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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

NOV 15 2016

**SC Court of Appeals**

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

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Consolidated Cases For Trial

NOV 30 2016

**SC Court of Appeals**

Case No.: 2010-CP-28-322  
Case No. 2010-CP-28-323

Jamie Curley, Plaintiff,

v.

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

v.

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

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

And

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

**RECORD ON APPEAL VOL. III**

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1 MR. ELLISON: That's it. Thank you.

2 (Recess held.)

3 THE COURT: All right. Cross-examination.

4 MR. SHEHEEN: Thank you, Your Honor, may it please the  
5 Court?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION BY MR. SHEHEEN:

8 Q. Dr. Dyce, I'm Vincent Sheheen. You and I have met on  
9 occasion before.

10 A. Yes, sir.

11 Q. Dr. Dyce, when you closed out your testimony, you  
12 discussed with Mr. Ellison what you did the summer of 2010  
13 when you had been released from SCENT. Do you recall that  
14 discussion?

15 A. Yes, sir.

16 Q. Okay. And I believe you testified that you looked  
17 around and in I believe you said some places out of state for  
18 possible employment, is that right?

19 A. Yes, I did.

20 Q. Did you tell the Judge that you also went to Carolina  
21 Pines HMA and talked to them about employing you?

22 A. I'm not sure why I would tell anyone that since that  
23 never happened.

24 Q. Are you aware that Lance Jones, in his deposition, which  
25 is Exhibit 178, said that you came to him. Are you aware of

1 that?

2 A. I'm aware that he said I came to him.

3 Q. And he said it was mid summer to late summer, are you  
4 aware of that?

5 A. I don't remember what he said exactly.

6 Q. Do you disagree with that?

7 A. I don't remember when we discussed it.

8 Q. I want to show you documents that were obtained by your  
9 attorney yesterday from HMA through subpoena that they shared  
10 with us, your attorney --

11 And may I approach, Your Honor?

12 THE COURT: You may.

13 Q. That is a proposed order of equipment for an ear, nose  
14 and throat practice by HMA for you, isn't it?

15 A. No, it's not.

16 Q. What is it?

17 A. When -- this was actually prepared by me, and when I  
18 realized that Dr. Puchalski was not going to change his  
19 course of action, I realized I had a number of options. One  
20 is to start a practice for myself somewhere. Two was go and  
21 work for someone else. And so what I began to do in my free  
22 time just to pass the time was start saying, well, if I  
23 started a practice for myself and I was going to get a  
24 guarantee, how was I going to do it, what equipment was I  
25 going to need, and I started calling different companies for

1 quotes on ENT equipment. This is not an HMA thing for  
2 equipment for me.

3 Q. Who's that document from?

4 A. This is from Brian Paylor.

5 Q. Where's he located?

6 A. I don't know.

7 MR. SHEHEEN: May I approach, Your Honor?

8 THE WITNESS: Actually, this is not -- this is not  
9 even -- this is not the document I was referring to. I'm  
10 sorry.

11 Q. Do you see at the top where it says, ship to Carolina  
12 Pines Medical Center, 1304 West Bobo Newsom Highway,  
13 Hartsville, South Carolina, top left-hand corner?

14 A. Yes.

15 Q. And you see it says, sold to party address, Carolina  
16 Pines Medical Center, and then it says attention Dr. Dyce?

17 A. Yes.

18 Q. And you see the document date over in the right-hand  
19 corner is 6/21/2010?

20 A. Yes.

21 Q. So this was you talking with -- obviously communicating  
22 with Carolina Pines about the purchase of medical equipment  
23 for an ENT practice?

24 A. Actually, this probably wasn't actually. I did not get  
25 any of this equipment, so I don't know where this equipment

1    went, it could have been to the operating room, but this was  
2    not for my practice so, I'm sorry.

3    Q.   Is your testimony that HMA just went out and did this on  
4    their own?

5    A.   They routinely buy equipment for their operating room.  
6    I have nothing to do with this.

7    Q.   Why is your name on it?

8    A.   Probably because they thought I was still the ENT there.

9    Q.   Dr. Dyce, I'm going to refer you to SCENT Defendant's  
10   Exhibit 230, which is in front of you. Just hold it for a  
11   minute, but first let me ask you about the secret  
12   tape-recordings that you made.

13   A.   Yes.

14   Q.   You've admitted you secretly tape-recorded many hours of  
15   conversations, right?

16   A.   Yes.

17   Q.   And I believe your explanation was, one, you  
18   taped-recorded them because you didn't want anybody to say  
19   they said anything they didn't say?

20   A.   Yes.

21   Q.   Why didn't you just tell people you were tape-recording  
22   their conversations?

23   A.   I needed to know what they were saying. I wanted them  
24   to speak honestly, and so I tape-recorded them.

25   Q.   Did you not want to give them a chance to know they were

1 being tape-recorded?

2 A. Well, I wanted to give them a chance to speak honestly  
3 and for me to interpret it honestly.

4 Q. Would you agree with me that you could have told them  
5 you were tape-recording their conversations, tape-recorded  
6 their conversations and recorded exactly what they said so  
7 that there wouldn't be any question about it if that was your  
8 goal; you could have told them?

9 A. I could have told them.

10 Q. But you didn't.

11 A. No.

12 Q. And you tape recorded Dr. Puchalski; yes?

13 A. I tape-recorded Dr. Puchalski.

14 Q. And you tape-recorded other people who were in the room  
15 during some meetings; is that right?

16 A. Whoever happened to be in the room, yes.

17 Q. And you tape-recorded conversations with, for example,  
18 some staff who might have been in the room?

19 A. Who might have been in the room.

20 Q. Or Austin Sheheen, the accountant?

21 A. Yes.

22 Q. Did you ever tell any of them you were tape-recording  
23 them?

24 A. No, I did not.

25 Q. In fact, one time Dr. Puchalski on a call asked if

1 anybody was tape-recording the conversations, didn't he?

2 A. Yes, he did.

3 Q. And your wife was a party to that communication and you  
4 were and your wife said no, right?

5 A. My wife may have said no, yes.

6 Q. And you didn't say anything?

7 A. No.

8 Q. Why didn't you just say yes?

9 A. We wanted an honest conversation, just as Bob  
10 tape-recorded me in the termination meeting. He didn't tell  
11 me he was tape-recording me.

12 Q. There was a tape-recorder on the table in the meeting,  
13 right?

14 A. I was not shown that tape-recorder.

15 Q. I want you to look at Defendant's Exhibit 230. This was  
16 our request for production. There's a cover letter from me  
17 and attached requests for production, and in that, No. 2, I  
18 asked or SCENT asks for any and all documents, whether  
19 written or recorded, electronic or tangible, however stored,  
20 that relate in any way to this action. Do you see that, No.  
21 2?

22 A. Yes, I do.

23 Q. By the cover letter this was sent April 1st, 2011. Do  
24 you see that?

25 A. Yes, I do.

1 Q. Yet you did not turn over these secretly recorded  
2 conversations until after a year and a half after that was  
3 requested, right?

4 A. Okay. Yes, I believe so.

5 Q. Why didn't you turn them over within --

6 A. Because I didn't think it applied.

7 Q. They're recorded, right?

8 A. Yes, sir.

9 Q. And there are statements on those recordings, aren't  
10 there?

11 A. Yes, sir.

12 Q. So why didn't you turn it over?

13 A. There was a lot of information going back and forth at  
14 the time in order to produce different documents, and I  
15 just -- this was among the many documents I got, and I just  
16 didn't think it applied.

17 Q. I want you to look at defendants Exhibit 137, should be  
18 the next one. The best way to do this, Doctor, is if you  
19 just want to set down the one over to the right, there you  
20 go, and then we're on 137. Should be the next one.

21 A. That's this one?

22 Q. It should say C.S. McCall & Company on the top, top  
23 left?

24 A. Yes.

25 Q. Do you see that? Do you see this is an invoice from



1 C.S. McCall & Company?

2 A. It appears to be so.

3 Q. And are you aware that that's who you hired to appraise  
4 during this litigation SCENT Land Holdings' assets?

5 A. I left it up to my attorneys.

6 Q. Turn to the next page. Do you see that's a check from  
7 Jamie Dyce paying the bills?

8 A. Yes, sir.

9 Q. And I want you to turn to the next page. What's the  
10 date on that?

11 A. August 13th, 2012.

12 Q. That's a letter from your lawyer to pay that bill, is  
13 that right?

14 A. It appears so.

15 Q. Okay. And look on the front page again.

16 A. Yes.

17 Q. The invoice at the top is April 30th, 2012, do you see  
18 that?

19 A. Yes.

20 Q. Now turn with me to 136, the next exhibit. Do you see  
21 that? This is your lawyer's response to me. It says,  
22 enclosed please find plaintiffs response to defendants fourth  
23 set of requests for production. Do you see that?

24 A. Yes.

25 Q. What's the date on that letter?

1 A. August 15th, 2012.

2 Q. All right. I want you to turn to the next page of that  
3 exhibit. The request was any appraisals or similar documents  
4 of any property owned by SCENT or SCENT Land or estimates,  
5 documents or comments used in preparation of such appraisals.  
6 Do you see that?

7 A. Yes.

8 Q. All right. Read the response that you sent. It says,  
9 the second sentence, without waiving our objection plaintiff  
10 states --

11 A. I'm sorry, I'm sorry.

12 Q. I'm on the response to one, two sentences down.

13 A. All right. So where are we now?

14 Q. I'll read it, it says, without waiving our objections,  
15 do you see that, plaintiff states there are currently no  
16 written appraisals in her possession pertaining to real  
17 property owned by SCENT Land.

18 A. Okay.

19 Q. All right. But the appraisal had been done. The  
20 invoice had been sent April 30th.

21 MR. ELLISON: Objection, Your Honor. He has not laid  
22 the foundation. The invoice had been sent, but he has not  
23 established that the appraisal had been done.

24 MR. SHEHEEN: Your Honor, may I be heard on that?  
25 There's the check on the next page written to C.S. McCall

1 paying the bill.

2 MR. ELLISON: That doesn't mean the appraisal had been  
3 done because in fact, Your Honor, it hadn't.

4 MR. SHEHEEN: He can answer.

5 THE COURT: I'm with you. I understand.

6 MR. SHEHEEN: He can answer what he knows.

7 MR. ELLISON: I understand, but for him to put into  
8 question something that's not in evidence I have a problem  
9 with.

10 MR. SHEHEEN: I'm not putting it into evidence.

11 MR. ELLISON: I have no problem with that. He said the  
12 appraisal had been done. In fact it had not.

13 THE COURT: I'm with you. He's cross-examining him, and  
14 if he knows, he knows.

15 Q. Do you know why the bill was paid, the invoice had been  
16 sent and yet we received a response saying there had been no  
17 appraisal done, do you know?

18 A. I have no idea, sir.

19 Q. I want you to look at the Exhibit 221. This is a letter  
20 from you and your attorneys to our firm discussing text  
21 messages that were sent, text messages between you and other  
22 former employees or employees of SCENT, do you see that?

23 A. Yes.

24 Q. Just like the question I asked you about the recorded  
25 conversations, why did it take you two and a half years to

1 turn these over?

2 A. Those texts were up until present, up until -- some of  
3 those folks work in my office. I mean, I could forward you  
4 every text as I get them, but that's how they primarily  
5 communicate with me.

6 Q. Some of the texts -- isn't it true that some of the  
7 texts you sent us were texts that were years old?

8 A. Yes. I didn't think about checking my Facebook page  
9 because I don't post anything on it. The texts -- the  
10 employees, I had to remind myself of who the employees were,  
11 and I just never thought about them. And then as I thought  
12 about texts, I said, you know, it's not just the main folks,  
13 maybe there are some other secondary folks that I said hi and  
14 bye to, so I sent all those texts and you have them, so I was  
15 trying to be complete.

16 Q. The next document I have up there is not an exhibit, but  
17 it's an order of Judge Cooper dated September 13th, 2013 in  
18 this case. Do you have it?

19 A. This is what I have next (indicating).

20 Q. I'm sorry. I'll share it with you. Turn that back  
21 over. I'll read it to you. Tell me if you agree or not.

22 MR. SHEHEEN: Your Honor, it should be part of your  
23 Court file. If you don't have the Court file, I'll provide  
24 it to you.

25 THE COURT: It's somewhere in there.

1 Q. This was an order issued by Judge Cooper September 13th,  
2 2013 after SCENT filed a motion to compel to force you to  
3 turn over documents. The Court found that plaintiff's --  
4 that's you -- answers to defendants' supplemental  
5 interrogatories, requests to produce and requests to admit  
6 dated July 2nd, 2013 are nonresponsive and not in compliance  
7 with either the spirit or the letter of the South Carolina  
8 Rules of Civil Procedure. The issue of relevance is  
9 generally a matter for the Court. A party to whom  
10 interrogatories are directed cannot rely on the phrase not  
11 relevant to parse his answers, and then the Court goes on to  
12 say, it appears to this Court that plaintiff's responses are  
13 evasive and intended to conceal essential issues in this  
14 case. Have you reviewed that order?

15 A. No, I haven't.

16 Q. Do you understand that Judge Cooper's saying that your  
17 responses have been evasive and intended to conceal essential  
18 issues in this case?

19 A. I'd have to discuss what it means with my attorneys.

20 Q. This order was not appealed to your knowledge, was it?

21 A. I don't know.

22 MR. SHEHEEN: Your Honor, may I approach?

23 THE COURT: Sure.

24 MR. SHEHEEN: Thank you.

25 Q. Were you aware that appraisals had been done -- that you

1 had obtained appraisals of SCENT Land?

2 A. I wasn't.

3 Q. Are you aware that when I filed a subpoena, there was a  
4 motion to quash that subpoena filed by your side --

5 A. I'd have to review what happened.

6 Q. -- and I had to get an order from the Court to get a  
7 copy of the appraisal?

8 A. I'd have to review what happened.

9 Q. Did you not want to turn the appraisals over because  
10 they weren't favorable to your position?

11 A. Again, I'd have to review what happened. I don't even  
12 remember the appraisals actually.

13 MR. SHEHEEN: I'm skipping some stuff, Your Honor. Beg  
14 your indulgence.

15 THE COURT: Not a problem.

16 Q. I want you to look at Exhibit No. 22 -- excuse me, 225,  
17 and there might be a page that I accidentally put in there.  
18 225. Do you see this exhibit? It's an e-mail from Dr.  
19 Puchalski to you. It says, hope you had a merry Christmas.  
20 Theresa mentioned you need to speak to me about the SCENT  
21 loan for syndication before signing it. The bank is trying  
22 to finalize our Lugoff building loan, and they need  
23 documentations for leases, loans, etc., do you see that?

24 A. Yes.

25 Q. Do you know what this is referring to?

1 A. I don't know for sure what it's referring to, but I can  
2 tell you what I think it might be referring to.

3 Q. Okay. I guess let me ask you this way, is it true that  
4 Dr. Puchalski would e-mail you and you all would go back and  
5 forth sometimes about financial issues like the loan  
6 syndication, like the building in Lugoff, those types of  
7 things?

8 A. We communicated a lot by e-mail about a lot of things.

9 Q. Is it also true you've admitted that you didn't check  
10 your e-mail a lot, right?

11 A. I didn't always have the opportunity to check my e-mail.

12 Q. All right. Let's look at --

13 We'll go through these rather rapidly, Your Honor,  
14 because you can look at the e-mails later.

15 Let's look at Defense Exhibit 24 which will be the next  
16 one. Do you see that? It should say -- it's a communication  
17 between Ed White and Bruce Armon. This was December 23rd,  
18 2009, do you see that?

19 A. Yes. I do.

20 Q. It looks like it's Bruce and Ed talking about comments  
21 on the employment agreement. Would that have been the  
22 proposed new employment agreements in 2010 -- 2009, 2010?

23 A. I believe so.

24 Q. So your lawyer and the lawyer for SCENT are talking  
25 about the agreement and exchanging comments to each other, is

1 that right?

2 A. It appears that Ed White is just telling Bruce that the  
3 documents aren't ready yet, right.

4 Q. Okay. It also says, Dr. Puchalski indicated he recently  
5 scanned and sent the executed employment agreement and  
6 shareholders agreement to Dr. Dyce and you may want to get  
7 those from him, want to review them in advance, do you see  
8 that?

9 A. I don't -- yes.

10 Q. All right. Let's look at 51.

11 THE COURT: Hold on.

12 MR. SHEHEEN: I'm sorry.

13 THE COURT: Let me ask you this question: Was your  
14 question did you receive the executed documents from Dr.  
15 Puchalski? Because that's not what that says.

16 MR. SHEHEEN: That wasn't my question. My question was  
17 does this say that he sent -- that Dr. Puchalski said that he  
18 recently scanned and sent the executed employment agreement  
19 and shareholders agreement to Dr. Dyce in that second  
20 paragraph.

21 THE COURT: It looks like he's just looking at them  
22 because it says, I spoke with Bob Puchalski, and he's going  
23 to get me his final comments on the employment agreement and  
24 shareholders agreement by Monday.

25 MR. SHEHEEN: Right.



1 THE COURT: So it doesn't seem like there's anything  
2 executed at that point.

3 MR. SHEHEEN: Really my question was just to elicit the  
4 fact that there was communication between his lawyer and  
5 SCENT about the shaping of these agreements.

6 THE COURT: Clearly, yes, got it. That I got it.

7 THE WITNESS: Not about the shaping of the agreements,  
8 just about the agreements.

9 MR. SHEHEEN: I haven't asked a question.

10 THE COURT: Got it.

11 THE WITNESS: Sorry.

12 THE COURT: Okay.

13 Q. I want you to look at Defendant's Exhibit 138. This is  
14 an executive summary of the -- I'm going to hand you  
15 something different. I'm going to interpose. I'm going to  
16 show you Defendant's Exhibit 138. This was the executive  
17 summary of the appraisals we were just talking about. Do you  
18 see it? When's it say the appraisals were done? What does  
19 it say?

20 A. It says, medical office building, 696 Medical Park  
21 Drive, Hartsville, Darlington County, May 9th, 2010.

22 Q. What was May 9th, 2010?

23 A. Date of value, May 9, 2010, date of inspection, March  
24 1st, 2012.

25 Q. Okay.

1 A. Was there a question?

2 Q. I just asked you to read it to me. Thank you.

3 A. Can I --

4 Q. Thank you. All right. Will you go to Exhibit 51? This  
5 appears to be an e-mail from Ed White to Bruce Armon, and by  
6 the way, just to clarify, and I'm sure the Judge has caught  
7 this already, but Bruce Armon is your lawyer personally, is  
8 that right?

9 A. Yes.

10 Q. Was or is, is that right?

11 A. Yes, he was.

12 Q. Okay. And Bruce Armon had represented you for years,  
13 right?

14 A. In certain matters.

15 Q. You've got to speak up a little bit, Dr. Dyce?

16 A. In certain matters, yes.

17 Q. He represented you when you were negotiating your  
18 shareholders issues in Virginia, didn't he?

19 A. Yes, he did.

20 Q. Okay. And in this e-mail it appears that Ed White is  
21 forwarding to Bruce Armon a bunch of comments that he has  
22 about -- it's a lot of things. I don't want to go through  
23 it. The Court can read it. But malpractice issues, proposed  
24 management agreements, the new proposed shareholder  
25 agreements and those types of things. So is it fair to say

1 that Ed White and Bruce Armon are communicating about the  
2 issues contained in this agreement?

3 A. Not specifically, communicating, yes.

4 Q. We can go through it if you want to. They're  
5 communicating about the management agreement, Carolina Pines,  
6 right?

7 A. I'm sorry, communicating about what?

8 Q. A management agreement with Carolina Pines. It's about  
9 midway through, says attached is a copy of the proposed  
10 management agreement with Carolina Pines.

11 A. Yes.

12 Q. And then the next paragraph says, as far as your  
13 questions on the contents, I will try to get you my  
14 assessment of what happens if new agreements are not signed;  
15 and, two, what provisions in the current agreements would  
16 offer protections for your interests, blah, blah, blah, blah,  
17 blah, right?

18 A. Yes.

19 Q. Okay.

20 THE COURT: Just so I'm clear, in other words, it  
21 appears that Mr. White is still communicating directly with  
22 Dr. Dyce. He's just copying his communications directly with  
23 Dr. Dyce to Mr. Armon, and that's the purpose -- that's what  
24 this shows is that while Mr. White is still communicating  
25 directly with Dr. Dyce, he's copying it to Mr. Armon.

1 MR. SHEHEEN: Who was involved at this point  
2 representing Dr. Dyce's individual interests, yes.

3 THE COURT: Okay.

4 Q. Let's look at Defendant's Exhibit 54. It says, Robert  
5 Puchalski at the top left. This is an e-mail at the very  
6 bottom from Theresa Williams to Bob Puchalski, and they cc  
7 you, right?

8 A. Yes.

9 Q. And it says, Dr. Dyce has requested the following, do  
10 you see that?

11 A. Yes.

12 Q. And then the e-mail above it is Dr. Puchalski's  
13 response, and he cc's you on that, right?

14 A. Yes.

15 Q. And he says, let's make all these available to him  
16 tonight and answer any and all of his questions. I would not  
17 feel comfortable sending anything out of the practice without  
18 adequate confidentiality protections. Do you see that?

19 A. Yes.

20 Q. This was February 17, right?

21 A. Yes.

22 Q. So Bob was telling you in this e-mail that he was -- by  
23 cc'ing you he was saying, let's give Dr. Dyce these things,  
24 but I don't want him taking them from the premises, is that  
25 right?

1 A. Yes, which is not what we wanted.

2 Q. Dr. Dyce, he also offered to make available to you to  
3 bring somebody on premises to review all these documents,  
4 didn't he?

