BY MR. STEPHENSON:

21 Q Exhibit No. 115.

22 A Okay.

23 Q Are you there?

24 A I'm here.

25 Q At the bottom, Dave e-mails you and he ends the

1 e-mail, Shift delete after reading. Do you see that?

2 A I do see that.

3 Q But you didn't do it?

4 A I'm sorry.

5 Q You didn't do it. You didn't delete it?

6 A Of course, I didn't. I don't think I replied to
7 this. I'm a skim reader. I probably wouldn't have even
8 gone all the way down there.

9 Q Well, this is six months later. Six months of
10 litigation.

11 A Okay.

12 Q Six months that this case could have been over. And
13 he says at the bottom, Now, we're back to dissolving CCC.
14 The hearing went well yesterday, heard our motion to
15 dissolve CCC Zoi.

16 Do you see that?

17 A Yes.

18 Q Do you understand that could have happened six months
19 previous? Do you understand that this company spent
20 months and months preparing to dissolve? That was taken
21 off the table. Somebody made a buy out offer. We know it
22 wasn't you.

23 Then they spent months and months --

24 MR. CAMPBELL: Your Honor, I'd object, and ask for
25 Tom to ask a question.

1 THE COURT: I'm confident he's getting there.

2 MR. STEPHENSON: I'm getting there.

3 BY MR. STEPHENSON:

4 Q They spent months and months putting the company back
5 together. And then y'all want to dissolve it again.

6 Do you see that?

7 A I know that there was a lot of time and effort gone
8 into a lot of things, including cooking the books to
9 present to Dave to negotiate an upside down deal for Dave.
10 I know a lot of time and effort went into that on their
11 part. That's what I do know. And that's why I've
12 supported Dave. That's why we're here today.

13 MR. STEPHENSON: Let me have a second, Your Honor.

14 THE COURT: All right.

15 (Pause.)

16 MR. STEPHENSON: That's all I've got.

17 THE WITNESS: Thank you.

18 MR. ARNOLD: Your Honor, I don't have anything.

19 MR. CAMPBELL: Nothing, Your Honor.

20 THE COURT: All right. Thank you, sir.

21 THE WITNESS: Thank you.

22 MR. STEPHENSON: Your Honor, I believe the next
23 witness is Ms. Stoddard.

24 THE COURT: Okay.

25 MR. STEPHENSON: And we've got a motion we might want

1 to argue a little bit.

2 THE COURT: Yes, sir.

3 MR. ARNOLD: It's his motion. Your Honor, did my
4 reply end up in the file? We filed it on Monday. It's
5 very short, but I don't know that --

6 THE COURT: No. I don't have that. If it didn't
7 come to my office, then it's probably --

8 MR. ARNOLD: Yes. It's five pages long.

9 THE COURT: Thank you.

10 So is this scientific testimony?

11 MR. FARRAR: No, sir. But it's an expertise, Your
12 Honor. She brings an expertise to the table.

13 THE COURT: Okay. Then go ahead. Yes, sir. I read
14 your motion.

15 MR. FARRAR: All right. Then I won't expound very
16 much more than that. I do want to submit her deposition
17 to the Court.

18 THE COURT: Okay.

19 MR. FARRAR: The reasons that we're moving to
20 disqualify Ms. Stoddard are multiple. One is she doesn't
21 even know the rules by which she operates. She testified
22 - she has not even read the pronouncements of the American
23 Institute of Certified Publics Accountants, under which
24 she would be testifying in that instance.

25 Now, we're on a different instance today, so it's

1 valuation. She'll recognize that.

2 THE COURT: That's what she's going to testify to?

3 MR. FARRAR: As I understand it. But it's going to
4 be based on part of what she's done before, Your Honor.
5 If not, then we'll have questions about that. She,
6 clearly, showed a bias in her deposition to the point that
7 I think the Court can take notice of it. We referred to
8 some of that. And, by her own testimony, she didn't do
9 any independent investigation. She just, basically,
10 accepted what was told to her.

11 Under the rules of the American Institute of
12 Certified Public Accountants, she has a duty to remain
13 objective. And we think we showed in her deposition, the
14 excerpts in the motion, that she's not capable of doing
15 that. So we move to disqualify her.

16 THE COURT: Okay. Well, I've read the memorandum.
17 And I find that the motion should be respectfully denied.
18 It's arguments that I'm sure will be brought out. But
19 they go simply to the weight. I think it's admissible
20 under Rule 702.

21 And you can call your next witness.

22 MR. ARNOLD: Okay. I've been permitted to call
23 Ms. Stoddard out of turn.

24 THE COURT REPORTER: Please raise your right hand and
25 place your left hand on the Bible.

1 WHEREUPON,

2 CATHERINE STODDARD,

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

4 THE COURT REPORTER: Thank you.

5 You may have a seat.

6 Please state your name, and spell your last name.

7 THE WITNESS: Catherine Stoddard, S-T-O-D-D-A-R-D.

8 DIRECT EXAMINATION

9 BY MR. ARNOLD:

10 Q Good morning.

11 A Good morning.

12 MR. FARRAR: Your Honor. I hate to interrupt.

13 Mr. Alford was coming to hear Ms. Stoddard and he -- we,
14 apparently, got through with Mr. Norvell quicker than we
15 thought.

16 How long --

17 MR. STEPHENSON: He's in the car.

18 MR. FARRAR: He's in the car coming here.

19 Is there any chance we can wait a few minutes?

20 MR. ARNOLD: I don't have any problem with that.

21 MR. FARRAR: I wasn't aware of that until

22 Mr. Stephenson just put it in my ear.

23 THE COURT: Okay. Yes. Sure. We'll just take a
24 break.

25 MR. FARRAR: Can we take a break?

1 THE COURT: Yes. Sure.

2 (WHEREUPON, a break was taken.)

3 (WHEREUPON, Plaintiff's Exhibit Nos. 179 and 180 were
4 marked for identification only.)

5 THE COURT: Yes, sir.

6 BY MR. ARNOLD:

7 Q Ms. Stoddard, first of all, you've prepared a report?

8 A Yes, I have.

9 Q And that's been marked as?

10 A Plaintiff's Exhibit No. 180.

11 Q And turning to Page 34, this is a list of your
12 qualifications as a valuation analyst?

13 A It is.

14 Q And you are certified as an accredited -- you're
15 accredited in business valuations?

16 A Yes. I'm accredited by the American Institute of
17 Certified Public Accountants, and, also, by the National
18 Association for Certified Valuation Analysts.

19 MR. ARNOLD: And I believe the Defendants have agreed
20 to -- subject to Mr. Farrar --

21 MR. FARRAR: Subject to my failed motion, Your Honor,
22 we're going to stipulate.

23 THE COURT: Okay.

24 BY MR. ARNOLD:

25 Q So tell us what you did, Ms. Stoddard, in the

1 valuation of Dave Wilson's interest.

2 A Well, the first thing I did was I took Mr. Del
3 Bradshaw's report, because he had done extensive work
4 about the company and he went ahead and normalized the
5 financial statements. So I started there. And I put them
6 on some spreadsheets, which are at the back of my report.
7 He already had them in his, but it was easier for me just
8 to look at the normalized, instead of all the adjustments.
9 And then I tried to understand what he -- how he got his
10 numbers. I, basically, understand what he did.

11 And then there are three approaches to business
12 valuation. There's the income approach, an asset
13 approach, and a market approach. And I looked at the
14 market approach. And, really, this is a pretty
15 specialized company as far as within the industry. And I
16 didn't see anything -- I didn't see a sufficient number of
17 market transactions in order to use the market approach.
18 So I discounted that.

19 The income approach requires that you have some kind
20 of predictable stream of income. And CCC is sort of a new
21 company. It didn't have a lot of income. It had a little
22 bit, but didn't have a lot. Then it started losing money.
23 So I didn't see a predictable income stream. So I did not
24 use the income approach.

25 So, based on all of that, I decided that the asset

1 approach was the most appropriate. And Mr. Del Bradshaw
2 had normalized the balance sheets. So I started with his
3 normalized assets on his balance sheet.

4 And then I had an equipment appraisal from Dan
5 Defonso that was done recently. And I adjusted the fixed
6 assets from -- adjusted his normalized numbers for that
7 fixed asset appraisal. And then I, also -- I'm sorry.

8 Q Well, let's talk about that appraisal real quick.

9 A Okay.

10 Q That appraisal of the equipment, is that the
11 appraisal of the equipment owned by CCC?

12 A Yes. It's my understanding.

13 Q Okay. And is this the sort of information that you
14 would rely upon in reaching a valuation of a business
15 entity?

16 A Yes. It's common to rely on other resources when
17 you're reaching a conclusion.

18 Q And did you find the appraisal of Rosen Systems to be
19 the sort that you had relied upon in giving opinions in
20 the past?

21 A Yes.

22 Q Okay. Have you ever -- are you familiar with Rosen
23 Systems at all?

24 A I'm not familiar with them particularly, but,
25 actually, this report seemed more complete than a lot that

1 I've used in the past.

2 Q Okay. So you -- so what else did you do?

3 A So, basically, I took the normalized balance sheet
4 that Mr. Bradshaw had started with and adjusted it for
5 this equipment appraisal. And I came up with adjusted net
6 asset value as of December 31, 2011, and December 31,
7 2012. So the total equity in 2011 was \$1,018,753. And
8 Mr. Bradshaw had broken out the partners equity because
9 there was some disputed transactions. I reconciled that
10 back to his.

11 So using his numbers then for Mr. Wilson's interest,
12 and assuming the disputed transactions were all treated as
13 shareholder distributions, historical shareholder
14 distributions, his value is 408,335.

15 Q So let's make sure I'm clear. So Dave Wilson's 45
16 percent interest in CCC as of December 31st, 2011, you
17 valued at \$408,335?

18 A Right. And that's shown on the initial letter at the
19 beginning of the report.

20 Q Okay.

21 A It's the second page, but it's not numbered.

22 Q And you, also, did a valuation as of December 31st,
23 2013?

24 A I did.

25 Q And what was that -- what was your conclusions of

1 value of David Wilson's 45 percent interest in CCC at that
2 time?

3 A \$233,776.

4 MR. ARNOLD: Your Honor, I would move that this
5 report be admitted into evidence.

6 MR. FARRAR: No objection. Subject to my prior
7 objection.

8 (WHEREUPON, Plaintiff's Exhibit No. 180 was admitted
9 into evidence.)

10 MR. ARNOLD: I don't think I have anything else for
11 this witness.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MR. FARRAR:

15 Q Good morning, Ms. Stoddard.

16 A Good morning.

17 Q Do you have the report of Mr. Defonso in front of
18 you?

19 A I have it here in my notebook.

20 Q Would you pull that out, please? And when I say
21 report, it's an appraisal report; correct?

22 A Yes. I think I do.

23 Q Take your time.

24 MR. ARNOLD: I've got an extra copy.

25 THE WITNESS: I've got it.

1 BY MR. FARRAR:

2 Q Just so we're all -- understand what you did, you,
3 essentially, took the book value, removed what was
4 recorded on the books for -- the book value as
5 Mr. Bradshaw had reached a conclusion, removed what was on
6 the books in terms of the historical cost of the machinery
7 and replaced it with the appraised value of the machinery;
8 correct?

9 A That's correct. And I, also, removed the accumulated
10 depreciation associated with that --

11 Q I should have said net value.

12 A Right.

13 Q Because there's two sides of that equation. For
14 accounting 101, if you buy a machine for a million dollars
15 and you've held it for two years and you're appreciating
16 it over a 10-year life span, it's worth \$800,000 on the
17 books. But it still shows as a million dollars cost and
18 200,000 accumulated depreciation; right?

19 A That's correct, yeah.

20 Q And so all you did was, in essence, cut that out and
21 drop in the appraised value; correct?

22 A That's correct.

23 Q So other than what Mr. Bradshaw did, you're,
24 basically, translating the report of Mr. Defonso into
25 this; correct -- well, that's not fair because you,

1 actually, had valuated whether you could do a market
2 approach --

3 A I did.

4 Q -- or income approach and ended up back at the
5 historical cost --

6 A Right. I did.

7 Q It changed because of the machinery; correct?

8 A Right.

9 Q If you're doing that, wouldn't you, also -- if you
10 were going to change one thing -- how did you decide to
11 change the machinery and not what the fair market value of
12 the rent would be on that building?

13 A Because Mr. Bradshaw had already adjusted that rent
14 in his appraisal -- in his report.

15 Q But you're aware that Mr. Bradshaw did nothing more
16 than take it out so the Court could decide whether it
17 should be in or out; correct?

18 A Yeah. That's correct.

19 Q But you didn't make any valuation -- I mean,
20 wouldn't as a valuator -- if you were doing this to tell
21 Mr. Wilson, this is what you want to pay for the business,
22 you'd figure out what the value of the lease was and the
23 value of the rent is; right?

24 A Well, actually, I summarized those at the end of my
25 report. Hold on a second and I'll reference that page.

1 Q Okay. Great.

2 A I summarized the effect of the disputed transactions
3 on Page 24 and 25 of the report. And, basically, I took
4 the disputed transactions and put them into some broad
5 categories. Because Mr. Bradshaw's report had a lot of
6 detailed transactions in there every year. And there were
7 some that were related. So I've summarized all of those
8 and showed the effect of those on Page 24 and 25.

9 Q I'm doing a horrible job of asking my question. Let
10 me try again. When you're sitting there and you look at
11 the historical costs and you say, okay, Mr. Bradshaw has
12 historical costs in his -- and there's some issues the
13 Judge has to decide. For instance, he has to decide
14 whether or not my clients are entitled to a salary for the
15 period of time they operated up until Mr. Wilson left.
16 That's not an issue you looked at for valuation purposes;
17 right?

18 A All I did was summarize the effect of those disputed
19 transactions so the Court can make those decisions, right.

20 Q But you did go ahead and make a change by changing
21 the value of the equipment based on market value; correct?

22 A I did based on this appraisal. That's right.

23 Q Why didn't you do that for the rent, which is easy
24 to -- people value rent all the time, don't they.

25 A Yes.

1 Q But you decided not to do that because that would be
2 harmful to Mr. Wilson, wouldn't it?

3 A I didn't do that because Mr. Bradshaw had already
4 addressed that in his report.

5 Q Ms. Stoddard, Mr. Bradshaw just took it out so
6 somebody could address it; right? He didn't address
7 machinery either, did he?

8 A No.

9 Q You did that?

10 A He didn't have this appraisal at the time he did his
11 report.

12 Q That's right. Because he wasn't doing a valuation.
13 He sat here yesterday and testified point blank he wasn't
14 doing a valuation. You're doing a valuation; correct?

15 A That's correct.

16 Q And the only valuation change you made is one to
17 increase the balance sheet to increase what Mr. Wilson
18 claims is his share; correct?

19 A The only adjustment I made was for the equipment
20 appraisal.

21 Q And the impact of that was to raise Mr. Wilson's
22 value; right?

23 A It raised everybody's value, right.

24 Q Right.

25 A It raised everybody's value on a pro rata basis based

1 on their ownership interest.

2 Q But it -- you didn't do that for rent where it would
3 lower the value?

4 A I did not adjust rent.

5 Q Okay. And do you remember when you were deposed
6 before and we talked about the fact that you didn't have
7 anything negative about Mr. Wilson in your review of
8 materials? Do you remember back then?

9 A I remember that, yeah.

10 Q And you're still continuing that trend, aren't you?
11 Because there's a negative to Mr. Wilson if the value of
12 the company is lowered because of accrued rental
13 obligations; correct?

14 A That would reduce his value, yes.

15 Q Okay. And looking at Mr. Defonso's report --

16 MR. FARRAR: And I thought it was part of yours. Can
17 we make it an exhibit?

18 MR. ARNOLD: Sure.

19 MR. FARRAR: I would like to mark this.

20 (WHEREUPON, Defendant's Exhibit No. 180 was marked for
21 identification only.)

22 BY MR. FARRAR:

23 Q If you don't mind, I'm going to hand you 180 and give
24 the Judge this one.

25 A Okay. Sure.

1 Q Looking at Exhibit No -- Defendant's Exhibit No. 180,
2 that is the appraisal report upon which you relied;
3 correct?

4 A It appears to be.

5 Q Well, it came from Mr. Arnold. I don't think either
6 of us would try to deceive you.

7 A I don't dispute that.

8 Q Now, in this, he's got -- I assume the one that's up
9 there might be in black and white. But he's got some
10 pretty color pictures of machines and so forth; correct,
11 the photographs of what he was looking at?

12 A He does.

13 Q Can you sit here now and tell me which one of those
14 machines were unplugged and never running?

15 A I have no idea, no.

16 Q And he didn't put it in there either, did he?

17 A No.

18 Q In fact, he didn't tell you how he valued the
19 machines, did he?

20 A He does talk about how he valued them.

21 Q How did he value them?

22 A Well, he had four approaches, most of which -- he had
23 four approaches that he looked at. But he mostly used the
24 sales and market approach.

25 Q Well, let's --

1 A But he had a depreciation and a cost approach, also.

2 Q He told you the ways they could be valued; right?

3 A Yeah. But he said -- I'm trying to find the quote.
4 Somewhere, he said that most of them he used the market
5 and sales approach.

6 Q So turn to Page 11, please.

7 A Okay.

8 Q And that's a summary of the machines being appraised;
9 correct?

10 A That's correct.

11 Q And so line number one is a slitter; correct?

12 A Yes.

13 Q And he has a fair market value of \$50,000; correct?

14 A 45,000.

15 Q My sheet didn't go all the way out that far. Do you
16 mind if I come look over your shoulder for a second?

17 THE COURT: What page?

18 MR. FARRAR: I was on Page 11.

19 THE COURT: Okay. Yes. I'm with you.

20 BY MR. FARRAR:

21 Q That first machine, which approach did you use to
22 value that machine?

23 A I think -- hold on one second. I do not know. But
24 he used the average -- the C represents an average guide
25 for that type of machine.

1 Q An average of what?

2 A An average of the values -- there's a condition he
3 puts on the machine, whether it's above average or below
4 average. And so he valued it on an average number. But I
5 don't know which methodology he used.

6 Q I mean, there were four methodologies; right?

7 A That's correct.

8 Q And there's no way to look at his report and tell you
9 which one he used, is there?

10 A Not, specifically, by machine, no.

11 Q You just can't, can you?

12 A No.

13 Q You can't look at a machine and say that's right and
14 that's reasonable, can you?

15 A No.

16 Q So there's no way for me to go back and look at a
17 machine and say, gosh, on machine number one, that
18 slitter, if he used this method, he would be able -- you
19 know, it would be a bad value. But if he used this method
20 maybe so. Is it --

21 A No.

22 Q Okay. And there's no way for to you do that either,
23 is there?

24 A No.

25 Q Did you call him and talk to him about this?

1 A I did not.

2 Q Who's the only person you've had discussions with
3 about this appraisal prior to walking in here today and
4 prior to anybody --

5 A Actually, I was just e-mailed a copy of it from
6 Mr. Arnold.

7 Q Is it fair to say you just took whole cloth? You
8 didn't make an evaluation to see whether or not the
9 numbers were really good, did you?

10 A I didn't retest his work, no. I mean, I did read
11 through it. But, no, I didn't --

12 Q But you read through it and you decided he didn't
13 have any way for you to tell which of each of those
14 machines he valued and how he valued them; right?

15 A Not by the machine, no.

16 Q Okay. And, also, he doesn't put one -- if it's in
17 there, I couldn't find it, maybe you did, words about
18 comparables, did he? He doesn't have comparable machines
19 to show you what they're doing in the market, does he?

20 A Well, I think that's part of a sales and market
21 approach.

22 Q But you don't know?

23 A Well, according to his definition, that's his
24 description.

25 Q Well, he says he does, but do you see anywhere in

1 there that you can pick any machine in there and say
2 that's the comparable he used to compare it to get that
3 rate?

4 A No. I don't see his list of comparables.

5 Q We just have to take his word that's what's correct;
6 right?

7 A Yes, we do.

8 Q Because we can't follow what he did, can we?

9 A I can't recreate it with what he gave me, no.

10 Q And these machines are expensive, big machines in
11 some instances, aren't they?

12 A Some of them are, yes.

13 Q You've seen them; right?

14 A I have not.

15 Q Oh, you've never seen the machines?

16 A No.

17 Q So you've really got to rely on him then?

18 A Yes.

19 Q So these machines -- what percentage of machine costs
20 do you think it would be to move one of these machines out
21 of there?

22 A I don't know.

23 Q Do you think it would be 30, 40 percent?

24 A I think his appraisal addresses whether they're moved
25 or stationary, though.

1 Q Yeah. He assumes they stay; right?

2 A That's not what I remember.

3 Q Help me find it then, please.

4 A Okay.

5 Q And I assume you're looking somewhere around where he
6 starts going, Statement of general assumptions and
7 limiting conditions?

8 A Probably.

9 Q On Pages 3 and 4 -- as a matter of fact, while you're
10 there -- and we'll keep looking. But while you're there,
11 maybe I can jump in and ask a question.

12 Paragraph 16 on there talks about the appraisal has
13 been made in accordance with, and it goes on to say
14 things. And it says, When appropriate, new and used
15 machinery dealers have been consulted for comparable
16 prices, catalogs, trade publications, and comparative
17 results of auction sales had been utilized.

18 Do you see that?

19 A I do.

20 Q All right. Which of those machines did he apply any
21 of those standards to?

22 A Those are general standards that he's applied, I
23 think, to the whole report.

24 Q But you think he -- for every machine in there, he
25 went online and looked for comparative results of auction

1 sales?

2 A I think he says when appropriate.

3 Q Yeah. That's right. What made it appropriate?

4 A I suppose if he if couldn't get a good value some
5 other way, but I don't know.

6 Q You're guessing; right?

7 A I didn't ask him.

8 Q You don't know?

9 A I don't know.

10 Q Okay. And with regard -- let me just put this off to
11 the side, because I think we're on the same page. With
12 regard to Mr. Bradshaw's adjustments, normalization
13 periods, whatever you want to call it, you're not
14 testifying as to what should be included and what
15 shouldn't be included, are you?

16 A I am not.

17 Q And that's up to the Court to decide whether
18 something should go in or not; correct?

19 A That's right.

20 Q For instance, if my client had borrowed money from
21 CCC, she would owe interest; right?

22 A That would be something for the Court to decide
23 whether she gets interest on what she bought or not. I
24 don't know.

25 Q Paid interest? If she borrows money --

1 A If she borrowed money, right, if she has to pay
2 interest.

3 Q Yes.

4 A Yeah.

5 Q Let me do a hypothetical with you while we're talking
6 about valuation. I've loved this, but nobody will let me
7 do it. But, now, they can't stop me.

8 MR. GOLDSMITH: Do you want to bet?

9 MR. FARRAR: My bad. I'm a big boy. Only one other
10 person here can stop me, I should say that.

11 BY MR. FARRAR:

12 Q On December 31st -- and this is a hypothetical, so I
13 want you to assume my facts. Okay.

14 A Okay.

15 Q There's a business that sells blown-up balloons.

16 A I'm sorry. Blowing up balloons?

17 Q It's just a balloon sale.

18 THE COURT: Well, what happened to the purple shag
19 carpet?

20 MR. FARRAR: The purple shag carpet, I couldn't think
21 of a good analogy with that, Judge. But I like the purple
22 shag carpet.

23 BY MR. FARRAR:

24 Q There's a business that sells balloons. And on
25 December 31st, 2013, that's all they've got is a warehouse

1 full of balloons. They've got 10,000 balloons in there.
2 And there are three members. They each own a third. And
3 that day, they have a falling out and one of them walks
4 out. And two years later, three years later, he says, I
5 want my value. And, oh, by the way, for the last two
6 years, I've been popping balloons in your warehouse. But
7 I'm entitled to 3,333 balloons on December 31st, 2011, but
8 I popped 9,000 of them.

9 Do you see how that might be a problem to pay him on
10 the December 31, 2011, basis if he's popping the balloons
11 in the warehouse?

12 A I see that's why we have judges and courts to decide
13 those things.

14 Q Good. Okay. That's fine. But that's not an
15 accounting matter, though?

16 A No.

17 Q Or a valuation matter?

18 A No.

19 Q Would it matter to you for the purposes of your
20 report whether or not CCC was given a going concern
21 opinion?

22 A On my business valuation report?

23 Q Yes.

24 A No. Because what I used was an asset approach. If I
25 had used the income approach, then questions like rent and

1 going concern might be more relevant. But for asset
2 approach, no.

3 Q But a rental obligation would be relevant on an asset
4 approach?

5 A Only if they had a lease they couldn't get out of,
6 then maybe, or if they couldn't sublet it, maybe.

7 Q But that's something you would value, though, figure
8 out; right?

9 A (There was no response.)

10 Q I mean, you would have to make a decision whether it
11 fit in that category; right?

12 A Yeah, you could.

13 Q You would, wouldn't you, not could?

14 A It could be an adjustment considered. I didn't
15 consider that.

16 Q Now, if you look at the appraisals report on
17 paragraph four --

18 A I'm sorry. What page?

19 Q Paragraph four under the statement of assumptions.
20 It says, The value stated in this appraisal report
21 reflects only the potential utility of this equipment and
22 no other allowances made for the potential value of the
23 continuing operating business.

24 Do you see -- you're not there. I'm sorry.

25 A I'm sorry. I was looking at my appraisal.

1 Q Oh, I'm sorry. I didn't see you --

2 A Let me catch up with you.

3 Q Okay.

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

5 Q I'm on Page -- it's back to the assumptions, Page 4,
6 I believe.

7 Are you with me where you list --

8 A I'm on Page 4. What number?

9 Q Number 13.

10 A Okay.

11 Q The value stated in this appraisal report -- are you
12 there?

13 A Yes.

14 Q And he's saying it reflects only the potential
15 utility of this equipment and no allowances made for the
16 potential value of the continued operating business.
17 He's, basically, saying if we shut the doors this is what
18 this machine is going to be worth if sold elsewhere;
19 right?

20 A That's right.

21 Q And so it's going to have to get moved out, isn't it?

22 A Yes.

23 Q Okay.

24 A Well, yeah.

25 Q Most likely?

1 A If you were to, actually, close the doors, he's,
2 basically, saying this is the value of the equipment
3 that's in place.

4 Q And did -- given that signal from him, is there
5 something you should have done differently to
6 Mr. Bradshaw's report, which isn't assuming a going
7 concern opinion, is it?

8 A I don't follow your question. I'm sorry.

9 Q Well, Mr. Bradshaw's numbers are book value. And
10 book value would change if it was closing down, wouldn't
11 it?

12 A If you have an orderly liquidation where you can get
13 fair market value for the equipment and stuff, no. If you
14 have a fire sale, yes. It depends on how you liquidate
15 those assets --

16 Q And sitting here -- excuse me. I apologize. And
17 sitting here, do you know how long it would take to
18 orderly shut down this business?

19 A Several months.

20 Q Based on what?

21 A Based on my experience with some of the businesses, I
22 would say a minimum of several months, maybe, if you tried
23 to buy out. A minimum of several months, maybe longer.

24 Q It could be years; right?

25 A I wouldn't say years, but maybe a year, or a year and

1 a half maybe.

2 Q Okay. Did your valuation take into account any
3 impact because Mr. Wilson owned less than the majority of
4 the shares?

5 A No. I didn't take any discounts.

6 Q No minority shareholders?

7 A No. I was asked to do a fair value. And we don't,
8 typically, apply those discounts in fair value
9 calculations.

10 Q So you're testifying that when you've been in Family
11 Court talking about the ownership of a business and
12 somebody has a minority interest and you represent the
13 majority side, you don't give a discount?

14 A In Family Court, the standard of value is fair market
15 value. So we do take those discounts. In this situation,
16 I was asked to do fair value. And fair value, we don't
17 apply these discounts. It's a different standard.

18 Q Well, fair value is, basically, saying to you I can
19 take the book value and change whatever I want to for what
20 I think is fair, such as the appraisals; right?

21 A No. Fair value is a standard of value that's defined
22 by a specific statute, court, or application. So fair
23 value in -- financial statement reporting could be
24 different from fair value here in this type of court.

25 Q Were you here yesterday when Mr. Bradshaw testified

1 to the effect that the impact of the poor inventory
2 accounting had not been fully felt until 2013?

3 A I was not here for his testimony yesterday.

4 Q Would that shock you to hear --

5 MR. ARNOLD: I'm going to object. I'm not sure that
6 was his testimony.

7 MR. FARRAR: I said to the effect. I believe it was.

8 BY MR. FARRAR:

9 Q If you weren't here, it doesn't matter.

10 A I wasn't here.

11 Q Okay. Do you know what the acquisition cost of this
12 equipment was?

13 A I do not know. But the depreciation method, which is
14 one of the methods he uses, I think would take that into
15 consideration.

16 Q Which one did he use the depreciation method on?

17 A I don't know, specifically, asset to asset. I just
18 know that he considered it.

19 Q Is it possible he used the depreciation method when
20 it benefited Mr. Wilson, and used another method when it
21 didn't benefit Mr. Wilson and didn't apply that
22 consistently?

23 A It's possible.

24 MR. FARRAR: Thank you.

25 I think that's all I have.

1 THE WITNESS: Okay.

2 MR. FARRAR: Oh, excuse me. Just one minute, Your
3 Honor. I'm sorry.

4 (Pause.)

5 MR. FARRAR: Thank you, Your Honor.

6 THE COURT: Sure.

7 CROSS-EXAMINATION

8 BY MR. GOLDSMITH:

9 Q Ms. Stoddard, I just need to see if I can understand
10 exactly what you did.

11 A Okay.

12 Q Did you set out to value the LLC or Mr. Wilson's
13 interest?

14 A I really set out to value Mr. Wilson's interest.
15 But, in order to get that answer, I had to value the whole
16 LLC.

17 Q So to get there, did you value the LLC and then give
18 Mr. Wilson his percentage of the LLC's value?

19 A I have a schedule in the back where I reconcile his
20 percentage of the LLC's value to Mr. Bradshaw's allocation
21 based on the disputed transactions. I kind of left that
22 as an open question for the Court to decide, which is
23 appropriate.

24 Q But in your calculation of \$408,335 as of 2011 and
25 233,776 as of 2013 --

1 A Those calculations assume that all of the disputed
2 transactions are treated as shareholder distributions.

3 Q Okay.

4 A Which is the same thing that Mr. Bradshaw is saying.

5 Q But here's what I want to know. To get -- I want to
6 know the math --

7 A Okay.

8 Q -- to get to these numbers.

9 A Okay.

10 Q Did you determine the value of the LLC in the manner
11 that you testified, which involved taking Mr. Bradshaw's
12 normalized report and the equipment appraisal and then
13 multiply that times a membership interest to derive these
14 two numbers?