5 A. Yes.

6 Q. And you didn't do that, did you?

7 A. No, we didn't. It would take a lot to review the  
8 documents, and you would need someone there for days,  
9 actually weeks or months, which was what we've done to try to  
10 get through the documents, so I'm not sure how bringing  
11 someone on premises would help.

12 Q. Let's look at the next one, 2477 -- excuse me, Exhibit  
13 55 down at the bottom. This is Ed and Bruce and you and you  
14 say, Ed, I do not have copies of my own policy. All my  
15 documents are at the office. I don't receive these at my  
16 home address. Is that right?

17 A. Yes.

18 Q. What did you mean by, I don't receive these at my home  
19 address?

20 A. Give me a minute.

21 Looks like I'm referring to the malpractice policy.

22 Q. You said referring to the medical malpractice?

23 A. It looks like it's referring to the medical malpractice  
24 policy.

25 Q. All right. You can flip to the next one. The next one

1 is Exhibit 226. Do you see that?

2 A. Yes.

3 Q. Now, you can take the time to flip through it. I'm  
4 going to represent to you this looks like it's a discussion  
5 about Med Pro with a bunch of information attached to it.  
6 Would that be the malpractice policy that you all were  
7 discussing?

8 A. Yes. This is what I received from SCENT about the  
9 malpractice policy.

10 Q. And you still wouldn't sign for the new malpractice  
11 policy, is that right?

12 A. Yes.

13 Q. What other information did you want about the  
14 malpractice?

15 A. When I called the malpractice carrier, these were not  
16 the numbers I was told from JUA/PCF, so I was wondering why I  
17 was being fed misinformation.

18 Q. Did you say that anywhere on these e-mails?

19 A. I believe I mentioned it to them. I don't know if I  
20 sent an e-mail about it.

21 Q. Exhibit 59, do you see Exhibit 59, Dr. Dyce?

22 A. Is that this (indicating).

23 Q. It says Robert Puchalski at the top left.

24 A. Yes.

25 Q. It's an e-mail, appears to be from Keiley. Who is

1 Keiley?

2 A. One of Dr. Puchalski's many assistants.

3 Q. And did she work for SCENT?

4 A. She was paid by SCENT. She worked for Dr. Puchalski.

5 Q. What do you mean by that?

6 A. She booked him plane tickets. She did errands for him.

7 She took care of car and other stuff and then was paid

8 through SCENT but she did have a place at SCENT.

9 Q. Did she work for SCENT?

10 A. Yes.

11 Q. Did she do work for SCENT?

12 A. And Dr. Puchalski.

13 Q. Did she do work for SCENT?

14 A. Yes, she did.

15 Q. Okay. So it says here, this is an e-mail to you, and it

16 says, here are the documents you were unable to read last

17 week. The password is scent. You will need to open these

18 documents using a desktop computer as opposed to using your

19 iPhone. And then it goes on a little bit more. The date of

20 this is March 1st, do you see that?

21 A. Yes.

22 Q. Then there's attachments. It looks like it's a bunch of

23 closing documents on the next page. Do you see that?

24 A. I don't know what they are.

25 MR. SHEHEEN: Okay. Your Honor, I think really 44

1 pretty much relates to the last one, so we can just skip over  
2 to the next one.

3 THE COURT: All right.

4 Q. No. 45 is an e-mail. It is to you and Jamie Curley. Do  
5 you see down at the bottom it's from Theresa. This is  
6 Exhibit 45. Do you see that? Dr. Dyce, just FYI, the  
7 Exhibit numbers are down here (indicating).

8 A. I don't have the exhibit numbers.

9 Q. Oh, I'm sorry.

10 THE COURT: Mine don't either.

11 MR. SHEHEEN: I'm sorry.

12 THE COURT: That's okay. Here you go. Here's a pen.

13 So now I'm confused and lost track of where we are.

14 What number's this one.

15 MR. SHEHEEN: Did it say Robert Puchalski in the top  
16 left?

17 THE COURT: It does.

18 MR. SHEHEEN: That is 44. First sentence is Theresa  
19 will be sending over a receipt with --

20 THE WITNESS: That one's 45.

21 THE COURT: 44. 44?

22 MR. SHEHEEN: Yes, ma'am.

23 THE COURT: Now, 45.

24 MR. SHEHEEN: Yes, ma'am.

25 Q. Down at the bottom, Dr. Dyce, it says, I have the SCENT



1 Land Holdings financial documents for your review, have them  
2 prepared for you to take once Jamie has signed the sign-out  
3 form. I will attach another copy of the sign-out form. Do  
4 you see that?

5 A. Where?

6 Q. Down at the bottom it says, Dear Dr. Dyce or Dr. Dyce.

7 A. Where it says thank you for your e-mail?

8 Q. Hold up the document. That one (indicating).

9 A. So this is not 44.

10 Q. That one's 44 and I'm on 45.

11 THE COURT: It's two pages.

12 MR. SHEHEEN: Yes, ma'am. Lot of documents.

13 THE COURT: Yes.

14 Q. So do you see that, the reference I have to SCENT Land  
15 Holdings financial documents for your review?

16 A. Yes.

17 Q. Do you know if you all ever came and picked up those  
18 documents?

19 A. I believe we did.

20 Q. Thank you. Have you ever purchased a house, Dr. Dyce?

21 A. Have I ever purchased a house?

22 Q. Yes.

23 A. Yes.

24 Q. And did you have a loan closing for the house when you  
25 purchased it or did you buy it in cash?

1 A. I had loan closings.

2 Q. Did you review the documents when you closed on your  
3 house, the loan closing documents, the day of the closing,  
4 weeks in advance, a day before?

5 A. I've done both.

6 Q. The next exhibit looks like that (indicating) and it's  
7 Exhibit 46. At the top left it says, Robert Puchalski. Are  
8 you with me, Doctor?

9 A. Yes.

10 Q. Do you see on that one it says it's -- it says, dear Dr.  
11 Dyce, please find attached the loan documents I received  
12 today from our attorney. Thanks, Theresa. Do you see that?

13 A. Yes.

14 Q. It looks like she forwarded you these loan documents the  
15 day that she received them.

16 A. She forwarded me the e-mail. I don't know if the loan  
17 documents were attached. We got a number of e-mails over the  
18 course of this period with nothing attached. So I got this  
19 e-mail. I don't know what was attached to it.

20 Q. The next one, Exhibit 47, at the top again it says  
21 Robert Puchalski on the left. That's it. I want you to turn  
22 to the second page of that one, second page, down at the  
23 bottom it says Charlie, do you see that?

24 A. Yes, at the bottom.

25 Q. I'm sorry?

1 A. Yes, I see it at the bottom.

2 Q. Charlie is the builder, right?

3 A. I assume.

4 Q. It says, Charlie, I assure you that we're doing  
5 everything in our power to facilitate the closing today.

6 Your workmanship has been exceptional, and I appreciate all  
7 your patience with us. And that was from Dr. Puchalski to  
8 Charlie, right?

9 A. Yes.

10 Q. And below that or on the next page is the e-mail from  
11 Charlie to Dr. Puchalski, and all this was forwarded to you.  
12 You can see that in the e-mail above it.

13 A. Yes.

14 Q. This was Charlie Lucas saying, we are just giving you  
15 our concerns over the delays on the last two invoices which  
16 can and has on some accounts caused burdens on our vendors  
17 and subcontractors. Do you see that?

18 A. Yes.

19 Q. You knew that the builder was anxious to be paid and  
20 letting SCENT know that.

21 A. That's what Dr. Puchalski was telling me.

22 Q. But you also saw that Charlie Lucas said it himself.

23 A. Yes, but in the -- in doing business with SCENT as part  
24 of SCENT I know we would often have people send letters in  
25 support of our position, so I'm not sure if that's a

1 legitimate letter from Charlie Lucas himself or if Dr.  
2 Puchalski said specifically send the letter, just like he  
3 said there's a mechanic's lien when there wasn't, so like I  
4 said, I don't know that that's -- yes, it says from Charlie  
5 Lucas, but there could be a whole lot more to that than just  
6 that e-mail.

7 Q. So you're saying that you think that Charlie Lucas  
8 didn't send that e-mail?

9 A. No, that's not what I'm saying at all. I'm saying on a  
10 number of occasions when we were dealing with hospitals or  
11 other entities to advance our position we would have someone  
12 send a letter in support of our position or an e-mail in  
13 support of our position so that we can take that to the party  
14 we're dealing with and say, hey, look at this letter or  
15 e-mail. We've done that before, we've continually done that,  
16 and that's what this e-mail here seemed like.

17 Q. I'm not asking about -- I understand you've said that  
18 and I understand that.

19 A. My answer is there's an e-mail there from Charlie Lucas,  
20 the backdrop of which I don't know. That's my answer.

21 Q. You got an e-mail forwarded to you from Charlie Lucas  
22 saying that he wanted his money, right?

23 A. That's what the e-mail said.

24 Q. Okay. We can skip over the next one.

25 THE COURT: Skip over 48?

1 MR. SHEHEEN: Yes, ma'am. And we're going to 62. It  
2 looks like this (indicating). It's a letter of Nelson  
3 Mullins.

4 THE COURT: What date?

5 MR. SHEHEEN: March 17th, 2010.

6 THE COURT: Okay. That's going to be 49.

7 MR. SHEHEEN: This is 62.

8 THE COURT: It's not written on there anywhere.

9 MR. SHEHEEN: I know. I'm sorry. In the books it's 62,  
10 and I don't want to get you off of what's in the books.

11 THE WITNESS: So just ignore this one before that?

12 MR. SHEHEEN: Right.

13 THE COURT: All right.

14 Q. This is a letter to -- Ed White to Bruce Armon, do you  
15 see that?

16 A. Dear Bruce, Ed White, yes, sir.

17 Q. This is dated March 17th, do you see that?

18 A. Yes, sir.

19 Q. I want you to look down at the last paragraph on the  
20 first page, okay, and I'll just read it, just saves a little  
21 time if I read it, if you'll follow along. It says, to allay  
22 any concerns Dr. Dyce may have about the financial records of  
23 the company Dr. Puchalski offered to split the costs of an  
24 audit of the company by an independent accounting firm. Dr.  
25 Puchalski also offered to meet with Dr. Dyce and the

1 company's accountants to address any concerns Dr. Dyce may  
2 have with the financial records of the company. Dr. Dyce has  
3 yet to respond to either of the alternatives. And then  
4 there's lots more in this letter, and the Judge can read it  
5 and you can as well, but what I wanted to ask you was, do you  
6 recall there being an offer of an independent accounting firm  
7 coming in to look over things?

8 A. I recall a number of offers, I don't recall the specific  
9 e-mails, but every one of them involved Bob overseeing the  
10 accounting or Austin Sheheen or his office overseeing the  
11 accounting or Theresa Williams overseeing the accounting or  
12 someone of Dr. Puchalski's choice overseeing the accounting  
13 which would defeat the whole purpose of an objective  
14 accounting.

15 Q. That's why I asked you -- this one says an independent  
16 accounting firm, and that's why I asked you, do you recall  
17 there being the offer of having an independent accounting  
18 firm come in to review things to allay your concerns?

19 A. I recall.

20 Q. Why didn't you say, great, let's go do that?

21 A. Because I already had a purpose for getting independent  
22 folks who were objective to come in and review it, I already  
23 had the folks all ready to look at it.

24 Q. Okay. The next one is Exhibit 61. It says Robert  
25 Puchalski at the top.

1 A. Okay.

2 MR. SHEHEEN: And just so that the Court will  
3 understand, Judge, you know how there was the other e-mail  
4 where there was a chain and there was Dr. Dyce asking  
5 questions, this is similar to that, and the Court will just  
6 have to kind of look at it a little bit to understand it.

7 Q. But, Dr. Dyce, just to set the stage, do you recognize  
8 that the beginning of the paragraph is you, and then there's  
9 Dr. Puchalski responding to you, and the type looks slightly  
10 different on my copy after some stars. Do you see that?

11 A. No. The first line is from Robert Puchalski to Jamie  
12 Curley. Is that what you have?

13 MR. SHEHEEN: May I approach the witness, Your Honor?  
14 Thank you. No. I'll hand mine to you, Doctor.

15 THE COURT: And this is number?

16 MR. SHEHEEN: 61.

17 THE COURT: It says confidential on the bottom?

18 MR. SHEHEEN: Yes, ma'am.

19 THE COURT: Got it.

20 Q. My question is is this you and Dr. Puchalski going back  
21 and forth with questions that you give and responses that he  
22 then gives? Not asking if you like the responses, I'm just  
23 asking is it you --

24 A. I believe these are back and forth between me and Dr.  
25 Puchalski.

1 MR. SHEHEEN: Thank you. Your Honor, the next exhibit  
2 you can skip over. I'm going to do that through another  
3 witness. It looked like -- it says Robert Puchalski at the  
4 top. Yes, just flip that one over.

5 THE WITNESS: They all say Robert Puchalski at the top.

6 MR. SHEHEEN: Many of them do.

7 THE COURT: What's the next one?

8 MR. SHEHEEN: The one that says, Robert Puchalski, and  
9 then it says Friday, March 26, we're skipping over that.

10 THE COURT: Okay.

11 Q. Dr. Dyce, do you recall in your deposition I asked you  
12 what documents it was that you wanted and you told me you  
13 didn't know, do you recall that?

14 A. I don't recall that.

15 Q. Tell me what documents you don't have that you think  
16 should have been provided to you?

17 A. To this day?

18 Q. Yes, sir.

19 A. Well, I never got the credit card, all the credit card  
20 records, I still haven't received the various versions of the  
21 shareholder agreement, and I still haven't received -- I  
22 forgot one or two other things. I can't remember them  
23 offhand.

24 Q. You're aware that your accountant went to the accountant  
25 of SCENT and spent, I believe, over a day going through



1 thousands of records. Are you aware of that?

2 A. I don't remember.

3 Q. Are you aware that your accountant went to the main  
4 office of SCENT and that we made available to him the things  
5 that he wanted to look at?

6 A. I don't remember. It's been a while.

7 Q. And I believe you testified today that you had received  
8 copies of proposed -- the proposed new shareholder  
9 agreements, is that your testimony, that you did or did not  
10 receive some copies of proposed shareholder agreements?

11 A. What was listed as a 2010 shareholder agreement?

12 Q. Yes, sir.

13 A. Yes, we eventually received copies of those.

14 Q. I'm not talking about after litigation. I'm asking you  
15 prior to litigation.

16 A. Yes.

17 Q. You received copies?

18 A. Yes.

19 Q. Do you recall in your deposition in the Dr. Gunnlaugsson  
20 case I asked you, when they drafted those agreements, did  
21 they actually provide you with a copy of those drafts, or  
22 they only gave them to Dr. Puchalski, and you said I was  
23 never provided any of the drafts?

24 A. Yes.

25 Q. Why do you say that?

1 A. Because I don't believe I was provided any of the  
2 drafts.

3 Q. Were you provided drafts of employment agreements and  
4 shareholder agreements or were you not?

5 A. I received a shareholder agreement to sign. It was  
6 supposed to be a finalized version, there was no negotiation  
7 on it, and I was supposed to receive that and sign it. The  
8 drafts 1 through 30 or 10 through 30 or 10 through 25,  
9 whatever the numbers were, I didn't receive those drafts, and  
10 that's what I'm referring to, so I'm sorry if I was unclear  
11 of what I meant.

12 Q. You didn't sign that agreement because you didn't like  
13 the terms, right? 2010 agreement.

14 A. I didn't -- it was an unsignable document.

15 Q. I'm trying to make this not real hard. So you didn't  
16 sign it, right?

17 A. I did not sign it.

18 Q. And you didn't sign it because you didn't like the  
19 terms.

20 A. It was an unsignable document.

21 Q. Did you like the terms of the 2010 agreement?

22 A. I didn't even consider the terms of the 2010 agreement.

23 Q. Why didn't you sign it?

24 A. Because it was an untenable, unsignable document.

25 Q. Because you didn't like the terms, correct?

1 A. The terms were not -- they were not real terms. It was  
2 not a real agreement.

3 Q. You didn't sign it, so it wasn't an agreement, right?  
4 The only agreements that were signed or the controlling  
5 agreements in this case are the 2008 shareholder agreement  
6 and the 2008 employment agreement, right?

7 A. And the articles of incorporation.

8 Q. Which ones?

9 A. SCENT's, whichever ones were in effect.

10 Q. And the reason there's no 2010 agreement is because you  
11 wouldn't sign it, right?

12 A. Yes.

13 Q. And you wouldn't sign it because you didn't like the  
14 terms and you weren't going to agree to the terms, right?

15 MR. ELLISON: Your Honor, this is the fourth time he's  
16 asked same question.

17 THE WITNESS: I met with Ed White --

18 THE COURT: I think he said they were untenable.

19 MR. ELLISON: He said the same answer three times.

20 THE COURT: I think what he said is it's untenable. I  
21 know what untenable means, I didn't like them.

22 Q. And you were free not to sign the agreement, right?

23 A. No, I wasn't.

24 Q. So you had to sign the agreement?

25 A. Or get terminated.

1 Q. And you understood, didn't you, that the bank was  
2 requiring that you sign as a guarantor to close on the  
3 building, you understood that?

4 A. I understood that I was no longer going to guarantee  
5 anything until I had a chance to review documents to ensure  
6 that the practice viability, financially, was there and that  
7 there was nothing nefarious or improper going on in the  
8 practice, that's what I understood.

9 Q. That wasn't my question. You've testified to that  
10 already. My question was you understood the bank was  
11 requiring that you sign the guarantee for SCENT Land to close  
12 the loan for this building, correct?

13 A. And I'm explaining to you what I understood. I didn't  
14 speak with any bank individuals at this time, and I  
15 understood I wasn't going to sign off on anything until I  
16 reviewed the documents. I did not speak to the bank. I only  
17 spoke to Dr. Puchalski, and he had been withholding sweeps,  
18 saying we didn't have the money. Austin was saying we had  
19 the money and was surprised it hadn't been disbursed. And I  
20 said, wait a minute, I'm not signing onto anything until I  
21 can get a chance to review the ledgers and everything else.

22 Q. You can answer my question no, you can answer it yes,  
23 you can answer it I don't know, and then you can explain, but  
24 I just want you to answer the question.

25 A. I understood I had the right to not guarantee anything,

1 that's all I'm saying. I'm not saying anything with the bank  
2 or with anyone else. I had the right to not guarantee  
3 anything else.

4 Q. My question is did you know that the bank, to close the  
5 loan while you were -- at that time was going to require you  
6 to guarantee it?

7 A. I don't know if I knew that at that time.

8 Q. Okay. Thank you. You knew that the lease on the  
9 current facility was running out, right?

10 A. I did.

11 Q. You knew that Jamie had to sign as a member of SCENT  
12 Land for them to be able to close on it, right?

13 A. I don't know what she had to do, but I knew she wasn't  
14 going to agree to anything either.

15 Q. So you don't know whether she had to close?

16 A. I don't know what she had to do or not do.

17 Q. You were told that from SCENT though?

18 A. From SCENT, Dr. Puchalski and Ed White.

19 Q. I want you to look at the next exhibit which I hope  
20 looks like this (indicating). It says Dr. Puchalski at the  
21 top. It says from Charlie Lucas to Theresa Williams. Do you  
22 see that?

23 MR. CLEVELAND: What number is it?

24 MR. SHEHEEN: I apologize. 49.

25 Q. This e-mail is sent from Charlie Lucas, and you'll see

1 on the second page that you're cc'd. It says, to Charlie  
2 Lucas, cc, Dr. Dyce, Jamie, Amy Puchalski, and there's a  
3 little message from Dr. Puchalski, but at the bottom on the  
4 second page there's a message from Charlie Lucas. Do you see  
5 that? That's what we talked about a little earlier, right?  
6 Looks like it's a copy of that same e-mail.

7 A. Okay.

8 Q. On the first page there's another message from Charlie,  
9 about midway through it says, Theresa, did you talk with Dr.  
10 Puchalski yesterday afternoon? Our company and some of the  
11 subcontractors' suppliers' cash flow is negative. Do you see  
12 that?

13 A. Yes.

14 Q. All right. Do you think that that might have been a  
15 plant message too from Charlie, or do you feel like that was  
16 a real one?

17 A. I don't know. As a show of good faith, I agreed to let  
18 us release \$100,000 in anticipation that we could get this  
19 matter resolved. I don't know what these e-mails were about.  
20 I wanted to move forward. I agreed to advance it, and  
21 instead I was terminated.

22 Q. All right. I want to you look at the next exhibit which  
23 is Exhibit 92. It says Dr. Puchalski at the top. It's sent  
24 to Tammy Szymanski, date's February 16, 2010.

25 MR. ELLISON: What exhibit is this?

1 MR. SHEHEEN: 92.

2 Q. Do you see that, Dr. Dyce?

3 A. Yes.

4 Q. It says February 16th. This is a discussion -- is it  
5 fair to say it's a discussion between you and Tammy about the  
6 medical malpractice, and there's information on the back  
7 referencing, for example, that suits can't be settled without  
8 the consent of the physician, which you referred to before.  
9 Is it fair to say this is information that you requested  
10 about the malpractice insurance?

11 A. This is a request for information, is that what you're  
12 asking me?

13 Q. No. I said aren't they providing you with information.  
14 Look on the second page. It's giving you information, right?  
15 Below I have outlined the benefits of switching to the  
16 Medical Protective from JUA and PCF which I presented during  
17 the board meeting.

18 A. Do you see where I said, could I be able to see the  
19 contracts for myself? So it's where I requested the  
20 information because at this time there was a lot of  
21 information being fed to me that wasn't necessarily true, and  
22 it turned out the malpractice agreement was not lower with  
23 the new company, based on what I found out. So yes, it does,  
24 in the middle of the page it says, would I be able to see the  
25 contracts from each company for myself.

1 Q. Do you see at the top where Dr. Puchalski says, not  
2 sure, are there written policies he could view; could you  
3 give him the reps to speak with directly?

4 A. Yes, and that's what I did.

5 Q. So nobody was trying to hide information about the  
6 malpractice quotes from you, were they?

7 A. Well, there's an e-mail that includes malpractice quotes  
8 which was different from what I found when I called the  
9 JUA/PFC. So I don't know if it was intentional or we didn't  
10 do due diligence, but either way, it was incorrect and higher  
11 than the quote they told me.

12 Q. My question, though, is nobody was trying to hide any  
13 information from you about medical malpractice; they said  
14 give him the number to call the rep, right?

15 A. I am not going to say that because they actually gave me  
16 incorrect information, so if you want to ask -- I'm not  
17 saying what their intent was with this e-mail, but the  
18 information they relayed to me was incorrect.

19 Q. Let's look at the next one which is Exhibit 93. It says  
20 Puchalski at the top. The date's February 22nd, 2010.

21 A. This is 93?

22 Q. Yes, sir.

23 A. It says Puchalski --

24 Q. The date is February 22nd, 2010. Do you see that?

25 A. Yes.



1 Q. This is communications between Tammy Szymanski, Dr.  
2 Puchalski, some guy named Darren Grazier who's at VGMFS  
3 lease, do you see that?

4 A. Yes.

5 Q. This is discussing leasing equipment, do you recall  
6 that?

7 A. Not completely, no.

8 Q. Look at the bottom. This is from Tammy Szymanski to Dr.  
9 Puchalski. I received statement of account today from  
10 Respironics showing a past due of \$34,492. I do get calls  
11 three or four times per week. Are we moving forward with  
12 this? I've been getting calls from them to finalize the  
13 lease documents, but I've not received those back from Dr.  
14 Dyce, parentheses, he has to review, do you see that?

15 A. Yes.

16 Q. They provided you with the lease documents related to  
17 this transaction with Respironics, right?

18 A. The lease documents? Do you have the lease documents  
19 that were attached or that they said they provided me with?

20 Q. I'm asking you, do you recall getting copies of the  
21 lease documents that Tammy's talking about, saying that she  
22 gave them to you?

23 A. I know, and as I said before, I didn't really recall  
24 this e-mail, so I can't recall if I got lease documents with  
25 it, so that's why I said if you could show me, maybe it would

1 jog my memory, but I can't recall anything about this.

2 Q. Okay. If you can't recall, you can't recall. Thank  
3 you.

4 A. Yes.

5 Q. Do you recall that you refused to sign for new equipment  
6 leases?

7 A. I recall that, again, as I mentioned earlier, I was  
8 being bombarded with a lot of things to sign which seemed to  
9 be a way to get money out of the practice into these little  
10 side ventures that potentially Dr. Puchalski could access for  
11 extra financing, so I recall too that Somnus was to be funded  
12 by SCENT -- funded by SCENT at a time when Dr. Puchalski had  
13 been withholding my distributions. So he's asking me to sign  
14 on to loans for construction and accruing essentially over \$2  
15 million in debt, signing on to loans for equipment for  
16 companies to -- like to Somnus, where we're buying equipment  
17 for them, signing on to all this new debt, when in reality he  
18 is not disbursing the funds like he's supposed to by our  
19 agreement. And my thing was, I don't know that we're  
20 financially viable enough -- one of my things was, I don't  
21 know we're financially viable enough to take on this kind of  
22 debt, which as you mentioned before, brought it to the brink  
23 of bankruptcy, or whatever your term was before, so I'm not  
24 agreeing to sign on to debt if I can't even review the  
25 documents in a meaningful way.

1 Q. My question was did you recall refusing to sign on to  
2 these lease agreements?

3 A. I refused to sign on to anything that would commit us to  
4 any more funds. It wasn't just lease agreements. Anything  
5 that committed us to any more outlay of capital that we  
6 didn't have, and I wanted to know why we didn't have it.

7 Q. You weren't going to sign anything.

8 A. I didn't say I wasn't going to sign them. I wanted to  
9 review the documents I've said that repeatedly, even in my  
10 e-mail, I'm willing to sign on to anything, just give me an  
11 opportunity to adequately review the documents.

12 Q. I asked you if you recall reviewing the lease agreement  
13 documents and you can't recall.

14 A. I can't recall, but I know I refused to sign a number of  
15 things at that time.

16 Q. If you had gotten the lease documents why wouldn't you  
17 sign them if they made sense?

18 A. I'm not sure they made sense.

19 Q. Dr. Dyce, you were making \$1.7 million that year?

20 A. 2009 I was credited with making 1.7, I believe.

21 Q. Do you agree with me, and in your prior deposition  
22 testimony you agreed with me, that prior to you beginning to  
23 request these many documents you -- Dr. Dyce was running the  
24 practice, business side; is that correct?

25 A. You said Dr. Dyce was running it.

1 Q. Excuse me, Dr. Puchalski, I apologize.

2 A. Dr. Puchalski was running the day-to-day portion of the  
3 practice, major decisions had -- were -- all the physicians  
4 agreed upon those.

5 Q. He was doing the hiring, right?

6 A. Actually, Theresa Williams was doing the hiring.

7 Q. Who oversaw Theresa Williams, Dr. Puchalski, right?

8 A. Dr. Puchalski, yes.

9 Q. And he was doing the firing, right?

10 A. Theresa Williams was doing the firing.

11 Q. And who oversaw Theresa Williams?

12 A. Dr. Puchalski.

13 Q. And you were, I think by your own admission, more  
14 interested in practicing medicine than the business; is that  
15 right?

16 A. Yes. I was very interested in practicing medicine, and  
17 for this reason Dr. Puchalski had anywhere from two to four  
18 half days off to manage the affairs of the business in  
19 accordance with our shareholders agreement and to the benefit  
20 of the practice and the shareholders.

21 Q. He didn't have two days off. He had two days where he  
22 was managing the business, right?

23 A. He was in Kiawah a lot. I guess he could manage from  
24 Kiawah. My fault, I'm sorry.

25 Q. It bothered you that he wasn't in the patient rooms or

1 the OR rooms as much as you were?

2 A. It actually didn't that much.

3 Q. It didn't bother you?

4 A. No.

5 Q. Okay.

6 A. It didn't really.

7 MR. SHEHEEN: Your Honor, we can skip over the next one.

8 Q. Dr. Dyce, during this time in January and February you  
9 and Dr. Gunnlaugsson were talking to each other about things  
10 that you didn't like about Dr. Puchalski and the things that  
11 you didn't like about SCENT, weren't you?

12 A. Dr. Gunnlaugsson and I were talking about a lot of  
13 things during that time, both good and bad, as we always do,  
14 as myself and Dr. Puchalski did, as myself and Vidrine --  
15 well, not so much Vidrine but as Vidrine and Gunnlaugsson and  
16 Gunnlaugsson and Puchalski.

17 Q. Are you telling me that things were just the same as  
18 they had been in the years past with --

19 A. No.

20 Q. So you and Dr. Gunnlaugsson were talking about things  
21 that you were upset about. I mean, you've mentioned some of  
22 them today, right? There's things you didn't like about what  
23 Dr. Puchalski was doing you didn't think was right.

24 A. Yes, but I don't know how much of that I mentioned to  
25 Dr. Gunnlaugsson.

1 Q. Let's look at Exhibit No. 71 which is the next one that  
2 says affidavit at the top.

3 A. This (indicating)?

4 Q. Yes, sir. Are you aware that this affidavit -- well,  
5 you are aware because you talked about it before -- that this  
6 affidavit was prepared by Gunnlaugsson's lawyer and  
7 Gunnlaugsson and it was presented to you in February, around  
8 February of 2010, wasn't it?

9 A. I don't know when it was presented to me, but he did  
10 send it to me.

11 Q. And you know because you told me that it was prepared by  
12 the lawyer for Gunnlaugsson.

13 A. It was a while back. I don't remember when he sent it  
14 to me. I don't know -- I'm not saying I didn't say that.  
15 I'm just saying I didn't prep for when this was prepared.

16 Q. Okay. Well, let's look at it briefly. This has your  
17 name on it to sign, doesn't it?

18 A. It does.

19 Q. It does. And it was given to you by Chad Gunnlaugsson.

20 A. It was.

21 Q. And at the top it says, Gunnlaugsson versus SCENT,  
22 doesn't it?

23 A. It does.

24 Q. And this is before Chad -- you weren't surprised Chad  
25 Gunnlaugsson sued SCENT because you knew that Chad

1 Gunnlaugsson was anticipating suing SCENT back in February  
2 2010.

3 A. Actually, I did not.

4 Q. You got an affidavit that is styled as a lawsuit, right?

5 A. Listen, before this whole debacle that went down with  
6 the practice I'd never been involved in a lawsuit. Maybe Dr.  
7 Puchalski, who had been involved in lawsuits, would  
8 automatically recognize this as a lawsuit. I had never been  
9 involved in a lawsuit. I hope to never be involved in one  
10 again. This, I don't automatically say oh, this is a  
11 lawsuit.

12 Q. What did you think it was?

13 A. Well, I'll tell you what Chad told me it was. He  
14 thought he was going to be fired, and when he thought he was  
15 going to be fired, he presented this to me and said, hey,  
16 will you vouch for the fact that I'm a shareholder.

17 Q. This is about the same time your text messages and your  
18 phone calls go through the roof with Chad Gunnlaugsson, isn't  
19 it?

20 A. I don't know. I know we'd been talking all along.

21 Q. You know what, I want you to look at the fourth  
22 paragraph here. He wanted you to sign this and say that Dr.  
23 Gunnlaugsson has completed all payments and actions necessary  
24 to receive his shares and should be in fact a shareholder of  
25 SCENT. Do you see that?

1 A. Yes, I do.

2 Q. Then the next sentence says, this understanding is based  
3 on my access to records of SCENT, my knowledge of the  
4 payments for shares made by Dr. Gunnlaugsson and my knowledge  
5 that SCENT contractually agreed to issue shares to Dr.  
6 Gunnlaugsson and that Dr. Gunnlaugsson has fully performed  
7 his part of that agreement, do you see that?

8 A. Yes, I do.

9 Q. Dr. Gunnlaugsson, his lawyer, put in here things that  
10 were confidential information of SCENT, didn't they, he talks  
11 about your access to the records of SCENT?

12 A. What? I'm sorry. It talks about your access -- I'm not  
13 sure what you're asking.

14 Q. He prepared this for you and as he prepared it he says  
15 that you're basing this on your, Orville Dyce's, access to  
16 the records of SCENT, that's what it says, right?

17 A. Okay.

18 Q. All right. Look at seven. This is Dr. Gunnlaugsson,  
19 his lawyer, putting this down for you to sign. On Tuesday,  
20 February 2nd, Dr. Puchalski called a meeting of the  
21 shareholders. At this meeting he made a motion to terminate  
22 Dr. Gunnlaugsson's employment. Only way he knew there was a  
23 meeting of the shareholders on February 2nd was because you  
24 told him, right?

25 A. I actually don't even remember the meeting.



1 Q. Then look at number nine.

2 A. I don't even remember the motion to terminate Dr.

3 Gunnlaugsson so I don't --

4 Q. Look at No. 9. Dr. Gunnlaugsson and I have significant

5 disagreements and concerns with Dr. Puchalski concerning the

6 management of the practice. I myself have grave concerns

7 over the proposed shareholder agreement which through my

8 attorney I have expressed to SCENT. Dr. Dyce, Dr.

9 Gunnlaugsson wasn't supposed to have access to the

10 shareholder agreement.

11 A. He didn't from my end.

12 Q. Well, he gave you this affidavit saying that you --

13 A. I don't think it says I gave him --

14 Q. -- had concerns.

15 A. He knew I had concerns. He knew there were no --

16 Q. Because you're sharing confidential information with him

17 about the shareholder agreements that he wasn't supposed to

18 have, isn't that right?

19 A. No, it's not.

20 Q. How did he know that you had concerns then?

21 A. We talked about it. He said that Bob told him there was

22 a new shareholder agreement that there were some

23 disagreements about in multiple meetings. Bob Puchalski

24 himself did that.

25 Q. Are you saying that Bob was sharing confidential

1 information with Chad Gunnlaugsson?

2 A. Bob was the one that showed him all the agreements. We  
3 negotiated the 2008 shareholder agreement with Chad  
4 Gunnlaugsson. That was Dr. Bob Puchalski. It was not  
5 Orville Dyce. I did not have access to Ed White. I don't  
6 know what Bob and him talked about. As you can see, even Dr.  
7 Gunnlaugsson's own contracts I didn't see before it being put  
8 up today, so maybe you should talk to Dr. Bob Puchalski, but  
9 I had no reason to share any of those documents with him.

10 Q. Dr. Dyce, we've talked previously about the text  
11 messages and the phone calls that spiked between you and Dr.  
12 Gunnlaugsson, are you aware of that?

13 A. Yes, we have.

14 Q. And I have shown you charts before, right?

15 A. You showed me charts of some things, yes.

16 Q. And these were charts that I told you were made off  
17 of -- you were using the cell phone that was SCENT's cell  
18 phone, right?

19 A. I had SCENT's cell phone, yes.

20 Q. You were using it -- were you using it to tape-record  
21 these conversations?

22 A. No, sir.

23 Q. You were using it to call Chad Gunnlaugsson, right?

24 A. I spoke to Chad Gunnlaugsson a lot.

25 Q. You really didn't talk to him very much until December

1 and January and through this whole -- these issues, right?

2 Look at the calls down at the bottom of the chart. I mean,  
3 you're not just talking about some patient for four months.

4 A. Can I talk about what we were talking about? There was  
5 an objection to what we were talking about.

6 MR. ELLISON: He's opened it.

7 THE WITNESS: There was a lot of discussion at that  
8 time. A number of things were talked about including that  
9 patient who needed not one but two subsequent surgeries when  
10 Dr. Puchalski did not check on that patient over the  
11 holidays. There are a number of, as I said, mandible  
12 fractures and patient care issues that we discussed, as he  
13 was the only other person around that could help me with some  
14 of these issues. Dr. Gunnlaugsson -- and I was asked by  
15 SCENT, i.e., Puchalski and Ed White, to go speak to Dr.  
16 Gunnlaugsson, and I reiterated he was not intent on leaving.  
17 When they asked me, I gave them an honest answer, he was not  
18 trying to leave. We also talked about just Bob's erratic  
19 behavior at that time. The nurses were saying that Bob was  
20 riding around being suspicious.

21 MR. SHEHEEN: I asked them if they were discussing --

22 MR. ELLISON: He asked what they talked about.

23 THE COURT: Hold on, whoa. The question was did your  
24 conversations increase and what was the topic of the  
25 conversations. I think the door's been opened.

1 MR. ELLISON: Absolutely, Your Honor.

2 THE COURT: You may proceed.

3 THE WITNESS: We talked about Bob's erratic behavior.  
4 He was no longer seeing patients. He would hole up in his  
5 office, talking to who knows, whoever. We talked about the  
6 lack of -- why Dr. Gunnlaugsson hadn't been admitted as a  
7 shareholder. We talked -- Bob let him know there was a  
8 shareholder agreement in the works that we couldn't agree on.  
9 Chad explained a concern that he was going to be terminated,  
10 so these are the sort of things we talked about. We didn't  
11 need to talk about the shareholders agreement. It could have  
12 been the elephant in the room. We would have never seen it  
13 because Bob was acting so erratically at that time that there  
14 were millions of other things going on.

15 Q. You just said you were discussing the fact that Dr.  
16 Gunnlaugsson didn't like what was in the shareholders  
17 agreement or that you didn't like what was in the  
18 shareholders agreement?

19 A. I didn't like what was in the shareholders agreement.

20 Q. You weren't supposed to be talking with Dr. Gunnlaugsson  
21 about the shareholders agreement because it was confidential.

22 A. I didn't realize I couldn't say I don't like what's in  
23 the shareholders agreement.

24 Q. That's all you did on these calls?

25 A. That's all I can remember doing. And no -- I can rehash

1 the things we talked about besides. That wasn't the only  
2 thing I told him.

3 Q. I was asking you about that specific thing.

4 A. No, I didn't need to show him the shareholder agreement.

5 MR. SHEHEEN: The next two exhibits, Your Honor, are  
6 just the call logs that support the charts. I don't see any  
7 need to go through those. I'll just flip those over, sorry,  
8 133 and 134.

9 I want you to look at No. 86 which says Chad  
10 Gunnlaugsson, Chuck Thompson at the top and just so the Court  
11 will understand --

12 MR. ELLISON: Which one are we talking about?

13 MR. SHEHEEN: 86. It says at the top, SCENT served from  
14 Chad Gunnlaugsson, Thursday, January 27, 2010. It says, once  
15 again you have put my mind at --

16 THE COURT: These two look very much alike.

17 MR. SHEHEEN: 86.

18 THE COURT: Got it.

19 MR. SHEHEEN: Your Honor, just for your information, and  
20 the other side knows this as well, these e-mails and the  
21 affidavit were retrieved from SCENT's computer. In the  
22 Gunnlaugsson case there was a motion to suppress them for  
23 attorney-client privilege purposes. That was not granted  
24 because they used SCENT's computer, so they were determined  
25 not to be attorney client privileged, just giving you some

1 background on it. That was in the Gunnlaugsson case.

2 THE COURT: Okay.

3 Q. This e-mail is between Chad Gunnlaugsson and his lawyer,  
4 do you see that?

5 A. Yes.

6 Q. Okay. I want you to turn to the second page, do you see  
7 that?

8 A. Yes.

9 Q. It says, I know Orville's lawyer was trying to contact  
10 you. This is January 7th, 2010, do you see that?

11 A. Where.

12 Q. Top of the page, second page, I know Orville's lawyer  
13 was trying to contact you.

14 A. Top of the page -- oh, yes, sorry, yes. Yes.

15 Q. Then down toward the bottom, 86, the second page, it  
16 says, Chuck, here's the name and e-mail of Dr. Dyce's  
17 attorney in Philadelphia, Bruce Armon, and then it's his  
18 e-mail address, and then it says I will try to get his phone  
19 number from Dr. Dyce also, right?

20 A. Yes, it does.

21 Q. On your direct you testified that the lawyers weren't  
22 talking to each other -- I don't want to put words in your  
23 mouth. You tell me. But I heard you say that there was no  
24 lawyers working together on y'all's side until after the  
25 lawsuits were filed?

1 A. This doesn't say they were working together.

2 Q. Did you say that on direct?

3 A. My attorney did not work together, and I repeat it --

4 Q. So you gave Dr. Gunnlaugsson your lawyer's e-mail and  
5 address.

6 A. He asked me for it.

7 Q. And you gave it to him.

8 A. Yes.

9 Q. And you just thought that he just wanted to know it or  
10 that he was going to have his lawyer contact him?

11 A. I don't remember what I was thinking at the time. I  
12 didn't realize that was off limits.

13 Q. I'm not saying it was off limits. I'm trying to  
14 establish -- strike that. Excuse me.

15 So on the top of the page Chad says, I know Orville's  
16 lawyer is trying to contact you, says that, doesn't it?

17 A. That's what it says.

18 Q. That's because you told him that, didn't you?

19 A. That is not what I told him. I don't remember telling  
20 him that. I don't know why my attorney would need to contact  
21 Chad Gunnlaugsson.

22 Q. Maybe because you all were working together to make sure  
23 that you could take over or stymie SCENT.

24 A. I know you'd love to believe that. Bob even came to me  
25 and said he doesn't believe that's true. Now I guess you

1 need some offset of damages or something, but that is simply  
2 not true. That is simply not true. My attorney was simply  
3 negotiating an agreement and trying to get a fair agreement.  
4 There was no litigation involved. There was nothing else  
5 involved.

6 Q. Was your lawyer licensed to practice in South Carolina?

7 A. I don't know where my lawyer's licensed to practice.

8 Q. Do you realize that in those calls going back and forth  
9 that you would talk to Chad and then Chad would talk to his  
10 lawyer and then Chad would call you back and then you all  
11 would talk some more, do you realize that?

12 A. I did not realize that. I'm not sure that's true.

13 Q. Okay. Let's look at the next one. It's Exhibit 72. It  
14 says at the top, again, SCENT server, some kind of  
15 administrative group thing, do you see that, Dr. Dyce?

16 A. Yes.

17 MR. SHEHEEN: We call this for shorthand the  
18 Gunnlaugsson manifesto, and if you look to the attachment,  
19 you can see this was around December 28th, 2009, and if you  
20 look at the attachment, again, Your Honor --

21 THE COURT: This is Exhibit?

22 MR. SHEHEEN: 72.

23 THE COURT: Thank you.

24 MR. SHEHEEN: Again, Your Honor, these were some of the  
25 documents retrieved from SCENT's computer system that we



1 discussed earlier.

2 Q. This is Dr. Gunnlaugsson's manifesto, who you had been  
3 talking to we know, right, on cell phones and texts?

4 A. Yes, I communicated with Dr. Gunnlaugsson.

5 Q. Okay. And he says in here, for example, up at the top  
6 in the first paragraph, second sentence, this is December  
7 27th, 2009, currently Drs. Puchalski and Dyce are  
8 shareholders of the S corporation designated SCENT, do you  
9 see that?