15 A Let me see if I can explain this. Let me get to the
16 right page. I apologize.

17 Q That's all right.

18 A If you go to Page 21, you'll see the first column on
19 my adjusted net assets for 2011. Those numbers came
20 straight off of Mr. Bradshaw's work. And then --

21 Q And I'm sorry. Let me --

22 A Okay.

23 Q Let me interrupt you to ask you to take it step by
24 step.

25 A Okay.

1 Q So that the record -- when we read the record, we'll
2 be able to follow it.

3 A Okay.

4 Q So Page 21, the first column shows a 2011 adjusted
5 net asset number. That number --

6 A Of what? Those numbers of cash, accounts receivable,
7 inventory -- do you want me to go down the whole list?

8 Q No. I just want the number that you ended up using
9 in your formula. I mean, I think you got to a bottom
10 number?

11 A I did. I'm sorry.

12 Q Tell me what that is.

13 A 897,805.

14 Q So that's one number that's in your formula?

15 A Right. And that is coming straight from

16 Mr. Bradshaw's work.

17 Q That's right.

18 A And then Mr. Bradshaw had that 897 broken out between
19 the three partners, removing all the disputed

20 transactions. And the break out below that 897 on that

21 same page shows 457,309 of that 897 belonging to John

22 Gandis, 353,908 belonging to Dave Wilson, and 86,588

23 belonging to Andrea Comeau-Shirley.

24 Q Okay.

25 A And that total is the same 897,805. All of that

1 information came directly from Mr. Bradshaw's work.

2 Q I'm with you so far. Now, what's step two?

3 A Okay. And then I took the equipment appraisal and I
4 adjusted -- if you'll see where it says, depreciable
5 assets and accumulated depreciation. And I removed the
6 historical numbers and replaced them with the -- value in
7 this equipment appraisal.

8 Q Which was what?

9 A 335,950.

10 Q 335,950?

11 A So I added that, subtracted the historical, which was
12 a total adjustment of 120,948 increase to the value of the
13 company.

14 Q I can't write that fast. Minus how much?

15 A An increase of \$120,948.

16 Q 948. Okay.

17 A Okay. And then I allocated that according to their
18 ownership percentage, 45 percent to Mr. Gandis, 45 percent
19 to Dave Wilson, and 10 percent to Ms. Shirley.

20 Q Okay.

21 A So that's an additional 54,427 to Mr. Gandis, 54,427
22 to Mr. Wilson and \$12,095 to Ms. Shirley. And that comes
23 up to the adjusted value for Mr. Wilson of 480,335.

24 Q So to get the 408, you took the 457,309 and
25 subtracted the 54,427?

1 A I'm sorry. The 457 is John Gandis share.

2 Q I'm sorry. So Mr. Wilson's was how much?

3 A 353,908.

4 Q 353,908.

5 A And then he an had additional value of 54,427 for the
6 equipment.

7 Q Okay.

8 A And that comes down to a value of 408,335.

9 Q Now, in that process, did you use two components, one
10 for Mr. Bradshaw and one from the equipment appraisal?

11 A I did.

12 Q And in Mr. Bradshaw's work, did he value the LLC
13 except as to the equipment appraisal?

14 A He did not do a valuation, as I understand it. He
15 did adjusted financial statements.

16 Q Asset approach?

17 A He adjusted the assets. But I don't think he,
18 actually, did a valuation.

19 Q Okay.

20 A But an adjusted asset is, basically, taking the
21 historical -- or adjusted historical and making some
22 adjustments for fixed assets and anything else.

23 Q So he came up using an asset approach to a net asset
24 valuation other than equipment of 897,805?

25 A His balance sheet comes up to 897,805. I don't know

1 that he would say he did a valuation.

2 Q But that's the number that you used?

3 A That is the number I used, right.

4 Q So however he got there, you took the 897,805?

5 A That's right.

6 Q And then in your methodology, you, also, took the
7 equipment value?

8 A That's right.

9 Q And then you did some math to allocate down to the
10 45 percent, 45 and 10?

11 A That's right.

12 Q And that's how you got to the 408,335?

13 A That's right. I did the same thing for 12/31/13,
14 which is on the next page.

15 Q All right. So let's stay with this.

16 A Okay.

17 Q So when you took the 897,805 and the 335,950, one
18 being from Bradshaw, one being from the equipment?

19 A That's right.

20 Q Then, at that point, you established in your mind a
21 value for the LLC?

22 A I did.

23 Q And then you took the -- then it was pure math, 45,
24 45, and 10 to get to Mr. Wilson's number?

25 A If you take all the disputed transactions and throw

1 them back in. It depends on how you treat the disputed
2 transactions, whether you 45/45/10 of the whole, or
3 whether you take -- start with the partners allocations as
4 Mr. Bradshaw had calculated them and then adjust for the
5 equipment. So it depends on what you do with the disputed
6 transactions.

7 Q Well, what did you do? That's what I'm trying to
8 understand.

9 A I presented the 408,335. Because I started with.
10 Mr. Bradshaw's assumptions about the partnership interest
11 and took all the disputed out.

12 Q And Mr. Bradshaw's assumption -- you took all of his
13 numbers, except anything that related to the equipment and
14 you used an equipment appraisal?

15 A Right. And the equipment appraisal, I just allocated
16 on a pro rata basis.

17 Q All right. So the effect of that, is it not, to have
18 valued the LLC and then it allocate it downstream to the
19 individuals?

20 A Yes, in effect. But given consideration to
21 disproportionate distributions and contributions that
22 they've made over time, according to Mr. Bradshaw's work.

23 Q Okay. But the end result was your work valued the
24 LLC, the component Mr. Bradshaw valued and the equipment
25 appraisal, and then ended up with an allocation for each

1 of the members?

2 A That's correct.

3 MR. GOLDSMITH: Thank you.

4 MR. ARNOLD: Are we entering the appraisal -- the
5 equipment appraisal into evidence?

6 MR. FARRAR: Yeah. I think I did. I move to
7 introduce that, Your Honor. I'm sorry.

8 MR. ARNOLD: I just wanted to make sure it was in
9 evidence.

10 (WHEREUPON, Defendant's Exhibit No. 180 was admitted
11 into evidence.)

12 EXAMINATION

13 BY THE COURT:

14 Q Ms. Stoddard, explain to me again the adjustment --
15 I'm looking at Page 21.

16 A Basically, all I'm doing is taking the depreciable
17 assets and accumulated depreciation as they were
18 historically reported and adjusting them to a 335,950
19 value, which was in the equipment appraisal.

20 So I took out the historical. I added the equipment
21 appraisal. So I adjusted the historical of 576,933 costs
22 and the accumulated depreciation of 361,931, and replaced
23 it with a positive value of 335,950.

24 Q So what is 129,048?

25 A That's the net of the two. When you take one out and

1 you add the other, that's the net effect --

2 Q The net of the equipment appraisal and what?

3 A And the cost that was on the books. So the equipment
4 appraisal was, basically, \$120,948 higher than historical
5 cost -- depreciated historical cost.

6 Q Which the old accumulated depreciation of 361,931 was
7 the equipment?

8 A Right.

9 Q Okay.

10 A I just took the accumulated --

11 Q Nothing else that's composed of --

12 A No. That's it.

13 THE COURT: Okay. Thank you very much.

14 MR. ARNOLD: I don't have anything else.

15 THE COURT: And where would the -- and y'all might be
16 better asking this than me.

17 BY THE COURT:

18 Q But where is the rent going to be reflected in here?

19 A The rent is reflected in -- let me give you the page
20 reference. On Page 24 and Page 25, I showed evaluations
21 starting with a pro rata allocation between the partners.
22 And then I reconciled down to the disproportionate
23 value for the partners that's based on Mr. Bradshaw's
24 work.

25 Q Okay. So what line is that?

1 A So like 24 starting at the top -- let me see where
2 rent is.

3 MR. FARRAR: Your Honor, I'm not sure -- if I might
4 be so bold. I think what she's showing you is how she
5 gets a present -- a market value analysis back for each
6 item. She's not showing you -- like --

7 And correct me if I'm wrong, Ms. Stoddard.

8 There's nothing in her work that shows, for instance,
9 that there's a lease obligation --

10 REXCROSS-EXAMINATION

11 BY MR. FARRAR:

12 Q By way of example, there's a lease obligation that
13 pays \$6,000 a month for a year, a \$72,000 adjustment, or
14 something like that; correct?

15 A You're right. These are the adjustments that
16 Mr. Bradshaw ended up making to the partners account. And I
17 think the rent maybe was not part of that final equation.
18 Because I don't see --

19 Q It got taken out, but it's not in here?

20 A Right. I don't see it in the allocations.

21 MR. FARRAR: Yes. Okay.

22 THE COURT: All right. Well, so that's -- I mean,
23 y'all can argue that later.

24 MR. FARRAR: And Mr. Alford is prepared to address
25 that, too, so.

1 THE COURT: Thank you.

2 MR. ARNOLD: Let me just make sure.

3 REDIRECT EXAMINATION

4 BY MR. ARNOLD:

5 Q The rent wasn't in dispute in 2011?

6 A That's right. It went up after 2011. So it would
7 only be -- wait, let me look. It might be on the other
8 page. Hang on a second.

9 Yeah, it is. I'm sorry. Look at Page 25. There's
10 the effect of the increased rent. /

11 THE COURT: Okay. I see.

12 MR. FARRAR: Your Honor, excuse me. Just because of
13 that, so we're all on the same page.

14 MR. ARNOLD: Okay.

15 FURTHER EXAMINATION

16 BY MR. FARRAR:

17 Q On Page 25, it shows Mr. Bradshaw's adjustment
18 because of the excess rent paid; correct?

19 A Right.

20 Q He gave them credit for the rent. He just says you
21 charge too much; right -- or that there's an issue about
22 whether there was too much charged?

23 A Right. He says this is the amount that's at issue.
24 And if you believe it goes back, then you would just
25 reverse that.

1 Q And the questions I was asking you earlier and I
2 didn't do a good job, so that's part two of how I failed
3 in this questioning. Is if there's an obligation to pay
4 rent? It's not shown on the historical books necessarily;
5 correct?

6 A That's, typically, not a balance sheet item.

7 Q Correct. But it's an obligation that would impact
8 the value of the company; correct, unless they could get
9 out of it?

10 A If you're planning to liquidate the company, it
11 could.

12 Q Even if you weren't planning on liquidating the
13 company, you know you have a committed payment in the
14 future; right?

15 A Well, it would be a future expense, which had not
16 been incurred at that time. It would not affect the
17 valuation.

18 Q But if you were doing financials -- all the financial
19 statements, clearly, these were -- you're doing an audited
20 financial statement, you would have a footnote showing
21 that; correct?

22 A Typically, that's a footnote disclosure, right.

23 Q And I don't know what the rule is now --

24 A It depends on what the terms of the lease are, but
25 right.

1 Q But just something to take into account if you're
2 valuing the company, that's significant to the company;
3 correct?

4 A It is a consideration if you're looking to buy a
5 company, right.

6 MR. FARRAR: Thank you.

7 THE COURT: So any -- is there any -- and maybe this
8 is something Dr. Alford is going to address. But is there
9 any evidence about the fair market value of the rent?

10 MR. FARRAR: Yes, sir. We'll have that.

11 THE COURT: All right. Thank you.

12 MR. ARNOLD: We're done, Your Honor.

13 MOTIONS

14 MR. STEPHENSON: Your Honor, I need to do this for
15 the record. I understand you're probably going to reserve
16 all of this to the end, but I need to do it.

17 I'm moving for a directed verdict. If you look at
18 the complaint, there's three causes of action. And you
19 really can't tell, but it appears -- and Andy can say
20 better than I that he sued derivatively.

21 If you look at Rule 23(b)(1), we think, clearly, any
22 derivative claim should go out. If you read the rule
23 itself, the rule says the complaint will allege with
24 particularity any efforts, if made, by the Plaintiff to
25 obtain the action he desires from the directors or

1 comparable authority in control, futility of demand. And
2 there's all sorts of case law. We don't think they did
3 that.

4 But, more importantly, the Plaintiff must fairly and
5 adequately represent the interest of the shareholders.
6 And he, clearly, doesn't to that. He's in competition
7 with the shareholders. He's trying to take the customers.
8 He's doing everything he can to devalue the company. And
9 we don't believe he's a proper derivative plaintiff in the
10 derivative cause of action. That doesn't get rid of the
11 causes of action.

12 He's got three. He's got oppression. We don't
13 believe he's proven oppression. That cause of action
14 ought to go out. He's got breach of fiduciary duty. We
15 don't believe he's proven any breach of fiduciary duty.
16 The Bradshaw report, clearly, states that there's nothing
17 taken, that the disputed items are right there in front of
18 everybody to see.

19 For example, Andrea Comeau-Shirley's hundred thousand
20 dollars, it was not taken. A book entry was made to show
21 there was a claim or something there for anybody that
22 wanted to look at the books. Nothing was taken. The same
23 is true of the rent, the salary, and everything else in
24 dispute in this case. There is no fiduciary duty against
25 us.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Good morning, Dr. Alford.

A Good morning.

MR. WILLIAMS: And, Your Honor, we're presenting Dr. Alford as an expert economist and in valuation.

MR. ARNOLD: We stipulate.

THE COURT: He's so qualified.

BY MR. WILLIAMS:

Q Dr. Alford, I think a good place to start is, perhaps, a comment on the expert opinion of Ms. Catherine Stoddard. Do you have any comments that you would like the Judge to hear about her approach?

A Yeah, a few. First, I completely agree with Ms. Stoddard that the adjusted book value -- or adjusted net asset value is the way to appraise in this case. There are no comparables. As you heard her say, she couldn't find anything. She couldn't, and I'm sure I couldn't.

Q Okay.

A But the operating results are negative. There's no way to capitalize losses, unless you pay somebody to take your business from you. So, you know, that leaves adjusted net asset value.

My problem with that, though, is not that that's the

1 wrong approach. I agree that I think it's the way to do
2 it. The problem is to do it, you have to have reliable
3 information.

4 Q Okay.

5 A And that's where I find it a little bit problematic.

6 Q Okay. Well, let's --

7 A Particularly --

8 Q I'm sorry. I'll let you finish.

9 A You'll just have to stop me.

10 Q Okay.

11 A Particularly with regard to the equipment appraisal.
12 And I want to be fairly specific about that.

13 Q Okay.

14 A I mean, neither Ms. Stoddard nor I could, you know,
15 appraise that -- well, I'll speak for myself. I couldn't
16 appraise that equipment, and I don't think she could
17 either. So you have to depend on something.

18 But if you look carefully at the appraisal that has
19 been submitted -- and, honestly, I was hoping that an
20 appraiser would testify, because that might clear some
21 things up. But I have three very significant problems
22 with regard to that.

23 He did that appraisal recently and -- I guess in
24 August or September of this year, presumably, to reflect
25 the value of the equipment now or, perhaps, the value of

1 the equipment at the end of 2013. And that's all he could
2 do. He couldn't go back and look at the equipment, you
3 know, in 2011. But he has done some sort of extrapolation
4 apparently. And, based on what Ms. Stoddard was
5 testifying to, she just used that \$335,000 either at
6 12/31/11 or 12/31/13.

7 Q Okay.

8 A Here is the problem with that. It is not just that
9 it's a different time period. But there are a number of
10 things that that equipment appraiser himself says that I
11 think should cause -- respectfully, I think it should
12 cause the Court to look very carefully at this.

13 He says, for example -- the market approach he uses
14 involves the collection of market data pertaining to the
15 subject assets being appraised. This is called
16 comparative sales approach, he says. And I'm not aware
17 that he did that in terms of looking at the market now or
18 the market in 2011.

19 More significantly than that is that the market --
20 from what little bit I understand about this industry, the
21 market has changed drastically. I mean, these people were
22 going great guns in 2010. And then they hit the wall and
23 the market deteriorated. And, now, the market has come
24 back.

25 This appraiser himself says -- he's talking about

1 reasons for changes in value of equipment. These reasons,
2 among others, are cited as major factors which limit the
3 ability of the value shown in regard to the effective date
4 of the appraisal. One of the reasons is unfavorable
5 external conditions. These can include such things as the
6 economics of the industry. That's on Page 7 of his
7 report.

8 But what he's saying is that you've got to value the
9 equipment in light of the industry in which it's going to
10 be used, and the economics of that industry at the time of
11 the appraisal. Though he says that several times, he
12 gives no evidence that that's what he's done.

13 Q Okay.

14 A So in terms of the timing of the appraisal -- and I
15 know that two parties have different ideas about when the
16 appropriate effective date of appraisal should be. And
17 that's fine. That's something, thankfully, the Court has
18 to wrestle with and not me.

19 But I can tell you that if you're using a current
20 appraisal of equipment, and you're considering the fact
21 that that equipment was operating in an industry that was
22 in a world of hurt in 2011, it should effect those values.

23 The second problem I have is that he says very
24 clearly that he uses the market approach, sales comparison
25 approach.

1 Q Okay.

2 A And Ms. Stoddard said, and I say, and every other
3 egghead appraiser says there's three ways of valuing
4 anything, you know. You look at the market transactions,
5 you look at income, and you look at replacement costs if
6 it happens to be equipment, or a house, or something like
7 that.

8 Well, the only thing he really used is the market
9 approach, which I would think would be the way to do it.
10 But he says, I may reference auction data. I may talk
11 with manufacturers. He talks about having done a lot of
12 things.

13 But, respectfully, for this appraiser, he never cites
14 one source for comparison. There is not one in there.
15 He's got a three-page list of what he calls personal.
16 That is the list of the equipment. And he describes the
17 equipment. He says something about it's -- you know, he
18 rates as to whether it's good or fair. And he gives a
19 value. But it is not based on any of the sources that he
20 says in his own report that ought to be used if you're
21 using the market approach.

22 So if you're using the market -- Ms. Stoddard herself
23 said I couldn't use the market approach in valuing this
24 business because there weren't any comparables. And she
25 knows, as I know, that if I want to use the market

1 approach, I better show you here are some comparable
2 sales, or here are some sales of companies that were
3 fairly comparable and I've made certain kinds of
4 adjustments.

5 Q Okay. How about the -- go ahead. How about the cost
6 of the equipment, the acquisition cost?

7 A That's the third problem. If you look at -- I mean,
8 he lists the equipment. And I -- you know, you can find
9 the list as well as I can. But it starts on Page 11 of
10 his report.

11 If you look at his equipment and then you look at the
12 balance sheet at the end of 2011 of CCC -- okay -- which
13 lists the equipment, some of the items that he
14 appraised -- now, remember, they put this stuff in service
15 in 2009 when the economy -- when the -- that industry's
16 economics were on the uprise. They were going to be doing
17 very well.

18 He's got -- there's an -- and I don't know what these
19 things are. I just picked up the descriptions from his
20 list of equipment and from the balance sheet. There's an
21 R1 Stanford 188 slit slash REW. I guess that's slitter
22 rewinder. It cost the company \$16,637 in 2009. He
23 appraises it at \$17,500. There is an S2 Celum 54-inch.
24 And I'm not sure what that is.

25 Q Sure.

1 A But he has a similar description in his appraisal.
2 The company bought that for \$11,885. His appraised value
3 is \$10,000, a little bit less, which is what you'd expect.
4 There's a 62-inch Stanford 338-S3. The company paid
5 \$30,118 for it. That's the first item on his appraisal
6 list is item one on his list of personality. He placed
7 it -- he appraised it at \$45,000.

8 So, to me, it becomes a question of a smell test, you
9 know. If we're looking at appraisals in today's market of
10 specific pieces of equipment -- and, you know, I've got
11 others here. There's a Bagley Suewell 84-inch CSR. The
12 company paid \$10,266 for it. He appraised it at \$25,000.
13 Well, you know, that suggests, I think, there's some kind
14 of a problem in that appraisal.

15 THE COURT: What did you say they paid for number
16 one, the slitter?

17 THE WITNESS: 16 -- for number one, they paid
18 \$30,118, according to the costs listed on the balance
19 sheet. And he appraised it at 45,000. There's another,
20 338, where they paid 45,963 and he appraised that at
21 45,000. That's item number four on that sheet.

22 So, in that case, he -- you know, he thinks it's
23 dropped \$963 in value in five years, essentially. So, you
24 know, I think adjusted book value is the way to go if you
25 have dependable data.

1 BY MR. WILLIAMS:

2 Q Let me ask you one more question. You're an
3 economist. Do you understand that there's costs when you
4 value this type of heavy textile machinery equipment in
5 moving it offsite and those costs are a factor in its
6 value?

7 A Yeah. Well, actually I've talked to engineers this
8 week about it. And one, a guy named Oscar Funderburk -- I
9 don't know if y'all know him or not. But he runs a
10 company. They move textile equipment. But he says --

11 MR. ARNOLD: I'm going to object. This is hearsay.

12 MR. WILLIAMS: Your Honor, under -- I think it's Rule
13 702, an expert can rely on otherwise hearsay testimony.

14 THE COURT: You'd have to finish -- if you can lay
15 the foundation.

16 MR. WILLIAMS: Sure.

17 BY MR. WILLIAMS:

18 Q Mr. Alford, the Defendant stipulated that you're an
19 expert in valuation?

20 A Yeah.

21 Q In arriving at valuations, do you sometimes rely on
22 other experts in your field to discuss things, for
23 example, machine costs?

24 A Sure. I mean, just like this equipment appraisal,
25 you know, you're depending on somebody else.

1 Q So if you've been hired by, let's say, CCC to value
2 all the assets on its balance sheet, would you in the
3 regular course of your work go out and speak to others in
4 order to try to figure out how to arrive at that valuation
5 number?

6 A Yeah. And the reason it becomes particularly
7 important here is if you read the equipment appraisal, it
8 says, specifically, this appraisal is based on an
9 assumption that the buyer will come in and remove the
10 equipment.

11 Q Okay.

12 A So it is an appraisal assuming that the buyer is
13 going to take it away, or they're going to use it right
14 there.

15 MR. WILLIAMS: Your Honor, have we laid a sufficient
16 foundation for him to testify regarding his reliance on
17 experts in the field related to the valuation of machinery
18 and taking it off plant?

19 THE COURT: Is there any objection?

20 MR. ARNOLD: I'll withdraw the objection.

21 THE COURT: Okay.

22 THE WITNESS: Well --

23 BY MR. WILLIAMS:

24 Q You were going to talk about discounts?

25 A Yeah, for textile equipment. They estimate 20 to 35

1 percent of the value of the equipment is an additional
2 expenditure for disassembling, transporting, assembling,
3 and tooling.

4 Q And are those --

5 A So if you've got a \$45,000 piece of equipment, if you
6 add just 20 percent to it, that means the buyer is looking
7 at a total cost of getting equipment in of \$54,000. And
8 this is a piece of equipment that CCC paid \$30,000 for.

9 Q Okay. Let's get off the appraisal. As to
10 Ms. Stoddard -- and I guess we have to kind of stay with
11 the appraisal. We've got the book value/market value.
12 Help the Court understand the kind of hybrid use of book
13 value/market value that's utilized in Mrs. Stoddard's
14 report.

15 A The book value is -- book value is an accounting
16 term, you know.. It's assets as they appear -- as their
17 values appear on the balance sheet minus liabilities as
18 their values appear on the balance sheet. Adjusted book
19 value is the value of assets as they, actually, exist.

20 And depending on what the Court decides its standard
21 of value is going to be -- I mean, it might consider
22 liquidation value or orderly liquidation value, fair
23 value, fair market value. There are a lot of issues that
24 the Court, I think, has to sort of wrestle with.

25 But the adjusted net asset value is some measure of

1 value of the assets other than net book value if you have
2 a basis for changing that minus the liabilities.

3 Q Okay. And --

4 A And the assets in this case -- one point I need to
5 make is that you can't -- if you're going to adjust asset
6 values, I think you have to be careful about not to cherry
7 pick and just say we'll look at the equipment, because we
8 think maybe the equipment is worth more. A big element of
9 the book value of this company, either in 2011 or 2013,
10 was accounts receivable.

11 Q Okay.

12 A If I had a hundred thousand dollars -- if somebody
13 owed me a hundred thousand dollars right now -- okay --
14 which I wish. But if they did and I came to you and said
15 I'll sell you that debt for a hundred thousand dollars,
16 that's the fair value of it. You would say, no, I think
17 I'll keep my cash and you keep that note.

18 Because if we're going to look at current day market
19 value of accounts receivables, the least we have to do, I
20 think, is look at the aging of the receivables and see
21 whether they're 30, or 60, or 90 days. And after the
22 fact, we even have an opportunity to see if they were, in
23 fact, collected.

24 The bigger issue is the inventory, you know. I read
25 Del's report and I listened to his testimony. And I know .

1 that the inventory is a big issue and the appropriate
2 valuation of the inventory.

3 And I know that Mr. Bradshaw, you know, he made an
4 adjustment in 2011 or so. And then he made another
5 adjustment by increasing cost of goods sold in a later
6 year. But what that highlights is that in 2011, the
7 inventory based on the physical account and then assigning
8 their costs to it may have really overstated its value.
9 Because a lot -- it turns out -- sounds to me like they
10 couldn't sell it at that.

11 So if we're going to look at market values to do
12 adjusted net asset value, then you've got to consider
13 whether that hundred thousand dollar deduction in
14 inventory should have happened or not.

15 You know, I think what Ms. Stoddard has done is say
16 I'm going to take everything that Del did and -- and I
17 don't blame her for that. He did a lot of work. I'll
18 just take everything he did, but we're only going to make
19 one adjustment. And that's because there was only one
20 adjustment provided to her, I'm sure.

21 But I think you need to look at item by item at the
22 assets and decide whether in computing the net asset value
23 you need to make adjustments for uncollectible accounts
24 receivable or delay in collection of accounts receivable.
25 And you need to make adjustments for whether the inventory

1 was really not worth what it appeared to be on the books.
2 And, of course -- I mean, if there were contingent
3 liabilities, you'd consider that. Not dollar for dollar,
4 but you'd, at least, consider them.

5 Q Let's move toward -- are we done on Ms. Stoddard?

6 A Yeah, yeah.

7 Q Let's move toward your opinions in this case. What
8 did you value the business at year end 2013?

9 A Well, I think --

10 Q Or am I jumping ahead?

11 A I think as an entire company, the only thing that we
12 have is the schedule that Del -- that Mr. Bradshaw and his
13 firm did.

14 Q Okay.

15 A And that's sort of a starting place. December 31,
16 2013, its normalized book value is \$87,000. Now, I'm not
17 saying that the Court ought not to change that. I'm just
18 saying I wouldn't change it myself based on that equipment
19 appraisal.

20 Q Okay.

21 A That's what you asked for, the equity?

22 Q I did.

23 A December 31, 2013, it was \$87,000. And, actually,
24 I'm reading from Catherine's table because she took it
25 right from Del's.

1 So December 31, 2011, it was \$897,000. So it's quite
2 a significant difference in terms of the book value that
3 Del computed based on his normalized adjustments.

4 Q Now, let's talk about your valuations opinion --
5 valuation opinions and dissolution for its buy out and all
6 the issues surrounding that.

7 A Yeah. I think the Court is either going to make its
8 own job easier or harder. If the Court directs a buy out
9 of Mr. Wilson's shares, if that is the solution that the
10 Court reaches, then the purchase of his shares is going to
11 be his capital account. Even if his capital account is
12 out of whack compared to the others.

13 For example, at the end of 2013, he had a normalized
14 positive capital account, and they had normalized negative
15 capital accounts. But if the solution is simply that when
16 it's all said and done, the company is going to acquire
17 his 45 percent ownership share, then it's going to be this
18 is equal to the normalized value of his capital account --

19 Q And what is that value?

20 A I come in and think I'm going to be so organized and
21 then I lose my place.

22 Q That's all right.

23 A At the end of 2013, his value is \$144,113.

24 MR. ARNOLD: Your Honor, may I -- did he prepare a
25 report?

1 MR. WILLIAMS: He did. You should have it in your
2 book.

3 THE WITNESS: And if the Court decides the value of
4 the company ought to be adjusted for equipment or for
5 anything, if the company -- if the Court decides the value
6 of the company should be increased by a hundred thousand
7 dollars, it's not hard arithmetic. The amount that would
8 be due to Mr. Wilson is that 144,113, plus 45 percent of
9 the difference or minus 45 percent of the difference, if
10 the Court decides the value of the company at December 31,
11 2013 is not 87,210 but is some other number.

12 BY MR. WILLIAMS:

13 Q Okay.

14 A If the Court uses 2011, it is exactly the same thing.
15 It all washes out. If he is paid -- on December 31, 2011,
16 if the company -- Mr. Bradshaw's value was \$898,000, but
17 Mr. Wilson's share was 353. Then based on a 2011
18 appraisal, they'd buy him out -- the company would buy him
19 out at 353,000 plus or minus, whatever difference the
20 Court assigns to the value of the company as it might be
21 different from that \$898,000, plus 45 percent of that
22 difference.

23 So it is really pretty easy arithmetic at that point.

24 Q Help us understand where rent -- we talked about that
25 earlier. Mr. Gandis or Ms. Comeau-Shirley working for the

1 company at no cost for the last years, where does that
2 play out in all of this?

3 A That really -- if Mr. Wilson is going to be bought
4 out, all you've got to do is focus on his capital account
5 and any differences -- 45 percent of any difference in
6 value that the Court decides is appropriate. If the Court
7 decides dissolution, or if the Court decides that somebody
8 else is going to be bought out, then you have to visit the
9 capital accounts of the other two owners. And you have to
10 decide whether Mr. Bradshaw's normalizing entries were
11 appropriate for valuation purposes.

12 And, you know, I don't tell the Court what Del
13 thinks. I think the Court knows. But if, for example,
14 the Court decides -- there was a rent issue. Fair market
15 rent would have been greater than what they were paying.
16 And so the increase in fair market rent was appropriate.

17 Q And have you seen an appraisal for fair market
18 rent?

19 A Yeah. I've got one of these, but it was an appraisal
20 by a guy in Anderson.

21 Q And do you recall what that is?

22 A Yeah. And, essentially, you know, a good real estate
23 appraisal will not just deal with value, but it will deal
24 with fair market rent. And so that, certainly, supports
25 the conclusion that the fair market rent on that facility

1 would have been greater.

2 And if it was and only if the Court decides that
3 buying out Wilson is not the way to go, that the way to go
4 is for me to dissolve this company, order it to be
5 dissolved, order it to be liquidated or something like
6 that, then what the Court has to do is decide what the
7 relative capital accounts of the -- all three of the
8 owners will be.

9 Then the rent adjustment, the adjustment for
10 litigation expenses that -- in his normalizing activity
11 that Mr. Bradshaw treated just as a distribution to
12 Mr. Gandis and Ms. Comeau-Shirley, the Court has to decide
13 if those were legitimate deductible expenses as Del
14 identified. Should I put those back in?

15 In doing that, you will increase all of the capital,
16 but you'll increase disproportionately the capital accounts
17 of Gandis and Comeau-Shirley, because that's where those
18 were taken out of. And for every one of Del's
19 adjustments, that decision has to be made.

20 But, really, you know, a lot of them are -- I mean,
21 the big picture, a lot of them are -- I mean, there's a
22 thousand dollar adjustment that has to do with charitable
23 contributions and stuff like that. But the big ones are
24 the legal expenses, legitimate compensation to the owners
25 that remain there, Mr. Gandis and Ms. Comeau-Shirley, and

1 the rent.

2 But -- and I'm not going to -- I mean, I know that if
3 you're appraising a business, you have to look at fair
4 market rent. The only reason that's important here,
5 though, is not for purposes of income. See, normally,
6 that adjustment would be important because you're looking
7 at the economic income of the entity. But, in this case,
8 it's losing money anyway. So normalizing the rent for
9 purposes of looking at the income of the business is
10 neither here nor there.

11 Q Let's pause right there. You talked about losing
12 money. Earlier, Ms. Stoddard was asked about if there was
13 a going concerns statement attached to this entity would
14 that affect her net asset value. And I can't remember
15 what she said, but posing the same question to you, what
16 would you say?