10 A. Where are you?

11 Q. Second sentence in the first paragraph, starts with  
12 currently.

13 THE COURT: You've got to go to the next page.

14 THE WITNESS: Okay.

15 MR. SHEHEEN: I'm sorry. Yes.

16 THE COURT: See right there it says currently  
17 (indicating).

18 THE WITNESS: Yes.

19 Q. Okay. And then in paragraph 1 there it says, a markedly  
20 enlarged buy-in formula based on the net revenues of the  
21 practice as described in Section 4.5 of the shareholder  
22 agreement, this was agreed upon by Dr. Dyce and Puchalski  
23 during the inclusion of Dr. Dyce in the partnership tracks.  
24 He successfully completed this in 2008. Do you see that?

25 A. Yes.

1 Q. He knew those things because you told him those things,  
2 right?

3 A. Actually, this proves he didn't get that from me because  
4 I never agreed to that markedly bought up price, so if he had  
5 gotten that information from me, I would have said I did not  
6 agree to that.

7 Q. I'm glad you brought that up, Dr. Dyce, because I've  
8 heard you allege now that you were a shareholder in, I think  
9 you said in 2007, but I'm not exactly sure because I don't  
10 think you've given us a date. When do you claim you were a  
11 shareholder?

12 A. I believe I became a shareholder as early as February of  
13 2007 but, again, it's more of a legal question because the  
14 documents are conflicting on when I became a shareholder, but  
15 I believe the first distribution of a K-1, my understanding,  
16 and I could be incorrect on this because I'm not a tax  
17 person, is that if you start getting distributions, you are a  
18 shareholder.

19 Q. You never got a K-1 --

20 A. I did.

21 Q. Let me finish the question because otherwise that's not  
22 an accurate question. You never got a K-1 in 2007, did you?

23 A. I did.

24 Q. You understand that a K-1 is actually a tax document,  
25 right?

1 A. I understand a K-1 is a distribution. I don't know what  
2 the term is or the legal wranglings or whatever it's called.

3 Q. You understand if you're a shareholder, when you file  
4 your taxes, you file as a shareholder, right?

5 A. I understand when I file my taxes I file as a  
6 shareholder, yes.

7 Q. In 2007 you did not file as a shareholder, right?

8 A. I was advised to file my taxes as a shareholder as per  
9 Austin Sheheen.

10 Q. If you could just answer the question and then you can  
11 explain. In 2007 you didn't file as a shareholder?

12 A. I didn't make the decision about how to file my taxes is  
13 what I'm saying. I'm not a tax person. I trusted my  
14 accountant to file the proper tax returns and do it  
15 appropriately. That was Austin Sheheen. So I did not say,  
16 no, don't file me as this or do file me as that. I just  
17 said, these are the numbers, this is what we're doing, make  
18 me a tax return that I'm in compliance with the law.

19 Q. Okay. Do you know whether you filed a tax return in  
20 2007 as a shareholder or not?

21 A. I don't know what the designation on my tax return was.

22 Q. If you don't know, you can tell me you don't know.

23 A. I just said I don't know.

24 Q. Would it surprise you for me to tell you that in 2007  
25 you didn't file as a shareholder?

1 A. I would have to check. I don't know.

2 Q. Okay. I want you to look at No. 3, okay? It says, the  
3 shareholder agreement contained clauses specific to only  
4 Robert Puchalski as designated in Section 3.9 of the  
5 shareholders agreement. Is he talking about the 2010  
6 proposed shareholder agreement to your knowledge, do you  
7 know?

8 A. You would have to ask Dr. Gunnlaugsson what he's talking  
9 about.

10 Q. Okay. Fair enough. Look on the next page, 72.

11 A. The next page?

12 Q. I'm sorry, the next page of 72. There's no real number  
13 on it. There's a full paragraph that starts, from June 1st  
14 2008 to April 30th, 2009 I completed the buy-in formula, do  
15 you see all that?

16 A. Yes, yes, sir.

17 Q. I want you to look at 3 down there, about midway through  
18 he says -- it starts out, for example, okay, do you see that?

19 A. Yes, sir.

20 Q. It says, for example Dyce agreed to pay Dr. Puchalski  
21 the taxable amount of the money that Dr. Puchalski absorbed  
22 during Dr. Dyce's buy-in period. This would be approximately  
23 equal to 40 percent taxable rate at the 620,000, quote,  
24 buy-in in my case, do you see that?

25 A. Yes, sir.

1 Q. Let's finish this document and then I'll ask you a  
2 question about it. On page 72.

3 A. Page 72?

4 Q. I'm sorry, again, I apologize, the next page of 72.

5 A. Yes, sir.

6 Q. See where it says one down there?

7 A. Yes, sir.

8 Q. He's talking about information between Ed White and  
9 things that Dr. Puchalski supposedly put forward that were  
10 contained in the 2010 agreement there. Dr. Puchalski  
11 maintained the office of managing shareholder and president  
12 of the S Corp. based solely on the gross revenues of the  
13 practice increasing and not by voting rights of the  
14 shareholders. Dr. Puchalski would get an additional 4  
15 percent of the sweep revenues each month. Those were things  
16 that were in the 2010 agreement that were given to you,  
17 aren't they?

18 A. I don't remember what was in the 2010 agreement.

19 Q. And you know Dr. Puchalski didn't give him the 2010  
20 agreement he gave you, right?

21 A. I'm not sure of that. I believe Dr. Puchalski did show  
22 us something in 2009. I don't remember what it was.

23 Q. So Dr. Puchalski gives out copies of the agreements for  
24 people to look at, is that what you're saying?

25 A. Dr. Puchalski does actually divulge a fair amount of

1 information in those meetings because it was supposed to be a  
2 meeting among shareholders, and I'm not implying that Dr.  
3 Gunnlaugsson was one, but there were a number of those  
4 meetings where Dr. Gunnlaugsson was there.

5 Q. Dr. Dyce, there are a lot of things in that manifesto of  
6 Dr. Gunnlaugsson that were confidential information of SCENT,  
7 aren't there?

8 A. There are a lot of things in that manifesto that Dr.  
9 Gunnlaugsson claims. I do not know where he got the  
10 information, but there are a number of what I would deem  
11 inaccuracies if he had asked me, such as me agreeing to the  
12 extra 40 percent. I did not find out about the extra 40  
13 percent until I was -- had independent accountants look back  
14 at my tax returns and realize that I'd been inappropriately  
15 listed as a 40 percent shareholder in SCENT just so Dr.  
16 Puchalski could get more distributions from SCENT, and that  
17 was the first time I realized that these things were going  
18 on. And this was after I'd filed my tax returns so  
19 according -- if he had asked me, I would have said no, I  
20 never agreed to those things, so this is almost proof  
21 positive that I never told him these things. These are  
22 coming directly out of the mouth of Bob Puchalski. He was  
23 the one that would have said this because even in subsequent  
24 e-mails to Austin that's in part of the exhibits he says, Dr.  
25 Dyce agrees to this to pay these taxes. I never agreed to

1 that.

2 Q. Dr. Dyce, are you aware that you were disbursed more  
3 money in 2009 than Dr. Puchalski?

4 A. I don't believe that.

5 Q. Let's look at the next Exhibit, 167, this is the  
6 complaint, it's the complaint, verified complaint of Chad  
7 Gunnlaugsson, and I'll read it slowly. On allegation 24 I'm  
8 going to look at and 28, Your Honor, and Dr. Dyce. 24 is on  
9 information and belief the new shareholders agreement shifted  
10 additional managerial rights to Puchalski and provided for  
11 significant monetary compensation to him and provided for  
12 certain additional compensation to Puchalski in the event he  
13 voluntarily left SCENT, do you see that? 24.

14 A. Okay.

15 Q. Dr. Gunnlaugsson knew what was in those confidential  
16 draft shareholder agreements, didn't he?

17 A. I would defer to Dr. Gunnlaugsson what he knew.

18 Q. Okay. And in 28 he says, because Dyce refused to agree  
19 to the new shareholders agreement and because of  
20 disagreements over Puchalski's management of SCENT's finances  
21 Puchalski terminated his employment. You told Dr.  
22 Gunnlaugsson that you refused to agree to the new  
23 shareholders agreement and that there were disagreements with  
24 you two shareholders over the management of SCENT's finances,  
25 you told him these things, didn't you?

1 A. I'm sorry, when was this?

2 Q. No. 28.

3 A. When was this document?

4 Q. This was filed April 23rd, 2010.

5 A. So this document was filed after I filed a lawsuit for  
6 an accounting, so I don't know that I told him that I had --  
7 I expected that there were some misappropriation of funds  
8 there. Secondly, as I mentioned before, I did tell Dr.  
9 Gunnlaugsson that I wasn't in agreement with the shareholder  
10 agreement, the new shareholder agreement as it was, so I did  
11 say that, I've already said that, but I did not tell him what  
12 was in that agreement. And he knew that because Dr.  
13 Puchalski also said that we were trying to work out a new  
14 shareholder agreement, so it wasn't just me as a shareholder  
15 telling him. Dr. Puchalski as a shareholder was telling him  
16 this as well.

17 Q. Look at the next exhibit, 99, it's a Carolina Pines  
18 Regional Medical Center -- okay?

19 A. Yes.

20 Q. It says Carolina Pines Regional Medical Center at the  
21 top.

22 MR. ELLISON: 199?

23 MR. SHEHEEN: 99.

24 Q. This says Carolina Regional Pines Medical Center, do you  
25 see that, it says that at the top? It's a pro forma. Do you



1 see the date -- excuse me, this is a pro forma that's  
2 prepared for you to come work for Carolina Pines, right?

3 A. I actually don't know what it is.

4 Q. I want you to look at -- there's stars at the bottom and  
5 there's a little three, and it's real small, and I apologize,  
6 would you read that to the Court?

7 A. Which one?

8 Q. There's stars at the bottom, do you see that, little  
9 footnoty things and there's three little stars, do you see  
10 that? It says SCENT --

11 A. Oh, SCENT currently sees a very low percentage of  
12 self-pay business.

13 Q. You understand some of the most confidential information  
14 of a medical practice is its payer mix, right, you understand  
15 that?

16 A. Okay. I understand that information is shared quite  
17 regularly, actually.

18 Q. So you're saying it's not confidential?

19 A. No, I didn't realize it was confidential because that's  
20 one of the first things, when someone moves to an area, they  
21 look at the payer mix, what percentage Medicaid, Medicare,  
22 private pay, I mean, those are common things that you can  
23 find out very easily what it's like, so I didn't realize that  
24 was confidential, but I'll defer to you on that. Maybe this  
25 is a misconception on my part.

1 Q. You know that SCENT would never reveal its payer mix to  
2 a competitor, you know that, Dr. Dyce.

3 A. Okay.

4 Q. And you told Carolina Pines what SCENT's payer mix was.  
5 You told them that they had a very low percentage of self-pay  
6 business, and they used that when they came up with your pro  
7 forma to hire you.

8 A. Actually, I did not tell them that. I don't know how  
9 they got that information. They could have gleaned it from  
10 the -- from the payer mix of the people that we did surgery  
11 on there, but I never told -- I don't even know what -- to  
12 this day I have no idea what SCENT's payer mix is.

13 Q. So we've got -- you do agree you went and took records  
14 from SCENT about their contracts with insurers, with  
15 carriers, didn't you?

16 A. Yes, I did have insurance contracts.

17 Q. You took those for your own purposes, didn't you?

18 A. Yes.

19 Q. And you also saw the first documents I handed you were  
20 in June of 2010 and they were with your name on them and  
21 Hartsville HMA buying equipment for an ENT practice, weren't  
22 they?

23 A. I don't know what they were buying the equipment for,  
24 but this is often equipment that you can use in an ENT  
25 practice. None of this stuff is in my office, and it says

1 sold, so I assume this was not for my office because if it  
2 had been purchased for my office, it would be in my office.  
3 We do have new Storz equipment in the operating room. Maybe  
4 that's where they bought it for. I don't know. This is all  
5 speculation on my part. I have no idea what this is.

6 Q. In fact, there are more records which you've seen before  
7 that I asked you about in your deposition where you continue  
8 to talk to Hartsville HMA about how to structure your  
9 practice and how you are going to purchase equipment,  
10 correct, you've seen records?

11 A. That was from August, September, October, well after the  
12 60-day period when Bob never paid me and I was forced to get  
13 a job.

14 Q. After these records we just looked at today.

15 A. These aren't records of mine.

16 Q. They have your name on them, don't they, Dr. Dyce?

17 A. Just because it has my name on it doesn't mean it's  
18 mine. If I pull up South Carolina ENT, my name still comes  
19 up. I'm not affiliated with that practice anymore.

20 Q. And you guys also ended up working out with HMA that you  
21 would own the durable medical equipment business and you  
22 would lease your equipment to HMA, didn't you?

23 A. I don't own durable medical equipment. I just have just  
24 regular ENT equipment.

25 Q. I apologize. You would own the ENT equipment and you

1 would lease it to HMA.

2 A. Yes, I did.

3 Q. And you get money for that.

4 A. Yes, I do.

5 Q. Do you realize that you're deducting on your medical  
6 equipment company your attorney fees for this litigation?

7 A. I'd have to check with my accountant.

8 Q. Does your medical equipment company have anything to do  
9 with this case?

10 A. I'd have to check with my accountant.

11 Q. I'm not asking you about any accounting. I'm asking  
12 you --

13 A. You're asking me for an accounting. I don't know what  
14 the tax returns say, so I can't answer that. I know I lease  
15 equipment to Carolina Pines, much in the way SCENT and Bob  
16 Puchalski leased a building to Carolina Pines and got a huge  
17 payout to Carolina Pines for leaving in a settlement  
18 agreement, I understand that, so he's leasing a building for  
19 10 to \$12,000 a month so he's continually getting paid. I am  
20 leasing equipment for which I get paid I think \$800 a month.

21 Q. Okay. My question is, I understand all that, my  
22 question is is your medical equipment company involved --  
23 it's not named as a defendant in this litigation or plaintiff  
24 in this litigation, is it?

25 A. I'd have to check.

1 Q. Okay. Do you recall in your deposition I asked you how  
2 much money you made in 2012, do you recall that?

3 A. I recall you asking me some questions about how much I  
4 made.

5 Q. Do you recall you weren't able to tell me?

6 A. Yes.

7 Q. And but the truth is you're making -- you made about a  
8 million, a little over a million dollars, right?

9 A. I don't remember what I made. It might have been around  
10 there, 800 to -- depends on -- it might have been. I don't  
11 know. I haven't looked at it recently.

12 Q. Dr. Dyce --

13 A. Yes, sir.

14 Q. -- when I asked you how much you made in 2012, why  
15 didn't you just -- I asked you if you could just ballpark it.  
16 Why didn't you just tell me around a million dollars?

17 A. Because I don't know. It's not something I keep track  
18 of.

19 Q. So do you recall that I said could it be more than 100,  
20 and you said yes, and I said could it be more than 200, and  
21 you said yes, and we got up to about 400, do you recall that?

22 A. I don't recall the specifics of the conversation.

23 Q. We'll come back to it. I want you to look, please, at  
24 the next exhibit, which is 109, and it looks like that,  
25 Carolina Pines (indicating).

1 A. This, redacted (indicating)?

2 Q. Yes, sir.

3 A. Okay.

4 Q. This is the cover of your employment package for final  
5 approval.

6 A. Yes.

7 Q. This is when you went to work for Carolina Pines, do you  
8 see that, and you're getting a big bonus to go there, aren't  
9 you, \$75,000?

10 A. It looks like it.

11 Q. Sign on bonus, \$25,000, and commencement, which means  
12 you got another 50 when you started, right?

13 A. Looks like after I started. I don't think it was when I  
14 started.

15 Q. And you got that because Carolina Pines knew, their pro  
16 forma, and you knew that this practice was going to pull  
17 hundreds of patients from SCENT to you, right?

18 A. Actually, I got that because I was negotiating with a  
19 number of other places, and I put those offers on the table,  
20 and I said, literally, I'm going to take the best offer that  
21 provides for my family. And Carolina -- that was not  
22 Carolina Pines initial offer and they upped the ante after  
23 they found out that potentially I could leave because they  
24 saw the opportunity to hire a well trained otolaryngologist.

25 Q. You had to bargain with them, didn't you?

1 A. What?

2 Q. You had to bargain with them, didn't you? HMA.

3 A. I negotiate every -- I try to -- especially after this,  
4 I negotiate every contract I can.

5 Q. You've negotiated every contract since you started  
6 practicing.

7 A. No, I did not. The ones I didn't negotiate got me in  
8 trouble.

9 Q. You left Virginia because you didn't like the  
10 negotiations in Virginia, didn't you?

11 A. No, I left Virginia because I had an opportunity to join  
12 a friend and build a really great practice. In Virginia I  
13 had a one-year buy-in, and the offer on the table was to cap  
14 out around 600, but they hadn't even started allergy yet, so  
15 it could be a lot more, so the Virginia opportunity was a  
16 fantastic one. Actually, when we were looking, we even  
17 looked back at that opportunity again.

18 Q. Let's look at exhibit -- we're going to skip the next  
19 two, Your Honor -- and we're going to go to Exhibit 64, which  
20 is a letter from Nelson Mullins to a Mr. Morris Ellison, and  
21 in this letter in the fourth paragraph is repeated something  
22 that had been offered to you before, right, which is to  
23 mediate this dispute and try to work out a resolution, that's  
24 been offered to you before, right?

25 A. There were e-mails where the suggestion of mediation

1 came up.

2 Q. But you never took them up on that, did you?

3 A. If you notice the date on these documents, they're  
4 before we got any of the requested information, so I'm not  
5 sure what we were mediating, were we mediating my  
6 termination, were we mediating looking at whether I had the  
7 opportunity to look at the documents or not, I'm not sure  
8 what the mediation would involve at that point.

9 Q. You can say no and then you can explain, but you didn't  
10 take them up on an offer to mediate, right?

11 A. There was no real offer to mediate. It was just thrown  
12 out there.

13 Q. Okay. And the next sentence says, as the company has  
14 consistently stated, it is hoping to provide Dr. Dyce  
15 appropriate information so long as adequate protections are  
16 in place to protect the confidential nature of the  
17 information. You guys had been talking about that for a  
18 while, is it fair to say?

19 A. I'm sorry?

20 Q. Is it fair to say that there had been back and forth  
21 between your lawyers and theirs for a while saying that SCENT  
22 wanted adequate protections placed -- put in place before you  
23 took documents off premises.

24 A. Only after I started requesting the documents.

25 Q. Okay. I want you to turn to the next page, the last



1 paragraph that says, in this regard it has come to the  
2 company's attention that Dr. Dyce recently requested and  
3 obtained in a questionable fashion copies of the company's  
4 contracts with insurance companies concerning reimbursement  
5 of physician services including rates of reimbursement  
6 negotiated by the company. Those are the insurance  
7 agreements that you took and you took them off the premises,  
8 right?

9 A. Yes, I did.

10 Q. You understand that violated the confidentiality  
11 provisions of your agreement with SCENT, don't you?

12 A. I don't understand it did, actually.

13 Q. You took those for your own purposes, not for SCENT's  
14 purposes, right?

15 A. Do you have a copy of the confidentiality agreement so I  
16 can review it?

17 Q. We can go through it later. It's in your shareholder  
18 agreement.

19 A. You asked me if it violated it.

20 Q. You can say no to that or you can say yes or I don't  
21 know.

22 A. Is this the confidentiality agreement?

23 Q. No, I was referring to the confidentiality agreements in  
24 your shareholders agreement.

25 A. That's what it says, 3.7, shareholders agreement,

1 confidentiality, where it says not disclose information, but  
2 it doesn't say that I can't look at it myself.

3 Q. Were you using -- you said earlier that you took it for  
4 your own purposes. That was your sworn testimony.

5 A. Yes.

6 Q. Okay. Do you understand that you weren't supposed to  
7 use corporate confidential information for your own purposes,  
8 it was only supposed to be used for SCENT's purposes?

9 A. Well, I wanted to look at the shareholder agreement to  
10 see -- sorry, the, what is it, the insurance contracts just  
11 to see what an insurance contract even looked like.

12 Q. The insurance contracts don't have anything to do with  
13 the shareholder agreement, do they, Dr. Dyce?

14 A. Well, you said the confidentiality agreements in the  
15 shareholder agreement.

16 Q. I said you took -- you've admitted that you took  
17 confidential insurance contracts for your own purposes.

18 A. Yes, and you said that was in violation of the  
19 shareholder agreement.

20 Q. I asked you if it was, right.

21 A. And I said no because this doesn't say anything about  
22 that. Did I answer your question? I hope I did.

23 Q. Thank you.

24 A. Okay.

25 Q. I'm going to quote to you from the shareholders

1 MR. ELLISON: I'm sorry, what number?

2 MR. SHEHEEN: 131.

3 Q. Dr. Dyce, you have -- you've signed contracts -- you've  
4 signed medical practice contracts before.

5 A. Yes.

6 Q. This is one you had with Virginia before you came to  
7 SCENT, is that right?

8 A. I can't find that.

9 Q. You haven't found it yet?

10 THE COURT: Me either. I with you.

11 MR. SHEHEEN: There should have been a map, and then  
12 you're flipping over that.

13 THE COURT: Here's what we're going to do, what we're  
14 going to do is we're going to stop because, number one, we've  
15 been going at it for quite some time without an afternoon  
16 break, and I know he's tired, and I'm tired. And I'm going  
17 to ask that if you all want us to be flipping through these  
18 documents, this six-inch stack of documents, that you at  
19 least give the Court, if not the witness, the consideration  
20 of putting the correct numbers on them, so I'm going to ask  
21 you to please do that.

22 MR. SHEHEEN: I apologize, Your Honor.

23 THE COURT: Well, you know. I want you to look at the  
24 stack here that I have been through, and it's -- there's  
25 enough to keep up with, and when you want to say, gee, I want

1 you to flip through the next three and then pick up that one,  
2 and then this has an exhibit number on it that says 65, but  
3 it's really not 65, it's really 187, it becomes wearisome,  
4 and I haven't even been answering questions, and I'm  
5 exhausted just by trying to keep up with the documents. So I  
6 think that it's only considerate that you all properly  
7 identify the documents, both mine and the witness's. You get  
8 yours because I'm going to get mine, so I want you to do the  
9 witness as well, and so I'd like for somebody to do that.  
10 And I would like to see counsel in chambers.

11 Thank you so much. We're going to start in the morning  
12 at 9:30. And you have to remember not to talk about your  
13 testimony. You can talk about any other thing, but you  
14 cannot discuss your testimony. You're still on the witness  
15 stand.

16 (Trial of the case adjourned at 4:53 p.m.)

17 (Trial of the case resumed on 11/21/13 at 10:00 a.m.)

18 (Defendant's Exhibit 231 premarked for identification.)

19 THE COURT: Your witness, Mr. Sheheen,  
20 cross-examination.

21 MR. SHEHEEN: Thank you, Your Honor. Just for  
22 housekeeping purposes, as we proceed today I want to tell you  
23 what we have for you to be able to keep up.

24 THE COURT: Great, yes.

25 MR. SHEHEEN: I have a book that I put in front of you.

1 There's one in front of Dr. Dyce, the small book, smaller  
2 book to the right, and that will have some exhibits that I'll  
3 use during various cross-examinations today, and I'll try to  
4 keep you with them. If you get confused, or Dr. Dyce, if you  
5 get confused, please stop me.

6 THE COURT: Fantastic. You are so kind to do that for  
7 me. Thank you.

8 MR. SHEHEEN: There's another book, Your Honor, and Your  
9 Honor's aware, we have all the exhibits in I think three --  
10 I've been trying to keep you out of those, but there's one  
11 book, Book 3, that also should be in front of you.

12 THE COURT: Yes.

13 MR. SHEHEEN: That's the tape-recorded conversations.  
14 We're going to go through some of those. I have tabbed those  
15 for your convenience, and I'll try to reference you to the  
16 tabs.

17 THE COURT: I see. Fantastic. Thank you so much. So  
18 you slept none at all last night, and I'm so sorry.

19 MR. SHEHEEN: Mr. Wright did a lot of this, Your Honor.

20 THE COURT: Yay, Mr. Wright.

21 MR. SHEHEEN: Your Honor, I also want to introduce Dr.  
22 Macy Vidrine, who's here on behalf of the defense today.

23 THE COURT: Great. Great. All right.

24 MR. SHEHEEN: Thank you. Dr. Dyce, good morning.

25 THE WITNESS: Good morning.

1 MR. SHEHEEN: One other housekeeping item, Your Honor.  
2 There was a document that is behind Tab A.

3 THE COURT: Yes.

4 MR. SHEHEEN: Which is SCENT's Defense Exhibit 231 that  
5 I discussed with Dr. Dyce yesterday, but it actually wasn't  
6 introduced into evidence because it had just been produced, I  
7 think, yesterday morning.

8 THE COURT: Okay. Yes.

9 MR. SHEHEEN: We're going to move that into evidence  
10 without objection. I've discussed it with plaintiff's  
11 counsel.

12 MR. ELLISON: Yes, Your Honor, that's correct.

13 THE COURT: Thank you, great, yes.

14 MR. ELLISON: Your Honor, one other housekeeping thing,  
15 since Mr. Sheheen's doing them. Mr. Cleveland last night, at  
16 the Court's request, did another short packet of the  
17 documents that were introduced earlier. These are in  
18 numerical order.

19 THE COURT: Thank you so much. Great.

20 MR. SHEHEEN: Judge, the last thing that I can do, there  
21 were a number of documents we went through yesterday.

22 THE COURT: Yes.

23 MR. SHEHEEN: That as Your Honor so eloquently put it  
24 were a little bit difficult to follow. We can put those in a  
25 notebook that's marked Defense Exhibits from Dr. Dyce, if

1 that would help, so you have them for the future, if that  
2 helps you refer to them.

3 THE COURT: That might be helpful at some point between  
4 now and then, and we'll figure out when then is, but we've  
5 sort of done them, and I have got them, so we'll continue on  
6 and maybe do that at some point in the future. That would be  
7 great.

8 MR. SHEHEEN: Thank you.

9 Q. Dr. Dyce, thank you for your patience. Dr. Dyce, you  
10 also have a book, there's a small book, and we're going to go  
11 through some exhibits with you, and then we're going to go  
12 through the big book, okay?

13 A. Yes, sir.

14 Q. Thank you. Dr. Dyce, if you would turn to Defendant's  
15 Exhibit 131, which is behind Tab C in the little book. Are  
16 you there?

17 A. Yes, sir.

18 Q. Do you recognize this document?

19 A. I believe I do, sir.

20 Q. Is this your employment agreement with, and I believe  
21 you pronounced it Boucher?

22 A. Yes, sir.

23 Q. I'm not going to spend a lot of time on it. I just  
24 wanted to touch on two points. If you turn to the fifth page  
25 of that, there's little numbers there on the bottom. You

1 tell me when you're there. Are you there?

2 A. Yes, sir.

3 Q. Would you agree with me that there was a nondisclosure  
4 of confidential information provision in this contract?

5 A. Yes, sir.

6 Q. If you turn to page 7 with me, at the bottom, would you  
7 agree with me there was a covenant not to compete contained  
8 within this contract?

9 A. Yes, sir.

10 Q. Okay. And I'm assuming, you tell me, that you read this  
11 contract before you signed it.

12 A. Yes, I did, sir.

13 Q. And that you agreed to its terms and that you understood  
14 them.

15 A. I believe I did, sir.

16 Q. Okay. And on the next page, if you'd just flip the  
17 page, I'm going to represent to you that this covenant was  
18 for a period of two years, do you see that?

19 A. Yes, sir.

20 Q. And there was an agreed upon damages amount in this  
21 covenant as well.

22 A. Okay.

23 Q. Do you agree with that?

24 A. I haven't reviewed this contract's entirety but, I mean,  
25 I can sit and read the whole thing to make sure that I agree



1 with it, but I'm just going by the few parts you show me.

2 Q. Okay. Based on the parts you see, would you agree with  
3 that?

4 A. I believe so, yes.

5 Q. The reason I'm asking you this is it's fair to say,  
6 isn't it, that you had experience with covenants not to  
7 compete. You had signed them previously.

8 A. Yes, sir.

9 Q. Okay. Dr. Dyce, we talked a little bit about your  
10 income yesterday. I don't want to spend too much time on it  
11 except in how it relates to this case. In 2011, and these  
12 are behind Tab D if you want to look at them, it appears that  
13 you made around \$700,000, do you agree with that?

14 A. I believe so.

15 Q. Okay. And in 2008, which is behind Tab E, you made,  
16 excuse me -- 2012, which is behind Tab E, you made a little  
17 over a million dollars, do you agree with that?

18 A. That's what the tax return says.

19 Q. Do you agree with that?

20 A. I agree with the tax return.

21 Q. Okay. And you -- I think previously agreed that you  
22 made around -- over \$1.5 million in 2008 with SCENT.

23 A. Yes, I believe I did say something -- I think it was  
24 1.7.

25 Q. Okay. And do you agree that -- I know you disagree

1 about the amount that you and Dr. Puchalski earned in that  
2 year, but do you agree that they were roughly proportional?

3 A. No, sir.

4 Q. Okay. Tell me how close they were.

5 A. I'm not sure. I don't think I ever saw the final  
6 numbers, maybe the accountants did, but I'm not sure, but I  
7 know when we were doing our taxes, as I said, there were  
8 \$50,000 checks that were being attributed to us that were not  
9 there. What we were being asked to pay taxes on, based on  
10 the tax returns that Mr. Sheheen prepared, there were  
11 multiple \$15,000 or more checks that apparently were  
12 attributed to us that were not there, so I can't reconcile  
13 all these discrepancies between checks that I was supposed to  
14 have received but never received but was being asked to pay  
15 taxes on it, based on the tax return that your uncle, Mr.  
16 Sheheen, did, and I don't know what he prepared with Dr.  
17 Puchalski and whether that was correct, so I can't answer  
18 that they were proportional, but I know that mine was  
19 incorrect.

20 Q. Okay. But did you say that you agree that you earned  
21 about 1.7 million?

22 A. That's what our final tax return said.

23 Q. Do you agree with that or not?

24 A. I believe I agree with it.

25 Q. Okay. How much do you believe Dr. Puchalski --

1 A. I have no idea, sir.

2 Q. Okay. And you're aware that during the year that you  
3 earned that income a significant amount of debt was incurred  
4 by SCENT, aren't you? We talked about this earlier.

5 A. I'm aware that after I left SCENT Dr. Puchalski  
6 accumulated a lot of debt by refinancing all of the  
7 equipment, all the land and then listed it on the books as  
8 debt and now is trying to say that I paid for it based on  
9 documents we got from Palmetto Bank which states in 2011 he  
10 took out all the loans against it, and that's when we  
11 accumulated the debt. Actually, in every document he'd given  
12 me to that point he'd said this was a very low debt  
13 environment, that was his representation to me. If you're  
14 telling me that's incorrect and he told me something  
15 incorrectly, then that's on Dr. Puchalski and you. It's not  
16 on me. My understanding is we were a very low debt  
17 environment.

18 Q. Are you testifying that you're not aware there was \$1.5  
19 million of debt in SCENT prior to your departure?

20 A. What I'm testifying to is I was aware we had some debt.  
21 I don't know the exact amount.

22 Q. So you're aware there was some debt.

23 A. But later represented to me that we were \$5 million plus  
24 in debt by you and Dr. Puchalski after I'd left.

25 Q. All right. I'm not talking about after you left, okay.

1 I'm talking about before you left. Do you agree that there  
2 was some debt prior to your departure from SCENT, is that  
3 right?

4 A. I believe there was probably some debt. Again, I did  
5 not have all the documents to review what amount of debt and  
6 what things were outstanding. As you remember, I asked for a  
7 lot of the documents and could not get them.

8 Q. There's obviously a lot of disagreement about that, but  
9 you testified to that previously. So there was some debt  
10 before you left. You were making \$1.7 million. You're now  
11 making a little over \$1 million. Do you feel no obligation  
12 to pay any of the debt that was incurred prior to your  
13 departure?

14 A. That's a very good question. A couple things come into  
15 play there as far as obligations go.

16 Q. If you'd answer yes or no and then you can explain.

17 A. It's not a yes or no question, and I have to answer the  
18 question that you asked, and I'm willing to answer it, but  
19 it's not a yes or no question.

20 Q. You can't say yes or no, is that what you're saying?

21 A. I'm telling you my line of thinking. If you don't want  
22 me to tell you, I don't have to.

23 Q. I want you to say yes or no and then explain yourself.

24 A. Well, when we made our agreements with SCENT, when I  
25 made my agreements with SCENT and Dr. Puchalski, it was a

1 very low debt practice. There was not a lot of debt. As  
2 such, debt was never introduced into the formula for buying  
3 in and buying out for shareholders. As a result, there is  
4 no -- to my knowledge there is no provision in the current  
5 agreement for debt. Now, in subsequent agreements I've seen  
6 where Dr. Puchalski attempted to introduce provisions for  
7 liabilities and debts, but when I agreed, there was no debt  
8 in there. So are you saying you want me to retroactively  
9 agree to debt that was not in the original agreement? Well,  
10 if it was not in the original agreement, I'm just trying to  
11 abide by the agreement. Dr. Puchalski is the one that has  
12 not abided by this same agreement. I mean, if you want me to  
13 go ahead and sign the 2010 agreement and then say, yes, I'm  
14 agreeing to take on the debt, that's a whole different story.

15 Q. Actually, what I want you to do is answer the question.  
16 I'm just asking you, Orville Dyce, not on the agreement --  
17 and you can say no or you can say yes or you can say I don't  
18 know. Do you, Orville Dyce, feel no obligation to pay the  
19 debt or parts of the debt that were incurred prior to your  
20 departure from SCENT?

21 A. Based on our agreements that were in place that dictated  
22 our relationship, I do not have an obligation to pay that  
23 debt.

24 Q. And that doesn't bother you at all?

25 A. I'm basing it on an agreement, I mean --

1 Q. And --

2 A. I mean, if you want me to tell you it makes me cry at  
3 night, it doesn't make me cry at night, no, if you're asking  
4 me if I'm bothered at all.

5 Q. That's not what I asked you.

6 A. You asked if it bothered me.

7 Q. I asked if you felt obligated.

8 A. And I answered the question.

9 Q. You've answered the question.

10 A. Yes.

11 THE COURT: Okay. He did. He said it didn't bother  
12 him. Go ahead.

13 MR. SHEHEEN: Let's go to Exhibit 207, and that's in the  
14 big book in front of you, Judge and Dr. Dyce, that's the big  
15 book in front of you. Judge, I'm going to try to move  
16 through these without dwelling a lot. There is a lot in  
17 these tape-recorded phone calls, and you have them all, but  
18 I'm not going to obviously have him read them all because you  
19 can read them yourself if you so choose.

20 Q. Dr. Dyce, just to set the stage, we've talked  
21 previously, I don't want to re-tread too much ground, you  
22 secretly tape-recorded conversations between you and a number  
23 of people, correct?

24 A. Yes, I did.

25 Q. And under Tab 1 is a conversation, if you would turn to

1 it, and then I'm going to refer -- I'm sorry, it's Exhibit  
2 207.

3 MR. CLEVELAND: Just so the record's clear, if you could  
4 say whether it's Plaintiff's Exhibit, Defendant's Exhibit,  
5 and what number it is.

6 THE COURT: Defendant's Exhibit 207 is what I have.

7 Q. Right. The first document that I'm looking at that you  
8 have there, it says at the top, not to leave practice, do you  
9 see that?

10 A. Yes, sir.

11 Q. Turn to page 18 of that document. There's page numbers  
12 at the bottom. Are you with me?

13 A. Yes, sir.

14 Q. About two thirds or about half way down there's some  
15 dialogue, and then it says, Puchalski, and it says you  
16 probably wanted, blank, stuff. Why don't you just -- I'll  
17 read that one, to save a little time, you follow along with  
18 me, okay? You probably wanted, blank, stuff. You, blank,  
19 were doing that. I'm not going to let this ruin our  
20 friendship, and I'm not going to go ahead and be a slave to  
21 the practice either, so there's no way, blank, putting myself  
22 in your shoes and I, blank. You said what's that. And then  
23 Dr. Puchalski said, I think there's a way to do this. I've  
24 looked at the numbers, and there's a way to do this that  
25 would actually maybe work out. It would work out. It would

1 work out for you, I think, very well. I think there would be  
2 some quality of life, blank, but I think financially it would  
3 work out very well for you. I really do. I think it would  
4 work out excellently. Okay, and I'm going to ask you some  
5 questions, but I just want you to have reviewed these when I  
6 ask you?

7 THE COURT: And where there are blanks it means it's  
8 unintelligible, right?

9 MR. SHEHEEN: Yes, ma'am. And you heard that it could  
10 be unintelligible, basically.

11 THE COURT: Yes.

12 Q. Turn the page with me to 19, and down at the bottom it  
13 says, and we keep, blank, could stay with the practice in  
14 Hartsville and just be, blank, you could, blank, which is an  
15 idea, you know, wouldn't, blank, it would be in any kind of  
16 timeframe, but it would be done in a timeframe that would  
17 have to be done before, blank, a resolution would have to be  
18 there. All right, Dr. Dyce -- and there's some more dialogue  
19 on the next page, and the Judge can read through that, and I  
20 would recommend the Judge does read through that at some  
21 point. You referred earlier to a conversation with Dr.  
22 Puchalski where you said that he said that he might separate  
23 the practices or that you might -- he might split them and  
24 you would take Hartsville. That was on your direct. Do you  
25 recall mentioning that?



1 A. Yes, sir.

2 Q. Is this the conversation you're referring to?

3 A. I don't know. I'd have to look through the whole thing  
4 and look at the date.

5 Q. You produced these, right?

6 A. Okay.

7 Q. You provided them. Okay. Do you see on page 19 what I  
8 just read to you where he was talking about you could stay in  
9 the practice with Hartsville down at the bottom of 19?

10 A. I see where that's written, yes, sir.

11 Q. Does that jog your recollection as to that conversation  
12 you had with him?

13 A. I really didn't review these tapes, and I would have to  
14 again look at the entire thing.

15 Q. Okay. So tell the Judge again why you made these tapes.

16 A. Because in discussions with Dr. Puchalski about the  
17 landholding agreement he threatened, when we couldn't come to  
18 an agreement, he threatened to say that I was never on any of  
19 the leases, I was never on any of the titles or loans, and so  
20 he was just going to say I never bought into them, and so  
21 then I thought that, well, if he is correct, there is no  
22 evidence of anything I've bought into in the practice so  
23 unless I have the tapes and I have -- because I don't want to  
24 tell him -- I don't want to accuse him of saying or doing  
25 something that he didn't do, so it's for my protection as

1 well as for his so that we were both in the same  
2 understanding of what was going on in the practice.

3 Q. Dr. Dyce, do you find it curious that the only alleged  
4 threat that you say he made was one on a conversation that  
5 wasn't tape-recorded?

6 A. Well, not if that conversation is the one that prompted  
7 the tape recordings. I wouldn't have known to start  
8 tape-recording it -- listen, up until this point I trusted  
9 him. I mean, up until this point we had a pretty good  
10 relationship. It's when he started doing these things that  
11 the relationship began to break down and continued to break  
12 down to where it is now.

13 Q. Dr. Dyce, there is hours and hours and hours of tapes  
14 that you made, and in them there are no threats to you, are  
15 there?

16 A. I have not reviewed the tapes. I don't know what the  
17 threats are and I don't know what you define as threats.

18 Q. Dr. Dyce, under his proposal that you began to discuss  
19 there and that you referred to earlier for you to take the  
20 Hartsville practice you would have had to take part of the  
21 debt that went with the Hartsville practice, wouldn't you?

22 A. This says we're talking about an agreement. We've never  
23 agreed on what I would take versus what he would take, you  
24 know, so I'm not sure where we're going with this. This is  
25 something he came up in his little head, and you're inferring

1 from that that he was going to saddle me with debt. I don't  
2 know what the agreement would, should or could have been.  
3 It's purely hypothetical. We never got to that point.

4 Q. So the way it ended up, you have the Hartsville  
5 practice, you have the patients from the Hartsville practice,  
6 you have the referring patients from the Hartsville practice,  
7 but you have none of the debt. Would you agree with me on  
8 that?

9 A. No.

10 Q. Let's look at the next one which is under Tab 2.

11 MR. CLEVELAND: I'm sorry, we don't have the tabs.

12 MR. SHEHEEN: Provider meeting January 19th, 2010.

13 MR. CLEVELAND: If you'll just give me the exhibit  
14 number, we have the exhibits.

15 MR. SHEHEEN: It's one big exhibit. The calls are one  
16 big exhibit.

17 MR. CLEVELAND: Does it have a defendant's exhibit  
18 number?

19 MR. SHEHEEN: Yes.

20 MR. CLEVELAND: Can you tell me what that is? I'm  
21 sorry, 207. Does it have a page number? I've got 207.

22 MR. SHEHEEN: It's entitled provider meeting January  
23 19th, 2010, and it's page 15.

24 MR. CLEVELAND: Thank you.

25 THE COURT: Can I ask this question?

1 MR. SHEHEEN: Yes, ma'am.

2 THE COURT: The one that we are looking at, that we just  
3 finished looking at.

4 MR. SHEHEEN: Yes, ma'am.

5 THE COURT: Did you have a way to identify a date of  
6 this recording? You may not have had that.

7 MR. SHEHEEN: Your Honor, Dr. Dyce turned these over to  
8 us in production, and so all I can do is ask him.

9 THE COURT: That's what I'm saying, you may not have had  
10 a way to determine a date.

11 MR. SHEHEEN: Dr. Puchalski in his testimony -- if Dr.  
12 Dyce is unable or refuses to provide when he thinks it  
13 occurred, Dr. Puchalski in his testimony will be able to give  
14 some frame of reference to it, but I can't do that through  
15 this witness.

16 THE COURT: I understand. That was the purpose.

17 MR. SHEHEEN: I'm sorry.

18 THE COURT: Not a problem at all.

19 MR. SHEHEEN: This one you can because Dr. Dyce entitled  
20 it provider meeting January -- the next one I'm discussing.

21 THE COURT: The next one, not the first one.

22 MR. SHEHEEN: Right, because he entitled it provider  
23 meeting January 19th, 2010.

24 THE COURT: Since I've got it, let me just tell you the  
25 reason why because I think you should know because I'm

1 looking at page 20.

2 MR. SHEHEEN: Yes, ma'am.

3 THE COURT: And there's some conversations on page 20  
4 that says, I see this as being the one that's most fair  
5 compared to a buyout, and then it goes on to say it was --  
6 let's see, I mean better than a forced buyout, better to be  
7 amicable buyout, it wouldn't suit me, you know, and then it  
8 goes on, as far as a forced buyout as far as you know a  
9 buyout over time, that's the reason that I was pondering  
10 because, as I understand what you all have told me to this  
11 date, there was this -- there was an awful lot of upset, I'll  
12 call it, concern, prior to that March the 3rd meeting, bank's  
13 closing in.

14 MR. SHEHEEN: Yes, ma'am.

15 THE COURT: Contract -- lots of issues going on. Then  
16 we have this meeting.

17 MR. SHEHEEN: Yes, ma'am.

18 THE COURT: But then beyond that there were still, as I  
19 understand it, a number of conversations, now how do we move  
20 forward, in other words, they didn't quit talking to each  
21 other. There was a long period of time, apparently, that  
22 they continued to.