17 A Yes. I think it would. Because I believe you have
18 to reconsider the adjustments that would be made to asset
19 values.

20 Q Okay.

21 A That doesn't suggest to me -- if it's -- if there's a
22 going concern opinion, which just means they have real
23 doubt it's going to last another year, that doesn't mean
24 that you have a fire sale of the equipment and you sell it
25 for \$0.10 on the dollar of its true worth. But it does

1 mean liquidation. And it does mean liquidation of other
2 assets or recognizing the time delay in collecting
3 accounts receivable.

4 So there are some -- I think you have to look very
5 carefully at the nature of the adjustments to your assets
6 if you anticipate that the company is going to be
7 liquidated.

8 Q Okay. And for the Court's benefit,, we all keep
9 talking about fair market value rent. Could you tell him
10 what your belief is on fair market rent?

11 A Well, I'll have to --

12 Q If I told you \$5,700 a month, would you disagree with
13 that?

14 A No. But I don't remember the number. You're asking
15 an old man for a long memory. But I'm certain you can
16 look at it.

17 Q Could I show it to you?

18 A Yeah. Sure.

19 MR. WILLIAMS: Do you all have a copy of it?

20 MR. ARNOLD: No.

21 MR. GOLDSMITH: It's the Stone.

22 MR. ARNOLD: Yeah. I've seen that.

23 THE WITNESS: Yeah, this is the Stone -- is this the
24 Stone report? We would expect this to lease for
25 approximately \$5,700 month.

1 BY MR. WILLIAMS:

2 Q Do you know what it currently rents for, or is
3 currently booked for?

4 A Oh, boy.

5 Q If I told you \$6,000, would that sound about right?

6 A Well, until I remembered, you could tell me anything
7 and it would sound about right.

8 Q If I told you it would -- it used to be 6,000, but
9 it's now less because part of the space isn't rented
10 out -- I could refer you and I can refer the Court to an
11 exhibit in our book or a schedule.

12 A Yeah. I mean, I apologize. But I didn't --

13 Q That's quite all right.

14 A Because I'm not prepared to make that adjustment. I
15 just believe if the Court is going to order a
16 dissolution -- I mean, here's what I think would have to
17 happen. If the Court orders a dissolution, I think it has
18 to bring its own expert back in and make some other
19 decisions about whether some of those normalizing entries
20 would have been appropriate for valuation purposes.

21 Q Okay. Year end 2011 and year end 2013. One of the
22 questions the Judge does have to wrestle with is when you
23 value the entity, do you have any observations on that?

24 A Yeah. Here is what we know. We have an equipment
25 appraisal that is a lot closer to 12/31/13. And he might

1 have extrapolated backwards, but I'm not aware that he --
2 I haven't seen any report to suggest that he did. And
3 Ms. Stoddard used the same valuation on two different
4 dates.

5 More important than that, though, is that we have
6 every indication that the problem with the inventory had
7 not washed out by the end of 2011. And in Mr. Bradshaw's
8 testimony, he said yesterday, I think that would have
9 washed out in 2011 and 2012.

10 So if we use the 2011 valuation date, then based on
11 the testimony I've heard, we're valuing it based on a
12 flawed estimate of the real value of inventory at that
13 time. That is the -- that's the biggest concern. Now, I
14 know there's some legal questions --

15 Q Sure.

16 A -- about whether it's at-will or term entity. But
17 I'm not going to show my ignorance by getting into that.

18 Q Okay. Then the last part of your opinion shifts away
19 from all of this. And it's a damages analysis of the
20 company for the claims the company has. For now, we've
21 got just kind of a broad -- this is my damages analysis
22 that you put together for us. But you've subsequently
23 created a document which we can give to all the parties.
24 And it goes on a by customer-by-customer basis analyzing
25 historic margins.

1 MR. ARNOLD: I think I would like to see that.

2 MR. WILLIAMS: We're not going to ask him to talk
3 about it. For the Court's benefit, he can create one of
4 those for doing the analysis.

5 THE WITNESS: Yes. Now, we're talking about the EFS
6 customers?

7 BY MR. WILLIAMS:

8 Q Yes, sir.

9 A Yes. I've prepared a schedule that is based on the
10 EFS --

11 MR. ARNOLD: I've not seen any of these schedules.

12 MR. WILLIAMS: We don't need to talk about it. I
13 just wanted to bring it to the Court's attention.

14 MR. CAMPBELL: I just -- you're talking about it.

15 MR. WILLIAMS: I'm not going to put it in.

16 MR. ARNOLD: But he's testifying from it. Look, I
17 like to play nice. We've played nice. And I respect
18 Dr. Alford. But I don't know what in the world he's got
19 in front of him. And I'd like to have the benefit of
20 seeing it.

21 MR. CAMPBELL: Is it anything other than 118?

22 MR. WILLIAMS: Yes. It's an update.

23 MR. CAMPBELL: There's an update?

24 MR. WILLIAMS: Yes.

25 MR. CAMPBELL: Is it in the book?

1 MR. WILLIAMS: He's not going to testify about it. I
2 just wanted to make it aware that we can do that for the
3 Court. It's an analysis.

4 THE COURT: I don't think he's eliciting testimony.

5 MR. ARNOLD: Okay. I just feel uncomfortable about
6 there being an opinion.

7 MR. WILLIAMS: It's the opinion you've got, and it's
8 a big number. And I'm just letting -- and I refer to
9 the -- what exhibit did you say it was?

10 MR. ARNOLD: 118. It's 20 pages.

11 MR. WILLIAMS: Defendant's Exhibit No. 18. And I'm
12 just making it known to the Court that he's got a
13 customer-by-customer analysis --

14 MR. ARNOLD: After he testifies?

15 MR. WILLIAMS: Well, you've got his bottom line. So
16 anything you want -- and you know all the customers.

17 MR. CAMPBELL: But, Your Honor, specifically, to my
18 clients, customer-by-customer is important. And I've not
19 seen any customer-by-customer analysis.

20 THE COURT: Wait a minute now. He hasn't testified
21 about any of this stuff. I don't know what --

22 MR. CAMPBELL: Okay.

23 MR. WILLIAMS: I didn't have any questions. I just
24 want to make the Court aware.

25 Do we agree to put this in?

1 MR. ARNOLD: I don't have any objection.

2 THE COURT: Any objection?

3 MR. WILLIAMS: This is Defendant's Exhibit No. 181.

4 That's a copy of the Stone Associates --

5 THE COURT: Any objection to that?

6 MR. CAMPBELL: The Stone report?

7 MR. WILLIAMS: Right.

8 MR. CAMPBELL: No objection.

9 MR. ARNOLD: No objection.

10 (WHEREUPON, Defendant's Exhibit No. 181 was marked for
11 identification and admitted into evidence.)

12 BY MR. WILLIAMS:

13 Q Last couple of questions. We're talking about the
14 damages against the company now. How did you compute
15 those damages?

16 A I took sales data that I understand to have been
17 provided by EFS and by Neologic. Okay. I did the normal
18 model of taking revenues of the so-called alleged
19 infringer, intellectual property case or, you know,
20 defendant in a different kind of case. I took their
21 revenues and I applied the specific gross profit margins
22 that Mr. Bradshaw had identified in his normalized
23 computations to compute the lost gross profit to CCC
24 resulting from sales of those two companies.

25 Q One more question --

1 MR. WILLIAMS: You've all seen this exhibit.

2 BY MR. WILLIAMS:

3 Q Dr. Alford, I refer you to the alternative
4 computations of amounts due analysis that you did. It's
5 Defendant's Exhibit No. 118.

6 A Okay.

7 Q Tell me when you're there.

8 A I've got them.

9 Q All right. What is -- we've got this broken down
10 into four segments. What does segment one tell us?

11 A Segment one assumes that the Court will not consider
12 any damages to CCC from either EFS sales or Neologic
13 sales. It is simply a bit of arithmetic that shows bottom
14 line what I said earlier. And that is if Wilson is to be
15 bought out, then -- and if the Court values the company at
16 the normalized book value computed by Mr. Bradshaw,
17 then -- at the valuation date of December 31, 2013, he'd be
18 paid \$144,113.

19 Q Okay. Segment two, what does that show us?

20 A Segment two shows the net amount that would be paid
21 to Mr. Wilson if he is bought out on December 31, 2013.
22 But if the damages to CCC include only the sales of the
23 elected Neologic customers that were identified, I
24 understand by Neologic applying CCC's gross profit margin
25 to those sales, then the question becomes do we credit --

1 does the Court credit Mr. Wilson with 45 percent of that
2 loss since he's a 45 percent owner of CCC.

3 If he is credited with 45 percent of that loss, then
4 he would still be paid \$30,877. If he is given no credit
5 for that loss, then he would owe \$61,771. That is based
6 on lost profits to Neologic from January 1, 2012 through
7 July of 2014 of \$205,884.

8 Q Okay. And segment three. And I want to pause at
9 segment three. We have a calculation error on the 715,
10 don't we, for giving too much for the first half of 2008?

11 A Well, when I did this, I based it on the full year of
12 2008, as well as 2009 and 2010 sales of EFS. And I
13 computed lost profits due to EFS sales of \$715,000. Now,
14 if you eliminate the first six months of 2008, that number
15 is cut almost in half.

16 Q So we could reorganize this just kind on the fly by
17 halving it?

18 A Sure.

19 Q Okay.

20 A That -- in section three, that 715,166 becomes
21 394,797. That was eliminating the first six months of
22 2008, and it was eliminating Horizon Energy sales.

23 Q Okay.

24 A But then the arithmetic, which is -- I mean, I can
25 stumble through, but the arithmetic would just simply flow

1 from that one number.

2 Q Okay. Could you stumble through it real quick? I'm
3 asking a lot of you.

4 A Not real quick, but I can stumble through it.

5 Q Okay.

6 A If Mr. Wilson is credited with 45 percent of that
7 loss as a 45 percent owner in CCC, cashing -- buying him
8 out and his replacing those damages of 394,000 would
9 result in a net negative value to him or a payment from
10 him of \$73,025.

11 Q Okay. And that's giving him the benefit of
12 45 percent?

13 A That is giving him credit for 45 percent, that's
14 right. If he is not given credit for that --

15 THE COURT: I may be missing something. I'm sorry.
16 How could he not be given credit for it if I were to go
17 along on this theory?

18 MR. WILLIAMS: Sure. Well, he's retained to benefit
19 one. So we're talking about --

20 THE COURT: Well, how?

21 MR. WILLIAMS: These sales were down outside of CCC
22 when they should have been done through. So you heard
23 testimony he retained profits with Mr. Norvell and
24 Mr. Myers, so he's been paid already.

25 THE COURT: All right.

1 THE WITNESS: If he's not given credit for it and if
2 he's bought out and charged for the damages to CCC, it
3 would be \$250,684.

4 BY MR. WILLIAMS:

5 Q And I'm not going to ask you to do the bottom
6 analysis. Just --

7 A Well, that's just a summation of two and three.

8 Q Okay. So we can just add them up down there?

9 A Yeah. Sure.

10 Q And then the last question. But if the Judge
11 determines there's a particular customer he wants you to
12 take out, can you do that analysis?

13 A Yeah, very easily.

14 MR. WILLIAMS: Thank you, Dr. Alford.

15 CROSS-EXAMINATION

16 BY MR. ARNOLD:

17 Q Good morning, Dr. Alford.

18 A Hey, Mr. Arnold.

19 THE COURT: I'm not trying to cut you off in any way
20 or limit you, but can you just tell me how long you think
21 your cross-examination might be, just for planning
22 purposes.

23 MR. ARNOLD: Yeah. I can't imagine it's going to be
24 long. I can't -- I mean, Your Honor, if it lasts
25 30 minutes, I'd be surprised.

1 THE COURT: All right. Thank you.

2 THE WITNESS: We can stop now if you need to.

3 BY MR. ARNOLD:

4 Q I'd probably be better off, but I'm going to go ahead
5 and give it a try. First of all, just as a general
6 matter, it would be much easier in this case to make a
7 determination of value and interest between the parties if
8 the Judge orders a buy out versus a liquidation, wouldn't
9 you agree?

10 A A lot easier for the Court. Conceptually, it's
11 not -- they're equally easy. But in terms of the arithmetic
12 and decisions that have to be made, buying out Mr. Wilson is
13 a lot easier.

14 Q And because there are a lot of disputed transactions
15 and interactions and -- that occur after Dave Wilson's
16 ouster in January of 2012, if you did a valuation based on
17 December 31st, 2011, you, essentially, turn back the clock
18 before any of those disputed transactions occur; isn't
19 that true? And that's what you're doing, you're turning
20 the clock back before any of that happened?

21 A Sure. But with the disputed transactions, you're
22 talking about some of the normalizing things --

23 Q Rent, I mean, whatever interest was paid?

24 A Yeah. But, essentially, he turned back the clock on
25 that through 2013. Because he took care of that through

1 normalizing entries.

2 Q Right. But, again, if the Judge is going to -- if
3 the Judge wants to determine a way to grapple with that --
4 you said he's going to have to grapple with that, but if
5 he chooses 2011, then whether or not rent should or should
6 not have been increased really falls off the table?

7 A No.

8 Q Okay.

9 A I didn't say it well enough. It falls off the table
10 if he -- if the Judge says Mr. Wilson is going to be
11 bought out.

12 Q Right.

13 A Because all the normalizing entries for the most
14 part, except for some interest on the loan, most of the
15 significant normalizing entries affected the capital
16 accounts of the other two members of the LLC. So that's
17 what causes that to fall off. It's not going back to
18 2011. Those adjustments, obviously, weren't made back
19 then.

20 Q Right.

21 A But I really don't think that is problematic at all.

22 Q Well, you did a 2011 valuation of Mr. Wilson's
23 interest, did you not?

24 A Yeah. I did -- well, I wouldn't call it a valuation.
25 But I did a computation paralleling what I just finished

1 going through for 2013.

2 Q And what was that value that you assigned to Wilson's
3 interest in the year 2011 computation?

4 A That was that number that you've heard already this
5 morning \$353,908, his normalized capital account.

6 Q Okay. I just don't have it and it wasn't included --

7 MR. CAMPBELL: If I may, Your Honor. I think it was
8 included in your response to my subpoena.

9 Because there was a separate table; correct.

10 THE WITNESS: Yeah. Here it is right here.

11 MR. CAMPBELL: You've got it up there?

12 THE WITNESS: Yeah.

13 MR. ARNOLD: I'd like for that to be admitted into
14 evidence, Your Honor.

15 THE COURT: Any objection?

16 MR. WILLIAMS: So long as we can put the schedule
17 that we talked about -- it's just the other side y'all
18 have seen -- into evidence.

19 THE COURT: Okay.

20 (WHEREUPON, Plaintiff's Exhibit No. 181 was marked for
21 identification and admitted into evidence.)

22 BY MR. ARNOLD:

23 Q But after the initial -- so you got a valuation or
24 computation of his interest as of December 31st, 2011, and
25 then you, also, did the computation for 2013; correct?

1 A Yeah. But I want to insist on saying it's not a
2 valuation of his interest. It is just a replication of
3 those capital accounts. And subsequent computations
4 included considerations of damages.

5 Q And so -- and that's the same for the 2013?

6 A Yes.

7 Q I mean, those numbers are -- whatever they represent,
8 they represent the same thing?

9 A There you go.

10 Q Okay. Now, let's go to your number three, the
11 adjustments for CCC lost profits to EFS?

12 A Yes.

13 Q Now, I may jump around just a little bit, so forgive
14 me. Because I'm really doing this on the fly. But why
15 would Mr. Wilson not be entitled to 45 percent? The Judge
16 asked that. Why would Mr. Wilson not be entitled to
17 45 percent of any damages that were found against EFS?

18 A I don't have any opinion that he would have or would
19 not have. I know that is a disagreement between the
20 parties and I computed it both ways.

21 Q So he could do it either way? He could calculate --

22 A Oh, I don't know if he can even do it either way. I
23 don't know whether the Judge has a choice.

24 Q But you calculated it either way?

25 A For either way, yeah.

1 Q Now -- because it's true that any profits or revenues
2 that EFS derived from those transactions, all of those
3 didn't go to Mr. Wilson, did they? Or do you know?

4 A No, no. I do not know.

5 Q Because some of those would have been paid as
6 commission to partners in the deals?

7 A Oh, sure, yeah. That's entirely possible. And he
8 could have incurred other types of expenses. The notion
9 is what is the incremental profit that would have been --
10 would have flowed to CCC had it had these sales. That's
11 all.

12 Q That's right.

13 A I'm not suggesting -- I haven't seen his financials.

14 Q I understand. But I think Mr. Williams made a
15 statement that he had already received those benefits.
16 And so, therefore, that would be one reason for not giving
17 him them again because he had already received them. But
18 we don't know he received them, do we?

19 A No. I understand, clearly, what Mr. Williams was
20 saying. And that is it looks as if there could be room
21 for some double dip. If I can leave a company, enjoy the
22 profits that I would have enjoyed in that company or some
23 of those profits and then only have to pay back a portion
24 of what I enjoyed, that's a little bit of a double dip, I
25 think.

1 Q But in EFS, he hadn't left CCC, he was joining CCC.

2 You understand that, don't you?

3 A Yeah, sure. Yeah.

4 Q And so there's this allegation that there were these
5 side deals and that there was revenue or profits generated
6 on these side deals; right?

7 A Yes.

8 Q And you have, essentially, taken that global
9 number -- your first time you did it for 2008, 2010?

10 A Yeah.

11 Q And you took that global number and, essentially,
12 subtracted that from Mr. Wilson's whatever he's due?

13 A Yeah.

14 Q And --

15 A Or subtracted 55 percent of it.

16 Q Okay.

17 A Either way.

18 Q So -- but if -- but you don't know whether or not
19 Mr. Wilson received some or all of that money?

20 A No.

21 Q Okay. And did you calculate any of the monies --
22 because I think what you did is you said, okay, the first
23 time you did it, you took the whole year, 2008?

24 A Yeah.

25 Q And then we just did this little quick calculation

1 where you said I'm going to take half of the year of 2008?

2 A Right.

3 Q Now, what if during the second half of the year,
4 there was about a hundred thousand dollars in transfers
5 for some of those disputed transactions that went from EFS
6 to CCC? How does that work out? You'd have to see those
7 numbers, wouldn't you?

8 A Yeah. Honestly, I don't even know what you're
9 talking about.

10 Q Yeah. Were you told that any of the transactions
11 that EFS did post-July 2008 that some of those resulted in
12 revenue going back to CCC for those transactions?

13 A No.

14 Q And so not being told that, you didn't calculate that
15 in?

16 A That's right. Fair.

17 Q And, again, you're not -- do you know anything about
18 the specifics of any of those transactions?

19 A No.

20 Q That -- and so, again, if there had been agreements
21 between the parties that those transactions were EFS
22 transactions, those would not have been included in that
23 number if you had been advised of that; is that true?

24 A I think a better way of saying it might be, you know,
25 I don't have an opinion about reliability. It could have

1 been Mr. Wilson was -- had every right to sell all of
2 these things or some of them.

3 Q Right.

4 A And that is based on information I don't have.

5 Q Got you. And, really, the same thing for your last
6 computation, which is Neologic and EFS; correct?

7 A Yes.

8 Q You were just given global numbers. I mean,
9 numbers -- here's EFS numbers of all the business they
10 transacted, and here is Neologic numbers for all the
11 business they transacted. And then you just used those
12 numbers and deducted it from Dave Wilson's share?

13 A I did. But, now, with regard to Neologic, I think
14 the source of those numbers was Neologic. And I don't
15 think that represents all of their sales. But it
16 represented what I understood to be sales to customers
17 that may have been CCC customers.

18 Q Former customers?

19 A Clearly, they were former customers, yeah.

20 Q Right. And -- but you don't know anything about the
21 circumstances of any of those leaving?

22 A No. I've got no opinion about that.

23 Q So this is just -- if the Judge believes the
24 Defendant's theories about the EFS transactions and
25 Neologic transactions, this is how the numbers, as they've

1 been represented to you, shake out?

2 A That's said better than I could say it, yes.

3 Q Well, it might be the only time. Let's talk -- let
4 me make sure I understand the rent issue. Because you
5 talk about fair market value rent and how that might shake
6 out. Did I understand you to say that that's only really
7 an issue if there's an order to buy out Mr. Wilson -- I
8 mean, it's not an issue?

9 A If it's dissolution, then -- if there's a -- because
10 the question is, see, if we're going to buy out
11 Mr. Wilson, where is that money going to come from? Okay.

12 Q Right.

13 A And if that is the only question, then it doesn't
14 affect his value. But if the question is we're not buying
15 out Mr. Wilson, we're buying all of ourselves out.

16 Q Through a dissolution.

17 A We're getting out of the business. In that case, you
18 have to go back and look at the fair value -- and I didn't
19 mean in the appraisal sense. You need to look at what the
20 true value of each of the capital accounts should be. And
21 that's where the rent becomes an issue.

22 Q Okay. And -- but you seem to say that if you get to
23 that analysis, what the Court should do, is take the Stone
24 fair market value of the rent and use that number?

25 A No. I think that the Court might do that.

1 Q Okay.

2 A And the Court might look at that appraisal and say, I
3 don't think that appraisal's any good. I'll go get
4 another appraisal.

5 Q Well, what if the Court determined there was an
6 agreement of the parties for a lesser amount?

7 A Then it will not make that adjustment.

8 Q Right.

9 A That's where -- it sounds pretty presumptuous of me,
10 but I'm sort of putting the burden back on the Court. If
11 there's going to be a dissolution, there are a lot of
12 specific issues like that that have to be answered.

13 Q Right. So you're not advocating in this case that
14 the appropriate measure for the Judge to use in
15 determining appropriate rent between these parties is fair
16 market value if there's an agreement in place between the
17 parties for some other number?

18 A Well, let me be real careful about that. If we were
19 appraising this business, okay, here is what I would do.
20 If I were appraising the business, I would determine what
21 is the rent that an objective third party buyer would have
22 to pay for this facility. That is the appropriate
23 normalization for appraisal purposes.

24 Now, that's not what Mr. Bradshaw did, but he didn't
25 do it for appraisal purposes. He was just getting rid of

1 a lot of the conflicting issues and saying, you know, I'm
2 going to leave that for the Court to decide. But what I
3 would do would be to say, all right, if I'm valuing this
4 company as a going concern going forward, I have to
5 normalize expenses in terms of saying what rent would a
6 new owner have to pay for this facility? How much would a
7 new owner have to pay a president, or treasurer, or
8 anybody else to manage the company? You know those --

9 Q In a net asset valuation, you would have to do those
10 things?

11 A No. Remember, I said rent -- fair market rent is not
12 initial in the appraisal because it wasn't making any
13 money. If it were making money, that would become an
14 issue.

15 Q Okay.

16 A It would become an issue.

17 Q But, again, I think I understand that you're saying,
18 again, the Judge needs to determine whether he should use
19 fair market value, or if there's an agreement of the
20 parties whether he should use that number?

21 A Yeah. I think the Judge has to decide this. Was
22 Mr. Gandis overpaying himself to get an unfair advantage
23 from the company or not? That's what it comes down to.

24 Q Well, let's say you have a hundred-year lease on a
25 piece of property for a hundred dollars. Would it be an

1 unfair advantage for you to unilaterally change that to
2 \$200?

3 A It's not a matter of fairness. I wouldn't do it. I
4 mean, if I know that's what the rent is going to be,
5 that's what it's going to be.

6 Q Okay. Because there's an agreement?

7 A Sure, yeah. And if they had an agreement, then they
8 had one. I mean, the evidence is going to --

9 Q That's right. Okay. And the same thing with
10 legitimate compensation of the owners. Was there an
11 agreement that the owners would be compensated through
12 anything other than distributions, to your knowledge, in
13 this case? Were they paid a salary?

14 A Oh, no, not that I -- I'm not aware of it, no.

15 Q Okay. And so, under that circumstance, if the
16 parties had agreed that their income would come from
17 distributions and that was the agreement of the parties,
18 then that would be something the Court would factor in to
19 determining what the appropriate compensation for the two
20 insiders --

21 A I assume so.

22 Q Okay. Now, in terms of whether you value this as a
23 going concern or not -- I'm not sure I understand all
24 the issues, but I think I understand the concept of going
25 concern. In 2011, wouldn't it be appropriate to value

1 that entity as a going concern because we know it went on
2 and on and on. It was a going concern; right?

3 A Yeah. Even Mr. Bradshaw said yesterday they might
4 have issued a going concern statement, but it would have
5 been close. He wasn't sure they would have even issued
6 one.

7 Q But if they had, they would have been wrong because
8 it's lasted more than a year. It's lasted, well, up
9 through today.

10 A No. That's not necessarily true. You know, if I
11 opine that a company cannot continue to operate because
12 it's losing money hand over fist, if it continues to lose
13 money hand over fist, that doesn't mean I was wrong. I
14 mean, it just means they're not real smart about
15 continuing to operate.

16 Q Okay. And you don't have an opinion on whether or
17 not the equipment appraisal is right or wrong. You're
18 just saying you've got questions?

19 A I am saying that I have great reservations. Because
20 there's not one citation in there of any kind of
21 comparable or any source other than simply saying I
22 reviewed sources, but none of them are cited.

23 Q Okay. So probably we need to have him show up here
24 tomorrow to clear up that. That would be the only way to
25 clear that up?

1 A Well, yeah. He says himself, you know, it's a
2 computer-generated report. That's his words, that's not
3 my words. There's just a lot of boilerplate in there and
4 there's no citations.

5 Q Right.

6 A There's nothing mentioned about this particular
7 industry.

8 Q You've done a customer-by-customer breakdown?

9 A Yes, sir, for EFS.

10 Q For EFS?

11 A Yes.

12 Q Not for Neologic?

13 A No.

14 Q But in each instance -- I mean, every deal has its
15 own profit margin; right?

16 A Yeah. But I, obviously, didn't know the profit
17 margin for each individual customer. I simply applied the
18 competed gross profit margin that -- Mr. Bradshaw's
19 people.

20 Q That he used for CCC?

21 A Yeah. Because that's the appropriate way to do it.
22 You know, we're not looking at disgorgement of profits
23 where you would look at profits earned by the offending
24 party. We're looking at lost profits. And then you apply
25 the cost structures of the moving party.

1 Q Well, the reason you say you're not using
2 disgorgement of profits is because the idea is if Neologic
3 didn't get that business, the assumption is CCC would
4 have?

5 A No, no. The reason I didn't use disgorgement of
6 profits is that I did not understand it was a case where
7 if it were determined that Mr. Wilson were liable that he
8 would make the other party whole by turning his profits
9 over to them. That's what disgorgement of profits would
10 be.

11 Q That's right.

12 A I assumed that the measure of damages would be CCC's
13 lost profits.

14 Q But the Court could disagree with you on that and
15 there is the concept of disgorgement of profits?

16 A Oh, sure. The Court has disagreed with me before.

17 Q And if Neologic didn't have any profits, there's
18 nothing to disgorge. Wouldn't you agree with that?

19 A Yeah. That's exactly right. If it did not have any
20 profits and if the Judge decides I'm only going to look at
21 disgorgement of profits, that is the easy answer.

22 Q Now, again, back to Neologic. Let's say there's -- I
23 mean, each customer would have bought a different product
24 under different circumstances and there would have been
25 different margins on each of those; correct?

1 A Yes.

2 Q Profit margins?

3 A Neologic profit margins.

4 Q Right.

5 A Yes.

6 Q And the same for CCC. I mean, they would have -- I
7 mean, they have different profit margins on different
8 products?

9 A Sure, yes.

10 Q Some they buy low and sell higher than others?

11 A That's right. I mean, sometimes they would drop ship
12 stuff. And normally, in a drop ship arrangement, you have
13 a higher profit margin. So they could have had higher or
14 lower profit margins.

15 Q The EFS number that you came up with -- and I'm,
16 perhaps, taking a chance. But the line item number that
17 you came up with, was it higher or lower than the numbers
18 that are in this summarized report?

19 A Now, I'm not sure what you're asking.

20 Q Okay. My understanding is there's two ways -- you
21 looked at all of EFS's sales?

22 A Yeah.

23 Q And then you multiplied that towards some multiplier
24 that represented margin?

25 A Right.

1 Q And then you came up with a number that represented
2 profits that you -- that EFS earned on those transactions?

3 A No.

4 Q Okay. Tell me where I'm wrong.

5 A That CCC would have earned on those transactions.

6 Q Okay. And in your -- but you, also, at least, for
7 the EFS part did a more itemized account by taking each
8 transaction individually and computing the margins on each
9 of those?

10 A No.

11 Q You didn't do that?

12 A No, no. I didn't do that. What I did is -- what was
13 provided to me is a QuickBooks printout of Eastern Films
14 Solutions sales from November of 2007 through March of
15 2014. I converted all of that to an Excel spreadsheet.

16 Okay.

17 Q Okay.

18 A And then I sorted them by date and by customer. So I
19 was -- and I -- of course, they had some sales that were
20 listed to CCC, and I eliminated those. And then I simply
21 looked for each period, the first six months of 2008, the
22 second six months of 2008, all of 2009 and 2010. I looked
23 at the sales by customer that EFS reported in this
24 spreadsheet in its Excel -- in its QuickBooks spreadsheet.
25 And I applied the gross profit margin that Del Bradshaw

1 had computed applicable for CCC.

2 Q Okay.

3 A For those periods.

4 Q Okay. But another way to do that would be to look at
5 what was, actually, sold and what the margins would have
6 been on that particular transaction; correct? That would
7 be an alternative method of determining damages?

8 A Yeah. It would be an alternative method that I'm not
9 aware that it would be possible. And, secondly, I have
10 never seen a computation of damages where on a transaction
11 by transaction basis to make that computation. The
12 internal accounting records rarely provide enough
13 information to do that.

14 Q And I'm going to probably -- well, I'm going to show
15 my ignorance. But if we took Del Bradshaw's report, his
16 normalized balance sheet for 2011, and we took the equity
17 account as he determined it as of that date, and we just
18 multiplied it by 45 percent, why would that not be an
19 appropriate measure of Mr. Wilson's value?

20 A Because the capital accounts were not aligned. The
21 values of the capital accounts were not aligned 45/45/10
22 at that time. So what you have to do is, first, bring the
23 capital accounts into alignment, based on a percentage
24 ownership.

25 Q But did he not do that? I mean, didn't he align

1 those capital accounts?

2 A No, he didn't. Because if you look at the capital
3 account values -- for example, in 2011 -- in 2011,
4 Mr. Gandis's capital account -- end of 2011 -- oh, I'm
5 sorry.

6 MR. ARNOLD: I don't have anything else.

7 THE WITNESS: Okay.

8 MR. ARNOLD: I'm -- that's it.

9 THE COURT: Okay.

10 MR. FARRAR: Judge, I've got maybe two minutes.

11 THE COURT: Okay.

12 CROSS-EXAMINATION

13 BY MR. FARRAR:

14 Q Charlie, I apologize. I fumble all over this. I
15 heard you say something to Andy, and I just had to get
16 clarification.

17 A I've been fumbling a long time. That's no problem.

18 Q When you were looking at Exhibit No. 118 and he was
19 taking you through some damages -- and I didn't pick up on
20 it. I wanted to make sure I heard right. I heard
21 something to the effect of did you take his share out and
22 what was the justification for that. Do you remember when
23 all that discussion went on?