23 MR. SHEHEEN: Up until August of 2010, I believe.

24 THE COURT: Is that when it was? I knew there was a  
25 long period of time they continued to have a conversation,

1 and so I just wondered sort of where in the -- and you don't  
2 know.

3 MR. SHEHEEN: Well, I don't --

4 THE COURT: From this witness.

5 MR. SHEHEEN: I can't tell you. I think I know this was  
6 quite before all that, actually.

7 THE COURT: And you feel like your client may very well  
8 be able to elucidate.

9 MR. SHEHEEN: Yes, ma'am.

10 THE COURT: Got it. This is Defendant's Exhibit 207,  
11 page 16.

12 MR. SHEHEEN: Yes, ma'am.

13 MR. CLEVELAND: Your Honor, I hate to keep popping up.  
14 Let me just tell you our problem. This is a several-hundred  
15 page exhibit, Defendant's 207. It's a series of pages that  
16 go from 1 to 15, 1 to 20, so saying page 15 doesn't tell us  
17 what page we're looking at, and I apologize. I just want to  
18 be able to look at the exhibit while he's examining Dr. Dyce.

19 THE COURT: Sure, of course you do. That's okay. We're  
20 going to do this together. We're all going to do this  
21 together. So I know that this is -- tell me how you have it  
22 organized. Is it organized pursuant to conversations?

23 MR. CLEVELAND: It's organized the way the defendants  
24 organized it. I have no problem with the organization, it's  
25 just nothing separates -- nothing tells you when something

1 starts.

2 MR. SHEHEEN: We just put them in there the way they  
3 were produced to us.

4 THE COURT: I understand.

5 MR. SHEHEEN: So it's the next batch, if that helps you.

6 MR. CLEVELAND: No, because I don't have the batch that  
7 you and the Judge and Orville went through.

8 MR. SHEHEEN: They all start over with a new page 1, the  
9 way they were produced to us. I don't mind him looking over  
10 the shoulder of the witness.

11 MR. CLEVELAND: If you would just do your best to tell  
12 me where you're going, and I'll do my best to keep up.

13 MR. SHEHEEN: This is the provider meeting, January 19,  
14 2010.

15 MR. CLEVELAND: I've got that first page.

16 MR. SHEHEEN: Great. And the way these are produced is  
17 how we tried to keep them in.

18 THE COURT: Go to page 16 under that conversation, just  
19 that one conversation, go to page 16 and tell me what's at  
20 the top of the page and see what happens.

21 MR. CLEVELAND: Requested from Ed.

22 THE COURT: Bingo. Okay. We found a way to do it.

23 Q. Down at the bottom, I'm just going to read it.

24 A. I'm sorry.

25 Q. Tab 2, Dr. Dyce, page 16.

1 THE COURT: Tell me when you get there.

2 THE WITNESS: I am there.

3 THE COURT: At the very top it says, requested from Ed,  
4 do you see that?

5 THE WITNESS: Requested from Ed, yes, ma'am.

6 THE COURT: We're all literally on the same page.

7 Q. Thank you. At the bottom, I'm just going to read it and  
8 then we'll turn back to 15, okay? It says, Puchalski, yes,  
9 Odie, in the future what I want to do is this, I want there  
10 to be four, blank, once a month, blank, to be you and me and  
11 then you and me and Chad, of course we'll have executive  
12 session after this, but we'll have to, blank, and during  
13 that, blank, we can go through finances and strategy and try  
14 to get them through this. Obviously we're not going to be  
15 able to go through any more Wednesday morning.

16 All right. Now, I want you to turn to 15, page 15.

17 A. A page earlier.

18 Q. Yes.

19 THE COURT: Right.

20 Q. At the top it says stronger, and then read, Dr. Dyce,  
21 your second comment, not your first but your second.

22 A. Well, the only time I really get the chance -- is that  
23 it?

24 Q. Yes.

25 A. -- to talk to Bruce is in the evenings, and I'll call



1 after hours or I'll e-mail him, so I can e-mail him again  
2 tonight and say, you know, we have kind of a timeline on,  
3 blank. I think Ed sent him a whole bunch of stuff, probably  
4 even more than what he'd asked for, and he just started  
5 reviewing it last week, so I think that is -- that all is  
6 tying into why he's taking so long.

7 Q. And then Puchalski says, I, blank, sent him but Ed  
8 should have sent him the contracts, blank. And then you  
9 said?

10 A. So you said Ed sent him a bunch of stuff, he said a  
11 bunch of the contracts probably some of the ones we already  
12 had and some other ones, so Ed, he's just, you know, yes, I  
13 hate it too because it's just more money, but so I'm trying  
14 to get him, blank, but he's not yet.

15 MR. SHEHEEN: And then there's more on that page. I  
16 want you to turn to tab -- your Tab 3. And, Will, it says at  
17 the top, attempts to justify actions. It should be the next  
18 one?

19 MR. CLEVELAND: Thank you.

20 THE COURT: Page 1 of that, right?

21 MR. SHEHEEN: Yes, ma'am.

22 THE COURT: Okay.

23 Q. I'll just read it, Dr. Dyce. It says, down about half  
24 way Bob says, the 1500 charts or so. And you said, nope,  
25 they always sign off on my charts. I've told them to just go

1 ahead and sign off on them. Are you required to sign off on  
2 your charts as a doctor?

3 A. I was doing whatever was established in the practice,  
4 sir.

5 Q. Is Dr. Puchalski telling you that you have 1500 charts  
6 that you haven't signed off on?

7 A. It could be. I'm not sure.

8 Q. I want to you look on page 2 down toward the bottom, the  
9 second Bob comment from the bottom, I'll read it, it says,  
10 um, he also wanted to share with me that under no  
11 circumstances were you to talk to Chad or attorneys, weren't  
12 talking or anything else, is that still your position, that  
13 over the last few months that you have, blank. And you said,  
14 I haven't talked to Chad about anything. I talk to Chad  
15 periodically, not about this stuff. And Bob said, no  
16 attempts by your attorney to talk to Chad's attorney or Chad.  
17 And you said, not that I know about, not that I know about.

18 Dr. Dyce, do you recall yesterday that I showed you the  
19 e-mails of Dr. Gunnlaugsson where he said to his attorney,  
20 early, and I believe it was January or February, that your  
21 lawyer should be getting in touch with him or that he should  
22 expect a call from your lawyer, and then he provided your  
23 lawyer's contact information, do you recall that?

24 A. I recall that.

25 Q. And you realize that this comment in this tape-recorded

1 conversation was after that?

2 A. Okay. I don't know when the date on this was but okay.  
3 Actually, this looks like this was from April.

4 Q. Which is after January or February, right?

5 A. Yes. And you were saying that -- I'm sorry, what was  
6 your question?

7 Q. My question was do you recall yesterday that we looked  
8 at an e-mail of Dr. Gunnlaugsson's where he was telling his  
9 lawyer your lawyer's address and that he should be expecting  
10 a call from your lawyer and that type of thing in early  
11 January?

12 A. Okay.

13 Q. Let's turn to -- we'll skip the next one. The next one  
14 I want to look at is your Tab 5 and it's entitled audio file  
15 001A037.

16 MR. CLEVELAND: How many pages did you skip to get where  
17 you are now?

18 THE COURT: Probably about 20 so. Just grab a chunk and  
19 take your time.

20 MR. CLEVELAND: Thank you.

21 THE COURT: You've got that one? Okay. Great. Do you  
22 want us to start on page 1 of this or do we want to go  
23 somewhere else.

24 MR. SHEHEEN: We're going to go to page 3, Your Honor.

25 THE COURT: Okay. So in that we're going to go to page

1 3, the top says, no, blank, one late night.

2 MR. SHEHEEN: Yes, ma'am. The Court can read this, but  
3 I just want to, through the witness, focus on some pieces.

4 THE COURT: Sure, of course.

5 Q. About midway down, Dr. Dyce, Dr. Puchalski says, good,  
6 well, I was hoping that maybe on Wednesday you and I could go  
7 through the contract after the board meeting, does that  
8 sound. And you said, well, I want to go through it with  
9 Bruce first because it doesn't make sense for me to go  
10 through it and then have to go through it with him, so let me  
11 kind of bring up the points he, blank, and then we kind of do  
12 that.

13 A. I'm sorry -- oh, okay.

14 Q. Take your time. Do you see where I was just reading?

15 A. Yes, sir.

16 Q. In a previous e-mail we talked that there was an e-mail  
17 that said that you told Dr. Puchalski that SCENT's lawyer has  
18 sent lots of stuff to your lawyer, do you recall that?

19 A. Yes, sir.

20 Q. Okay. And in this one clearly you're talking about  
21 again contract negotiations, right?

22 A. Yes, sir.

23 Q. All right. Dr. Dyce, clearly you guys were negotiating  
24 this contract, don't you agree? It's in these recordings.

25 A. No, we weren't negotiating the contracts. The meetings

1 involved Bob going through piece by piece and trying to just  
2 each part of the contract and why he deserved it, and that's  
3 what it was, that's all it was, that's all it ever was.

4 Every time we tried to sit down to negotiate, Bob would say,  
5 no, no, no, listen to me, I'll write a little black line in  
6 the corner, and this is why I think I deserve this, this is  
7 why I think I deserve this, this is why I think I deserve  
8 this. That was the extent of the negotiations.

9 Q. How come that's not in the tape-recordings?

10 A. There's a lot of things not in the tape-recordings.

11 Q. Okay.

12 A. Actually, in this tape-recording what you see is Bob  
13 trying to filter again the information only through him, you  
14 know, and that's very clear. Like, no, no, no, I don't want  
15 you to go through your attorney. Let me go through it with  
16 you first kind of thing, and we're going back and forth, so  
17 it's right in line with what I've said, that every  
18 information has to be filtered through Bob or an agent of  
19 Bob, who's actually supposed to be an agent of the practice  
20 but who's working only for Bob Puchalski, whether it's  
21 attorneys or whether it's accountants or anyone else.

22 Q. You didn't like that he was trying to negotiate it  
23 directly with you in that conversation?

24 A. No, I didn't like that I was only able to get his  
25 perspective alone of the contract rather than get objective

1 advisement. As you can recall, the 2008 contract for me was  
2 a disaster, and I was trying to avoid the same thing from  
3 occurring again. This 2010 made the 2008 look completely  
4 fair, and I realized that, and I realized that I needed  
5 professional help because if it was left up to Bob, he was  
6 always go to negotiate contracts that only favored him.  
7 After 2000 -- after our initial agreements in 2007, every  
8 single opportunity he had to work with an attorney to come up  
9 with a contract somehow allowed him more distributions, more  
10 favors, more slant towards his perspective and not to the  
11 benefit of the shareholders, to the point where his actions  
12 destroyed the practice or tried to destroy the practice.

13 Q. Let's look at Tab 6. It says "Jamie kicked out" at the  
14 top, and so we skipped a fair number of pages, 10, 15 pages.

15 THE COURT: Yes, exactly, the rest of that.

16 MR. CLEVELAND: Thank you.

17 THE COURT: What page in "Jamie kicked out" can we go  
18 to?

19 MR. SHEHEEN: Your Honor, it seems awkward, but the way  
20 it was produced, there's a page 15, at the top it says Bob  
21 and then Orville -- excuse me, 16, about midway, page 16.

22 THE COURT: "We are, I don't care what happens" is on  
23 the top?

24 MR. SHEHEEN: Yes, ma'am, right.

25 THE COURT: You're going to go through several pages

1 that have no numbering, and then the numbers pick up, so in  
2 your hand probably pick up about 20 pages, and that will put  
3 you in the numbered pages. See that, Will?

4 MR. CLEVELAND: Does it say "bargaining for his  
5 contract" at the top?

6 THE COURT: It starts with "Jamie kicked out", the  
7 "Jamie kicked out portion".

8 MR. CLEVELAND: I've got that.

9 THE COURT: Now pick up about 20 pages, looks like about  
10 20.

11 MR. CLEVELAND: Yes, I'm here.

12 THE COURT: Then you'll be at page 16 because about the  
13 first, I don't know, eight pages or so don't have numbers,  
14 and then the numbers begin with page 1, and then you're going  
15 to go to page 16.

16 MR. CLEVELAND: Does that start "we are, I don't care"?

17 THE COURT: You've got it.

18 MR. SHEHEEN: Yes, sir.

19 MR. ELLISON: Judge, I apologize. We're a little  
20 mystified because Mr. Cleveland's trying to follow along  
21 because he's got their book, but when we produced the tapes,  
22 they were Bates numbered.

23 THE COURT: This one has a Bates number and the Bates  
24 number is WCSR7425. It still has the Bates numbers on it.

25 MR. SHEHEEN: Your Honor, the ones in the big book --

1 MR. ELLISON: Do your copies have the Bates numbers?

2 THE COURT: Yes, mine does.

3 MR. SHEHEEN: The copies I'm going off of have your --  
4 are you talking about right there -- your Bates number, but  
5 for the exhibits they don't because the exhibits to the trial  
6 have the trial exhibits on them, which makes sense.

7 MR. ELLISON: But I think we can use the Bates numbers.

8 MR. SHEHEEN: You don't have to worry about that, but  
9 they can follow along with that.

10 THE COURT: I'm with you because mine have Bates numbers  
11 too.

12 MR. SHEHEEN: So it's 1392, the page that starts with  
13 "we are, I don't care what happens", about half way down it  
14 says, "while Orville".

15 THE COURT: Let me just say, for the record, what you  
16 just said, "we are, I don't care what happens", that  
17 wasn't -- that's in the conversation. That wasn't you.

18 MR. SHEHEEN: No. I care what happens. Thank you.

19 THE COURT: I just want the record to reflect you're  
20 directing them, rather than you Vincent Sheheen saying I  
21 don't care what happens. It. That was not you, that's  
22 what's in the recording.

23 MR. SHEHEEN: Thank you, Your Honor. I do care.

24 Q. About half way down, a little further Orville says,  
25 while, while, don't we rewrite the whole contract, let's sit



1 down, let me sit down with Ed, since Ed has no, let me talk  
2 to Bruce, and then we'll see what we want, how about that.  
3 Bob says, okay, it can go onto your schedule. If you,  
4 something, there that I don't recognize that you don't want  
5 to share with me that I haven't said, even if it with you,  
6 you don't want to share it with me, that's fine.

7 All right, then I want to turn to page 31 of that.

8 MR. CLEVELAND: And would you give the SCENT Bates  
9 number?

10 MR. SHEHEEN: 1407.

11 MR. CLEVELAND: Thank you.

12 Q. Dr. Dyce, do you see there on page 31, about a little  
13 bit less than half way down Bob says, and you're certainly  
14 not sharing it with G. Do you see that?

15 A. Yes, sir.

16 Q. Who's G?

17 A. I assume Dr. Gunnlaugsson.

18 Q. And what's your response?

19 A. I'm not sharing anything with G.

20 Q. Turn to page 33. Are you there?

21 A. Yes, sir. Sorry.

22 Q. The first big paragraph from Bob at the last two  
23 sentences it says, so basically termination without a cause  
24 comes out, any questions about taking termination for cause  
25 out. And you say what?

1 A. I said, no, I'm going to run it all by Bruce so I'm not,  
2 and blank.

3 Q. Then Bob says, can I try a dialogue with you, or is that  
4 just hopeless, do you see that?

5 A. Yes. And afterwards it says, Bruce informs that I don't  
6 know why you'd ever sign this contract, quote, unquote.

7 Q. Turn to page 51. Up at the top portion, maybe four Bobs  
8 down.

9 THE COURT: Want to give the Bates number?

10 MR. SHEHEEN: 1427.

11 MR. CLEVELAND: I don't have Bates numbers. I just want  
12 the record to be as clear as it can be what we're doing here.

13 Q. So about a quarter of the way down, Dr. Dyce, you say, I  
14 say we stop building, I say we shut it all down. Do you see  
15 that?

16 A. Yes, sir.

17 Q. And then Bob says, but then the costs are still going to  
18 roll in that we can't cover. Look at the e-mail. What do we  
19 do to cover that cost? And you respond how?

20 A. I'm sorry, what page are we on?

21 Q. 51.

22 A. It says, I'm being pressured to sign a contract or to  
23 sign for land on a contract that I never even wanted  
24 renegotiated, and I feel like this is where the browbeating  
25 comes in. I mean, at what point --

1 Q. Read a couple lines up from that where it says -- Bob  
2 says, what do we do to cover the cost. And then you say?

3 A. I say we shut it down until we get this contract signed  
4 or this contract figured out, so until we get the contract  
5 signed we stop disbursing funds to anything.

6 Q. Okay. And then, Dr. Dyce, you mentioned -- I'm still on  
7 51. I'm sorry. You mentioned yesterday a little bit about  
8 the loan that was given to SCENT to buy the shares of the HMA  
9 syndication. Do you remember your discussion with Mr.  
10 Ellison about that?

11 A. Yes.

12 Q. And you said that you -- I believe you said that you  
13 would approve the loan but that you would not approve the  
14 loan from Dr. Puchalski or his wife.

15 A. Yes, sir.

16 Q. Okay. And, in fact, you raise that in this  
17 conversation, I believe, if you look toward the bottom. I  
18 don't know that we need to read it out loud, but you talk  
19 about that, and you and Bob go back and forth. And he says,  
20 I told you about it in a providers meeting. You say, you  
21 didn't tell me that in the providers meeting. And then Dr.  
22 Puchalski says -- he says on the next page, if you turn it,  
23 he says, would it make, I'm happy, and you say, no, I mean  
24 it's just some minor point, and you say, I'm happy to  
25 refinance, and you say, no, no, no it's just some minor

1 point. Do you see that?

2 A. Yes, sir.

3 Q. And then go down to the bottom. You say, why don't we  
4 go and ask Chad and Macy. They were there for the same  
5 meeting. I was there. I'm not dumb. I'm dumb but I'm not  
6 that dumb. And then if you go to the next page.

7 A. Next page.

8 Q. Yes, sir, 53, let's just go to the bottom, close to the  
9 bottom. Dr. Puchalski says, essentially, hey, if you think  
10 this is some sweetheart deal, you can have it, do you see  
11 that?

12 A. Yes, sir.

13 Q. Do you recall that?

14 A. Wait, wait, what, sorry, I'm sorry, I blanked for a  
15 second.

16 Q. At the bottom of the page he says and I summarized --

17 A. On page 53?

18 Q. Yes, sir. He says, I'm going to give you the exact same  
19 terms. You say, I don't want any terms. He says the exact  
20 same terms, and you can take over the loan. You say, I don't  
21 want anything yet, I don't know what I want yet, I'm looking  
22 through all this stuff. He says, same thing, I'll give you  
23 the exact same terms, you take it, you think it's such a  
24 great interest rate until you recognize that it's on your  
25 margin account, you're going to have to pay 6.5, he says --

1           And then there's some back and forth, and the Judge can  
2 read the rest. Dr. Puchalski is saying to you, if you  
3 don't -- if you think I have some sweetheart deal, you can  
4 take it over and you can have it. Do you remember that  
5 conversation?

6 A. I vaguely remember that conversation.

7 Q. You have testified under oath that there were a lot of  
8 bad things that Dr. Puchalski -- yesterday -- a lot of bad  
9 things Dr. Puchalski said to you in conversations. Do you  
10 recall some of those things? You mentioned the threat. He  
11 tried to strong-arm you, didn't treat you right, that kind of  
12 stuff.

13 A. You'd have to specify what you're referring to, sir.

14 Q. Let me ask you. Is your testimony here that he  
15 threatened you?

16 A. He said because we couldn't agree on a contract he was  
17 going to separate me from the practice. I perceived that as  
18 a threat.

19 Q. Anything else he ever said to you that you took as  
20 intimidation or threats or strong-arming?

21 A. I'm going to make this termination final unless you come  
22 back to the table and sign this contract.

23 Q. He told you that?

24 A. Well, he terminated me, and he and Ed White said,  
25 listen, until you work it out, work out the contract, that's

1 how you get back to the table.

2 Q. Anything else, any other strong-arming things that he  
3 said to you?

4 A. I'm going to kick your wife out of the landholdings  
5 agreement until you basically comply with my demands.

6 Q. He said that to you?

7 A. I'm not a tape recorder. I can't say it in his words,  
8 but we have the documents that back this up.

9 Q. Prior to March of 2010 did he make any threats, did he  
10 strong-arm you in any way, did he intimidate you in any way?

11 A. Well, when we had the conversation where he threatened  
12 to separate me from the practice unless I gave him back a  
13 \$50,000 check in his hand, I perceived that as a threat.

14 Q. Was that tape-recorded?

15 A. I think that was referring to that first conversation  
16 you had. I don't know if the tape-recording captured it. I  
17 believe, but I'm not sure. I'd have to review it. I haven't  
18 had a chance to review these documents.

19 Q. You've had these documents for a long time, right?

20 A. I did not -- I have not reviewed every single document  
21 for this case. I've reviewed sort of the relevant ones with  
22 the breaches of the contract -- the various contracts and  
23 agreements.

24 MR. SHEHEEN: We're nearing the end, Your Honor. Thank  
25 you for your patience.

1 THE COURT: While you have a break in the action,  
2 counsel, can you all just approach for just a second?

3 (Judge and counsel confer.)