24 A Number 118?

25 Q Wasn't 118 your chart?

1 A It's been marked as 181. Is this what we're talking
2 about?

3 Q Yes, sir. Can I come see? See, the first mistake I
4 made is I got the wrong exhibit number.

5 THE COURT: It is 118. That's the -- is the updated
6 one --

7 MR. ARNOLD: That's the 2011.

8 MR. FARRAR: Oh, I don't want that one.

9 THE WITNESS: Well, I think that must have been this.
10 BY MR. FARRAR:

11 Q Is that the 2013?

12 A Yes.

13 Q 2013. Okay. If you take that and you were asked a
14 series of questions -- and I guess it's true for either of
15 them, actually. But you were asked a series of questions
16 about -- you know, there were questions about somebody
17 saying, well, don't you take out the 45 percent, or do you
18 leave in the 45 percent? Do you remember all that? And
19 you said maybe not precisely 45 percent because he might
20 have partners. Do you remember that? Suppliers,
21 commission, salesman.

22 A Yeah. But I think in that case, he was talking about
23 the profitability of EFS.

24 Q EFS. Okay. Thank you.

25 And so if EFS had a partner like Mr. Norvell, he --

1 and you reduced Dave's share because he didn't get all
2 45 percent of that, then Mr. Norvell is the partner who
3 got it, possibly?

4 A Yeah. I mean, the question is, is somebody liable
5 for lost profits; right? And if somebody is liable for me
6 losing a hundred dollars, I don't think it matters whether
7 they keep a hundred dollars or they split it up with their
8 cousins. I've still lost that amount.

9 Q And then the second part -- the second question I'm a
10 little confused about, he was talking to you and he said
11 if you had an agreement that you were not to get
12 compensation, but just take distributions. He didn't put
13 the other half of that equation in. And the agreement
14 offering, it would stay there and put their shoulder to
15 the wheel. Agreements change, don't they?

16 A Yes. It appears that it did, yeah.

17 Q And, finally, if you had an agreement that you were
18 going to defer your compensation and was told there was an
19 exit event -- and I'm, specifically, saying Ms. Shirley's
20 testimony anticipated compensation in excess of 10 percent
21 of her commission -- her percentage. Isn't this whole
22 event an exit event in that regard if she's waiting until
23 there's an exit event?

24 MR. ARNOLD: I'm going to object. Can he answer
25 that?

1 BY MR. FARRAR:

2 Q Do you feel comfortable answering that question?

3 A I'm sorry?

4 Q Do you feel comfortable answering that question?

5 A Yeah.

6 Q I mean, it's an economic event; right?

7 A That's what it seems to me.

8 MR. FARRAR: Thank you, sir.

9 MR. WILLIAMS: No questions, Your Honor.

10 EXAMINATION

11 BY THE COURT:

12 Q Can I ask a couple?

13 A Yes, sir.

14 Q All right. Yes, sir. You said that the 21 -- 2011
15 valuation did not really take into account the problem
16 with inventory; right?

17 A Yes, sir.

18 Q Okay. But isn't the valuation just a snapshot, and
19 like any business being valued, there are always going to
20 be variables like that that you can't fully account for?

21 A Sure. There are going to be some variables you can't
22 account for. But when the inventory itself is such a huge
23 percentage of the total net assets value and that issue is
24 questionable -- you know, clearly, if we were valuing it
25 based on, say, capitalized earnings or something like

1 that, that wouldn't have been too much of an issue.

2 But, you know, the two elephants in the room with
3 regard to that are whether the reported book value -- the
4 inventory is a correct assessment of its true value at
5 that date, and whether the equipment is a correct
6 assessment value at that date. If they were -- if this
7 were a million dollar company with \$25,000 of inventory, I
8 would agree with you more. But it's a significant element
9 of facts.

10 Q So it's material in this particular case?

11 A Yes.

12 Q So how do you -- what is your opinion of how to
13 account for that as of the 2011 valuation?

14 A The only way that I can account for it would be to
15 take that -- take out that \$101,250 that Mr. Bradshaw,
16 ultimately, takes back out in 2012, I believe it is.
17 That's the only information we have about that.

18 Q Where does he do that?

19 A If you look at his normalizing entries -- I can
20 probably show it to you. This is Page 109 of his
21 Exhibit No. 38.

22 If you see that 101,250 that he adds back to
23 purchases he calls at that time, but that has been pulled
24 out. It was an inventory reserve. And he had pulled it
25 out earlier in the year and put it back in there. And I

1 believe that reflects the fact that he believed that,
2 ultimately, that inventory was not going to sell off at
3 its full valuation. But that's the only data point that
4 we have about that.

5 Q All right. And your valuations -- all the valuations
6 in this case about 2013 are December 31, 2013; right?

7 A Yes, sir. I've not seen anything after that.

8 Q Okay.

9 A Because that's what -- we're almost a year past that.

10 Q That's what I was going to ask. How is that
11 accounted for?

12 A I don't have any accounting for it at all.

13 THE COURT: You can follow-up.

14 RE CROSS-EXAMINATION

15 BY MR. ARNOLD:

16 Q The inventory, that \$101,000 that Del Bradshaw
17 removed, how was that \$101,000 originally calculated?

18 A How was it originally calculated?

19 Q Yeah.

20 A I don't know.

21 Q Bradshaw didn't come up with the \$101,000?

22 A No, no. He reversed that out. And then he said
23 later I'm going to reverse my reversal.

24 Q And so if that number was just made up out of thin
25 air, then --

1 A Sure, yeah, yeah.

2 Q Then you reserve it out?

3 A Yeah. I mean, if the inventory was truly worth --
4 and I can't answer the question. If the inventory was
5 truly worth on December 31, 2011 what the balance sheet --
6 what the normalized balance sheet says, that is the value
7 to use. If it were worth something less than that, an
8 adjustment ought to be made.

9 Q And there's really no way to know for certain, unless
10 we went back to that date and calculated what was there
11 and what was supposed to be there?

12 A Yeah. I think there's so many questions in this
13 case, none of which can be known for certain.

14 Q But that one -- but to tell you -- that 101,000
15 inventory reserved was a number Andrea Comeau-Shirley
16 decided without anything that we've been provided with to
17 place on the balance sheet as a reserve?

18 A Yeah. And if -- you know, we're in agreement about
19 this.

20 Q Okay.

21 A If that was inappropriate and in doing so, she
22 understated the inventory, you know, I'm leaving it what
23 it was. Somebody is going to have to decide that.

24 MR. ARNOLD: Okay.

25 MR. FARRAR: Your Honor, just to follow up.

RECROSS-EXAMINATION

BY MR. FARRAR:

Q But Del did put it right back in there, didn't he?
He reversed his reversal; right?

A Yeah --

Q He didn't pull that out the air?

A I'll say that he had to reverse his reversal. That's
right.

Q And he just didn't know what the timing was between
2011 and 2012; right?

A That's why he, ultimately, said all of that inventory
problem was -- should have been washed out through 2012.
He couldn't get -- he didn't feel -- well, he testified.

Q He said what he said; right?

A Yeah.

MR. FARRAR: Thank you, sir.

THE COURT: All right. Thank you, Dr. Alford.

THE WITNESS: Okay.

THE COURT: What time do you all want to reconvene?
How much more do we have to do?

MR. STEPHENSON: One witness.

THE COURT: One witness left, which is who?

MR. WILLIAMS: We're going to do redirect of
Mr. Gandis -- our direct in our case in chief of
Mr. Gandis of a limited piece of it.

1 MR. ARNOLD: And I'm -- and I don't think he can be
2 here until tomorrow based on -- we had agreed that we
3 could get the appraisal report in without him being here.
4 But I now believe in rebuttal, I may have to bring the
5 equipment appraiser to testify. And I'm trying to contact
6 him now.

7 MR. STEPHENSON: Your Honor, this case will go on
8 forever if we do that. We can bring our real estate
9 appraiser up here now. He put on his case and he had an
10 appraiser. Now, he wants to bring the expert who his
11 expert relied on to testify tomorrow. Then we've got to
12 bring an expert to counter that expert. We think the case
13 ought to be over today.

14 MR. ARNOLD: Look, I wanted it to be over today. And
15 that's why I said, hey, do I have to bring this guy to
16 testify. But if you're going to cross-examine him through
17 Charlie Alford, then I'm going to bring him here. And I
18 ought to have the right to do it. There's nothing that
19 says I'm done, that I don't get a chance to present stuff
20 that you --

21 THE COURT: Why can't he be here today?

22 MR. ARNOLD: Because he's in Atlanta. I thought --
23 he had other obligations. And, honestly, I -- he's going
24 to charge us \$1,500. And I know that doesn't seem like a
25 whole lot, but we were trying to save every penny. And if

1 we could get by without having him here, that's what we
2 wanted to do. And that's why we attempted to reach an
3 agreement.

4 MR. STEPHENSON: Your Honor, we agreed to put it in.
5 They rested. For what it's worth, to bring him back up
6 here tomorrow, then we've got to bring our guy back.

7 THE COURT: What guy?

8 MR. ARNOLD: That's right. What guy?

9 MR. STEPHENSON: Well, we were never going to bring a
10 guy.

11 THE COURT: Yes. Y'all --

12 MR. ARNOLD: We can talk about it.

13 THE COURT: Y'all talk about it. I think he's got a
14 right to rebuttal with somebody that's already submitted a
15 report.

16 Let's start back at 1:45.

17 (WHEREUPON, a lunch break was taken.)

18 (WHEREUPON, Defendant's Exhibit Nos. 182 and 183 were
19 marked for identification and admitted into evidence.)

20 MR. STEPHENSON: Your Honor, I think I've got good
21 news. I want to make sure I state this correctly. You
22 recall the disputed machinery fair market value?

23 THE COURT: I do recall that.

24 MR. STEPHENSON: Mr. Arnold said he was going to
25 bring the guy tomorrow.

1 THE COURT: Yes.

2 MR. STEPHENSON: We would like to get through today,
3 if possible. So we've agreed to stipulate that the fair
4 market value of the machinery is 335 --

5 MR. ARNOLD: 950.

6 MR. STEPHENSON: -- 950, which does not include the
7 cost to move the machinery.

8 THE COURT: Got you.

9 MR. STEPHENSON: That doesn't mean we stipulate that
10 that's the appropriate number that ought to be used. We
11 just stipulate that's what it is so he doesn't have to
12 call the guy.

13 THE COURT: Okay.

14 MR. STEPHENSON: I've got one more suggestion so we
15 can push to get through today.

16 THE COURT: So that means --

17 MR. STEPHENSON: That doesn't mean we agree with it.
18 We agree the fair market value is that. We don't agree
19 that you necessarily use that. And we'll make --

20 THE COURT: Okay.

21 MR. ARNOLD: So the number that the appraiser said is
22 the number of fair market value. Now, whether or not --
23 you may choose not to use fair market value.

24 MR. STEPHENSON: I don't want to make the argument,
25 the cherry picking argument.

1 THE COURT: Okay. I'm with you.

2 MR. STEPHENSON: Okay. Lastly, we're going to push
3 today to get through. I hope we do. If we do, this side
4 kind of wants to make plans. My thought is this thing has
5 got so many pieces of paper, so many issues, I would
6 prefer to submit a limited brief within a limited period
7 of time to you, and they do the same. And then if you
8 have questions after receiving that, you call us up here
9 and we have a little oral argument, instead of just
10 showing up and having oral argument.

11 MR. ARNOLD: And I would prefer to have an oral
12 argument tomorrow morning and be done by noon. And if you
13 want proposed orders after that, then we submit proposed
14 orders. And I think there's enough paper, too. And I
15 think you may have questions for us and I'd like to be
16 able to answer them. But that's my -- that's where I'm
17 coming from. I think that's where they're coming from --

18 MR. STEPHENSON: Well, I'm not saying something too
19 much different than that. I'm saying the number I had in
20 my mind was 15 pages or less, something short, that we
21 submit it within seven days. You read them.

22 And then we show up here after you've read them and
23 thought about them and you say, Stephenson, you've said
24 this, what about that, instead of just showing up tomorrow
25 and having sort of a free for all without having any

1 context or your having any brief to think about it
2 personally. But I'm willing to do either.

3 MR. ARNOLD: And my thought is the trial briefs that
4 we submitted beforehand kind of serve that function. So
5 that's our position.

6 THE COURT: All right. I can only speak for myself,
7 but I suspect that this sentiment might be universally
8 felt in this room. I think everybody is ready to have
9 this matter decided and move forward with things that life
10 has to offer them.

11 So I would just assume do the oral arguments in the
12 morning, and give both sides 20 minutes to present
13 whatever they want. And if I've got questions, I can ask
14 them at that point. I think having the continual briefing
15 might -- number one, I'm not going to know this case
16 better after reading two sets of briefs that are sent to
17 me a week after I've heard all this testimony. And I
18 suspect y'all won't either.

19 MR. STEPHENSON: We're agreeable with that.

20 MR. WILLIAMS: Thank you, Judge.

21 The Defendants recall John Gandis.

22 THE COURT: Sir, you're still under oath.

23 DIRECT EXAMINATION

24 BY MR. WILLIAMS:

25 Q Good afternoon, John.

1 A Hey, Burl.

2 Q First of all, we've called you back up because we're
3 going to talk about the claims of the company. And I want
4 to begin with our trade secret claims.

5 Can I get you to turn to Defense No. 117?

6 MR. WILLIAMS: Judge, does it benefit you at all for
7 me to do any work off the screen?

8 THE COURT: Yes, sure.

9 BY MR. WILLIAMS:

10 Q John, what are we looking at?

11 A This is a screen shot of Dave Wilson's, I guess,
12 folder on our server at CCC.

13 Q Okay. And we have circled three things that come
14 from that screen shot. What are those?

15 A So these are the contacts and phone numbers,
16 opportunities by contacts, and the opportunities by
17 account.

18 MR. STEPHENSON: Now, hold on a minute. What number
19 is that?

20 MR. WILLIAMS: 117.

21 BY MR. WILLIAMS:

22 Q I'm sorry. We interrupted you.

23 A It's contacts of phone numbers, opportunities by
24 contact, opportunities by account.

25 Q Over on the right-hand column, there's a date

1 modified category. Will you read that to the Court?

2 A So on January 9th of 2012, that would indicate that
3 Dave was in those files.

4 Q Okay. And when did Dave leave?

5 A Dave's last day was January the 18th.

6 Q Okay. I want you to turn to Defense No. 173. Tell
7 me when you're there.

8 A I'm there.

9 Q We've heard some testimony that any trade secret
10 information once it gets to about 2013 is stale. In that
11 line of argument, tell me what's before you.

12 A So this is an e-mail from -- this is an account that
13 I managed at CCC.

14 Q Okay.

15 A We developed film to go on the back of a white board.

16 Q Okay.

17 A So Randy Fox was my contact.

18 Q What's -- do some basics. Who's it from?

19 A This is from Bill Shaw to Randy.

20 Q Okay. And what does the first sentence say?

21 A It says, It's probably been over a year or so since
22 we last communicated while I was at Carolina Custom
23 Converting.

24 Q And what did Bill Shaw do at Carolina Custom
25 Converting?

1 A Bill was on our customer service desk.

2 Q Okay. But here, it looks like he's trying to make a
3 sale. And tell me about Patrick Industries. And tell me
4 about -- what is this product that y'all developed for?

5 A So Patrick Industries is a board laminator. It's a
6 publicly traded company with a number of plants all over.

7 Q What kind of boards are we talking about?

8 A Plywood, gypsum, that sort of thing.

9 Q And what was y'all's product application for them?

10 A So this application was the white boards. They had
11 challenged me with coming up with film that would create a
12 barrier on the back of economical white board to replace
13 chalk boards in schools, so.

14 Q And the precise product spec width that he's quoting,
15 where does that come from?

16 A Right. So that's what we figured out. That's what
17 we developed. That's our secret sauce.

18 Q And how about the price he's quoting now?

19 A He's, in fact --

20 Q Don't tell me yours, just tell me, is it below?

21 A He's quoted it below our price at Carolina Custom.

22 Q Okay.

23 A I guess I would, also, add that, you know, in order
24 to keep this account, I had to -- this customer did
25 approach me that there was some price pressure from some

1 competition. And I, basically, had to match it in order
2 to keep the business.

3 Q Okay. I want you to turn to Defense Exhibit No.
4 172. We're still a year and a half -- we're in 2013.
5 This is an e-mail -- well, first, tell me what the front
6 packaging is.

7 A So this is an e-mail from John Tarchala. He's the
8 purchasing manager at a company that Carolina Custom was
9 supplying called Prime Packaging.

10 Q Okay.

11 A Prime Packaging had been an account that we developed
12 a film into at Carolina Custom.

13 Q Okay. I want you to read the second -- third
14 sentence after the comma.

15 A Dave was in last week and he said that this is the
16 same material that we get from Carolina.

17 Q Now, we are 18 months after Mr. Wilson left your
18 company. How is it possible that he knows what you're
19 selling?

20 A Well, he had to take -- you know, these things are
21 developed, especially a packaging account won't just
22 accept a film. You, typically, go through a trial. They
23 evaluate the product. A lot of times, there can be FDA
24 approval on those things.

25 So they don't just buy from anybody. You have to be

1 an approved supplier. And, basically, Dave walks right in
2 and is going to bypass the entire process. Because he's
3 giving them the same product that we worked to spec in at
4 Carolina Custom.

5 Q Okay. And let's talk about that spec in. What are
6 we really talking about there? How does that work?

7 A I mean, I think even Bruce Hotmer mentioned, whenever
8 it was, yesterday or the day before yesterday, some of
9 these manufactures make up to 20,000 kinds of films. That
10 doesn't mean all of them will work for every application.

11 So there's got to be an evaluation to make sure that
12 manufacturers film will, in fact, meet the specification.
13 Each manufacturer has its own little thing that's a little
14 different that meets different codes, FDA approvals, those
15 sort of things.

16 So it's not -- it's never as simple as just walking
17 in. It just doesn't happen, especially in food packaging.

18 Q But he could just walk straight in, couldn't he?

19 A He did.

20 Q Let's go to the attached PO, which is just behind
21 Defendant's Exhibit No. 162 -- 172. Excuse me. All
22 right. And that has pricing information on it.

23 I want to direct you to the price right there that,
24 apparently, Neologic offered and they accepted. I don't
25 want you to tell me your price, but I want you to tell me,

1 is it close to your price, or is it below your price?

2 A This is below our price. We did, in fact, lose this
3 business.

4 Q I want you to turn to Defendant's Exhibit No. 157. I
5 guess we'll start with the first e-mail. What are we
6 looking at?

7 A So this is an e-mail from Dave to Nicki Manis on June
8 20th of 2012. Nicki was at Intertape, an account of a
9 sales rep that we -- that works for us.

10 Q You can stop there.

11 A All right.

12 Q Intertape is an account for who?

13 A Carolina Custom.

14 Q And who manages that account?

15 A Jim Bucks.

16 Q Keep going. I'm sorry.

17 A Yeah. So Dave, basically, you know, again, walks in.
18 He knows our gauge, the type of polyester, clear
19 untreated. He's got the widths. And he's, once again,
20 quoted beneath my price.

21 Q Okay. Let me show you the rest of that e-mail. In
22 addition to quoting below your price, is he, also, quoting
23 projects that y'all had been working on?

24 A Yeah. We had developed the yellow-coated polyester
25 film while Dave was still with Carolina Custom.

1 Q Okay.

2 A Yellow's kind of special, you know. Polyester comes
3 in clear or metallized most of the time. So to try to
4 figure out how to put a color to it can be a bit of a
5 trick. So that's something we worked on.

6 Q Okay. Now, did y'all lose the Intertape account?

7 A We did not. We had to -- we did, actually, drop our
8 price to meet the competitive pricing that was out there.
9 I've been doing this for the past two and a half years
10 since this litigation has gone on. I'm constantly having
11 to meet price pressure.

12 Q Okay. Let's turn to Defendant's Exhibit No. 151.
13 Tell me what we're looking at.

14 A So this is an e-mail from Dave at Neologic.

15 Q What's the date?

16 A June 29th of 2012.

17 Q Okay.

18 A To Mary Gervais.

19 Q Okay. Who?

20 A She was new to Toray, a new sales person.

21 Q What was Toray?

22 A Toray is a polyester film manufacturer that is in
23 Rhode Island.

24 Q Okay.

25 A Bruce kind of described the arrangement we had with

1 Toray at Carolina Custom. He was talking about that off
2 cut and the value that we could bring.

3 Well, Dave and I had developed a relationship with
4 Toray to obtain their roll and use it for the flex duct
5 industry. And it worked out so well for us we put these
6 offerings in our UL file. So that would have cost us
7 money to get these added.

8 So -- and that's what's really allowed us to compete.
9 I'm giving all my secrets away, you know. Most flex duct
10 films are supplied from China. But we're able to source
11 domestically with a supply stream, put it into our UL
12 file, and supply customers at import pricing, which had
13 always been -- and here's Dave walking in and trying to
14 take everything we've done with one e-mail.

15 Q Finding the supplier, getting it UL qualified. Okay.
16 And is this -- strike that.

17 Let's turn to Defendant's Exhibit No. 153.

18 MR. GOLDSMITH: May we approach the bench, Your
19 Honor?

20 THE COURT: Sure.

21 (WHEREUPON, a bench conference was held.)

22 BY MR. WILLIAMS:

23 Q Please turn to Defendant's Exhibit No. 153.

24 A Yep.

25 Q Okay. What are we looking at here, John?

1 A So this is an e-mail from Dave at Neologic to Ray
2 Hughes at BPR Plastics.

3 Q Okay. Who is BPR Plastics?

4 A BPR is a recycler. You know, there's hundreds of
5 these people in the plastics industry. That's the great
6 thing about plastic, the majority of it is recyclable.
7 This one we developed and discovered that he had a source
8 of a recycle silicone-coated polyester film, which is a
9 pretty -- from a price standpoint, typically, pretty
10 expensive. And he was using it to recycle.

11 So while at CCC, we developed with him products that
12 we could sell and make a good market.

13 Q Okay. And in all of these e-mails, we're seeing
14 contact being made. How is it you think he's able to
15 remember all of these e-mail addresses, all these
16 products, all these suppliers, customers?

17 A Well, he copied them right off of our server.

18 Q Let's go to Defendant's Exhibit No. 166. What's the
19 significance of this e-mail to you? Just tell the Court
20 what it is first and then --

21 A So, typically, the way we sell is a lot of times
22 we'll send out an inventory list or product offering of
23 what we have to a number of accounts. A lot of people
24 will buy off that list.

25 The significance of this account is Allied Packaging

1 was an account we had built after Dave left. Allied
2 Packaging is a big company. And he got right to her. So
3 we believe he's been using our confidential information
4 throughout the litigation to gain customers.

5 Q Who was she doing business with?

6 A Allied, actually, is a Zoi customer, which, of
7 course, happened after Dave left.

8 Q Sure. I'll turn you to Defendant's Exhibit No. 43.
9 What are you looking at?

10 A So this is our --

11 Q First of all, what's the date on this document?

12 A 11/4/2010.

13 Q Okay. And where did we get this document?

14 A This came in discovery from Neologic.

15 Q Okay. And when did Dave leave and begin at Neologic?

16 A I don't know when he began at Neologic, but he left
17 on January 18th of 2012.

18 Q Of 2012?

19 A Or 2011. I'm sorry.

20 MS. ANDREA COMEAU-SHIRLEY: 2012.

21 THE WITNESS: 2012. Sorry.

22 BY MR. WILLIAMS:

23 Q Tell me what document this is.

24 A So this is -- it's a number of pages. It's a very
25 large Excel spreadsheet. It's not, maybe, as simple as

1 Bill Shaw had described. But it's a great reference.
2 It's a great tool that we use at Carolina Custom to cross
3 reference different manufacturers, films, types. And it
4 really makes the sales process more efficient and
5 really --

6 Q Did y'all develop this while you were at CCC?

7 A Yeah. This was a group effort. Bill may have
8 initiated it, but I know a lot of ladies in accounting,
9 even Andrea herself, contributed to it. Because a lot of
10 these things were things learned over time. Especially
11 when you go to the last sheets where you've got very
12 specific one-side slip treat, one-side plain, both sides
13 slip treat, no treatment adhesion. Some of them have FDA.

14 So what this allows me to do is very quickly if a
15 customer -- and I guess the other thing I would point out
16 is even on the first page, these product codes, they are
17 not public knowledge. If you go and you Google DuPont
18 X6550, you're not going to get anything. These are secret
19 codes. These are things they share with their distributor
20 partners.

21 Q Okay.

22 A Somebody to walk in off the street that said that,
23 they wouldn't know what they're talking about.

24 Q Okay.

25 A So these are things we learned. Some of these films

1 we even tested ourselves to gain this knowledge to make
2 this file.

3 Q Okay.

4 A So a customer calls, they want something with FDA,
5 48-gauge. You can do a find, boom, you've got all your
6 manufacturers, the different types that would meet that
7 criteria, check your inventory, which is another tool we
8 developed. And I could make a sale in two minutes.

9 Q Okay. And speed in your industry is important
10 sometimes. Tell me why that is.

11 A Yeah. So especially in the packaging industry, the
12 lead times are two days. If you don't have it, you can't
13 sell it, you know. And so this gets us to market a whole
14 lot faster. When Dave and I were starting out, sometimes,
15 it would take us a week to get a quote back to somebody.
16 That job has already run and passed. So we developed this
17 to become efficient.

18 Q Okay. You mentioned that inventory cross check.
19 Tell the Court what that is.

20 A All right. So that's the other side of this equation
21 is so -- and, actually, I'm going to give all the credit
22 to Andrea. Because Dave and I really started with this
23 giant spreadsheet that had tons of information in it about
24 films, types, gauges, width, color, you know. Everything
25 we could think of, we threw it into this big Excel

1 spreadsheet.

2 And then Andrea, actually, made it very professional
3 with pull-downs, and macros, and cross references, and
4 tabs. And it just made the whole process a whole lot more
5 efficient of really identifying what was in our warehouse.
6 At any time, I think we would have had up to 600 rolls to
7 a thousand.

8 Q Okay. Turn to Defendant's Exhibit No. 169. What are
9 we looking at here?

10 A 169?

11 Q Yep.

12 A All right. So, as I mentioned, one of the ways we
13 would sell is we would provide a customer with a snapshot
14 of our inventory. We would take it out of our inventory
15 file.

16 Q You would take it out of your inventory spreadsheet?

17 A Yeah.

18 Q Okay.

19 A So one thing that is truly unique to us and really
20 probably more of me as an engineer trying to figure out
21 all the different special things about film, I put color,
22 you know. Films come in color or metallized. But, to me,
23 I thought color was important, so we added it to the
24 sheet. Metallized, typically, people say MET for the
25 abbreviation. Me, in my infinite wisdom, I call it

1 silver, so I put SV.

2 So this is why I know they have my inventory tracking
3 sheet, because they've got color and they've got SV. And
4 that's very unique to us.

5 Q Okay. Let's turn to Defendant's Exhibit No. 160.

6 A Which one?

7 Q Defendant's Exhibit No. 160.

8 THE COURT: What was that last one? 153?

9 THE WITNESS: 169.

10 MR. WILLIAMS: 169.

11 BY MR. WILLIAMS:

12 Q Do you have 160?

13 A Yes.

14 Q Okay. Tell me what this is.

15 A So this is an e-mail between Dave at Neologic to Bill
16 looking for some bare foil pricing from a supplier from an
17 obscure town in China called Dahua that Carolina Custom
18 used to supply Imperial, really.

19 And there's all their product spec right there, 1235
20 alloy, triple lot 35 thickness, three and a half inches
21 wide. He knows the length. He's got that it's a wettable
22 low temple foil. He's using our supplier information, all
23 the customer specs to obtain the Imperial business, which
24 we, in fact, lost..

25 Q Okay. Let's look -- you said they're the supplier.

1 Let's look at the other side of the equation. Turn to
2 Defense -- actually, I take that back. Let's turn to
3 Defendant's Exhibit No. 174.

4 This is a different supplier, isn't it?

5 A So if you'll turn -- yeah. This is -- so we lost the
6 business to competitive pricing. In order to try to
7 regain it, we developed a new supplier from a very obscure
8 town in China. And, actually, we had put that
9 manufacturer into our UL file.

10 Q Okay.

11 A And we have recently regained the Imperial business.

12 Q Okay. And, in discovery, you found this. Tell me
13 what the significance of this is to you.

14 A You know, to me, this is a clear violation of the
15 protective order. We've been providing them information
16 throughout this litigation. Dave walks right in and goes
17 straight to this manufacturer and says, I'm interested in
18 your product. This took a year and a half for us to
19 develop this relationship to get them into our UL file.
20 And, in one e-mail, Dave has nailed it.

21 Q And you can --

22 A I want to point out the date of that e-mail, too.

23 Q I showed you the beginning, but if you want to walk
24 the Judge through the rest of it.

25 A So this is Dave getting the same product so he can go

1 compete with us at Imperial.

2 Q Okay.

3 A This was happening in 2014. This happened in
4 February of 2014. I'm still dealing with it.

5 Q What did y'all do to maintain the secrecy of
6 everything at CCC?

7 A Everything on our server is password protected.
8 There's clear separation of duties. Dave, Andrea, and
9 myself were the only two that had access to everything.

10 But even the three other people who have access do
11 not have access to everything. We have one drive we call
12 the common drive that we put things like our handbook on.
13 But, you know, the -- there's an inventory file that says
14 that the customer service people don't have access to.
15 And then, of course, customer service file people don't
16 have access to all the inventory data.

17 Q Turn to Defense No. 135. Can you tell me how many --
18 can you tell me what that is?

19 A All right. So through discovery, these were the
20 accounts that Neologic turned over to us as their
21 customers.

22 Q Okay. Can you go through there and tell me how many
23 of these were customers of CCC?

24 A I did it before I got here. It's 23 out of 27.

25 Q Okay. Now, in previous testimony, we've heard that

1 Mr. Wilson knew all of these people from a previous life.
2 And because he knew these people, there was nothing secret
3 about it. But I wanted to test some of that.

4 I'm going to show you an exhibit that he put into
5 evidence which shows from June 2006 to June -- well,
6 June 2006, EFS. And I want to run those past his
7 customers he's currently selling to, your former
8 customers. Turn to Defendant's Exhibit No. 132.

9 This is the prices they -- this is the net revenue
10 they've given us in discovery; correct.

11 A This 132 are the -- they said these are the ones that
12 Carolina Custom did business with.

13 Q Okay. Let's just go down the list.

14 A Okay.

15 Q Comparing the two, do you see ASG, Inc., on that
16 list?

17 A No.

18 Q Do you see Elliott Shultz and Associates on that
19 list?

20 A No.

21 Q How about Engineered Laminates and Coatings?

22 A No.

23 Q How about Filtros y Mallas Industrialis?

24 A No.

25 Q How about Flagship Converters?

- 1 A Flagship is on the EFS list.
- 2 Q Flexeaze?
- 3 A They're on the EFS list.
- 4 Q Graphix?
- 5 A Graphix is not.
- 6 Q Griff Paper?
- 7 A Griff Paper is not.
- 8 Q Horizon Energy?
- 9 A They are on the EFS list.
- 10 Q How about Imperial Manufacturing?
- 11 A They are not.
- 12 Q Okay. Industrias Vermont?
- 13 A They are.
- 14 Q Lambro?
- 15 A Lambro is on the -- well, there's a Lambro Venting
- 16 and there's a Lambro Industries. And they are separate
- 17 companies, but.
- 18 Q How about Peppertree Air?
- 19 A Peppertree Air was not an EFS customer.
- 20 Q How about Plastic Packaging?
- 21 A Was not.
- 22 Q How about Prime Packaging?
- 23 A It was not.
- 24 Q How about Supply One?
- 25 A It was not.