4 Q. Dr. Dyce, earlier you stated that the 2008 contract was  
5 a disaster. Do you recall that testimony?

6 A. Yes, sir.

7 Q. And you made \$1.7 million under that contract, is that  
8 right?

9 A. Yes, sir.

10 Q. And were you not satisfied with \$1.7 million?

11 A. I'm sorry, sir. I don't only use money to define  
12 whether I'm successful or not or whether a contract is a good  
13 contract or not. One that was -- when I was instructed by Ed  
14 to go ahead and sign the contract, he told me that it was for  
15 my protection as well as Dr. Puchalski's protection and that  
16 often the managing original shareholder can run into problems  
17 later, and that's why we needed special protections. I  
18 thought Ed was acting on behalf of the corporation and all  
19 shareholders involved, turns out he wasn't, and so as a  
20 result it is a disaster because it allowed Dr. Puchalski to  
21 terminate without cause this shareholder who was one of the  
22 top, busier physicians in the practice, and as you yourself  
23 stated brought him to the -- brought the practice to the  
24 brink of disaster, so on a number of levels it was a  
25 disaster. It's not just judged by how much money everyone

1 makes.

2 Q. Were you satisfied financially making \$1.7 million in  
3 2008?

4 A. That's not where I get my satisfaction from, sir.

5 Q. I'm asking you, financially, did you want more money,  
6 Dr. Dyce? This can be hard or easy. Did you think you  
7 deserved to make more money in 2008, or are you satisfied you  
8 made an amount --

9 A. I think as a general rule physicians deserve to make  
10 more money for what they do, but I did not -- it never once  
11 entered my mind that, oh, I should be making more, if that's  
12 what you are asking, when I got my paychecks.

13 Q. Dr. Dyce, you were making \$150,000 when you came to  
14 SCENT, weren't you?

15 A. The previous contract I was under said I was making  
16 \$150,000, yes.

17 Q. After three and a half years at SCENT you were making  
18 over a million dollars, weren't you?

19 A. After three and a half years of SCENT -- after two years  
20 of SCENT I was credited with earning over a million dollars,  
21 yes.

22 Q. And you're earning over a million dollars now.

23 A. I am earning, I think it's around a million dollars,  
24 yes, sir.

25 Q. And you're doing that servicing many patients that SCENT



1 used to service in Hartsville, correct?

2 A. I service a good number of patients, some of them were  
3 serviced by SCENT, many of them have told me they would never  
4 go back to the place once I left. A number of them are old  
5 patients that were seen for a different problem that have  
6 come in for new problems. A number of them were from out of  
7 town, so I service a lot of --

8 Q. My question was servicing a number of patients from  
9 SCENT, right?

10 A. Not from SCENT, sir.

11 Q. They formerly were serviced by SCENT.

12 A. There are a lot of patients all over the place.

13 MR. ELLISON: I would just ask that Mr. Sheheen let him  
14 answer the question. He keeps interrupting him in the middle  
15 of the answer. That's what's creating confusion for the  
16 court reporter because they get into a dialogue with Mr.  
17 Sheheen trying to talk over Dr. Dyce. Let him finish and  
18 then Mr. Sheheen's certainly able to go back and ask  
19 additional questions.

20 THE COURT: I understand, and I think this will help.  
21 This will help. Dr. Dyce, when you're asked a yes or no  
22 question, if you can answer it yes or no, answer it yes or  
23 no. Now, having said that, you get to explain your answer.

24 THE WITNESS: Okay.

25 THE COURT: What's happening is that if you're asked a

1 yes or no question and then you go into the explanation  
2 before you answered yes or no, lawyers, their heads just  
3 start spinning around. So if you can answer yes or no,  
4 sometimes you cannot, but if you can answer yes or no, if you  
5 can answer that and then explain, that's absolutely  
6 appropriate, okay.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Thank you so much.

9 THE WITNESS: You're welcome.

10 THE COURT: You may proceed.

11 Q. Dr. Dyce, did you realize there was a gap of two or  
12 three months in the recorded phone calls that you taped in  
13 the fall of 2009?

14 A. I'm sorry?

15 Q. Did you realize there's a gap in the fall of 2009 in the  
16 recorded phone calls that you made, in other words, there's  
17 two or three months where you didn't make any recorded phone  
18 calls, did you realize that?

19 A. I did not realize that.

20 Q. Dr. Dyce, before we just had that little colloquy, we  
21 were talking about the fact that you're now making over a  
22 million dollars, whether you were satisfied. You don't have  
23 any debt associated with your practice, right, because you  
24 work for HMA.

25 A. I do not own a practice, sir, if that's what you're

1 asking me.

2 Q. Do you have any debt associated with you practicing  
3 medicine?

4 A. I've paid off my debt, sir.

5 Q. Did you have any debt associated with practicing  
6 medicine? I'm asking this question.

7 A. Yes, I did, sir.

8 Q. Tell me how you incurred debt in your practice.

9 A. I had to purchase my own equipment.

10 Q. Did you then lease that equipment to HMA?

11 A. Yes, I did, sir.

12 Q. And then HMA paid you?

13 A. Yes, sir.

14 Q. Did you have any other debt associated with the  
15 practice?

16 A. Not that I can think of offhand.

17 Q. So would you agree with me that financially you're in a  
18 much better position now with no debt and making over a  
19 million dollars with HMA than you would have been if the  
20 practice had been separated, for example, and you had taken  
21 the SCENT practice in Hartsville?

22 A. No, sir.

23 Q. Would you agree with me that you're in a much better  
24 financial position than Dr. Puchalski or Macy Vidrine or the  
25 other owners of SCENT who are making less than you with

1 millions of dollars in debt?

2 A. No, sir.

3 MR. SHEHEEN: No further questions, Your Honor. Thank  
4 you.

5 THE COURT: All right. Redirect.

6 MR. ELLISON: Two minutes, Your Honor.

7 (Brief pause.)

8 REDIRECT EXAMINATION BY MR. ELLISON:

9 Q. Dr. Dyce, there's been some discussion about insurance  
10 policies that you took.

11 A. Yes, sir.

12 Q. Do you remember that? Did you take copies of the  
13 insurance policies for the purpose of doing anything adverse  
14 to SCENT?

15 A. No, sir, I was simply trying to learn it -- as a  
16 shareholder and as an owner of SCENT, I simply wanted to  
17 learn more about what exactly we were involved in and how  
18 insurance contracts worked and what they looked like because  
19 I'd never seen one.

20 Q. I'm sorry?

21 A. As I don't recall ever seeing one or having to go  
22 through one.

23 Q. Did you view those actions as being adverse to SCENT?

24 A. They were not, sir.

25 Q. Now, in response to some of Mr. Sheheen's questions

1 yesterday you talked about your legal representation in the  
2 context of the different sets of documents that were  
3 executed.

4 A. Yes, sir.

5 Q. So let's go through them, not by putting them up on the  
6 screen but just by talking about the time of the various  
7 items.

8 And, Judge, I'm going to try to limit the number of  
9 documents I use here. There's been too much fumbling around  
10 with it. I'd like to avoid that.

11 The first set of documents that you signed in 2005 --

12 A. Yes, sir.

13 Q. -- did you work with counsel?

14 A. Yes, I did, sir.

15 Q. Who did you work with?

16 A. Mr. Bruce Armon.

17 Q. Now, the 2007 documents, the employment agreement, the  
18 shareholders agreement and the stock purchase agreement, did  
19 you work with Mr. Armon on those?

20 A. I believe I worked with Mr. Armon somewhat on the 2007  
21 agreements, I just don't remember which ones.

22 Q. The 2008 agreements, did you work with -- which are the  
23 shareholder agreement and the employment agreement that we've  
24 been talking a lot about, did you work with Mr. Armon?

25 A. No. I was a shareholder so I believed I was being

1 represented as a shareholder by corporate counsel.

2 Q. And the 2010 draft documents, did you work with Mr.  
3 Armon on those?

4 A. We tried to but --

5 Q. Now, we talked about getting documents and getting  
6 accountings and this sort of thing. Do you remember when you  
7 filed the initial lawsuit, this suit initially?

8 A. Yes, yes, sir.

9 Q. Was that on or around March 15th, 2015, after you'd been  
10 terminated?

11 A. Yes, sir, it was.

12 Q. Do you remember what you asked for?

13 A. I simply asked for an accounting of the practice and  
14 what -- where distributions were going, what the ledgers  
15 looked like and the like, it wasn't --

16 Q. Did you ask for documents, books and records?

17 A. I did as well.

18 Q. Did you seek monetary damages against SCENT or Dr.  
19 Puchalski?

20 A. I did not.

21 Q. And the first time anybody sought damages against  
22 anybody, when was that?

23 MR. SHEHEEN: Your Honor, I'm pretty sure I didn't raise  
24 this on my cross.

25 MR. ELLISON: He did raise it with regard to access to

1 books and records and damages and claims going back and  
2 forth.

3 MR. SHEHEEN: I don't mind giving him some leeway.

4 MR. ELLISON: This isn't going to take very long.

5 THE COURT: Interestingly, if I remember these responses  
6 from before --

7 MR. ELLISON: Then I'll leave it alone.

8 THE COURT: I really do remember the responses.

9 MR. ELLISON: Judge, I'm happy to leave it alone.

10 THE COURT: But I do want to hear, I kind of want to  
11 hear, not that you asked for it so much as did you get it. I  
12 really am curious about that. Do you see the difference, Mr.  
13 Ellison?

14 MR. ELLISON: I do, and I'll go that way.

15 THE COURT: That I don't know. And, yes, we have talked  
16 excruciatingly about them, but I still don't know -- and I  
17 know that you all have got tons of documents, but what I  
18 don't know, since the issue of accounting has been raised, I  
19 really do want to know to what extent the discovery has  
20 provided those documents. I would like to know that.

21 MR. ELLISON: Okay.

22 THE COURT: Am I clear?

23 MR. ELLISON: Yes, Your Honor, absolutely.

24 THE COURT: Because I don't know that at this point.  
25 You all do. I don't.

1 MR. ELLISON: Let me take it in the reverse order.

2 THE COURT: Yes.

3 Q. Dr. Dyce, did you ever get the accounting from SCENT --  
4 from SCENT?

5 A. Sort of.

6 Q. When?

7 A. I think we ended up having -- needing a hearing to get  
8 it, and I believe some of it -- a lot of it came piecemeal  
9 and in varied forms. It wasn't in easily identifiable forms.  
10 For example, I think in early, I want to believe it was  
11 summer, we got two boxes full of paper documents which were  
12 jumbled in different order with no rhyme or reason to them.  
13 And they said, here, these are the documents. And so we had  
14 to spend a fair amount of time and effort going through the  
15 documents, trying to match up pages and account to account.  
16 And I remember distinctly among those documents a number of  
17 critical pages, which we found out later when we got more  
18 documents, were missing such as May 10th, I believe, a  
19 distribution of the day after I left Dr. Puchalski took out I  
20 think between 500 and \$750,000 and distributed it to himself  
21 from the practice. It was a combined amount in two or three  
22 checks. That page was conveniently left out of the documents  
23 we were provided, and so we would have to ask for more  
24 documents and more documents to sort of put it all together,  
25 and sort of that's where -- how we got some of the documents.



1 I think as late as September 2011 we were still attempting to  
2 get documents. We still don't have all the -- when we look  
3 at the company ledgers of the credit card statements that  
4 were being reimbursed, we got a list of those credit card  
5 numbers. We still never got all those credit card  
6 statements. And I believe we know there was a huge disparity  
7 in the credit cards balances. For Dr. Dyce over a period,  
8 and I believe, and don't quote this, haven't looked at this  
9 recently, a little under \$10,000 over three years. In the  
10 same period I believe Dr. Puchalski runs \$200,000. So these  
11 are sort of the disparities we were trying to make sense of  
12 when we were getting the documents, and these were given to  
13 us in a very piecemeal fashion, and to this day we have not  
14 gotten all the credit card statements that we had.

15 Q. Did you get a copy of the --

16 I don't want to go through everything, Your Honor, but  
17 I'm trying to respond to your --

18 THE COURT: I appreciate that because these are the  
19 questions in my mind when you start asking did you get the  
20 ledgers. These are things that are in my head.

21 MR. ELLISON: That's exactly where I'm going.

22 Q. Did you get -- the general ledger, did you get that  
23 before the confidentiality agreement was signed after you  
24 were terminated?

25 A. No, I did not, no.

1 Q. Did you get it afterwards?

2 A. I believe I got it sometime afterwards.

3 Q. Did you get copies of the checks prior to when you were  
4 terminated?

5 A. No, I did not.

6 Q. Did you get copies of all the checks afterwards?

7 A. They told me I got copies of all the checks, but there's  
8 some checks that were still missing that I never got.

9 Q. Did it take going through discovery to get copies of the  
10 tax returns?

11 A. And rulings, yes, sir.

12 MR. ELLISON: Hold on one second. Judge, I'm just  
13 trying to respond to you.

14 THE COURT: Mr. Ellison, I know I'm kind of causing this  
15 and Mr. Cleveland's helping.

16 MR. ELLISON: Your Honor, I think one way to do this is  
17 to go to Plaintiff's Exhibit 34 which you have a copy of.

18 THE COURT: Yes.

19 MR. ELLISON: And I think that we went through this  
20 yesterday. These are some of the things that were requested  
21 by Dr. Dyce on March 3rd, okay, and just skipping to get it  
22 in context, Dr. Dyce wrote, I'm just publishing, Theresa, am  
23 I to understand Jamie is to come to the closing in ten  
24 minutes, review the following while there and then sign for  
25 the loan, and these are some of the things that were being

1 requested.

2 THE COURT: And then there's a response to that that  
3 said the documents are going to be provided but you're not --  
4 you'll only need ten minutes to look at it because it's 12  
5 pages.

6 MR. ELLISON: Right.

7 THE COURT: And I just remember that e-mail. Let me  
8 tell you, let me not be mysterious about the reason that I'm  
9 asking this. Because there is a cause of action for an  
10 accounting, I've got to make a determination whether there  
11 has been or not an accounting, and if not why not and what  
12 needs to occur for there to be an accounting, understanding  
13 there's a suit for damages and breach and all the other  
14 things, but given that I need what I need when you leave me,  
15 when you all leave me and leave this with me, one of the  
16 questions that will be is whether or not an accounting has  
17 existed, and so that's the reason why I'm actually pushing  
18 you to tell me that information. And so when you show me  
19 this list of things, I know that it was requested, I know  
20 that then there was an e-mail that said in response, these  
21 documents are going to be provided, you will only need ten  
22 minutes to look at these documents because there are only 12  
23 pieces of paper. That cannot be.

24 MR. ELLISON: Judge, I understand.

25 THE COURT: And then there's the response back from Dr.

1 Dyce where he says, ten minutes to look at this.

2 MR. ELLISON: Right.

3 THE COURT: Which brings me back to you, Mr. Ellison, to  
4 tell me, so what have we got. So we're going to go back here  
5 and then we'll talk about it.

6 MR. ELLISON: Right. I'm doing exactly, Your Honor,  
7 what you asked me to do. I think Dr. Dyce has already told  
8 you he's not gotten the accounting.

9 THE COURT: Some of it, yes, but I need to know the  
10 specifics.

11 MR. ELLISON: And that's what I'm going to.

12 Q. Prior to engaging in this lawsuit did you get copies of  
13 all the bank statements and the canceled checks?

14 A. I don't believe I did, no, sir.

15 Q. Have you gotten them since then?

16 A. I believe I have gotten some documents, those documents,  
17 yes.

18 Q. Prior to engaging in the lawsuit did you, or excuse me,  
19 prior to engaging in discovery did you get electronic copies  
20 in Excel of the check register?

21 A. No, I did not, sir.

22 Q. Have you gotten them now?

23 A. I believe we have gotten them, sir.

24 Q. No. 3 was an electronic copy of the general ledger year  
25 by year. Did you get that prior to engaging in discovery?

1 A. I don't believe I did, sir.

2 Q. Have you gotten it since then?

3 A. I believe we have, sir.

4 Q. I think you've talked about not getting copies of all  
5 the credit cards, so I won't go through that. Have you  
6 gotten copies of some of the records of the credit cards?

7 A. Some of the records of the credit cards, yes, sir.

8 Q. Have you gotten -- did you get copies of SCENT's tax  
9 returns prior to engaging in discovery?

10 A. No, we did not, sir.

11 Q. Have you gotten them now?

12 A. I believe we have, sir.

13 Q. And then the last item on this list was access to all  
14 supporting documentation at a location controlled by SCENT  
15 related to disbursements. Did you get that access prior to  
16 engaging in discovery?

17 A. No, we did not get access, sir.

18 Q. So I think we talked about books and records, so let's  
19 talk about accounting.

20 THE COURT: So the answer is how about now on the last  
21 one.

22 Q. After discovery did you get access to the documentation,  
23 if you know?

24 A. I don't know, I don't know offhand.

25 MR. ELLISON: Judge this is not everything that we asked

1 for in discovery. I'm just taking it from the e-mail in  
2 terms of what was requested prior.

3 Q. Dr. Dyce, has SCENT ever given you an accounting, showed  
4 how the money flowed back and forth. Not whether you had it  
5 done. Has SCENT ever provided it to you?

6 A. No, sir.

7 MR. ELLISON: Does that take care of, Judge, your  
8 questions?

9 THE COURT: Oh, yes.

10 Q. Have you engaged your own accountant to do an accounting  
11 based on the information provided?

12 A. Yes, sir, I had to.

13 Q. Is that Richard Livingston?

14 A. That's Richard Livingston and his firm.

15 MR. ELLISON: Are we good, Your Honor?

16 THE COURT: That is exactly the information I was  
17 looking for. Thank you so much.

18 MR. ELLISON: You're welcome.

19 Q. Dr. Dyce, after you were terminated, did Dr. Puchalski  
20 or anyone on behalf of SCENT ever offer you any money or  
21 anything for your shares?

22 A. No, they did not, sir.

23 Q. Prior to the counterclaims being put before the Court in  
24 October 2010 did Dr. Puchalski or anyone at SCENT ever say  
25 that they believed you owed SCENT money?

1 A. No, sir.

2 THE COURT: Ask that question one more time.

3 MR. ELLISON: Prior to the filing of the counterclaims.

4 THE COURT: Which was when?

5 MR. ELLISON: October, well, they filed a motion to  
6 amend and the draft complaint was attached to it, Your Honor.

7 THE COURT: Yes.

8 MR. ELLISON: In October 2010.

9 THE COURT: October 2010, okay.

10 Q. Prior to that date, and I don't expect Dr. Dyce to  
11 remember the date, but I do think you remember the  
12 counterclaims. Prior to that time, seeing a copy of those  
13 proposed counterclaims, had Dr. Puchalski or anybody at SCENT  
14 ever said that they believed you owed SCENT money?

15 A. I don't believe so, sir.

16 Q. Let's go to Defendant's Exhibit 71. Dr. Dyce, this is  
17 the document that Mr. Sheheen asked you questions about, the  
18 draft affidavit that was prepared by Mr. Thompson.

19 A. Yes, sir.

20 Q. Did you provide Mr. Thompson with any information  
21 regarding some of the allegations contained in this  
22 affidavit?

23 A. No, I did not, sir.

24 Q. To the best of your knowledge did you provide any  
25 information with regard to the allegations contained in this

1 affidavit to Dr. Gunnlaugsson?

2 A. I did not, sir.

3 Q. Did you sign the affidavit?

4 A. No, sir.

5 Q. It was a draft, was it not?

6 A. I assume.

7 Q. And you didn't sign it?

8 A. I did not sign it, sir.

9 Q. I think you talked about with Mr. Sheheen why you didn't  
10 sign it, but if the Court wants we can go back into that.

11 Dr. Dyce, why did you not sign the affidavit?

12 A. One, because Chad never asked me to sign it. And, two,  
13 I would have had to have an attorney look at it and make sure  
14 it was correct, and there was just no reason to sign it.

15 Q. Were there errors in the information contained?

16 A. It's not information that I would have agreed with as it  
17 was stated on that document.

18 Q. Now, let's go to an e-mail dated January 13th, 2010  
19 which you talked about on your direct from Ed White to Bruce  
20 Armon that shows that Dr. Puchalski got a copy and you got a  
21 copy.

22 A. Okay.

23 Q. To the best of your knowledge is this the first time you  
24 saw a draft of the proposed revised shareholder agreement and  
25 employment agreement?



1 A. No, not quite. That's when I was -- first time I was  
2 given a draft. I believe in a meeting a lot earlier, maybe  
3 in the late summer, fall, Bob explained there was a new  
4 contract. He had it on his computer, and he sort of scrolled  
5 through some of the provisions of it, but I never received a  
6 draft of it.

7 Q. You never received a draft?

8 A. No, never received a draft to review for my review.

9 Q. Is this the first time you received a copy of the draft?

10 A. If I'm remembering that e-mail correctly, that would  
11 have been the first time if that had the shareholders  
12 agreement attached.

13 Q. And you didn't have a copy of any of the prior drafts I  
14 think you said.

15 A. No, sir.

16 Q. This was on January 13, 2010.

17 A. Yes, sir.

18 Q. Let's go back to December 28th, 2009. This is  
19 Defendant's 72. This is what Mr. Sheheen referred to as the  
20 Gunnlaugsson manifesto. What's the date on the e-mail  
21 transmitting the Gunnlaugsson manifesto?

22 A. Appears to be December 27th, 2009.

23 Q. And at that point in time did you have copies of the  
24 draft employment agreement or the draft shareholders  
25 agreement?

1 A. I did not.

2 Q. Now, you were talking with or you were talking with Mr.  
3 Sheheen about threats and that sort of thing.

4 A. Yes.

5 Q. And I don't want to go through a laundry list but Dr.  
6 Puchalski and SCENT began withholding distributions in  
7 November-December 2009, did he not?