1 Q Okay. And, of course, we know exactly Valencia was
2 because we met Mr. Hotmer earlier in the week?

3 A Right.

4 Q But even the customers that were at EFS, don't --
5 once you got them in, is that the end of day? Do you have
6 to find different outlets, find different suppliers? What
7 do you have to do to keep a customer?

8 A Well, you -- of course, you've got to service them
9 well.

10 Q Sure.

11 A And you've got to be able to connect the dots. You
12 know, part of our business as a distributor is you've got
13 to have a secure vendor relationship, as well as the
14 customer side. And being able to do that at a price where
15 you can make money is where the magic happens.

16 Q And when Mr. Wilson left, he took all that
17 information, didn't he?

18 A Thousands of documents.

19 Q Okay. Let's move off of this and let's shift over to
20 the side deals. You've heard testimony this week that if
21 a claim we call a side deal -- in turn -- excuse me. Let
22 me say it a different way.

23 If EFS, actually, sent money back over to CCC on the
24 side deal, is that the claim that you're calling for
25 damages?

1 A No.

2 Q That's a claim where your employer didn't compute
3 right, isn't it?

4 A Yes.

5 Q Okay. I heard testimony yesterday that there were
6 exceptions. I heard it from Ms. Comeau-Shirley about this
7 EFS/CCC relationship. We're not talking about the
8 so-called imports, are we?

9 A No. The exceptions were always the Duetex scrim, and
10 then adhesive, and the wire.

11 Q Okay. And if I show you -- if I turn you to
12 Defendant's Exhibit No. 126.

13 A Okay.

14 Q If you go to Page 4 of 10.

15 A I'm sorry?

16 Q Page 4 of 10, the spillover category?

17 A Okay.

18 Q That -- the customer is Flextech. And then if you
19 see some of the last sales they made, what were they
20 selling?

21 A Polyester wire.

22 Q Okay. That's one of those exceptions?

23 A Yes.

24 Q Okay. If you turn over to the next page, also, the
25 spill over. What is that?

1 A Adhesive.

2 Q Okay. Same thing?

3 A Yes.

4 Q Okay. Because it is such an important issue in this
5 case, and because the purpose of your testimony today is
6 claims, I want to briefly run you through the deal. Turn
7 to Plaintiff's Exhibit No. 3. If you look up there at the
8 screen, if you'll read that sentence first that Dave is in
9 favor to the end of that.

10 A Dave is in favor of moving his accounts over to the
11 CCC account column and collecting a salary for a period of
12 time until we can really get things going. We started
13 doing some of this this week by moving towards purchasing
14 inventory for future orders that Dave had under his
15 umbrella.

16 Q Okay. Stop. And that is an e-mail that is dated,
17 that right there at the very bottom of the screen.

18 A What -- where are you, Burl?

19 Q Right there at the bottom. What's the date of the
20 e-mail?

21 A It says May -- oh, I'm sorry. May 30th, 2008.

22 Q And then that turns over to what you just read?

23 A Which book are you in?

24 Q Plaintiff's Exhibit No. 3. I'm sorry.

25 A What number?

1 Q Plaintiff's Exhibit No. 3. You had just read an
2 e-mail saying he was in favor of moving his accounts over
3 in return for receiving a salary. Same e-mail, we're
4 still there. And what was the salary?

5 A \$8,000 a month.

6 Q Okay. And then we have the so-called imports. Read
7 the "there are three."

8 A There are three accounts that Dave imports that do
9 not currently go through CCC.

10 Q Okay. Keep going.

11 A We both think it best that these three accounts stay
12 away from CCC.

13 Q Okay. Keep going.

14 A Dave agrees that all future orders, even if they are
15 imports, should be run through CCC.

16 Q Keep going.

17 A I do not know how much of his income is derived from
18 the three accounts I mentioned. But, again, this is
19 something that you can help us with. Maybe CCC should not
20 pay the salary portion that the three accounts cover.

21 Q Okay. That last sentence is what I want to talk
22 about. When the deal began in July, what did you pay?
23 How much?

24 A \$8,000 a month.

25 Q Okay. Turn to Plaintiff's Exhibit No. 5.

1 A Okay.

2 Q What's the date of that e-mail?

3 A This is July the 10th.

4 Q Okay. That's a month, 10 days after the other one.
5 Read the "We have had a few evenings."

6 A We have had a few evenings of heart to heart
7 discussions. And Dave is now on board with being a
8 partner and not both commission salesman/owner. We are in
9 a good place. Thanks for all your counseling.

10 Q And what did that mean?

11 A Well, I think you can see we were talking about
12 generating commission off of certain sales to justify the
13 salary. And we had moved to an agreement that it all came
14 in to receive that rate --

15 Q Okay. I'm going to turn you --

16 A -- to simplify things.

17 Q -- to Defendant's Exhibit No. 8. Do you see
18 Defendant's Exhibit No. 8?

19 A Oh, the Defense. I'm sorry. Yep.

20 Q Okay. What is it?

21 A So this was an e-mail from Dave to me in June of
22 2004.

23 Q It was two weeks before the e-mail we just looked at?

24 A Yeah.

25 Q About three weeks, actually?

1 A Yes.

2 Q Okay. And what does it say?

3 A Take a look at this and let me know if you have
4 questions. I think the projected CCC sales are doable if
5 we can get the pounds through the plant.

6 Q Okay. Go to the last page, which is the tab of the
7 attachment; correct?

8 A Yes.

9 Q Okay. When you looked at this, what did you
10 understand that last page -- or what does that last page
11 represent?

12 A Well, this is what we were doing.

13 Q What do you mean by that?

14 A Well, we had started in November and we were already
15 doing Minova, Chiefs, Lamborn, Technoflex. All those
16 things, we were already doing. Light Source is an account
17 we developed at CCC, which Dave and I did that together.

18 Q And there's been testimony offered in this Court that
19 that document represented what Mr. Wilson was bringing.

20 A That's what we already had.

21 Q I want to test that argument against the other two
22 pages in that attachment. And I need you to do it against
23 his Plaintiff's Exhibit No. 177. And it lists sales of
24 CCC in 2008 that are highlights that contain the EFS
25 customers?

1 A All right. So this in 2008. We, also, did business
2 with --

3 Q Hold on. Hold on.

4 A I'm sorry.

5 THE COURT: What does it look like?

6 MR. WILLIAMS: I think, Judge, that may be the only
7 copy.

8 THE COURT: Oh, that's the only one.

9 Okay. Go ahead.

10 BY MR. WILLIAMS:

11 Q So the list -- I'm looking at the last page. The
12 list of customers, is there -- is Horizon on that list of
13 customers, the last page?

14 A Horizon is on this list.

15 Q It's on that one, but is it on the last page?

16 A Oh, I see what you're saying. No. Horizon is not.

17 Q Is Horizon on the 2007 EFS sales by customer --

18 A Yes.

19 Q Which is two pages over?

20 A Correct.

21 Q Okay. How about Industrias Vermont, is it on the
22 last page?

23 A It is not.

24 Q Okay. Is it on the 2007 EFS sales by customer?

25 A Yes.

1 Q Okay. And then do the other thing, is it on the 2008
2 CCC customers?

3 A Industrias Vermont is not.

4 Q Are you sure about that?

5 A Wait. I'm sorry. Which one are we looking at? I'm
6 confused now.

7 Q I can tell. It's entirely my fault.

8 A So I guess the point is there's a number of folks on
9 the top page that were in the same bucket, yeah.

10 Q So I'll keep this one.

11 A All right. Help me out.

12 MR. WILLIAMS: I'm sorry for the confusion, Judge.

13 BY MR. WILLIAMS:

14 Q The last page you've told me is -- or has been argued
15 in the Court this week was the page where he's telling you
16 what he was bringing and that's it. But the other two
17 pages had no bearing upon what he was bringing.

18 Well, the last page, as far as I can tell, doesn't
19 contain Horizon. But, in 2008, y'all did do work with
20 Horizon. And Horizon is on the 2007 film sales, which is
21 the first tab.

22 A Yes.

23 Q All right. Is Vermont Industries on the last page?

24 A No.

25 Q Okay. Is Vermont Industries a company y'all did

1 business with at CCC?

2 Look at the exhibit he produced to your left.

3 A So CCC did business with Vermont in 2008, yeah.

4 Q But it's not on that last page?

5 A No.

6 Q But it is on the 2007 EFS sales by customer?

7 A Yes. That's the Industrias Vermont.

8 Q Okay. How about Gray Flex, is it on the last page?

9 A Gray Flex is not.

10 Q Okay. Is it on the 2007 sales EFS customer list?

11 A It is.

12 Q And is it something y'all did business with in 2008
13 at CCC?

14 A Yes.

15 Q How about Flexible Technologies? Is it on the last
16 page?

17 A They are not.

18 Q Okay. Go over to the 2008 sales by CCC.

19 A We did sell to Flexible Technologies.

20 Q Okay. And then go to the 2008 year-to-date sales by
21 customer, which is on the first page. Do you see them?

22 A I'm sorry. Flexible Technologies?

23 Q First page. Do you see them as a 2008 customer of
24 EFS?

25 A They were not.

1 Q Tab 46.

2 A Oh, I'm sorry. There they are, Flexible Technologies
3 at the bottom.

4 Q Okay. So there's a number of accounts found on this
5 last page that you did business with in CCC in 2008?

6 A Yes.

7 Q I'm sorry for that long exercise. So if we've heard
8 testimony that this last page was not -- was the business
9 I'm bringing, it appears that that's not correct?

10 A Correct.

11 Q All right. Now, turn to Defendant's Exhibit No. 10.
12 Confirm for me that Defendant's Exhibit No. 10 is the
13 e-mail responding to the other e-mail we just finished
14 going through, please.

15 A So this was from Dave to me on June 24th of 2008.

16 Q Go to the back page. Is the beginning e-mail the
17 same e-mail as Defense Exhibit No. 8, it just has the
18 attachment?

19 A Yes.

20 Q Okay. Read the first sentence of the e-mail.

21 A Using only the past two years does not really give us
22 an accurate picture of what I am bringing to the company.

23 I --

24 Q Okay. What did you understand that sentence to mean
25 in the context of the attachment that we just went

1 through?

2 A Well, they were all coming in.

3 Q Okay.

4 A Just looking at the past two years, yeah.

5 Q You've asked me to ask you to look at Plaintiff's
6 Exhibit No. 19. I'd ask you to look at that and tell the
7 Court what that is, and what it meant to you when you
8 received it?

9 A All right. So this is, again, the quote that I
10 supposedly received a year later that was supposed to set
11 me off that -- to know that Dave was doing these West
12 Carrollton deals.

13 And I guess what I wanted to point out is it is not
14 uncommon with an import opportunity for a manufacturer to
15 want to lock you into a price. And I get them to this day
16 where someone will give you a blanket. It doesn't
17 necessarily mean you're going to fill it if your vendor
18 stream changes mid-year.

19 Q What's a blanket?

20 A So it would be a purchase order or purchase orders
21 that would cover an extended period of time.

22 Q Okay.

23 A Of course, if the market changes and my supply goes
24 up, I'm not likely to fulfill an order if my price is
25 higher than the selling price.

1 Q Okay.

2 A So, again, this tells me nothing except Dave says
3 he's secured some better pricing on the vendor side, not
4 that the sale, actually, ever went through. And I have a
5 deal now with CCL Avery Dennison. It's a very similar
6 situation. The price of the raw material has changed.
7 They've got a PO, but I can't get it without selling it at
8 a loss. So we won't fulfill that PO.

9 Q And is that why if you turn to Defense No. 19 -- or
10 is Defense NO. 19 what you're describing to me?

11 A Yes.

12 Q If you'll take a look at that second sentence.

13 A This is the Lamborn PO?

14 Q No. We don't have anything on that. This is West
15 Carrollton.

16 A Is this Plaintiff's Exhibit No. 19?

17 Q Defendant's Exhibit No. 19.

18 A I've got a Lamborn e-mail.

19 THE COURT: There was a maybe 18.

20 MR. WILLIAMS: Oh, well, I'll show him what mine
21 looks like.

22 THE WITNESS: Oh, I'm sorry. Yeah. That's the --

23 BY MR. WILLIAMS:

24 Q Yeah?

25 A Okay.

1 Q Is that what you're describing?

2 A Yes.

3 Q And tell me what that is.

4 A So this is an e-mail from Dave to Steve Norvell
5 saying West Carrollton is back on the table.

6 Q In the context of what you just said about price
7 leads?

8 A So they probably had no intent of fulfilling an older
9 purchase order. But Dave had, as he says in the quote,
10 secured better vendor pricing so it would move forward.

11 Q And that would be a new deal, wouldn't it?

12 A It would be a new deal.

13 MR. WILLIAMS: Your Honor, if I could take one
14 second.

15 THE COURT: Yes, sure. Take your time.

16 (Pause.)

17 BY MR. WILLIAMS:

18 Q Okay. John, let's do a quick run through. You've
19 heard -- we heard testimony from Mr. Wilson about his cell
20 phone being cut off and his family's cell phones being cut
21 off. Will you tell us all about that?

22 A Yeah. So when I accepted Dave's resignation, he
23 called his lawyer. He called the landlord. Our situation
24 wasn't improving. He kept taking the loads of company
25 property with him. And, you know, Dave used to send us an

1 expense report with his cell phone bill on it.

2 Q Okay.

3 A So I had suggested to him, look, let's just get --
4 let's bring it into the company plan. We had a company
5 plan with a number of people in the plant that had a
6 phone. And when that happened, we just absorbed his
7 account number.

8 When Dave wouldn't leave that day -- the person that
9 manages the Verizon account was my wife. So I called her.
10 I said, I can't get him to leave. Maybe if he wasn't
11 talking on the phone, he would leave. And so I said, Can
12 you cut off his cell phone?

13 So when Denise did that -- she called and it was his
14 old account that was cancelled. Well, I didn't know he
15 had his kids, his wife -- I didn't know they were all
16 being charged through the company, that they all lost
17 their service. As soon as we found out, we went and we
18 turned the phones back on.

19 And we just reserved that 238-5407. That was the
20 number on our web page on all of our sales and marketing
21 data. And we kept that phone number. And that's how that
22 happened.

23 Q Okay. What's your understanding of what Mr. Wilson
24 did to the computers before he brought them back to your
25 lawyers?

1 A So it took -- I don't know -- three or four weeks
2 before they ever came to the attorney's office. William
3 Floyd sent -- or computer forensics technology picked them
4 up and did a sweep of them.

5 Q And what did you learn from all of that?

6 A So computer forensics explained that there had been a
7 program run called e-mail shredder.

8 MR. ARNOLD: I'm going to object. This is hearsay,
9 what he was told. The report is in. The Court can review
10 the --

11 BY MR. WILLIAMS:

12 Q As a result of the --

13 MR. WILLIAMS: Can I try and rephrase?

14 THE COURT: Sure.

15 BY MR. WILLIAMS:

16 Q As a result of reading the report, what did you find
17 out happened to the e-mails?

18 A The report said there was a program run called e-mail
19 shredder. And it was followed by another program called
20 eraser.

21 Q Okay. And when you got the computer back and you
22 tried to look at documents, what did they look like?

23 A In order to figure all of this out, they recovered a
24 number of e-mails from the machine, I guess, thousands.
25 But it was like reading hieroglyphics when you tried to

1 open them. So I didn't spend much time trying to figure
2 out what they were.

3 Q Okay. We've heard testimony that you owned a machine
4 company before in your prior life?

5 A Yeah.

6 Q Okay. Do you -- could you tell the Court, generally,
7 what it cost when you buy a machine and you need to move
8 that machine or sell it and take it out?

9 A Sure. So I, actually, have an agreement now with a
10 company. They allow us to use their equipment. We allow
11 them to keep it on the property at no charge, as long as
12 we can use it.

13 So I do work with a lot of used equipment. And it's,
14 typically, 25 to 30 percent of the cost of the machine to
15 move it.

16 Q Okay. And how about rent? What do you charge for
17 rent?

18 A Our current rent rate is \$6,000 a month.

19 Q Okay. Have you looked at anything to determine
20 whether or not that's a reasonable rental value?

21 A We had a local company do an appraisal. I suppose
22 it's been over a year. And it was between 250 to 325 a
23 square, which I think worked out to 6,000 to \$6,500 a
24 month.

25 And we recently had one done about a month ago. And

1 the rate in the area has dropped a little bit. But we're
2 still well in the range of 212 to three, I believe, is
3 what -- per square.

4 Q Okay.

5 A Stone -- I think it was Stone and Associates.

6 Q Financially, how is the company doing compared to,
7 say, last year?

8 MR. ARNOLD: I'm going to object. We've asked for
9 the 2014 financial records and been told we can't have
10 them. I don't know why he can testify to them and not
11 give them to us.

12 BY MR. WILLIAMS:

13 Q How about if I ask a different question? Why don't
14 we have financials?

15 A Well, we've argued over the content of what should be
16 in them, you know. And that's -- as soon as we can agree
17 on what they should be, then we'll produce them. I think
18 every time Andrea tried to make some sort of accounting
19 adjustment, it would be added to the lawsuit.

20 Q Yesterday, we heard a question from you about --
21 maybe it was two days ago. Dissolution. Will you tell
22 the Court the process CCC -- when it, initially, said,
23 okay, let's do it, went through to move toward that in
24 2011?

25 A All right. So --

1 MR. STEPHENSON: 2012.

2 BY MR. WILLIAMS:

3 Q I stand corrected. 2012.

4 A So our counsel had some discussions with us about how
5 that would work. And we were most concerned about the
6 employees and how that would work.

7 So we employed some legal help from Smith Leatherwood
8 to help us make sure we could take care of the employee
9 issues, you know, their insurance, things that we wanted
10 to make -- pay roll issues, taxes, that sort of thing that
11 we were preparing for.

12 We were depleting our inventory. We were making
13 sales to try to make some sort of dissolution maybe go
14 more smoothly. We held off on doing some orders, turned
15 away some customers thinking that everything could just
16 get wrapped up pretty efficiently. And, you know, we
17 loosely tried to help some of our employees give them some
18 time so they could find additional work.

19 Q And some of the legal fees that you incurred, are
20 those the legal fees that Del and P. Tiffany just said
21 throw out, put in your column?

22 A Yes. They were employees. It was company legal. It
23 shouldn't -- yeah.

24 Q Okay. And then how long did that process take,
25 depleting inventory, all of that stuff?

1 A Well, we had three months to prepare. We really kind
2 of started working on that plan in October. And it's a
3 slow time of the year.

4 So, you know, we were doing some fire sale type
5 things, again, to try to drive our inventory as low as
6 possible and go into it.

7 Q Okay. And then -- strike that.

8 MR. WILLIAMS: Thank you, John.

9 CROSS-EXAMINATION

10 BY MR. ARNOLD:

11 Q So when did you find out that Dave Wilson had stole
12 your trade secrets?

13 A Well, he didn't return the laptops for about four
14 weeks. And then I think -- I don't remember how long it
15 took for computer forensics to complete their work.

16 Q And when did you find out that he was doing all of
17 these side deals?

18 A When did I find out he was doing the side deals?

19 Q Yeah.

20 A I didn't really understand or appreciate the scope of
21 the side deals until we got discovery from Eastern Films.

22 Q Well, when was that?

23 A Not very long ago.

24 Q Well, you, actually -- Eastern Films or Neologic?

25 A You said side deals.

1 Q Yeah. Because you had -- because he left his EFS
2 QuickBooks at the CCC office, did he not?

3 A I learned that later, yes.

4 Q You didn't know that then?

5 A I had no reason to try to open the QuickBooks file
6 that was on that computer.

7 Q Well, you were digging through the e-mails looking
8 for evidence that Dave was doing business on the side,
9 weren't you?

10 A Do you want to put that in a time frame context?

11 Q January and February of 2012.

12 A In January and February of 2012, I was looking at
13 e-mails because my partner was not communicating with me
14 over a number of offers that had been put in front of him.

15 Q But you were going through his e-mails looking for
16 evidence that he had taken business from CCC while there;
17 isn't that true?

18 A I did learn that he was looking to take the whole
19 business to Mark McGarel later.

20 Q That's dishonest, isn't it?

21 A I think so.

22 Q And you wouldn't want to do business with dishonest
23 people?

24 A No.

25 Q Let me show you what's been marked as Plaintiff's

1 Exhibit No. 179. Do you recognize that document?

2 A I do.

3 Q Now, first of all, let me guess, Andrea
4 Comeau-Shirley wrote that e-mail -- that letter?

5 A No.

6 Q That was the one you wrote?

7 A I wrote this letter.

8 Q Okay. Read it to the Court.

9 A Dear Dave, more than once I have heard comments in
10 the marketplace that you wish you were still -- that we
11 were still working together, and that you had enjoyed
12 working with me. Of course, I have no way of knowing if
13 you had changed your mind from January without just asking
14 you.

15 My thought is before we embark on a path that
16 eliminates that option, if you've had a change of heart,
17 now is the time to have that conversation. I don't
18 believe that we can go back to how it was before. And you
19 have seen the financials. So you know that I need to
20 restructure the company in order to move forward and get
21 access to working capital. Perhaps, after this time
22 apart, we can, finally, have that conversation about how
23 to move forward together.

24 Q So after you found out he stole your trade secrets,
25 was trying to poach your customers, had engaged in side

1 deals, you want to go back into business with him, some
2 form of business?

3 A That's not what this letter says.

4 Q Well, we'll let the letter speak for itself.

5 A This letter is an apology. Because, sometimes,
6 that's just what people need. We were already involved in
7 litigation.

8 Q Yeah.

9 A The lawsuit had already happened.

10 Q The lawsuit had already happened. And about three
11 weeks before this letter was sent, we discovered Zoi
12 Films; right?

13 A I don't know when you discovered Zoi Films.

14 Q It was before you sent this letter, wasn't it?

15 A Yes.

16 Q And we had a motion pending to get your QuickBooks
17 file. Do you remember that? We were trying to get
18 your --

19 A I don't remember, but if you say so.

20 Q But, now, you're reaching out to the crook that you
21 locked out and are saying that maybe we can get back
22 together in some form or fashion, maybe we can move
23 forward together?

24 A My thought was to get the litigation settled. I
25 didn't want to be in a lawsuit.

1 Q Well, that's not a settlement offer. That's a kiss
2 and make up letter, isn't it?

3 A (There was no response.)

4 Q Well, I don't know which is the best way to do this,
5 but let me try it. What are we doing here?

6 A (There was no response.)

7 Q Let me just ask you. This information -- this
8 spreadsheet, Defendant's Exhibit No. 43, the trade secrets
9 with all the product codes --

10 A Are you talking about our vendor tracking sheet?

11 Q Your vendor tracking sheet. Where did all of that
12 information come from?

13 A From the manufacturers. A lot of it was learned --
14 some of it was learned by our own internal website.

15 Q Website. You want to look at the -- this is
16 Mitsubishi.

17 A If you want to have a challenge about what's on that
18 sheet that you're not going to find, I mean, I'll do that
19 with you. I mean, I dare you to find that DuPont code
20 that I named.

21 Q Well, look, we can -- but let's just say that some of
22 those codes -- at least, some of those are right here on
23 the Mitsubishi -- do you want to look at them? Do you
24 want to compare? Let's look at 43.

25 A Some of those codes are on the Mitsubishi website,

1 yes. Because it -- what our sheet does is it matches a
2 distributor's code to a manufacturer's code.

3 Q Do you think because you put public information in a
4 spreadsheet, you convert it into a trade secret? Is that
5 your --

6 A It's the rest of the stuff that's on there that's the
7 trade secret. It's that tool that we developed. It's
8 that time that we spent developing that to make our sales
9 function more efficient.

10 Q Let me show you this. This is kind of a neat thing.

11 A I sure would love to have my competitors.

12 Q Let's do imports, Carolina Custom Converting. Let's
13 just Google that. The first result, let's see what that
14 says. Did you know that all of your import records are
15 public information?

16 A I know that there is software you can buy that
17 will -- you can gain access to that sort of thing, yes.

18 Q Well, actually, you can Google it, although the
19 connection is slow. But if I --

20 MR. FARRAR: The glove is not fitting.

21 MR. ARNOLD: The glove is not fitting.

22 BY MR. ARNOLD:

23 Q So did you know I can find out everything you've
24 imported, the products, by Googling it?

25 A I, also, know there's ways to keep that from people.

1 Q Well, you haven't because --

2 A Andy, seriously.

3 Q You tell me. Seriously what, John?

4 A Show me.

5 Q I'm trying to get this to pull up. As soon as it
6 pulls up, we'll resume this line.

7 Now, Supply One, that's one you say that Dave stole
8 from you. When did you lose that customer?

9 A I don't remember.

10 Q Remember them returning 17 pallets of silicone
11 product to you. Do you remember?

12 A There was some quality issues.

13 Q And didn't -- once those 17 pallets were returned to
14 you, you never did any more business with Supply One after
15 that date, did you?

16 A I don't remember.

17 Q Well, you're suing him for taking it from you; right?

18 A Yes.

19 Q But you lost it before it went to Neologic, didn't
20 you?

21 A I don't think so.

22 Q You don't think so?

23 A I -- you know, specifically, I don't remember the
24 dates.

25 Q Well, how in the world can you sue somebody for an

1 account that you don't even know whether or not they took
2 from you?

3 A So silicone-coated film, typically, costs \$2.00 to
4 \$2.50 a pound. Dave and I had figured out through BPR
5 Plastics that we could sell it at \$1.85 and make money.
6 And when Dave took BPR and Dave took it to Supply One, he
7 stole it. He couldn't have done it any other way. We
8 developed that at CCC. We worked hard to gain that. We
9 went to Flint and we ran trials with recycled plastic to
10 make that work. That was our secret.

11 Q Your secret?

12 A If everybody knew it, everybody would do it. We
13 could double our money.

14 Q We've seen an e-mail where Supply One contacted
15 Neologic in January of 2013. Remember that e-mail? Do
16 you remember it?

17 A (There was no response.)

18 Q And you lost that business in November of 2012.

19 A They've had all my pricing information. It would be
20 so easy to just walk in there and drop the price. He got
21 the supply and he got the customer, boom, done.

22 Q It would be easy if you just had the box of documents
23 you let Bill Shaw walk off with; right?

24 A Bill Shaw was not allowed to walk off with anything.
25 Bill Shaw took our company information.

1 Q And he did it without a non-disclosure agreement;
2 right?

3 A Bill Shaw was held to a higher standard. He knew
4 documents that he had were important to the company. And
5 they were not things that we would want shared with
6 anyone.

7 Q Then why didn't you protect them?

8 A My -- our attorney -- the company attorney wrote Bill
9 Shaw a letter and said, if you have anything else, we want
10 to make sure it gets back to us. And my understanding,
11 again, is that Lee Plumblee called you, and you told him
12 if Bill brought you anything that it would be returned.

13 Q Well, these e-mails that you say you found, what did
14 you do after you found these e-mails of Dave e-mailing
15 customers, or former customers? What did you do to stop
16 it?

17 A Well, I had to -- I mean, I didn't learn about the
18 e-mails until -- through discovery.

19 Q So we went through -- you showed us e-mail 173,
20 Patrick Industries. Do you remember that? You said that
21 was a trade secret he was trading on?

22 A Yes.

23 Q Did Neologic do business with Patrick Industries?

24 A I have no idea.

25 Q Let me ask you this. Did Decotex do business with

1 Patrick Industries?

2 A Decotex does business with Patrick indirectly.

3 Q So Decotex does business with a CCC customer?

4 A That's not true.

5 Q Well, wait a minute. Patrick Industries, you just
6 said that -- you just made a point that Neologic was
7 trying to get Patrick Industries, but they failed. But
8 Decotex, actually, does business with Patrick Industries;
9 right?

10 A Decotex derives an income off the use of the
11 royalties for designs that it owns. That's Decotex.

12 Q You showed us an e-mail with Intertape. Neologic
13 doesn't do business with Intertape, do they?

14 A I have no idea.

15 Q Okay. Well, what's the point of showing us that
16 e-mail?

17 A Andy, it's real easy to do deals with these people
18 outside of the information that you've turned over.
19 Because you could simply run these customers right through
20 a Valencia, a Roll Back, Filmtech, all of those guys.
21 Even Mike Myers could do this for Dave at Neologic.

22 Q Even Mike Myers, huh?

23 A (There was no response.)

24 MR. ARNOLD: One second.

25 (Pause.)

1 BY MR. ARNOLD:

2 Q Now, one of the things you accused Dave of doing is
3 ordering all of this excess inventory. And we saw
4 yesterday where you had purchased \$400,000 of inventory in
5 a short period of time. Do you remember that, from JBF
6 RAC?

7 A No. I don't remember seeing anything that said I did
8 that.

9 THE COURT: It's 168.

10 MR. ARNOLD: 168. I don't see it over here. It's
11 been removed.

12 THE COURT: Do you want this?

13 MR. ARNOLD: Yes.

14 Thank you.

15 BY MR. ARNOLD:

16 Q Do you remember this?

17 A I do.

18 Q Now, do you remember the 3M deal that you accused
19 Dave of interfering with?

20 A Yes.

21 Q And JBF RAC was going to supply you with the product
22 for that 3M deal?

23 A They were the supplier, yes, the manufacturer.

24 Q And you have -- you accused Dave of going to 3M and
25 preventing you from getting, what, a million dollars worth

1 of work?

2 A I believe that's what it was, yes.

3 Q You, also, accused JBF RAC of the exact same thing,
4 didn't you? You accused them --

5 A I was not aware of Dave's interface with 3M prior to
6 JBF's interference. So my natural inclination was to
7 think that it was them.

8 Q And we have marked 163. I think I gave it to you a
9 little earlier.

10 Let me show you 165. Who's Dave Fowler?

11 A Dave Fowler was some sort of salesman with JBF.

12 Q Some sort of -- he was your contact at JBF, wasn't
13 he?

14 A For a short while.

15 Q And you accused them of doing the same thing you've
16 accused Dave of doing, of interfering with the 3M
17 contract?

18 A I did.

19 Q And is that the e-mail you received in reply?

20 A I wrote a letter, actually, to Dave Fowler's boss,
21 Parham.

22 Q Uh-huh.

23 A And he was quite disappointed that we believed that
24 JBF went around us to make that sale. We were not aware
25 that Dave had already been to 3M to try to get the

1 business from us.

2 Q Well, so did Dave or JBF RAC interfere with that
3 deal?

4 A I'd like to think that Dave initiated it. And I
5 think the e-mails show that.

6 Q Okay. Well, let's see what this e-mail says. JBF
7 did not subvert a customer from one of our distributors.
8 Simply put, when you fail to pay your bills from your
9 supplier for nearly a year, how can you be considered a
10 viable distributor?

11 Do you see that?

12 A Do I get to reply to this comment?

13 Q Sure.

14 A I mean, do you know what this is?

15 Q I know that's film that you purchased.

16 A Right. So what this was was an agreement by me that
17 JBF would be paid in \$10,000 a month increments, which we
18 honored every month. JBF got every dollar back of the
19 film that we purchased.

20 And after we were paid in full, I found out that they
21 were going to go direct with 3M. And they were saying
22 that we owed them interest on that film.

23 So my letter to Parham was saying, yeah, you know
24 what, you guys hurt us with this. And he put Fowler up to
25 write the reply. The failure to pay had nothing to do

1 with our ability to have done that 3M deal.

2 Q And you accused JBF RAC of making negative comments
3 to 3M to cost you that business, did you not? It's the
4 same thing you've accused Dave of.

5 A Where does it say that?

6 Q Well, let's look at number three in Exhibit No. 165.
7 Our sales manager nor I ever made negative comments about
8 CCC or you --

9 A Where are you?

10 Q I'm on Exhibit No. 165. And he's replying to you.
11 In fact, I have never ever visited -- I've never even
12 visited the 3M account that you mention as your customer.
13 They put that in quotation marks. This situation is
14 now -- the CCC situation is now common knowledge in the
15 marketplace.

16 Look at number four. Dave Fowler is informing you,
17 When our sales manager visited the particular 3M account,
18 your purchasing manager made it clear that he had given CCC
19 an order for JBF Film, which you never placed with us. Upon
20 your failure to place this order with us, 3M chose to deal
21 directly with JBF. Therefore, it is clear that your blatant
22 failure to service this customer resulted in you losing this
23 customer.

24 Isn't that what happened?

25 A No, absolutely not. I had made arrangements with

1 another distributor that was a minority-owned business to
2 be the conduit to make sure that 3M would be able to get
3 their product. And I think they really would have liked
4 the idea that it was a minority-owned partner of JBF that
5 would have supplied them with that film.

6 Q Now, let's look at one other correspondence that you
7 had with Dave Fowler about the past due balance from a
8 year prior. This is September of 2012. This is your
9 letter to Dave Fowler; right?

10 A This is an e-mail I wrote to Dave Fowler.

11 Q And you're accusing Dave Wilson of -- for your
12 inability to pay the JBF invoices that you placed after he
13 was gone?

14 A These purchase orders weren't necessarily placed
15 after Dave was gone.

16 Q Then when were they placed?

17 A I don't have the purchase order dates in front of me.
18 I mean --

19 Q Well, they've got order dates?

20 A No, they don't.

21 Q What are these dates?

22 A Those are the due dates.

23 Q Okay. So what is this date?

24 A So a due date of 12/6 would have been ordered prior
25 to that.

1 Q Yeah.

2 A A due date doesn't happen until it hits the shore.

3 Q That's right. So a due date of -- the date of the
4 order is April?

5 A Yeah. But look at all the 12s in front of it. I
6 mean, these were ordered while Dave was here. Some of
7 these --

8 Q Show me one that was ordered when Dave was here.

9 A The due date was 12/6/12.

10 Q That's --

11 A I'm sorry.

12 Q He's gone in 2012. You ordered those. That's your
13 signature on that document, isn't it, John?

14 A All right. These were ordered after Dave left.

15 Q By you?

16 A Yes.

17 Q And then you couldn't pay the bill. And then you
18 blamed Dave Wilson for your inability to pay for \$400,000
19 of product you purchased?

20 A Dave owed the company a hundred plus. We asked for
21 it back so we could pay our vendors.

22 Q That's been your business strategy for the last two
23 years is to blame Dave Wilson. That's your business
24 model, isn't it?

25 A Is that a question?

1 Q Yes. Isn't that right?

2 A No.

3 Q Because since you fired Dave, you've run that
4 business into the ground, haven't you?

5 A I don't think so.

6 Q Del Bradshaw thinks so.

7 A I wouldn't agree with you.

8 Q They wouldn't have given CCC another year. Do you
9 expect CCC to be around?

10 A Yes.

11 Q For another year or two?

12 A I do.

13 Q Do you have any plans to file bankruptcy if you're --
14 if CCC were happened to be ordered to buy out Dave's
15 interest?

16 A No.

17 Q Could CCC afford to do that?

18 A That's a hypothetical --

19 Q It is.

20 A -- without knowing the number.

21 Q 403,000.

22 A I'll just have to see how it works out.

23 Q Why shouldn't the Court order you and Andrea to buy
24 out Dave's interest at fair value?

25 A I mean, define fair value. You know, from day one,

1 Dave's gotten the upside of everything. Dave needs to pay
2 45 percent for the past three and a half years of my free
3 work. He needs to pay for Andrea's free work, 45 percent
4 of that. He needs to pay 45 percent of the rent.

5 Q The rent that you raised without an agreement with
6 Dave, that rent?

7 A Dave continues to try to take the upside of
8 everything and leave me with the bill.

9 Q And that's the CCC business model, blame Dave;
10 right?

11 A (There was no response.)

12 MR. ARNOLD: We've been over everything else, Your
13 Honor. I'm done.

14 MR. WILLIAMS: One question, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. WILLIAMS:

17 Q John, we've heard a big deal about a couple of
18 customers that we never could find on the customer list we
19 produced in discovery. Do you remember that?

20 A Yes.

21 Q Okay. There's an exhibit in the Plaintiff's book --
22 Defense book. We added it. I'll find it.

23 Do you see the Roll Back exhibit? While I look for
24 it, will you tell the Court -- you know what I'm talking
25 about?

1 A Yeah.

2 Q Will you tell the Court about what Mr. Wilson told
3 the Court the other day about customer, supplier,
4 competitor?

5 A Yeah. So there's a number of ways to do
6 transactions. I think even Bruce Hotmer testified how he
7 intended to stay in the film business by utilizing the
8 assets of others.

9 So you've got people in the industry that can work at
10 a desk, you know. Valencia happens to be one of those. I
11 didn't know, but I think Mike Myer is one of those sort of
12 folks how they run their business.

13 So if you were trying to -- the other way people do
14 deals is you can run a customer through a broker and then
15 collect a commission on that. Filmtech would have been a
16 good example of that because they have -- they could buy
17 film from me as a seller. They could process it for me.
18 Because they have slitters as a toller or they could just
19 cut me in on a commission for a sale that I would bring to
20 them.

21 So we had concerns -- a number of concerns about that
22 when Neologic showed us that some of the folks that we
23 knew to be suppliers as customers.

24 Q What is that?

25 A So this is an e-mail from, actually, Bill Shaw to Joe

1 Benedict at Roll Back. Roll Back is similar to Filmtech.
2 And it's an invoice for their getting their commission for
3 a toll slitting job.

4 So you could very easily run Intertape, Patrick
5 Industries, any of those guys. They could have run an
6 order through, say, Roll Back. Roll Back would show -- so
7 it says, Bill to Roll Back. And it says, Ship to Roll
8 Back. I don't know where this went. Roll Back could have
9 very easily made that sale to Intertape and this is just
10 Neologic collecting the profit from that job.

11 MR. WILLIAMS: No more questions, Your Honor.

12 THE COURT: All right. Thank you, sir.

13 MR. ARNOLD: I believe Plaintiff's Exhibit Nos. 175,
14 176, 177, 178, and 179 we had not previously moved into
15 evidence. And I would like at this time to move --

16 MR. WILLIAMS: Can we see what they are?

17 MR. ARNOLD: Yeah, sure. I mean, they were things
18 that were marked and given to you --

19 MR. WILLIAMS: May I see them?

20 MR. ARNOLD: Sure. Go ahead.

21 MR. WILLIAMS: Judge, we, also, move to introduce
22 Defendant's Exhibit No. 179. We talked about it.

23 MR. ARNOLD: I have no objection.

24 (WHEREUPON, Plaintiff's Exhibit No. 175, 176, 177, 178,
25 and 179 were admitted into evidence.)

1 (WHEREUPON, Defendant's Exhibit No. 179 was admitted
2 into evidence.)

3 THE COURT: All right. Do y'all want to do your
4 closing arguments at 9:00 in the morning? I'll give
5 everybody 20 minutes.

6 MR. ARNOLD: I think I should, at least, make my
7 argument -- my motion for directed verdict on their
8 claims.

9 THE COURT: Yes, sure.

10 MOTIONS

11 MR. ARNOLD: They've got a claim for the side deals.
12 There's, I think, two bases, for my motion. The first, I
13 think the clear evidence was -- they did not show by a
14 preponderance of the evidence that the deals that they
15 claim that Dave did on the side were part of the original
16 transaction, particularly the three accounts, the West
17 Carrollton, the Lamborn, and Modular Metal. And if they
18 did, then the West Carrollton, Exhibit No. 19, which was
19 the proposal showing that Eastern Films Solutions had --
20 was shipping product to West Carrollton would have been
21 more than enough to put them on notice that Dave was doing
22 something on the side.

23 So either he had permission to do it or he didn't,
24 but they knew about it. And I think the knowledge showed
25 it was part of the agreement. But if it wasn't part of

1 the agreement, then the statute of limitations begins to
2 run at that point in time. They can't have it both ways.
3 But they learned about it and they knew about it. And
4 that put them on a duty to conduct a reasonable
5 investigation into what Dave was doing on the side.

6 So I don't think they bore their burden of proof by a
7 preponderance of the evidence that Dave breached the
8 original agreement. So that's to the first cause of
9 action.

10 They've got a cause of action for civil conspiracy.
11 And that, as I understand it, is that Steve funded this
12 litigation so that they could dissolve CCC. Of course, we
13 were blamed for not dissolving it before we, I guess,
14 conspired to dissolve it.

15 But the bottom line is there's no evidence that that
16 was the motive -- there was an improper motive. Dave
17 brought this litigation as he has the right to do to get
18 his interest -- or the value of his interest. And you
19 have a right, I think, under those circumstances to pursue
20 your legal rights. And that's more in the way of a
21 frivolous claim, I believe, if he wanted to pursue that
22 type of claim.

23 But the bottom line is it was never dissolved. How
24 you can have a civil conspiracy to dissolve CCC and it not
25 come to fruition even if they had conspired, there was no

1 damages because they weren't dissolved. And we would need
2 you, Your Honor, as part of our conspiracy to make that
3 happen.

4 So I think --

5 THE COURT: I appreciate your arguments. And I'm
6 following them. But it seems like this is what we ought
7 to be doing tomorrow morning.

8 MR. ARNOLD: Okay. I just wanted to make sure since
9 he made his motions --

10 THE COURT: Okay.

11 MR. ARNOLD: And I'll just, lastly, say there's trade
12 secrets. We don't think they've proven trade secrets.

13 MR. STEPHENSON: I'll stipulate he made his motions
14 just like I did. You'll hear it all tomorrow.

15 THE COURT: I understand.

16 MR. ARNOLD: And I'm happy to do that.

17 THE COURT: And that's fine. I understand where
18 you're coming from.

19 MR. CAMPBELL: And I've got some motions, too. Can
20 we take those up tomorrow?

21 MR. STEPHENSON: Yes, sir.

22 THE COURT: All right. We'll start at 9:00 in the
23 morning.

24 MR. FARRAR: You said 20 minutes, Your Honor, for
25 each side?

1 THE COURT: 20 minutes for -- I mean, I don't want
2 to --

3 MR. FARRAR: I think that's doable. I just want to
4 make sure that I heard you.

5 THE COURT: I don't want to have some litigation
6 about what I meant by side. So 30 minutes for y'all, and
7 30 for y'all. However you want to divide it up.

8 MR. ARNOLD: Fair enough.

9 THE COURT: Thank you.

10 (WHEREUPON, the proceedings were concluded at
11 approximately 4:45 p.m. to be reconvened on
12 Friday, October 3, 2014.)
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1 FRIDAY, OCTOBER 3, 2014

2 THE COURT: Are y'all ready to make your arguments?

3 MR. ARNOLD: Yes, sir.

4 May it please the Court?

5 THE COURT: Yes, sir, Mr. Arnold.

6 CLOSING ARGUMENTS

7 MR. ARNOLD: For the Plaintiff. I'll start my clock.

8 Your Honor, let me just say this, it probably goes
9 without saying, but this is a pretty significant case for
10 my client. The stakes are high. I think it's really --
11 the ouster or the lockout has I think, without overstating
12 it, can be said to have changed my client's life pretty
13 dramatically and the life of his family.

14 So, in that context, I've always seen this case as,
15 essentially, three parts. You've got what I call the
16 formation questions. What was the deal? Then you've got
17 the oppression piece. Was there oppression? Was there a
18 squeeze out of my client by the controlling members? And,
19 thirdly, there's the competition people back in. Did my
20 client do anything unlawful in resuming making a living
21 selling film? So those are I think the three pieces of
22 this case.

23 I want to start with the oppression piece because I
24 think that is -- that is our claim. And I think everybody
25 else has to be viewed through the prism of oppression. I

1 do believe if you'll look at the cases, the Kiriakides
2 case, which Tom has mentioned previously. And it's a case
3 he was involved in. The Ballard case, which I think was a
4 case that Judge Miller tried and we got an opinion on that
5 case. The Jordan v. Holt case and the Historic Holdings
6 case, I think are all law that supports our contention in
7 this case that Dave Wilson was squeezed out.

8 And I'm not going to repeat the facts. You've heard
9 them, actually, multiple times, read e-mails multiple
10 times. But I will say that this case, like the other
11 cases I've just cited, presents classic squeeze-out
12 tactics, eliminating minority from the management of the
13 entity from those discussions, that exclusion.

14 I think the spying, the inside information, using
15 that information against my client, threatening to
16 terminate his compensation and, in January of 2012,
17 terminating that compensation. The self-dealing with
18 regards to rent, with regards to the way the balance
19 sheets were maintained with the line of credit being used
20 to payoff a tax liability. The providing of the falsified
21 reports and Zoi, even though Zoi was an aborted attempt to
22 funnel business through another entity. All of those I
23 think are part of the oppressive behavior that has
24 resulted in the squeeze out of my client's interest.

25 THE COURT: Why do you say Zoi was part of the

1 oppression? He was gone by that point.

2 MR. ARNOLD: He was gone. But, again, what was
3 happening at that point in time as he was gone. They were
4 still planning what they were going to do with his
5 interest. So what they had planned to do -- I think there
6 was two components to that. One was to create a new
7 entity so we don't have to haggle with Dave about what's
8 his and funnel silver opportunities through Zoi. And
9 that's the Cliff Gandis e-mail we talked about.

10 And then they bought these large quantities of
11 inventory on debt, gave John security interest in all the
12 assets of the entity. So that when the entity was,
13 eventually, going to be dissolved that Zoi would hold the
14 customers and that John would be able to foreclose on all
15 the assets.

16 So I think that was the last -- and I think,
17 honestly, Your Honor, this litigation is an extension of
18 that. The claims they have presented against my client I
19 think are baseless. They were belated. They brought
20 Steve Norvell in because he was my client's --
21 essentially, the source of his funding. That was an
22 attempt to squeeze him to stop funding this litigation.

23 So I think the squeeze out just doesn't -- I mean,
24 there was -- I think a point at which it culminated the
25 day they locked him out. I think that's what's

1 interesting about this case. We call it a freeze out, but
2 there was an actual lock out. He was locked out of his
3 ownership. And we have cited case law. And I won't
4 repeat it, but we've cited the case law. And these -- I
5 think all the cases that we've cited and the South
6 Carolina cases we've cited support the idea that this is
7 classic oppression.

8 And, look, the fraudulent balance sheet presented to
9 him in December of 2012, Bradshaw testified that there
10 were -- that there were deductions on that balance sheet
11 that were not even in QuickBooks. The balance sheet was
12 downloaded to an Excel spreadsheet and altered to lower my
13 client's interest, the value of his interest. And that
14 was that tax distribution that Mr. Bradshaw testified to.

15 So that element is a classic squeeze out. It is to
16 present balance sheets that have been manipulated to lower
17 the value of the oppressed shareholder's interest. And so
18 we think this is a classic squeeze out.

19 The case -- the Henley case that had been argued when
20 I asked for dissolution back in June -- you were presented
21 with the Henley case as the case you should follow in not
22 ordering the dissolution, that what you should order is a
23 buy out. And I've got the transcript here where
24 Mr. Stephenson said, look, this is going to be -- this is
25 a buy out. There's employees. There's an ongoing entity.

1 There should be a buy out.

2 THE COURT: That's the Joe Anderson case?

3 MR. ARNOLD: That's the Joe Anderson.

4 And one other thing that Joe Anderson says in that
5 case is that in the case of a squeeze out, the time of
6 ouster is the most appropriate time for valuation. And so
7 that -- so what we believe in our oppression case is that
8 we are entitled to a finding of oppression, fraudulent
9 activity, unfairly prejudicial behavior, and a valuation
10 of his interest at the date of ouster. And that is what
11 we presented -- that valuation was the valuation presented
12 by Catherine Stoddard.

13 Now, I want to make clear what we're asking for in
14 our case. I think you've got two choices in terms of
15 remedies. Look, shareholder derivative action and the
16 oppression action are both equitable actions. So you have
17 a broad range of discretion and a lot of tools at your
18 discretion.

19 But I think that there's really two primary types of
20 remedies. One is to order a buy out by the other members.
21 And Kiriakides in paragraph -- or in footnote three
22 recognizes that the buy out remedy can be ordered against
23 either the shareholders or the entity.

24 I think if you're going to order a buy out, it has to
25 be against the shareholders. And I think the buy out,

1 again, should be for the amount at the time of ouster,
2 which is Ms. Stoddard's number. We're asking for
3 attorney's fees. We're asking for the cost of the
4 Bradshaw report or some portion of that, which has been
5 paid, by the way, Your Honor. So we apologize for
6 belatedly doing that. And for all -- for the cost of
7 having to obtain the e-mails that were withhold from us --
8 withheld from us. And I think we know why they were
9 withheld from us. Because they were very incriminating.
10 And without them, I don't know that we could have proved
11 our case.

12 THE COURT: What would entitle you to get the
13 attorney's fees?

14 MR. ARNOLD: Well, in the buy out, there's -- the
15 Historic Charleston Holdings case is dicta, no doubt. But
16 what the Court says is if it is a legal claim, then you're
17 only entitled to attorney's fees if there's a statutory
18 provision. But the Historic Holdings case said but if the
19 remedies are equitable, then attorney's fees can be part
20 of an equitable remedy.

21 You're not bound by the statutory or contractual
22 requirement of a case brought at law. And, again, that's
23 dicta. And I've looked, not as hard as I probably should
24 because there were so many other issues. But I believe
25 that that case, which was a 2009 Supreme Court case,

1 recognizes, again, in dicta that part of the equitable
2 remedies in an equitable case -- the Court can order
3 remedies.

4 I mean, again, in equity, I think the goal is to be
5 fair. And what -- you know, putting him back in the place
6 he should have been if the oppression never occurred.

7 And so -- now, the other side of that if the Court
8 says, no, I think I'm going to order the entity to buy him
9 out, we've had no information, zero, presented, given to
10 us or presented to this Court about the current status of
11 that entity's financing. We think that ordering the
12 corporation -- the entity to buy my client out is going to
13 be a loser remedy. Then we're going to be saying where's
14 the payments? We don't have enough money. In what order?

15 I mean, if you're going to order the entity to buy
16 him out, then we need to dissolve the entity. There needs
17 to be a receiver to oversee the dissolution. I think then
18 they need to return the amounts that were normalized by
19 Bradshaw. Now, he normalized them. It just means the
20 books represent that those figures were not rightfully
21 included. But they haven't -- those amounts have not been
22 returned to the entity.

23 And I think the only way the entity will have a
24 chance to pay my client's share in the dissolution is if
25 the attorney's fees spent on this litigation are returned

1 to the entity, the excess rent is returned to the entity.

2 And let me just say something about excess rent real
3 quick. They're going to say, well, that's fair market
4 value, Your Honor. Well, first of all, we've heard lots
5 of testimony that Decotex was conducting business out of
6 that entity. We've asked and we subpoenaed Decotex
7 records. We didn't get those either. But Decotex was
8 doing business out of that entity. There was an agreement
9 in place for rent. You don't get to just unilaterally
10 raise rent because you want to. So that excess rent
11 should be returned.

12 The 30,000 exorbitant fee paid to Cliff Gandis should
13 be returned to the entity. Now, those are all remedies as
14 part of the fiduciary duty breaches. And those are
15 remedies of the entity. But they should be returned to
16 the entity. A receiver should be appointed. And then my
17 client should have priority over the other members in the
18 distribution of the value of his share.

19 Now, whether the entity -- you know, what they do
20 after that with what's left, that's their business. But I
21 don't think you can order the entity to buy him out
22 without knowing the status of that entity's finances,
23 CCC's finances. And I honestly think there ought to be
24 some level of concern about if you do that what happens to
25 the assets of the entity between now and then. And

1 without a receiver supervising how that's done, I think
2 we're -- I think we may end up back in here.

3 So I think you either buy -- the buy out is directed
4 at the shareholders. If there's going to be a remedy
5 that's funded by the entity, I think it has to be a
6 dissolution.

7 Now, on the front end, they've got these claims.
8 Your Honor, I think they're bogus. And I think we start
9 with the three accounts. I think the only evidence of a
10 meeting of the minds on those three accounts is that those
11 three accounts were excluded.

12 We've got Gandis telling Ms. Shirley, originally,
13 they draft an operating agreement that excludes the three.
14 We have got an e-mail later to her saying these three --
15 we've agreed should not even be a part of CCC. And
16 there's nothing after that that indicates any meeting of
17 the minds to the contrary.

18 THE COURT: What about Himey?

19 MR. ARNOLD: What about Himey?

20 I mean, look, Himey called. John said he didn't even
21 know the names of the dealers. He was -- so whether he
22 knew that that Lamborn order was a part of the orders that
23 were passing through CCC or the import that was excluded,
24 I don't know. I don't know what he thought. I mean, he
25 didn't seem very well informed on the stand about the

1 particulars of his agreement with my client.

2 But the documents were clear. My client was clear
3 that those three accounts were never included. And I
4 don't know how you can with a straight face say we didn't
5 know about West Carrollton when we've got an e-mail that
6 says, hey, I shipped 15 containers to West Carrollton last
7 year. That's Exhibit No. 150. Exhibit No. 19 is the very
8 proposal itself that says we're shipping materials out.
9 And if they're lying about West Carrollton, then they're
10 lying about the others.

11 Just take Lamborn. The Himey e-mail relates to
12 Lamborn. Well, when Lamborn returned materials, what did
13 they do? They booked that against my client's capital
14 account. Why? Because that was his deal. They knew it
15 was his deal. So that was booked against my client's
16 capital account.

17 There is absolutely, I think, nothing that
18 demonstrates that there was a meeting of the minds that
19 those three accounts were in. The only discussions about
20 those three accounts at all are -- indicate that three
21 accounts were excluded. And the e-mails that discuss
22 those from my client, he's being up-front about those.
23 Any e-mail that mentions those, he's being up-front.

24 THE COURT: Do you think there's a meeting of the
25 minds that those three accounts were to be out?

1 MR. ARNOLD: Yes.

2 THE COURT: How so?

3 MR. ARNOLD: Well, again, my client testified that
4 was part of the deal. Gandis relays that to Ms. Shirley
5 not in one e-mail, but two. So I do think so. But that's
6 not -- but we don't bear the burden of proof on that. So,
7 at worst, the tie goes to the runner.

8 But even if there wasn't a meeting of the minds, they
9 knew about the West Carrollton deal. That puts them on a
10 duty of reasonable inquiry, hey, what's going on here?
11 Maybe we don't see things the same way. Dave is selling
12 stuff to West Carrollton. That duty of inquiry exists.

13 So even if there was not a meeting of the minds, even
14 if John Gandis hadn't agreed to the exclusion of those
15 three, then he has a duty to investigate as soon as he
16 finds out that there's something going on that he would
17 reasonably believe is a violation of that agreement.

18 The statute of limitations. And I've got a cheat
19 sheet around here somewhere that says, essentially, if you
20 get that information, then whatever your reasonable
21 inquiry would have led you to -- that information is,
22 essentially, imputed to you. He had a duty of reasonable
23 inquiry.

24 So, Your Honor, I think we've established oppression.
25 And, again, I don't think you can look at the claim on the

1 three deals outside the scope of the oppression. If these
2 folks are the types of folks who are going to engage in
3 the type of activities they've engaged in, create false
4 balance sheets, have e-mails between them secretly trying
5 to oust my client, those motives don't just, originally,
6 arise up at that point in time. This shows the integrity,
7 the credibility of the folks on the other side. I don't
8 know how you believe the oppression with them,
9 essentially, denying it under oath and believe anything
10 else they've got to say.

11 THE COURT: So do you think they could -- that
12 Ms. Shirley and Mr. Gandis couldn't communicate at all
13 concerning the management of the company without including
14 Mr. Wilson?

15 MR. ARNOLD: I think they could. But what they were
16 communicating about is exit strategies for Dave and about
17 how they could create a situation that was pressure packed
18 so that he would be forced to relinquish his interest.
19 The whole idea of terminating his pay was to apply
20 pressure. Gandis says, Wonder if he's panicked yet. I
21 mean, all of that -- yeah, they can have private
22 discussions. But they can't have private discussions
23 about matters that result in self-dealing. And that's
24 what you have here.

25 Ms. Shirley says, Let's present this to him. And one

1 of the things he has to do is relinquish to me his
2 ownership interest. So I think the e-mails, clearly,
3 indicate that most of those communications were about --
4 the ones that we presented were not just about good faith
5 management of the entity, but about ways in which to get
6 Dave's equity interest.

7 Now, on the back end -- and I'll -- I think I'm
8 running out of time because I want Burl to be able to have
9 some. But on the back end, we've got, essentially, a
10 couple of things. We've got a conversion claim. We
11 didn't prove it. We didn't put the evidence up. They
12 kept some stuff of his. It wasn't worth wasting our time.
13 We abandoned that claim. They've got a conversion claim.
14 I think about as much of it as I do the evidence we
15 presented on ours.

16 So that leaves two, really, for us. There was a
17 civil conspiracy. There's a civil conspiracy for us to
18 try to dissolve the entity. I think, if anything, Your
19 Honor, you ought to recognize that even if you don't
20 completely agree with my view of this case that,
21 certainly, there's a legitimate -- a good faith basis for
22 my client to pursue these claims. And if he had a
23 brother-in-law so kind to fund it, that is hardly a basis
24 for liability.

25 So that -- I think that leaves, lastly, the trade

1 secrets claim. We presented witnesses in the industry who
2 said the type of information they're claiming to be trade
3 secrets aren't trade secrets. And I would just point Your
4 Honor to the Hill Holiday case. It is a Fourth Circuit
5 case interpreting South Carolina law. I can hand it up to
6 the Court.

7 But it, essentially, says that in order to have a
8 claim for trade secrets that the party has to exercise
9 eternal vigilance. There's nothing in this case close to
10 eternal vigilance. There's a quote that I probably will
11 need to end with.

12 But it, essentially, says that unless you have an
13 agreement to protect the trade secrets with the person you
14 disclose them to, then that person is free to do with
15 information what they want to do. Bill Shaw didn't have a
16 non-disclosure. He had a box of -- he had a box of
17 documents is what he had. My client had no
18 non-disclosure, no confidentiality, no non-compete.
19 Gandis said Ms. Shirley didn't have one. Namaste didn't
20 have one. No customers had any non-disclosures. They
21 were free to talk about price, products, needs, customer
22 preference.

23 And so -- but there's tons of cases out there that
24 says, look, if what you're claiming is your customer list
25 and you're protecting information that's all available,

1 public information, that's not a trade secret. Just
2 because you put public information in a spreadsheet
3 doesn't make it trade secrets. And I'll just say, if you
4 read Hill Holiday -- if you follow Hill Holiday, then the
5 trade secret thing vanishes. It just vanishes.

6 I would, also, point the Court to Atwood. That's
7 really kind of the same thing, this customer list. The
8 customer list was all an accumulation of publically
9 available information. That's just not a trade secret.

10 So I think those claims fall away. And I think what
11 you're left with is an oppression case that you've got to
12 determine the value of my client's interest and how it
13 will be funded in its purchase.

14 And I ended at 22 minutes, so Burl's got eight. Fair
15 enough?

16 THE COURT: Thank you.

17 MR. CAMPBELL: Good morning, Your Honor.

18 That's a tough act to follow. I may refer a few
19 minutes back.

20 I'm going to address -- well, first of all, we'll
21 adopt Plaintiff's arguments with respect to trade secrets,
22 conversion, and civil conspiracy. There's a unique claim
23 alleged against Mr. Norvell, which is the aiding and
24 abetting a fiduciary duty claim. Two cases -- three
25 cases, really, the Vortex, the Future Group case, which

1 was Mr. Farrar's case, and the Simmons case lay out South
2 Carolina law with respect to aiding and abetting breach of
3 fiduciary duty. And those cases say that actual knowledge
4 is required. Constructive knowledge is not enough. A
5 brother-in-law relationship is not enough. The Plaintiff
6 has to prove actual knowledge.

7 They, also, have to prove knowing participation in
8 the breach of a fiduciary duty. There's no evidence in
9 this case that Mr. Norvell knew about Mr. Wilson's deal
10 when Mr. Norvell was financing these three -- or two, the
11 Lamborn and West Carrollton, transactions. In fact, the
12 only evidence in this case is that Mr. Norvell did not
13 know at the time he financed them.

14 So I don't think the Plaintiff has shown any right to
15 relief on that claim. It should be dismissed whether -- I
16 guess we're arguing dismissal motions and closing, so
17 however the Court wishes to address.

18 I will with respect to conversion add that there's no
19 evidence that either Fresh Water or Neologic converted
20 anything. Mr. Wilson's employment began at Neologic
21 months after he left CCC. So we don't think there was
22 anything improperly taken. But if it was, it was done
23 long before my client got involved.

24 Likewise, with the trade secrets, again, they haven't
25 been protected. They're not trade secrets. If there was

1 any misappropriation, which we don't believe there was, it
2 happened long before Mr. Wilson came to work for my
3 client. And there's no evidence that either Neologic --
4 Fresh Water is in the water business. They have no use
5 for film customers, manufacturers, vendors. And there's
6 absolutely no evidence that there was a misappropriation
7 by either Neologic or Fresh Water.

8 Finally, we have a claim -- and it's not a throw away
9 claim, Your Honor, that the trade secrets claims were made
10 in bad faith. Mr. Wilson left CCC in January of 2012.
11 Neologic, and Fresh Water, and Mr. Norvell -- but the
12 claims -- trade secrets claims are against Fresh Water,
13 the water company. They were not served until 2014, over
14 two years after Mr. Wilson left. We believe that a good
15 faith misappropriation of trade secrets claim would have
16 been filed and served long before that.

17 And to continue Andy's theme, the only reason my
18 clients were brought into this case was to squeeze
19 Mr. Wilson by bringing his brother-in-law into this case
20 and trying to cut the legs out from under Mr. Wilson. If
21 I've got any time left, you're welcome to it.

22 MR. ARNOLD: You've got about four minutes. I do
23 want to point this out on the attorney's fees --

24 MR. STEPHENSON: Your Honor, we're not going to be
25 real strict. I don't want them to not get their say.

1 MR. ARNOLD: I want to try to stay within the rules
2 and guidelines you set. So I'll just say this. We've
3 asked for a couple of these -- if you order a dissolution,
4 we think that our derivative action -- and the idea that
5 he is not the suitable representative, he's the only one
6 that could be a representative. He's representative of
7 the only person who was excluded. The other two members
8 are the insiders who were doing the self-dealing. If he
9 is not representative of himself, if he can't complain
10 about that on behalf of CCC, then no one can.

11 And so the idea that in this case there would be
12 breaches of fiduciary duty without a remedy because he
13 can't legitimately represent those interests when he's the
14 only one who would because the other two are the ones
15 doing it. That, to me, kind of defies logic.

16 I want to talk about the attorney's fees. One of the
17 most interesting things that happened in this case -- we
18 took Del Bradshaw's deposition. Steve Farrar did, and did
19 quite a good job and did a great job on Catherine
20 Stoddard.

21 But after the Bradshaw deposition, the court reporter
22 asked Steve, Do you want a copy of the transcript? He
23 pointed down to Tom, He'll buy the transcript. And the
24 reason why is because Andrea Shirley is not going to bear
25 the cost of that transcript. Everything they could

1 funnel, they funneled through the Nexsen Pruet
2 representation. Now, these are great attorneys and I may
3 have done the same thing from a legal strategy
4 standpoint --

5 THE COURT: Maybe it was just his turn to buy.

6 MR. ARNOLD: Maybe it was just his turn to buy.

7 But I think if you look at the way this case has been
8 pursued, it has been an attack through CCC in an effort to
9 defend the oppression suit. The oppression suit has been
10 defended by attack. And that tactic, we think, and those
11 fees spent on that tactic should be returned to CCC.

12 THE COURT: Thank you.

13 MR. STEPHENSON: Your Honor, give me a minute before
14 you cut on the clock.

15 THE COURT: Okay.

16 (Pause.)

17 MR. STEPHENSON: Good morning, Your Honor.

18 I want to start with our claim. Because we think the
19 first thing the Court should do in our view is determine
20 how much money flows our way. We've got three claims, the
21 side deals, the trade secrets, and the conspiracy claim.
22 And let me talk about the side deals first.

23 Andy talked about that there was a meeting of the
24 minds, that the three deals were excluded. If you look at
25 the e-mails, it's clear they talked about excluding the

1 three deals early on. They talked about reducing the
2 salary and giving him part of the three deals early on.
3 But if you look at Mr. Wilson's e-mail of June the 24th --
4 this is his own e-mail. This is not any conversation
5 between John and Andrea. He says, If I am to focus all of
6 my efforts on the film business of CCC, I get the salary.
7 A year later, he says the same thing. I don't believe
8 there's any doubt we proved that the side deals were not
9 included.

10 And I sort of want to begin with the -- a case we all
11 learned in law school. I'm going to hand it up, Meinhard
12 v. Salmon. Then Chief Judge Cardozo, first year of law
13 school, he opined, Copartners owe one another while the
14 enterprise continues the duty of finest loyalty. And it
15 goes on to say, Not honesty alone, but the punctilio of an
16 honor most sensitive. Same case as this. You had
17 partners, one of them took a corporate opportunity and
18 Meinhard v. Salmon was written.

19 Now, Andy said in his argument that the burden is on
20 us. I'm going to hand up a little memo I wrote, Your
21 Honor.

22 THE COURT: Thank you.

23 MR. STEPHENSON: That's not true, as we see it. As
24 we see it, under the case law, once we establish that
25 there's a corporate opportunity -- and he claims there's

1 an exception. He claims we agreed to it -- the burden is
2 on him to prove otherwise, not the burden on us to prove
3 that the exception didn't exist. And if you think about
4 why the law is like that, it makes sense. He's in the
5 position to do it. He took the opportunity.

6 And if he believes that he's entitled to it, the
7 burden is on him to prove that he was entitled to take it.
8 He could have written an e-mail. He could have produced
9 some proof that he was permitted to do it. He didn't.
10 But I think that's sort of irrelevant. Because I think we
11 proved, Your Honor, without much doubt that the deal was
12 \$8,000 a month guaranteed preference on profits in return
13 for "all the film business," which brings me to damages,
14 Your Honor.

15 If you look at Professor Alford's chart and you take
16 out some of those that were, perhaps, disproven at trial,
17 some of the side deals we're maybe not entitled to, you
18 come up with about \$400,000, about \$400,000 that he owes
19 back to the company, which raises the question, if you
20 give it back to the company, is he entitled to part of it?
21 Well, the argument is it goes back to the company. He
22 owns 45 percent of the company. Does he have to return
23 all of it, or does he have to return part of it?

24 Well, Your Honor, I'm going to hand up a Delaware
25 case. I couldn't find a South Carolina case. But I

1 believe South Carolina would adopt this rule. That
2 precise issue came up in Delaware. And the Court opined,
3 If an officer or director of a corporation in violation of
4 his duty as such acquires gain or advantage for himself,
5 the law charges the interest so acquired with the trust
6 for the benefit of the corporation. And it goes on to say
7 that he is not entitled to any credit for it. The case is
8 Guth v. Loft.

9 THE COURT: Is it a -- what level case is it?

10 MR. STEPHENSON: It's the Supreme Court of Delaware.

11 So to put the side deals to bed, Your Honor, we
12 believe we're entitled to approximately \$400,000 from
13 Mr. Wilson because of all the side deals, which brings me
14 to me to Mr. Norvell.

15 I agree if he didn't know about it, he's not
16 responsible for it. But did he know about it? You've got
17 to prove these cases by circumstantial evidence. Nobody
18 is ever going to admit that they knew about it. We're not
19 going to be able to prove by direct evidence that he knew
20 about it.

21 But we did prove this, he had the motive to assess
22 the -- assist Dave Wilson. Mr. Wilson owed him money. He
23 admitted that if he had known, he wouldn't have done it.
24 He admitted that he knows that partners don't take side
25 deals for himself.

1 So the question is, did he know it? And I will
2 assert, Your Honor, the circumstances prove that he knew
3 it. I'll remind the Court that Mr. Wilson had moved from
4 his old office to an office rented by CCC out at Green
5 Gate Office Park early in 2009. This is a close family.
6 They've been here all week. It's just not possible that
7 they didn't talk about it. He claims he didn't hear of
8 CCC until 2010. That simply does not make sense in our
9 view, which brings me to the trade secrets, Your Honor.

10 Andy made much of the fact that there's no secrecy
11 here. I'm going to hand up the Trade Secret Act. And it
12 says a couple of things that Andy ignores. First of all,
13 was this a trade secret? The Trade Secret Act was passed
14 to benefit companies and particular secrets and make it
15 easier for companies to bring these claims, not harder.

16 And the very definition of a trade secret means any
17 formula, pattern, compilation, program, device, method,
18 technique for product system for process, design,
19 prototype, procedure that derives independent economic
20 value. If you look on the second page, a trade secret may
21 consist of a simple fact, item, procedure, or series or
22 sequence of items or procedures, which although
23 individually would be perceived as relatively minor or
24 simple, collectively make a substantial difference in the
25 efficiency of a process.

1 It's exactly what we've got here. You've got the
2 customer name. You've got the customer phone numbers.
3 You've got their e-mail addresses. You've got our prices.
4 You've got the vendor names, the vendor contacts, the
5 acquisition cost. He's got our budgets. He's got our
6 inventory. All of that makes our business work.

7 If you'll, also, look at the Trade Secrets Act, Your
8 Honor, on the third page at 39830, it makes it clear that
9 you don't have to have these secrecy agreements or
10 non-compete agreements. Every employee who is informed or
11 should reasonably have known from the circumstances of the
12 existence of any employer's trade secret has a duty to
13 refrain from using or disclosing the trade secret.

14 And it goes on to say, Such duty is independent of
15 and in addition to any written contract or agreement.
16 That's what the law says. And the reason the law was
17 passed is cases just like this. Most start ups don't have
18 the capability to do this. Most people don't do this. He
19 was a partner. Only three people knew all of this
20 information, and he took it.

21 Now, Your Honor, there's no doubt that we had trade
22 secrets. The next question is, can we prove that he took
23 it? I think he admitted he took it. He admitted he took
24 the computers. He admitted he copied the computers. We
25 produced some evidence in discovery that he had the

1 inventory tracking system. He took it. There's no
2 question he took it. And there's no question it was a
3 trade secret. I guess the only question left, did he use
4 it?

5 Well, I think he admitted he used it. If you look at
6 the e-mail to Mark McGarel that he wrote before he left,
7 he told Mark McGarel, if I go to work for you, I'm going
8 to take all the customers and the prospects. He, also,
9 gave Mr. McGarel the entire customer list. That was his
10 intent. That's what he was going to do at McGarel had he
11 gone there. Well, he didn't. He went to Neologic and did
12 the very same thing.

13 THE COURT: Well, what evidence is there that shows
14 there's damages proximately caused by using the trade
15 secrets, if I were to agree he did that?

16 MR. STEPHENSON: Well, Your Honor, you've got to
17 prove all these cases circumstantially. You can't prove
18 them directly. Nobody ever admits they took them. We
19 proved that he sent e-mails out to our customers using the
20 secret information.

21 You remember Mr. Gandis' testimony. He went through
22 all the e-mails. They didn't refute that, the specific
23 e-mail addresses, the specific people at a company,
24 specific prices, specific specifications, and specific
25 vendor information. You can't prove that he took each and

1 every customer. But we proved that he took it and he used
2 it. And it's circumstantial. And you -- in a trade
3 secret case, you can hardly have better evidence than
4 that.

5 Now, there were damages, I think, we proved that
6 we're not seeking. Mr. Gandis testified that he had to
7 lower his prices because Mr. Wilson was using CCC's price
8 information to quote below their price level. We didn't
9 seek that. We're only seeking the damages for the
10 customers that he took.

11 Mr. Norvell admitted that in 2013, the first real
12 year of operation, 80 percent of their revenue was CCC
13 customers. So we know that he took it. We know it was a
14 trade secret. We know he used it. And we know he took
15 his customers.

16 If you look at Dr. Alford's chart, that comes to
17 about \$200,000, Your Honor. And the same argument applies
18 to that 200 that applies to the side deals. He should not
19 get the benefit of it because he's the wrongdoer, and that
20 should accrue to the corporation.

21 THE COURT: Where on Alford's chart are you looking?

22 MR. STEPHENSON: I'll hand it up.

23 THE COURT: Okay. Thank you.

24 MR. STEPHENSON: He simply took the CCC customers
25 that Neologic took, applied the profit margin, and came up

1 with the \$200,000, which brings me to the conspiracy
2 claim, Your Honor. And I want to reserve a little time to
3 talk about the oppression.

4 The conspiracy claim is pretty simple. In 2011,
5 we're headed to dissolution. It's getting to winter.
6 We've agreed on a receiver. We're headed to a hearing.
7 We quit buying inventory. We're turning down orders. We
8 spent weeks and weeks preparing for dissolution.

9 MR. FARRAR: That's 2012.

10 MR. STEPHENSON: 2012. I'm sorry, Your Honor.

11 We're headed toward dissolution. We've seen the
12 e-mail between Dave Wilson and Steve Norvell about, hey,
13 let's make an offer. It'll throw them off. It won't be
14 serious. They won't take it. They make the offer that
15 wasn't serious. They make it again at the hearing. The
16 dissolution is called off.

17 And what I think happened and I think the evidence is
18 they went out there and looked at the plant after they
19 made the offer and said we don't want to do this. We can
20 steal it instead of buying it.

21 So they never looked at the term sheet. They whip
22 sawed us six months later after they gained all that time,
23 used our secrets. They say dissolve again. By then, this
24 man had no option but to start the company back up, keep
25 working, get new inventory, do all of those things. And

1 Mr. Norvell funded it. He was right in the middle of it.
2 He admitted it. He's in a position to benefit. His
3 company will benefit.

4 And a word about Freshwater and Neologic. They're
5 one in the same. You saw their balance sheet. Neologic
6 is Fresh Water. That is the conspiracy. And what are our
7 damages? Del Bradshaw's fees, the attorney's fees that we
8 spent. If we -- those wouldn't have happened had the
9 dissolution gone forward as everybody agreed to in 2012.

10 Your Honor, that brings me to the redemption of
11 Mr. Wilson's shares. You've got three issues in the
12 redemption, the timing, you take 2011 or 2013, the price,
13 and who buys it. And before I get there, we don't believe
14 there's truly an oppression here, which matters.

15 This is a court of equity. If there's not really
16 oppression, when you fashion the remedy, I think you've
17 got to consider that. We had the right and the obligation
18 to quit funding debt for the company and make it
19 self-sufficient, which was the real argument. We weren't
20 going to give him distributions beyond 2011. Mr. Wilson
21 admitted all of that. But I'm not going to spend a lot of
22 time on that.

23 Let me hand up the statute. I guess I learned and I
24 have to learn at 60 years old, go back and read the law.
25 This is section 702 of the LLC Act. And if you turn to

1 the second page -- and it's called court actions to
2 determine fair value of distributional interest, which is
3 exactly what we're doing here. If you turn to the second
4 page, number one, the first thing the Court is supposed to
5 do is determine the fair value considering among other
6 relevant evidence the going concern value. Well, the
7 going concern value of this company is next to nil.

8 The second thing you do is specify the terms of
9 purchase, including installment, payments, subordination
10 of debt, whether you defer it, and a covenant not to
11 compete, paragraph two. So if you make us buy Mr. Wilson
12 out, one of the things the Court ought to consider
13 explicitly in the law is a covenant not to compete or
14 other restriction.

15 Then the law goes on to say that you require the
16 company, not the individuals, to buy the interest. If the
17 company doesn't buy it down in Section C, the company is
18 to be dissolved. Now, I didn't write this. The
19 legislature wrote the statute. And the statute is
20 explicit. What you do is determine fair value considering
21 going concern value, specify how it's to be paid, and tell
22 the company to pay it. If they don't pay it, you
23 dissolve. That's what ought to happen, which brings me to
24 timing.

25 Do you take 2013 or do you take 2011? First of all,

1 if you read the statute, the remedy is dissolution. If
2 you dissolve it, you can't dissolve it in 2011. You've
3 got to dissolve it now. And the closest figures we've got
4 is to 2013. The non-compete. It's too late to impose a
5 non-compete on Mr. Wilson. That horse is out of the barn.
6 And the only way to recognize the non-compete or to be
7 fair is to take the 2013 value, not the higher 2011 value.

8 And I want to remind the Court of Steve Farrar's
9 balloon argument. He wants us to pay for the warehouse
10 full of balloons in 2011. Well, between 2011 and 2013,
11 not only did he pop the balloons, but he stole some of the
12 balloons. So it just doesn't make equitable sense for us
13 to have to pay a price in 2011 when he created, at least,
14 part of the difference in value between 2011 and 2013.

15 I, also, want to remind the Court of the spite buy.
16 He damaged the corporation, the accuracy. Everybody
17 admitted, including Ms. Stoddard, that the accuracy of the
18 2011 valuation is not as accurate as the 2013 valuation.
19 So there's all sorts of reasons that you ought to pick
20 2013, and not 2011, which brings me to the price.

21 Well, the statute itself says fair value among other
22 relevant evidence, the going concern value of the company.
23 What does that mean? Well, Professor Alford testified
24 about adjusted book value. And he came up with 144. But
25 I think you've, also, got to consider the rent, the

1 salaries, the fact that Mr. Wilson put in \$3,000 into this
2 corporation, but has already gotten \$382,000 in
3 distributions and \$130,000 of loans interest free. So I
4 think you start with Professor Alford's 144 number of 2013
5 and work it backwards, which brings me to who -- who
6 should buy it? .

7 I have already shown you, Your Honor, I believe the
8 statute says that CCC buys it and not the individuals.
9 And it's just not fair.

10 THE COURT: Where are you seeing that in the statute?

11 MR. STEPHENSON: Look at Paragraph C, Your Honor,
12 33-44-702(c) .

13 Do you see that?

14 THE COURT: Yes.

15 MR. STEPHENSON: It says how you do it, specify the
16 terms. If the purchase is not completed in accordance
17 with the terms, the company is to be dissolved. And it
18 goes on to say, If a limited liability company is so
19 dissolved, the disassociated member has the same rights
20 and priorities in the company's assets had the sale not
21 been ordered. And the only reason that could be in there
22 is that the LLC drafters felt that the company ought to
23 buy it, not the individuals.

24 Your Honor, I'll concede there's case law under the
25 corporate code that says the individuals can be ordered to

1 buy it. And let's put the statute aside a second. I
2 don't believe it makes sense to require the individuals to
3 buy it here. This is about a company, not about
4 individuals. He had ownership in a company. It was not
5 guaranteed by him or her. He gets it out of the company.
6 It would penalize him for keeping it going for two years
7 and trying to make a go of it to take 2011 or require him
8 to purchase to fund the purchase himself.

9 Your Honor, I want to save a little time for
10 Mr. Farrar. Do you have any questions?

11 THE COURT: I don't believe so.

12 Thank you, though.

13 MR. STEPHENSON: All right.

14 THE COURT: I may later.

15 MR. FARRAR: May it please the Court.

16 THE COURT: Yes, sir, Mr. Farrar.

17 MR. FARRAR: Before I came over here, I was talking
18 to one of our younger lawyers and I said, When I was a
19 younger trial lawyer, I always got baited into responding
20 to the Plaintiff's closing argument. Darn, if he didn't
21 do it again.

22 Let's talk about the deposition payment, because this
23 is important. Because it's going to come up in a minute.
24 I didn't order Bradshaw's deposition because, quite
25 frankly, I understood what he said. I didn't need it. I

1 ordered Ms. Stoddard's deposition and Andrea paid for
2 that. You know why? Because she showed how -- I'm not
3 sure what the word -- opposite the word is, how
4 non-objective, how biassed she was. And that's in the
5 record -- the deposition. And people laugh when I say
6 this, but that's an accountant's deposition you want to
7 read because it's incredible. It's incredible. And we
8 covered some of it in our motion. That's why I didn't buy
9 Mr. Bradshaw's deposition. I didn't need it.

10 But as we're going to talk about in a second, I think
11 that Mr. Bradshaw and I for a long time were the only two
12 people in this case who understood the matter. And then
13 Dr. Alford got involved and now Your Honor.

14 Before I get to that, though, Mr. Arnold talks about
15 he wants payment for the e-mails. What he's saying is if
16 I requested the documents and you brought me a hundred
17 boxes, I would have had to look at them. But since I got
18 them electronically, I want you to pay for bringing them
19 to me electronically. That's the only thing I can figure
20 out he's saying, which is an appropriate way to deliver.
21 He did have to argue some to get the e-mails, but we've
22 already ruled on that. That's water over the dam.

23 It's, also, critically important to think about all
24 these e-mails. If we were hiding e-mails, man, there's
25 some e-mails on there we would have hidden. But there's,

1 also, a lot of e-mails in there that when you read them in
2 context, you wouldn't have. And it's important to realize
3 that throughout these e-mails -- and there's repeated
4 instances, Ms. Shirley saying I know Dave wants -- a
5 partner and I support him in that role. And she's saying
6 it to John Gandis, nobody else. It's not a question of
7 this is how we get him out.

8 One time the word exit strategy is used, and that's
9 to talk about taking him out of doing the sales and
10 purchasing. It's not oppression. It's not a squeeze out
11 to make one of your members -- demand to make your
12 member -- fellow member that he obey the law and pay
13 creditors and employees first. It's not a squeeze out.
14 And that's not what was happening.

15 Andrea is entitled to her fee. And the reason I say
16 that is several. First, Del says he wouldn't have done it
17 for that. And if you do the math, Del's \$5,000 a month
18 that Andrea put in there is not that much. She's giving
19 notice to a subsequent purchaser is what she's doing then.
20 But Del says it was reasonable. John said he agreed to
21 it, not the amount. And that's where they get hung up.

22 Because there's an e-mail -- and they got caught in
23 the testimony about, Did you promise this? Well, John
24 didn't promise the amount, he promised the concept, as did
25 Dave. Dave never took the stand to my recollection and

1 said, no, she wasn't entitled to anything above the 10
2 percent. I don't think we ever heard that.

3 And so when you figure it out, Andrea is doing a job
4 that she thinks she's going to get compensated for. Dave
5 is taking out \$12,000 a month much of the time. Andrea is
6 not getting anything. She's waiting to be trued up at the
7 end. This is the end. And if you figure it out -- just
8 doing the math -- and we're going to talk a little bit
9 more about math, but just the \$155,000, which isn't all of
10 it -- that's just at a time when she's preparing those
11 statements. Dave's share of that is almost \$70,000,
12 \$69,750.

13 I won't cover it again because Tom did, but the
14 concept they use in 2011 versus 2013. In addition to that
15 well hung on, very sophisticated balloon argument, there
16 are two other things that come into mind. One is the
17 uncertainty of the inventory number at that time.
18 Mr. Bradshaw said it wasn't a good number. He said you
19 couldn't use that number because it didn't wash out until
20 2013.

21 There's a discussion about how he took out the
22 inventory adjustment. He said some adjustment was
23 necessary. He just couldn't tell what it was. And he put
24 it back in in 2012, thinking by 2012, that impact was
25 felt. So it's not a question of them staging the books in

1 that regard.

2 Ms. Stoddard, who, bless her heart, I don't know why
3 she was brought in. Because, quite candidly, she admits
4 that she didn't take into account the moving costs of the
5 machines, which the only testimony Your Honor has is
6 between 20 to 35 percent. Using a 30 percent number on
7 her balance and fair market value of those machines, to
8 move those machines out, it comes out to within \$10,000 of
9 the book value. Once you take the 300 something thousand
10 dollars and take 30 percent off of moving the machines,
11 those machine values go back down to book. It's just a
12 coincidence. I don't think that's anything scientific.
13 It's just the way it works. So there's no impact of that.
14 The book value is good.

15 Not only that, nobody figured out the value of the
16 machines in 2011. Nobody figured out what the machines
17 are -- actually, plugged in and running. So why not take
18 up the value? That's the most reasonable thing for 2013
19 and 2011, which I don't think applies.

20 Now, Your Honor, I was going to put this on the
21 screen, but it's so small. I'll give you a demonstrative
22 exhibit. Obviously, we're not introducing it. But when I
23 was trying a case in front of Joe Anderson, he had just
24 taken the bench, I said I wanted to do some ciphering.
25 And he looked at me like he didn't know what that means,

1 so I better say math. Because he did tell me at the break
2 he just couldn't admit he knew what it meant on the
3 record. But what I've done here --

4 THE COURT: Well, I will say he didn't go to school
5 just for the lunch.

6 MR. FARRAR: Yes, sir. He got it right, though, as
7 it turns out.

8 But what this shows in this exhibit -- I tried to do
9 the math in the simplest way possible. I tried to throw
10 out a lot of things that just aren't materially important
11 now.

12 For instance, Mr. Gandis -- I'm giving away
13 Mr. Gandis' money. Mr. Gandis is entitled to rent for
14 loaning money. But Del took it out at his adjustment. So
15 what I did is I went back and said there are two sets.
16 There's what's been paid and what hasn't been paid. And
17 that's important. Because so many of the numbers on that
18 sheet hadn't been paid.

19 But if you take the top and look at it, the disputed
20 rents, if Your Honor decides that the fair market value is
21 what they're entitled to, that's going to be the impact of
22 what's, actually, been paid.

23 Now, the top three things don't impact the bottom
24 line number. They just shift the risk. Because if you
25 put in the rents they're paid, the number stays the same

1 in 2011 and 2013.

2 THE COURT: All right. You're getting ahead of me.

3 MR. FARRAR: All right. There's two parts, Your
4 Honor.

5 THE COURT: You're going to have to go line by line.

6 MR. FARRAR: I'll do that. The first line on there
7 is -- this is 2013 numbers from Mr. Bradshaw's report.

8 THE COURT: Okay.

9 MR. FARRAR: The adjusted capital.

10 Now, there are certain things that were paid. For
11 instance, they increased the rent and for several months
12 paid a higher rent. So Mr. Bradshaw took out the margin,
13 the difference, the delta between what it was and what the
14 increase was, about what was paid. Now, all I'm doing is
15 putting it back in here.

16 THE COURT: Okay.

17 MR. FARRAR: But it hasn't been -- it's already been
18 paid in terms of what's in the business, the legal cost.
19 So it doesn't change the overall book value. It just
20 changes where it gets allocated. There were legal costs,
21 which Mr. Bradshaw said was an appropriate expense to the
22 extent he could. He tried hard not to step on Your
23 Honor's toes. The amount that's paid there, that's the
24 legal costs paid before the litigation.

25 THE COURT: Now, who was that paid to?

1 MR. FARRAR: Oh, that's Zamer and some other people.
2 That was a company expense.

3 THE COURT: Okay.

4 MR. FARRAR: And then the last one, CCC legal bills,
5 that's this. And so you look at that. That's what's
6 being paid. Then you get down to what's unpaid.

7 Now, these are just things that are on the books that
8 we claim. So Mr. Bradshaw didn't impact the equity. So
9 it does impact the total equity for those things. And the
10 first one on there is a hundred thousand dollars. That
11 hundred thousand dollars represents from 2000 -- well, it
12 says on the bill 2007 to 2011, but that's really just what
13 Ms. Shirley is charging for doing four years worth of
14 work.

15 So if that gets allocated across evenly, that's what
16 happens. The deferred rent, that's what didn't get paid.
17 And there's a number there. There's other information in
18 here, but that number is there.

19 THE COURT: Is that DX 125?

20 MR. FARRAR: That's Defendant's Exhibit No. 125. And
21 that was just sloppy of me not to take that off, Your
22 Honor. I had references so I could go back and find them
23 when I had to. And so that's the rent that he backed out.
24 That's the increased rent that he back out since those
25 statements.

1 Then there's compensation for Gandis and compensation
2 for Shirley. And those numbers are, basically, for John
3 Gandis -- you'll see that it's not a round number, because
4 we started mid-month January. And that's what the company
5 should pay Mr. Gandis and Ms. Shirley for working there
6 the same way they were -- when Dave was taking a \$12,000
7 draw, John was taking a \$9,000 draw many times. So we
8 used \$9,000.

9 So when you get down to the bottom line, the reason
10 we didn't -- I'm not talking about interest on the loans
11 or either way for things like that or the Cliff Gandis
12 note, which can be explained, those type things --
13 because, quite frankly, they're not going to make a
14 difference in this. If we get to a point where Your Honor
15 adjusts this the way we think, Mr. Wilson has a negative
16 \$272,000. And that's not shocking because this company
17 paid much, much, much more to Mr. Wilson than it did to
18 anybody else.

19 And, in sum, what I think we're seeing is that
20 Mr. Wilson is asking this Court to put him first. And
21 that's not surprising. That's why he wants Andrea and
22 John to pay. Because he has a history in this company of
23 taking money out of this company and forcing Mr. Gandis
24 and Ms. Shirley to pay it. And he just thinks that's the
25 norm and it's not.

1 So we ask that Your Honor, please, rule in our favor.

2 THE COURT: Thank you, sir.

3 MR. FARRAR: Thank you.

4 MR. WILLIAMS: Your Honor, I would like to make one
5 point.

6 THE COURT: Okay.

7 MR. WILLIAMS: Pending before the Court is the
8 company's motion to disqualify Wilson as a derivative
9 representative. I don't want to argue it. We included
10 that in our trial brief at Pages 12 through spill over 14.
11 Some of the arguments were made by Mr. Wilson's counsel to
12 the effect of corporate claims that he's seeking to
13 pursue. If Your Honor rules in favor of our motion to
14 disqualify Mr. Wilson, those claims go by the wayside.

15 THE COURT: Well, maybe y'all can help me out,
16 Mr. Williams. How can a shareholder oppression suit be
17 brought derivatively?

18 MR. WILLIAMS: I don't know that it can. It's a
19 direct claim. I think they're trying to make claims
20 for -- I heard him say rent, for example. The company has
21 been harmed because it paid, in their words, excess rent.
22 That would be a corporate claim that would be brought
23 derivatively. We contend they want to stand and do it
24 because they're not proper representatives.

25 THE COURT: What about that, Mr. Arnold?

1 MR. ARNOLD: I'm not sure I understand. I mean,
2 what's the question?

3 THE COURT: What's your derivative claim?

4 MR. ARNOLD: The derivative claim is that they
5 engaged in self-dealing at the expense of the entity.
6 They took assets off the balance sheet. For example, they
7 have an appraiser that said their property value is X and
8 the fair rental value of it is \$5,700. Well, take out the
9 two air conditioners that CCC paid for and let's see what
10 the value of that property is then.

11 THE COURT: Okay. Well, doesn't that just fold into
12 your oppression?

13 MR. ARNOLD: Well, look, I think you can -- if you
14 determine that you're going to value the entity as of 2011
15 with Del Bradshaw's balance sheet, then, yes. Yes, I
16 think you can bypass that. I think -- and in that case,
17 you can say, no, I'm going to award him a buy out under
18 the oppression statute and not reach those other things.
19 I think you could do that.

20 THE COURT: What about your -- I haven't looked back
21 at the complaint recently, but is your oppression claim
22 under your fiduciary duty?

23 MR. ARNOLD: No. No. We set it out separately.

24 THE COURT: What's the difference?

25 MR. ARNOLD: Well, the oppression claim is the

1 claim -- that's his claim that he was excluded and,
2 therefore, he should be entitled to the buy out of his
3 interest. The fiduciary duty claim is that the entity was
4 harmed by the self-dealing of the increased rent.

5 Now, of course, it trickles down to injure him. But
6 the remedy sits with the entity.

7 THE COURT: So that's a derivative?

8 MR. ARNOLD: That's the derivative claim.

9 THE COURT: All right. Got you.

10 MR. ARNOLD: And can I say, there's three statutory
11 cites I think you want to look at. Because he mentioned
12 702. 801 is the oppression piece of this. That's where
13 you find the oppression language is 801. And that's the
14 dissolution.

15 And so the fair value of the distributional interest
16 is 702. If you look at 701, that's in the context of
17 disassociation. If he had been -- if he had disassociated
18 or wrongfully disassociated, you determine his
19 distributional interest consistent with 702. We have
20 asked -- we have pled a claim for dissolution. That's
21 801. What Tom argued and what Henley says is that as an
22 alternative to dissolution under 801, you get an award of
23 a buy out. 702 doesn't apply to that context.

24 And the last statutory provision I just point out is
25 33-44-410. That's where it says a member can maintain an

1 action against the entity or other members for equitable
2 or legal relief. So we think those are the remedy
3 provisions. And just taking one and looking at just it
4 outside the context of the whole statute doesn't provide
5 an accurate assessment of your options.

6 THE COURT: All right. Well, I thank both sides for
7 your excellent presentations. And I enjoyed the case. I
8 may be one of the only people in the courtroom that did,
9 but I enjoyed it. And I, certainly, have a lot to mull
10 over. Although, I anticipate making my decision fairly
11 quickly. I've got about 50 pages of notes up here and a
12 couple of exhibits.

13 So I thank you all for your professionalism.

14 I was thinking about your balloon analogy. That may
15 be the prequel for Up.

16 MR. FARRAR: I should trade market for Disney.

17 THE COURT: But I'll try to let you know my decision,
18 hopefully, as quickly as possible. I've got to start a
19 two-week asbestos trial on Monday.

20 But thank you all.

21 *****END OF TRANSCRIPT OF RECORD*****
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 29th and 30th days of September, 2014, and on the 1st, 2nd, and 3rd days of October, 2014.

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

July 30, 2015

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2012-CP-23-02887

DAVID WILSON,
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

JOHN GANDIS, ANDREA
COMEAU-SHIRLEY, AND ZOI
FILMS, LLC,
DEFENDANTS.

ORIGINAL

December 6, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

W. ANDREW ARNOLD, ESQ.
Attorney for the Plaintiff

MASON A. GOLDSMITH, ESQ.
LARRY LEE PLUMBLEE, ESQ.
Attorneys for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

1 disassociated from the entity. And we would --

2 THE COURT: Wait a minute now. Who do you want to be
3 disassociated?

4 MR. ARNOLD: Mr. Gandis and Ms. Shirley.

5 THE COURT: Okay.

6 MR. ARNOLD: And so we've asked to disassociate them
7 for their wrongful acts.

8 THE COURT: Okay.

9 MR. ARNOLD: We don't want to gut the entity. We
10 think the business has value. Remember, we were here not
11 long ago because they didn't want to give us the customer
12 list because that customer list has such value. Well, we
13 agree it has value. And we want -- well, actually, we've
14 made an offer to purchase this business for almost half a
15 million dollars, their interest. That hasn't been -- they
16 haven't accepted or rejected that yet. But we think this
17 business has value. We don't want to dissolve the entity
18 unless it's absolutely necessary. We want a
19 disassociation.

20 And so we've pled a cause of action for
21 disassociation. Our prayer for relief, clearly, states
22 that we're asking for an order disassociating the
23 Defendants from CCC, or in the alternative dissolving CCC.
24 What they want you to do is say, well, before we litigate
25 the issues, I just -- we're going to do away with your

22661

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court

D. Garrison Hill, Circuit Court Judge

RECEIVED

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 III

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Gandis - Business Opportunities Meeting
October 30, 2007

Partnership ("LLC") Structuring Issues

With Lorraine

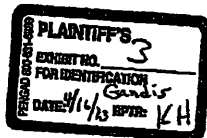
1. Ownership, Income & Distributions:

- a. What will be contributed as capital by each member to the LLC?
 - i. At Formation? *95k - JOHN GANDIS*
 - ii. Subsequently? *0 - DAVE WILSON*
- b. What are the ownership percentages? *50/50 51/49*
- c. Will any member have a preferential distribution of profits or cash flow?
 - i. ~~John~~ ^{JOHN} - annual payment for services
 - ii. ~~Cliff~~ - return on capital invested
- d. How and when will cash flow be distributed?
 - i. By majority vote? *Mutual Agreement*
 - ii. Mandatory distribution of all profits?
 - iii. Distributions sufficient to pay income taxes on LLC profits allocations (What to do when cash flow does not match taxable income)? *Equal funds from partners*

2. Management

- a. Will managers be designated or will all managers jointly manage?
 - i. Do some have specific powers? *JOHN - PRESIDENT/CEO*
 - ii. If more than one, how to handle joint management? *DAVE - VP*
- b. How to handle votes in a two-member entity? *MUST BE UNANIMOUS*
- c. What decisions require special voting (e.g. supermajority or unanimous vote of members/managers)?
 - i. Hiring senior level employees? *Yes*
 - ii. Terminating employees? *Yes*
 - iii. Admitting a new member? *Yes*
 - iv. Purchase or redemption of membership interest except as specifically contemplated by an LLC operating agreement? *Yes*
 - v. A change in the nature of the LLC's business? *Yes*
- vi. Any requirement obligating (all) members to make additional capital contributions?
 1. Approval of RFPs prior to submission by contributing member? *Yes*
 2. Notification of bid variances > x% prior to funding? *Yes*

*→ May need to ask Accountant
1 what this means.*



Gandis – Business Opportunities Meeting
October 30, 2007

- vii. The creation by the LLC of any debt or contract obligations that, taken with all other existing debts and contract obligations (other than anticipated obligations to pay for routine services and supplies) require the LLC to pay more than \$5000. (specify amount) in any year? *yes*
 - viii. Entering into any agreement or arrangement with an affiliate of a member? *yes*
 - ix. Liquidation or dissolution of the LLC? *unanimous. yes*
 - x. Taking any action, including but not limited to the sale of any asset, outside the ordinary course of business? *yes*
 - xi. The merger or consolidation of the LLC with another entity? *yes*
 - xii. Relocation of the LLC's principal place of business, the opening of any new company office, the entrance into a new business by the LLC, or the cessation of the LLC's business? *yes*
 - xiii. Increasing, modifying, consolidating, or extending any loan, whether secured or unsecured, affecting the LLC? *yes*
 - xiv. Distributing any cash or property of the LLC to any member, other than as provided in the LLC operating agreement? *yes*
 - xv. Assigning the rights of the LLC in any of its properties? *yes*
 - d. In a two-member deal – recommend that the operating agreement can be amended only by unanimous vote. *yes.*
3. Employment and Compensation
- ✓ a. Will Service partner (John) be "employee" (i.e. receive guaranteed payments) of the LLC? (Note: true employee status is not possible with an LLC). Should Cliff receive compensation for his time or should we increase his percentage to compensate for his efforts?
 - b. Is compensation to be paid as a stated salary or under a formula? (Or is compensation to be left to a vote of the members/managers (see Paragraph 1D)). *compensation to be left to a vote of the members.*
 - c. Generally employee benefits (vacation, insurance, etc) should also be described – unless they are provided in a separate entity. *Someday Medical Insurance*
 - d. Termination of employment
 - i. On what notice can employee quit? *Mutual Agreement*
 - ii. On what notice can the LLC terminate employment without cause? *N/A*
 - iii. Need to include a "for cause" provision, will notice be required? *N/A*
 - e. Is there a noncompete provision?
 - i. During employment? *No.*
 - ii. After termination or employment? *No.*

Gandis - Business Opportunities Meeting
October 30, 2007

- f. Is there an agreement regarding disclosure of confidential information? *No*
- g. Is there an agreement regarding solicitation of employees? *No*
- 4. Transferability and Issuance of Membership Interest
 - a. In general, membership interests should be NONTRANSFERABLE *Yes*.
 - b. Should transfer to family members or other members or employees be permitted? *Yes, No*
 - c. Can the LLC issue new membership interests without giving existing members preemptive rights? *No*.
- 5. Buy - Sell Provisions
 - a. How is each membership interest valued?
 - i. Net book value based on financials: *- Yes*
 - 1. Use depreciated value or 50% of cost, whichever is greater?
 - 2. Accrue all expenses?
 - 3. Exclude accounts receivable and pay some percentage as salary continuation?
 - 4. Exclude life insurance proceeds on the death of a member
 - ii. Formula based on some other factor (with Goodwill component)?
 - iii. Outside Appraisal?
 - iv. Is each member guaranteed to receive what he paid (capital) or some stated amount?
 - b. Who should purchase the interest (the LLC or the other members)?
 - c. What happens on the death of a member?
 - i. Mandatory purchase by the LLC? (Time period of at least 18 months)
 - ii. Option to purchase by the LLC? (Or the other member)? *Yes*
 - iii. "Put" by estate to LLC? (Or other member)?
 - d. What happens on disability of member?
 - i. Same as death? *- Yes*
 - e. What happens with divorce of a member?
 - i. ~~Prohibition on actual transfer of interest to spouse?~~
 - ii. Prohibition on involvement by spouse? *Yes*
 - iii. Other?
 - f. What happens on termination of employment of member?
 - i. Voluntarily by the member - *Yes*.

Gandis – Business Opportunities Meeting
October 30, 2007

1. Immediately off manager board? *Yes.*
2. No further vote as member? *Yes.*
3. Mandatory purchase by the LLC? *No.*
4. Option to purchase by the LLC? *Yes.*
5. No obligation on LLC to purchase? *Yes.*

ii. Involuntarily by the LLC

1. Same issues as above
2. What if terminated "for cause"
 - a. Reduction in value?
 - b. Reduction in salary continuation?

g. How is the purchase price to be paid?

1. Immediately available funds upon closing?
- ii. Installments over 36 months (or lesser period)?
 1. Interest rate?
 2. Security interest in LLC assets to secure payment?
 3. Personal guaranty by other members?
 4. Are there extended payments at lower (or no) interest rates for members who quit?
 5. Is there a non-compete that causes forfeiture of payout of membership value or salary continuation?
 6. Is there a vesting schedule on the value or on any salary continuation?
- iii. Will there be any life insurance on the members? *No.*
- iv. Should there be a "put-call" provision? (What period of time permitted on reciprocal offers?) *No.*

RE: Update

RE: Update

Item ID: 169706
Subject: RE: Update
From: Namaste Consulting <namasteconsult@bellsouth.net>
To: John Gandis <john@decotextllc.com>
Cc: gandisc@bellsouth.net <gandisc@bellsouth.net>
Sent: June 2, 2008 6:25:09 PM EDT
Received: June 2, 2008 6:25:00 PM EDT
Attachments: Carolina Custom LLC Formation questionnaire.doc

Size: 81 KB (83,462 bytes)

Source: Outlook.pst
Location: Exported mail files/Outlook.pst/Top of Personal Folders/Clients/CCC/CCC Partner matters
Duplicates: 2

Content Created: June 2, 2008 10:51:46 AM EDT
Content Last Modified: June 2, 2008 6:14:40 PM EDT

MIME Type: message/rfc822
Content MIME Type: text/plain
Character Set: utf8
Language: English
MD5 Hash: 8bf7546a1997fcd37564296e74cd8086
Message Hash: b622079b500e248292f43e56af0299aa

John – I too thought it was a very productive day. We had a great meeting with Dave – laying a solid foundation for your partnership discussions and I the time with Joy going over the QuickBooks items should help your financials both in terms of timing as well as matching revenues with expenses, etc.

[REDACTED]



May-Dec2008_to_John00000074

RE: Update

[REDACTED]

I'd like to suggest that you complete this questionnaire ALONE (Although you are documenting the discussions you had with Dave, I'd rather you write down your understanding of the deal rather than sit with Dave to complete. In this manner, if I have any suggestions that you like, Dave won't perceive it as his deal is being changed. He will still have full opportunity to negotiate for changes – but this way I won't have to explain items that may be better for you than they are for him. I am particularly concerned about putting too much in front of him until we finish the discussions related to cash flow implications. I feel that we need to ensure that he continues to take on SHARED entrepreneurial risk in this deal and it may take him a little while to shift from his historical "commission based" mindset to one of true owner. Once you fill out the questionnaire (leaving open any items that you have not focused on – we'll get them in the next round). Then send it to me and we can discuss these points together. I can help you think through the best case and worse case planning, and then we'll bring Dave into the documentation process once we have a game plan that covers the cash flow alternatives.

If I missed any of your points, let me know.

Andrea

PS – as for the Custom Carolina accounting for inventory – at this point, it is better that you have expensed everything than the opposite. If you are still showing a profit at this point – and have as yet to sell everything, then business is doing well. I want to make certain that we define "distributable cash flow" to include a reduction for unsold inventory costs – this will ensure that the company funds its own inventory purchases before "salaries" are paid to owners. At year end – we can put the costs associated with the inventory still on hand "back on the books." This is a Lean Accounting approach – and may work better in this first year to help you manage business.

From: John Gandis [mailto:john@decotextllc.com]

Sent: Friday, May 30, 2008 5:41 PM

To: namasteconsult@bellsouth.net

May-Dec2008_to_John00000074

RE: Update

Cc: gandisc@bellsouth.net

Subject: Update

Hi Andrea,

Hope you had a great week !

I just wanted to shoot you an e-mail and say thanks again for all of the great help you gave us last week. We really appreciate it. It has been a real eye opener for Dave and I – and my Dad especially appreciates the advice you gave me... as he has been preaching to me all along.

Dave and I sat down on Tuesday – and had some great discussions on moving our business forward. Dave is in favor moving his accounts over into the CCC account column and collecting a salary for a period of time until we can really get things going. We started doing some of this – this week by moving towards purchasing inventory for future orders that Dave had under his umbrella. Fortunately we have the cash coming in that will allow us to do this without borrowing any money.

We also discussed putting Dave on the payroll starting in July. I think that we can handle the \$8000 that he pays himself starting in July if we are able to convert the existing orders that we have in house.

I would feel better about all of this if you had an opportunity to look over everything that we are doing – to confirm that we can indeed afford it.

In addition – I would like to receive a management fee for what I am doing, but do not want to strap the business just so that I get paid right away.

There are three accounts that Dave imports that do not currently go through CCC – we both think it best that these three accounts stay away from CCC. Dave agrees that all future orders (even if they are imports) should be run through CCC. I do not know how much of his income is derived from the three accounts I mentioned – but again... this is something that you can help us with. Maybe CCC should not pay the salary portion that the three accounts cover. In two of the cases – I do not think that he has derived any income from the accounts... and they could very easily go away.

With all of this said... I need help. I have been entering the inventory as an expense, and fear that I have really screwed up the CCC account. We are not showing the profits that should be there – I think that it is the way I am accounting for it.

Next week I am out Monday, Tuesday and Thursday – the week after that I am open. Joy is gone the following week. Let me know your thoughts on all of this and any advice you may have for moving forward.

Look forward to hearing from you,

John

May-Dec2008_to_John00000074

RE: Update

Attachments

1. Carolina Custom LLC Formation questionnaire.doc

Type: application/msword
Size: 56 KB (57,452 bytes)

May-Dec2008_to_John00000074

RE: Update

Attachment #1.

Carolina Custom LLC Formation questionnaire.doc

Original view

5 pages (displayed on pages 276 to 280)

May-Dec2008_to_John00000074

**Gandis – Business Opportunities Meeting
October 30, 2007**

Partnership (“LLC”) Structuring Issues

1. Ownership, Income & Distributions:

- a. What will be contributed as capital by John Gandis to the LLC?
 - i. At Formation?
 - ii. Subsequently?
- b. What will be contributed as capital by Dave to the LLC?
 - i. At Formation?
 - ii. Subsequently?
- c. What are the ownership percentages?
- d. Will any member have a preferential distribution of profits or cash flow?
 - i. Dave - annual payment for services (minimum salary expectation – hopeful salary expectation)
 - ii. John - return on capital (equipment) invested, management fee (and why is this in ADDITION).
 - iii. What is the rationale for providing a “salary” rather than merely dividing profits? (Note – this question is not an attempt to eliminate salaries, but rather to help focus on the total business and all the various ways in which the members are compensated for their assets and their time).
- e. How and when will cash flow be distributed?
 - i. By majority vote?
 - ii. Mandatory distribution of all profits?
 - iii. Distributions sufficient to pay income taxes on LLC profits allocations (What to do when cash flow does not match taxable income)?
 - iv. What to do if cash flows are not sufficient to meet the minimum salary and management fee expectation of the partners.

2. Management

- a. Will managers be designated or will all managers jointly manage?
 - i. Do some have specific powers?
 - ii. If more than one, how to handle joint management?
 - iii. How are contract decisions to be made?
 - iv. How are decisions about large capital investments to be made?
 - v. How will the decision to continue or dissolve the venture be made?

**Gandis – Business Opportunities Meeting
October 30, 2007**

- b. How to handle votes in a two-member entity? When will one member be able to commit the entity to a business transaction without the prior-approval of the other member.
- c. What decisions require special voting (e.g. supermajority or unanimous vote of members/managers)? How is to handle these types of decisions as the company grows?
 - i. Hiring senior level employees?
 - ii. Terminating employees?
 - iii. Admitting a new member?
 - iv. Purchase or redemption of membership interest except as specifically contemplated by an LLC operating agreement?
 - v. A change in the nature of the LLC's business?
 - vi. Any requirement obligating (all) members to make additional capital contributions?
 - 1. Approval of RFPs prior to submission by contributing member?
 - 2. Notification of bid variances > x% prior to funding?
 - vii. The creation by the LLC of any debt or contract obligations that, taken with all other existing debts and contract obligations (other than anticipated obligations to pay for routine services and supplies) require the LLC to pay more than _____ (specify amount) in any year?
 - viii. Entering into any agreement or arrangement with an affiliate of a member?
 - ix. Liquidation or dissolution of the LLC?
 - x. Taking any action, including but not limited to the sale of any asset, outside the ordinary course of business?
 - xi. The merger or consolidation of the LLC with another entity?
 - xii. Relocation of the LLC's principal place of business, the opening of any new company office, the entrance into a new business by the LLC, or the cessation of the LLC's business?
 - xiii. Increasing, modifying, consolidating, or extending any loan, whether secured or unsecured, affecting the LLC?
 - xiv. Distributing any cash or property of the LLC to any member, other than as provided in the LLC operating agreement?
 - xv. Assigning the rights of the LLC in any of its properties?
- d. In a two-member deal – recommend that the operating agreement can be amended only by unanimous vote.

**Gandis – Business Opportunities Meeting
October 30, 2007**

3. Employment and Compensation

- a. Will any partner be “employee” (i.e. receive guaranteed payments) of the LLC? (Note: true employee status is not possible with an LLC). Note- a guaranteed payment is different from a profit split in that the guaranteed payment is fixed – even if no money is made (or profit is earned). A guaranteed payment needs to be funded from alternative sources when no profits are there.
- b. Is compensation to be paid as a stated salary or under a formula? (Or is compensation to be left to a vote of the members/managers (see Paragraph 1D)).
- c. Generally employee benefits (vacation, insurance, etc) should also be described – unless they are provided in a separate entity.
- d. Termination of employment
 - i. On what notice can employee quit?
 - ii. On what notice can the LLC terminate employment without cause?
 - iii. Need to include a “for cause” provision, will notice be required?
- e. Is there a noncompete provision?
 - i. During employment?
 - ii. After termination or employment?
- f. Is there an agreement regarding disclosure of confidential information?
- g. Is there an agreement regarding solicitation of employees?

4. Transferability and Issuance of Membership Interest

- a. In general, membership interests should be NONTRANSFERABLE
- b. Should transfer to family members or other members or employees be permitted?
- c. Can the LLC issue new membership interests without giving existing members preemptive rights?

5. Buy – Sell Provisions

- a. How is each membership interest valued?
 - i. Net book value based on financials:
 - 1. Use depreciated value or 50% of cost, whichever is greater?
 - 2. Accrue all expenses?
 - 3. Exclude accounts receivable and pay some percentage as salary continuation?
 - 4. Exclude life insurance proceeds on the death of a member
 - ii. Formula based on some other factor (with Goodwill component)?

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- iii. Outside Appraisal?
- iv. Is each member guaranteed to receive what he paid (capital) or some stated amount?
- b. Who should purchase the interest (the LLC or the other members)?
- c. What happens on the death of a member?
 - i. Mandatory purchase by the LLC? (Time period of at least 18 months)
 - ii. Option to purchase by the LLC? (Or the other member)?
 - iii. "Put" by estate to LLC? (Or other member)?
- d. What happens on disability of member?
 - i. Same as death?
- e. What happens with divorce of a member?
 - i. Prohibition on actual transfer of interest to spouse?
 - ii. Prohibition on involvement by spouse?
 - iii. Other?
- f. What happens on termination of employment of member?
 - i. Voluntarily by the member
 - 1. Immediately off manager board?
 - 2. No further vote as member?
 - 3. Mandatory purchase by the LLC?
 - 4. Option to purchase by the LLC?
 - 5. No obligation on LLC to purchase?
 - ii. Involuntarily by the LLC
 - 1. Same issues as above
 - 2. What if terminated "for cause"
 - a. Reduction in value?
 - b. Reduction in salary continuation?
- g. How is the purchase price to be paid?
 - i. Immediately available funds upon closing?
 - ii. Installments over 36 months (or lesser period)?
 - 1. Interest rate?
 - 2. Security interest in LLC assets to secure payment?
 - 3. Personal guaranty by other members?

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4. Are there extended payments at lower (or no) interest rates for members who quit?
 5. Is there a non-compete that causes forfeiture of payout of membership value or salary continuation?
 6. Is there a vesting schedule on the value or on any salary continuation?
- iii. Will there be any life insurance on the members?
 - iv. Should there be a "put-call" provision? (What period of time permitted on reciprocal offers?)
- h. What should happen to assets in the event that the partners agree to voluntarily terminate the LLC?
- i. Each partner is entitled to receive the identical asset they contributed
 1. How is the asset to be valued at distribution?
 - ii. What items would be required to be sold – so cash could be divided?
 - iii. Would either partner be prohibited from continuing to pursue activities with the same customers, in same area, etc.?

Custom Carolina

Item ID: 169708
Subject: Custom Carolina
From: Namaste Consulting <namasteconsult@bellsouth.net>
To: John Gandis <john@decotextile.com>
Sent: June 16, 2008 3:04:35 PM EDT
Received: June 16, 2008 3:04:00 PM EDT
Attachments: Carolina Custom LLC Formation questionnaire.doc, image001.jpg

Size: 91 KB (93,795 bytes)

Source: Outlook.pst
Location: Exported mail files/Outlook.pst/Top of Personal Folders/Clients/CCC/CCC Partner matters
Duplicates: 2

Content Created: June 16, 2008 3:02:27 PM EDT
Content Last Modified: June 16, 2008 3:02:27 PM EDT

MIME Type: message/rfc822
Content MIME Type: text/plain
Character Set: utf8
Language: English
MD5 Hash: 497e6f0c5bee89254ef02713f322034b
Message Hash: 3d71af43eb8ac07cc8c6076dfb42e89e

I think we can move the priority allocation –
Need a list of every customer, with the old commission in whatever rate
he used to charge and a year by year volume/sales figure.

Andrea

****To ensure compliance with requirements imposed by the IRS, we inform
you that any tax advice included in this written or electronic
communication is not intended or written to be used, and it cannot be
used by the taxpayer, for the purpose of avoiding any penalties that may
be imposed on the taxpayer by any governmental taxing authority or
agency*****

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prohibited.



May-Dec2008_to_John00000075

Attachments

1. Carolina Custom LLC Formation questionnaire.doc

Type: application/msword
Size: 72 KB (74,268 bytes)

2. Image001.jpg

Type: image/jpeg
Size: 12 KB (13,234 bytes)

Attachment #1

Carolina Custom LLC Formation questionnaire.doc

Original view

7 pages (displayed on pages 284 to 290)

**Gandis – Business Opportunities Meeting
October 30, 2007**

Partnership ("LLC") Structuring Issues

1. Ownership, Income & Distributions:

- a. What will be contributed as capital by John Gandis to the LLC?
 - i. At Formation? 100% - \$60,000 on home equity line, \$30,000 borrowed from DecoTex line (\$300,000). John borrowed from bank and put 60K into CCC's bank account. Decotex borrow \$\$ and then lent to this company (not equity but a loan). Should Decotex become a partner in CCC or should this be a loan between Decotex and CCC.
 - ii. Subsequently? 100% - All debt funded from John... borrowed \$15,000 from M-Tech Properties LLC line to purchase film. Single member LLC owned by John which owns the real property – already has a \$125,000 line (at this point, no debt has been drawn). There will be NO mandatory additional contributions by John and subsequent funding will be lent to the company at 15%.
- b. What will be contributed as capital by Dave to the LLC?
 - i. At Formation? None
 - ii. Subsequently? None – I would like to have Dave's name attached to the M-Tech Properties note, but I don't know if we will be able to make that happen. Dave lists the contractual relationships, along with the commissions and historical sales levels. We want the big Minova in this listing, but anything that is not our product is excluded and somehow we need to prohibit him from doing new deals in our market that don't come through here.
- c. What are the ownership percentages? I'm cool with 50/50... We going to have priority returns on this old book of business, under which Dave earns his old commission on his old poundage up to \$8K per month, and John earns his old commission on the same poundage, each month. Shortage cause shortfalls in this distributions and excesses are held to cover shortfall months. NOT A GUARANTEED PAYMENT – but rather a priority allocation. In the event the margin suffer – both parties take the reduction.
- d. Will any member have a preferential distribution of profits or cash flow?
 - i. Dave - annual payment for services (minimum salary expectation – hopeful salary expectation) Dave needs to make \$8000 a month... that is what he currently pays himself. I think that with the current level of business that we are bringing in – we should be ok. As regards the customer relationships on the list, Dave is to receive a priority profits allocation up to the \$8 based upon his old commission rate on those old pounds. John earns his old commission rater on those same old pounds.

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- ii. John - return on capital (equipment) invested, management fee (and why is this in ADDITION). Not sure I am understanding here. Rebuilding machines, accounts payable, accounts receivables, employees are now a shared cost – and they need to come FIRST before the priority distributions. Then we need to come up with a reasonable “management” element that ties with Dave’s.
 - iii. What is the rationale for providing a “salary” rather than merely dividing profits? (Note – this question is not an attempt to eliminate salaries, but rather to help focus on the total business and all the various ways in which the members are compensation for their assets and their time). I guess because Dave needs to make some money – dividing profits... as long as he get’s at least \$8k a month and this may be a good scenario.
- e. How and when will cash flow be distributed? Dave needs something monthly... management fee for me can be whenever.
- i. By majority vote? Yes For dissolution, for new debt, for wind down.
 - ii. Mandatory distribution of all profits? At some level Monthly = need an accounting of the pre-contribution accounts with the volumes COLLECTED and a tentative determination of the priority profit distribution. At the same time, we need an overall accounting of the company’s distributable cash flow. – and the LESSER of overall profits or the priority will be distributed. Any deficit in the priority distribution carryover to months that have excess operations.
- Distributable cash flow in year one is Amounts collected less account payable at month end. In year two, Distributable cash flow is Amounts collected less accounts payable at month end less 1/12 of owner loans (with accrued interest thereon). Need to write this so the owner loans are ratable paid down in year two.
- iii. Distributions sufficient to pay income taxes on LLC profits allocations (What to do when cash flow does not match taxable income)? No mandatory tax distributions so long as the priority distributions of profits are being made. Once the owners have agreed to terminate the priority distribution regime, then tax distributions will be required on a quarterly basis from profits based upon the prevailing federal and state tax rates to the extent cash distributions are less than this amount.
 - iv. What to do if cash flows are not sufficient to meet the minimum salary and management fee expectation of the partners. Good question... have any suggestions. I would hate to borrow money on a new company like this. No guaranteed payments and distributions are subject to overall cash flow limitations. If cash is low in company, then everyone is low.

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2. Management

- a. Will managers be designated or will all managers jointly manage? I have been running all operations... Dave runs the sales John is a managing member – ask the attorney what is risk differential to John is Dave's interest is a non-managing interest.
 - i. Do some have specific powers? Yes
 - ii. If more than one, how to handle joint management? Mutual agreement Specify things that need unanimous decisions.
 - iii. How are contract decisions to be made? Must be jointly for contracts over \$5,000.
 - iv. How are decisions about large capital investments to be made? Jointly – for assets over \$5,000.
 - v. How will the decision to continue or dissolve the venture be made? I would like to control this decision as long as the equipment is in my name. Both parties retain the right to have distributions in KIND of assets they contributed to the venture. If one person wants to go Mediation before a lawsuit.
- b. How to handle votes in a two-member entity? When will one member be able to commit the entity to a business transaction without the prior-approval of the other member. Dollar limits?
- c. What decisions require special voting (e.g. supermajority or unanimous vote of members/managers)? How is to handle these types of decisions as the company grows? Sounds like all of these need special voting.
 - i. Hiring senior level employees? yes
 - ii. Terminating employees? no
 - iii. Admitting a new member? Yes – we also want to limit the transferability of the interest – and we want to cover what happens in the event of death and divorce with the new and unwanted partner.
 - iv. Purchase or redemption of membership interest except as specifically contemplated by an LLC operating agreement?
 - v. A change in the nature of the LLC's business? yes
 - vi. Any requirement obligating (all) members to make additional capital contributions? yes
 - 1. Approval of RFPs prior to submission by contributing member?
 - 2. Notification of bid variances > 1% prior to funding?
 - vii. The creation by the LLC of any debt or contract obligations that, taken with all other existing debts and contract obligations (other than anticipated obligations to pay for routine services and supplies)

**Gandis – Business Opportunities Meeting
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require the LLC to pay more than \$250,000 (specify amount) in any year?

- viii. Entering into any agreement or arrangement with an affiliate of a member? Yes – pre-existing arrangements for space, utilities, and loans. We need a rental agreement \$750. We need to verify the Decotex LOC reps & warrants to determine the structure of the \$30,000.
- ix. Liquidation or dissolution of the LLC? Yes
- x. Taking any action, including but not limited to the sale of any asset, outside the ordinary course of business? Yes
- xi. The merger or consolidation of the LLC with another entity? Yes
- xii. Relocation of the LLC's principal place of business, the opening of any new company office, the entrance into a new business by the LLC, or the cessation of the LLC's business? Yes
- xiii. Increasing, modifying, consolidating, or extending any loan, whether secured or unsecured, affecting the LLC? Yes
- xiv. Distributing any cash or property of the LLC to any member, other than as provided in the LLC operating agreement? Yes
- xv. Assigning the rights of the LLC in any of its properties? Yes
- d. In a two-member deal – recommend that the operating agreement can be amended only by unanimous vote. Yes

3. Employment and Compensation

- a. Will any partner be "employee" (i.e. receive guaranteed payments) of the LLC? (Note: true employee status is not possible with an LLC). Note- a guaranteed payment is different from a profit split in that the guaranteed payment is fixed – even if no money is made (or profit is earned). A guaranteed payment needs to be funded from alternative sources when no profits are there. Yes – would have to fund from some type of line (preferably the M-Tech properties line). No guarantee payments.
- b. Is compensation to be paid as a stated salary or under a formula? (Or is compensation to be left to a vote of the members/managers (see Paragraph 1D)). What do you think it better? There will be a formula for the priority allocation based upon the contributed accounts – for one year to be renewed and recalibrated at the 2nd year and 3rd year – after which priority allocation is to be removed.
- c. Generally employee benefits (vacation, insurance, etc) should also be described – unless they are provided in a separate entity. If he is not an employee is it really important to outline this?
- d. Termination of employment

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- i. On what notice can employee quit? Years notice? @ 90 days?
Death, disability (impaired) are covered separately – otherwise we have a partnership termination. Really should cover termination for cause – and have some remedies.
- ii. On what notice can the LLC terminate employment without cause?
Need help here... what is customary? Not applicable here
- iii. Need to include a “for cause” provision, will notice be required?
Need help here. Attorney will provide language.
- e. Is there a noncompete provision? Needs to be... minus the three.
Everything in our industry(product category) goes through LLC – first right of refusal on every single contract opportunity (new or old customers), and if we refuse, then he can pursue independently including through the Chinese and India slitting business partners.
 - i. During employment? There are three accounts that Dave wants to retain something over... may be easier to discuss this over the phone.
 - ii. After termination or employment? Would be nice to have. Need non-compete in instance when entities dissolve for cause.
- f. Is there an agreement regarding disclosure of confidential information? We do not currently have anything in place... should we? Some generic confidentiality language is ok.
- g. Is there an agreement regarding solicitation of employees? Not sure that I understand this... are you saying if someone left that could not “raid” the staff?
- 4. Transferability and Issuance of Membership Interest
 - a. In general, membership interests should be NONTRANSFERABLE Ok.
 - b. Should transfer to family members or other members or employees be permitted? No
 - c. Can the LLC issue new membership interests without giving existing members preemptive rights? Don't understand the questions. No new members without unanimous vote/
- 5. Buy – Sell Provisions
 - a. How is each membership interest valued? Need help
 - i. Net book value based on financials:
 - 1. Use depreciated value or 50% of cost, whichever is greater?
 - 2. Accrue all expenses?
 - 3. Exclude accounts receivable and pay some percentage as salary continuation?
 - 4. Exclude life insurance proceeds on the death of a member