8 MR. SHEHEEN: Your Honor, I'm going to object to leading  
9 questions.

10 MR. ELLISON: Okay.

11 THE COURT: Overruled.

12 THE WITNESS: Dr. Puchalski began unilaterally  
13 withholding profit distributions to shareholders starting  
14 around October-November 2009.

15 Q. Did you view that as a threat?

16 A. Well, yes, when he said I'm not going to disburse it  
17 until you sign the documents.

18 Q. And when you say these documents, what do you mean?

19 A. The shareholder and -- shareholder and the employment  
20 agreement, the proposed 2010 agreements.

21 Q. I think you said -- had you received a copy of those  
22 documents?

23 A. No, not yet.

24 Q. So to make sure I've got the timing right, when did he  
25 begin withholding the distributions?

1 A. Around October or November 2009, coming into our busiest  
2 period of the year.

3 Q. When did you first receive copies of the draft  
4 agreements?

5 A. I believe it was January 2010.

6 Q. Now, you talked yesterday about sitting in on various  
7 meetings with SCENT, do you remember that?

8 A. Yes, sir.

9 Q. Can you describe for the Court again kind of the  
10 meetings you sat in on?

11 A. We only had a few meetings, some were one-on-one  
12 meetings with Dr. Puchalski at various times of the night and  
13 in the morning. Those were just one-on-one. And then there  
14 were what's called these weekly Wednesday morning meetings  
15 where we'd meet, I believe, between 5:30 and 6:00 or 6:30 in  
16 Camden, where we'd review all events going on with the  
17 practice and any issues meant to be dealt with, whether it be  
18 insurance companies, hospitals or whatever else. And then  
19 once a month we would have what's called provider meetings  
20 where the providers, meaning the physicians and the --

21 Q. You need to speak up just a little bit.

22 A. -- where the physicians and the PA's or nurse  
23 practitioners would meet once a month on Fridays. There were  
24 some directors meetings also on Thursdays, but those  
25 initially were attended by physicians, but then after some

1 time only Dr. Puchalski represented the physicians. And  
2 occasionally we'd have a meeting after the providers meeting  
3 just for the physicians.

4 Q. So in broad strokes, I think you've described three  
5 general types of meetings that were being held. The first  
6 were the practice meetings.

7 MR. SHEHEEN: Your Honor, I'm going to object. I didn't  
8 go through any of this meeting stuff on my cross. If he's  
9 going somewhere that's related to the cross, I understand,  
10 but we've just spent five minutes talking about meetings I  
11 didn't ask any questions about, so I'd object at this point.

12 THE COURT: He says he can tie that up.

13 MR. ELLISON: Oh, I'm going to.

14 THE COURT: Tie it up.

15 MR. ELLISON: I've got less than three minutes on this  
16 and then I'm done.

17 Q. So you had practice meetings, is that right?

18 A. Yes, sir.

19 Q. You had director meetings, is that right?

20 A. Yes.

21 Q. And you had provider meetings.

22 A. Yes, sir.

23 Q. And at some of these meetings information --  
24 confidential practice information was distributed to the  
25 people who were at the meetings, is that right?

1 A. Absolutely.

2 Q. And then when the meetings were over --

3 MR. SHEHEEN: Your Honor, I'd object to leading  
4 questions.

5 Q. -- were you allowed to keep copies?

6 MR. SHEHEEN: Your Honor, I object.

7 THE COURT: Were you allowed to keep copies?

8 Q. Were you allowed to keep copies?

9 A. I don't believe so.

10 Q. So did you have access to the information that was  
11 provided at these meetings after the meetings were over?

12 A. Only Bob Puchalski, Theresa Williams and whoever Bob had  
13 running around for him at that time had access.

14 Q. And who did you say attended these meetings?

15 A. All the physicians. It depends on which meeting you're  
16 referring to.

17 Q. Okay. Who attended the practice group meetings?

18 A. The physicians and the PA's or nurse practitioners would  
19 have attended the weekly meetings. The provider meetings  
20 were attended by the providers, meaning the healthcare  
21 providers, the physicians and the nurse practitioners. And  
22 then occasionally we'd have, to discuss the numbers, we would  
23 also have a meeting of just the physicians/shareholders after  
24 those meetings to discuss the practice numbers and all that.

25 Q. And there were also director meetings. Who attended

1 those meetings?

2 A. Those were the directors of each department, the allergy  
3 department --

4 Q. Did the physicians attend all of these meetings where  
5 confidential information was given out and then taken back?

6 A. Pretty much because even when we were going over the  
7 buy-in sheets before people had completed their buy-in, all  
8 the physicians were allowed to sort of see the process and  
9 watch what was going on.

10 Q. So did Dr. Gunnlaugsson attend these meetings?

11 A. Yes, he did.

12 Q. So as part of these meetings did Dr. Gunnlaugsson have  
13 information, confidential information being distributed at  
14 these meetings?

15 A. There was a lot of information being distributed that he  
16 would have been -- he would have had access to.

17 Q. And who was providing this information?

18 A. Dr. Puchalski and Theresa Williams.

19 MR. ELLISON: Your Honor, I'm done.

20 THE COURT: Recross.

21 MR. SHEHEEN: Beg the Court's indulgence.

22 THE COURT: Sure. And if you need to take a break, now  
23 wouldn't be a bad time to take a short break if you need to  
24 do that. Would you like to do that?

25 MR. SHEHEEN: Sure, if you're going to do it anyway.

1 THE COURT: It really is a good time, and since this is  
2 the other party, it probably is a good time for you to have a  
3 moment to be sure you're done.

4 MR. SHEHEEN: Thank you, Your Honor.

5 THE COURT: All right. We'll take about 15.

6 (Recess held.)

7 MR. SHEHEEN: I have nothing further for the witness.

8 THE COURT: You may come down and come back to your  
9 table.

10 MR. SHEHEEN: Thank you, Your Honor. Sometimes we save  
11 time by taking a break.

12 THE COURT: Absolutely. All right. Yes, sir, call your  
13 next witness, please.

14 MR. ELLISON: Your Honor, we'd like to call Dr.  
15 Gunnlaugsson to the stand.

16 THE COURT: Okay.

17 CHAD GUNNLAUGSSON,  
18 being first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. ELLISON:

20 Q. Dr. Gunnlaugsson, state your name for the record,  
21 please.

22 A. Excuse me?

23 Q. Could you state your full name for the record?

24 A. Chad Bjorn Gunnlaugsson.

25 Q. Dr. Gunnlaugsson, I want to go into a little bit of your

1 agreement, but at that point Dr. Puchalski had made it very  
2 clear to me that there was a hold up in the practice and I  
3 would not be getting my shares until he and Dyce came to  
4 agreement on a new shareholders agreement.

5 Q. Before your litigation commenced in April 2010 did you  
6 ever see a copy of a proposed amended shareholders agreement?

7 A. No, I did not.

8 Q. Were the terms of that agreement ever discussed with  
9 you?

10 A. Yes, by Dr. Puchalski.

11 Q. And we're getting a little ahead of the story, but when  
12 did that occur?

13 A. Oh, during the months of really mainly January, February  
14 and March of 2010.

15 Q. And what did Dr. Puchalski tell you?

16 A. Dr. Puchalski stated that as the founding member of  
17 SCENT he felt that he should remain the executive forever.  
18 He felt that should have certain privileges related to it,  
19 such as covering his entertainment expenses, his travel and  
20 automobile, extra compensation, things to that such.

21 Q. And when was the first time you can recall seeing an  
22 actual copy of this proposed amended shareholders agreement?

23 A. It wasn't until I began the discovery process in June of  
24 2010 once I had left the practice.

25 Q. Did Dr. Dyce ever provide you with copies of insurance



1 contracts?

2 A. Never.

3 Q. You said there were some patient issues in late  
4 2009-2010 that you discussed with Dr. Dyce, can you describe  
5 those for the Court, please?

6 A. Dr. Dyce had a fairly -- did a fairly complex surgery on  
7 a patient right around Christmas of 2009. He was not on call  
8 for that Christmas weekend, nor was I. During that time that  
9 patient was not rounded on by Dr. Puchalski, he was seen by a  
10 physician's assistant, and that patient ended up having a  
11 significant, near disastrous wound complication. I ended up  
12 seeing the patient a week later on rounds about a week later  
13 when it was my turn to round, and I immediately scheduled  
14 that patient for emergent surgery to help repair the defect  
15 and then had to go back and do a second reconstructive  
16 surgery later which Dr. Dyce assisted me with.

17 Q. Did you have any discussions with Dr. Dyce about that  
18 patient?

19 A. Several.

20 Q. Can you describe those discussions for the Court,  
21 please?

22 A. The first thing you say is, what the heck happened here,  
23 how is a patient not -- who's had a major head and neck  
24 cancer operation who is sick is not rounded on and cared to,  
25 how is the dressing not changed during the five days that

1 he's in the hospital, how do I walk into a clinic bed six  
2 days after procedure, be the first one to take off the  
3 dressing and see a gaping wound in the neck. There were many  
4 conversations. That was a scary time. He could have died  
5 from what we call a carotid blowout where the saliva, which  
6 is now leaking into his neck, can erode into the carotid  
7 artery. And I immediately, I believe later that day or  
8 within the next few days took him to the emergency room and  
9 did what's called a pectoralis flap, where I covered at least  
10 80 percent of the defect with muscle to prevent another  
11 complication, and then I had to go back and do it on the  
12 other side on another Wednesday, not my time, with Dr. Dyce  
13 and do another procedure, and that gentleman did end up  
14 leaving the hospital.

15 Q. Were there other things that you were talking about with  
16 Dr. Dyce during the time period of December 2009 through  
17 January 2010?

18 A. Yes, at times I'd come to Dyce and say, what's going on,  
19 where are my shares, and he would just simply say, there's  
20 lots of issues, I can't talk to you about them. It was a  
21 scary time. You have to understand that from the day those  
22 profit sweeps stopped in November there wasn't a day that I  
23 felt safe in that practice. The profit sweeps stopped. The  
24 one year buy in that was one year for Dr. Vidrine, that was  
25 one year for Dr. Dyce is now 17 months for me with no hope.

1 I had never once contacted a lawyer in my entire time in that  
2 practice, but in November I reached out to Molly Cherry at  
3 Nexsen Pruet.

4 MR. SHEHEEN: Your Honor, I would object. We're getting  
5 far afield of the question and far afield of the relevance to  
6 the case, so I'm objecting.

7 MR. ELLISON: He's saying what they talked about.

8 THE COURT: Just come on back. I know that so much of  
9 this is personal too, but the issue of course has to do with  
10 any sharing of confidential information.

11 MR. ELLISON: That's what I'm trying to get at. We're  
12 also dealing with the exhibit that they were talking about  
13 with Dr. Dyce showing that the volume of text messages and  
14 phone calls went up.

15 THE COURT: Exactly.

16 MR. ELLISON: And so I'm trying to --

17 THE COURT: And you can certainly talk about that as it  
18 relates between this witness and Dr. Dyce.

19 MR. ELLISON: That's exactly what I'm trying to do.

20 THE COURT: I know that, I know that, and the objection  
21 is, as I would anticipate, because it is personal to this  
22 witness, that it would go into his own individual  
23 difficulties, and I understand that, just we've got to come  
24 back.

25 MR. ELLISON: I'm trying as much as I can.

1 THE COURT: I know.

2 Q. Dr. Gunnlaugsson, during this time period did you and  
3 Dr. Dyce also talk about the sleep boards?

4 A. All the time. We took those in November, and that's a  
5 big part of studying together when both of us are taking an  
6 exam.

7 Q. Did you talk about any insurance issues other than the  
8 one patient that you talked about that you remember?

9 A. No.

10 Q. Did Dr. Dyce during this time period ever share any  
11 confidential information regarding the practice with you?

12 A. Never.

13 Q. Were you looking to leave the practice during this time  
14 period?

15 A. No.

16 Q. What happened at the, I guess it's the provider meeting  
17 that occurred in late January 2010. What happened in that?

18 A. In late January 2010 in a meeting with everyone present  
19 Dr. Puchalski --

20 Q. When you say everyone, who was present?

21 A. Macy Vidrine, Dr. Puchalski, Dr. Dyce, myself, Theresa  
22 Williams. In the executive session for the partners Dr.  
23 Puchalski said, Dr. Gunnlaugsson, you are at the precipice of  
24 getting your shares. Mind you, in my mind, they're now six  
25 months overdue.

1 MR. SHEHEEN: Your Honor, I'm going to object again.  
2 We're getting to things that don't have anything to do with  
3 this case.

4 THE COURT: Thank you. I'm going to let him go a little  
5 longer because of the time period.

6 THE WITNESS: He said that the only thing preventing me  
7 from me receiving my shares was a disagreement and  
8 contractual issue between him and Dr. Dyce.

9 Q. Did Dr. Dyce ever describe the disagreement that he had  
10 with Dr. Puchalski?

11 A. No, he did not.

12 Q. Did Dr. Puchalski during this time period, late January  
13 2010 describe the disagreement with Dr. Dyce?

14 A. Yes. He told me that they -- that he wanted a new  
15 shareholders agreement in place.

16 Q. Did Dr. Puchalski later discuss the specifics of the  
17 disagreement?

18 A. Of the shareholders agreement issues?

19 Q. Yes.

20 A. Yes, he told me exactly what provisions he wanted.

21 Q. Can you describe for the Court what those provisions  
22 were as described to you by Dr. Puchalski?

23 A. In loose terms, increased executive compensation, paying  
24 for automobiles, paying for entertainment expenses, CEO for  
25 life, an executive buyout, the a/k/a golden parachute that

1 you hear about, and my answer to those things was always, I'm  
2 not signing that.

3 Q. When did Dr. Puchalski discuss these things with you?

4 A. Between late January 2010 and really right up until  
5 April 20th, 2010.

6 Q. And did Dr. Dyce ever discuss any of these particulars  
7 with you?

8 A. No. That all came from Dr. Puchalski.

9 Q. Now, during the period of January until let's say March  
10 1st, 2010 were you looking to leave SCENT?

11 A. No.

12 Q. Did you have any concerns about being terminated?

13 A. Every day.

14 Q. Can you describe those concerns for the Court, please?

15 A. When you have paid more money than everyone else --

16 MR. SHEHEEN: Your Honor, I'm going to object. It's  
17 interesting, but it's not relevant to the case what he was  
18 concerned -- whether he thought -- it was relevant to his  
19 case, but it's not relevant to this case.

20 THE COURT: What fact that is in issue does this  
21 testimony make more probable or less probable?

22 MR. ELLISON: I'm sorry?

23 THE COURT: What fact which is in issue does this  
24 testimony make more probable or less probable.

25 MR. ELLISON: The alleged coordination between lawyers,

1 the affidavit, draft affidavit that Mr. Sheheen introduced  
2 yesterday provided to Dr. Dyce, what was going.

3 THE COURT: Overruled, you may proceed.

4 MR. ELLISON: Thank you.

5 Q. Go ahead, Dr. Gunnlaugsson.

6 A. As I stated, I had to go home every night to my wife and  
7 say, I'm worried that I'm going to get a pink slip. This is  
8 a scary time. In February there was really the first  
9 shareholder meeting that I was not even made aware of. I  
10 know that Orville and Bob had been having meetings, but there  
11 was to be a meeting where they were going to discuss  
12 shareholder issues, and I was so nervous that I was going to  
13 be fired that I actually asked my attorney to make  
14 preparations in the event that I was fired, how can I stay on  
15 board and serve my patients and stay on the job and make a  
16 salary. I have no other outs. My state license is only good  
17 for this state. If you leave a practice, you're really out  
18 of a job for six to eight months with credentialing and all  
19 those other things.

20 MR. ELLISON: Your Honor, I've called up on the screen  
21 Defendant's 71.

22 THE COURT: Okay.

23 Q. Can you see that one, Dr. Gunnlaugsson?

24 A. I can.

25 Q. Can you identify that for the Court?

1 A. That is an affidavit that at my request my attorney,  
2 Chuck Thompson, wrote for me in the event that I was fired.

3 Q. And during what period of time was this affidavit  
4 written?

5 A. Early February 2010.

6 Q. To the best of your knowledge did -- and who did you  
7 give the affidavit to?

8 A. I e-mailed it to Dr. Dyce.

9 Q. And did he ever sign the affidavit?

10 A. No.

11 Q. Now, there's some information in here regarding the  
12 practice that Mr. Sheheen says is confidential, we can go  
13 through the specific paragraphs if the Court wants, but who  
14 provided you with the information regarding the practice  
15 contained in this affidavit?

16 A. Dr. Puchalski. At this point I had been in these  
17 partnership meeting and executive sessions for over two  
18 years.

19 Q. Did Dr. Dyce provide you with any of the -- to the best  
20 of your knowledge did Dr. Dyce provide you with any of the  
21 information that would be alleged to involve the practice in  
22 this affidavit?

23 A. No, he did not.

24 Q. During the time period of February 2010 until March  
25 10th, 2010, February 1st to March 10th, did you have any



1 discussions with regard to any issues involving the real  
2 estate holdings associated with the practice?

3 A. No, I did not.

4 Q. Did Dr. Dyce ever talk to you about any loans involving  
5 SCENT Land or SCENT?

6 A. No, he did not.

7 Q. Did you have any knowledge that there was ever -- during  
8 that time period, January 31st until March 10th, that there  
9 were problems with any potential loans involving SCENT Land?

10 A. The only thing I was told is that Dr. Puchalski stated  
11 that there were mechanic's liens against the practice.

12 Q. Who said that there were mechanic's liens against the  
13 practice?

14 A. Dr. Puchalski.

15 Q. Do you recall when he said that?

16 A. Yes. He said it in a provider meeting or in the  
17 executive session of the provider meeting.

18 Q. Let's go to March 10, 2010. Are you now aware that  
19 that's the date that Dr. Dyce was allegedly terminated?

20 A. It's one of the saddest days of my life.

21 Q. I'm sorry?

22 A. I'm very aware of it.

23 Q. On March 10, 2010 were you aware of it?

24 A. On March 10th?

25 Q. Yes.

1 A. Not until I got home.

2 Q. What happened at the practice involving you and Ed White  
3 and Dr. Puchalski on March 10th, 2010?

4 A. On Wednesday, March 10th, after my clinic I was pulled  
5 into an office, and at a four seated table, Ed White, Dr.  
6 Puchalski and Theresa Williams were present, and Bob  
7 Puchalski sat me down and said, there are things going on in  
8 the practice, and I can't do anything with your status and  
9 your complaints for the next 60 days, but in 60 days I'll  
10 give you the new shareholders agreement, and I looked at him  
11 and said, where are my shares, not a new agreement, where are  
12 my shares.

13 Q. Did you ask any questions as to why he was saying 60  
14 days?

15 A. I had no idea at that point.

16 Q. So you said that you got home that night and that's when  
17 you found out that Dr. Dyce had been terminated.

18 A. That is correct.

19 Q. How did you find out?

20 A. My wife was on the phone with Jamie Dyce and my wife was  
21 crying.

22 Q. Why was your wife crying?

23 A. Because our friend Orville had just been terminated.

24 You don't even believe that these things can happen.

25 Q. Were you told why Dr. Dyce was terminated?

1 A. No.

2 Q. Did you wonder why?

3 A. Yes.

4 Q. So did you ask Dr. Dyce why?

5 A. I didn't talk to Dr. Dyce. The only conversation was  
6 between my wife and his wife.

7 Q. To the best of your knowledge did Ms. Curley tell your  
8 wife why her husband had been terminated?

9 A. No, she just said Orville got fired, and then there's  
10 really -- there's silence, there's -- there's hysteria,  
11 there's sadness. You know at that point things have been set  
12 in motion that are going to be very, very bad.

13 Q. So did you have a meeting with Dr. Puchalski later on  
14 that month to discuss the situation involving the practice?

15 A. Yes, within a week.

16 Q. I'm sorry?

17 A. Within a week.

18 Q. What was discussed at that meeting?

19 A. I was brought into his office again. Dr. Vidrine was  
20 present at that meeting. And we were given a letter from Dr.  
21 Puchalski and his lawyers to, actually, you that said -- it  
22 was a letter to Dr. Dyce and it said, Dr. Dyce, please be  
23 aware that you've been terminated, please be aware that the  
24 noncompete's in full effect, please be aware that all the  
25 patient charts are ours, and you can't have access to your

1 Sheheen was pointing out yesterday. This is not a great  
2 copy. And I'm going to paragraph 24 which is on page 5. I'm  
3 going to go through a couple of paragraphs. Dr.

4 Gunnlaugsson, looking at paragraph 24.

5 A. Yes, sir.

6 Q. And I'm reading right now. It says, on information and  
7 belief the new shareholders agreement shifted additional  
8 managerial rights to Puchalski and provided for significant  
9 new monetary compensation to him and provided for certain  
10 additional compensation to Puchalski in the event he  
11 voluntarily or involuntarily left SCENT. Do you see that?

12 A. Yes, sir.

13 Q. Who provided you with the information that that  
14 paragraph -- that that allegation is based on?

15 A. Dr. Puchalski.

16 Q. Did Dr. Dyce ever provide you with any information  
17 relating to that allegation?

18 A. No. That allegation was already existing in a June 2009  
19 agreement where he had already tried to do that once, and he  
20 had told me what his plans were prior to that. It was all  
21 Dr. Puchalski.

22 Q. Let's look at paragraph 25, just go through a couple of  
23 these. Paragraph 25 says, the new shareholders agreement  
24 constitutes a power grab by Puchalski in an effort to provide  
25 himself with additional significant compensation in the event

1 that he voluntarily or involuntarily leaves SCENT. Who  
2 provided you with the information that forms the basis of  
3 this paragraph?

4 A. Dr. Puchalski.

5 Q. Did Dr. Dyce provide you with any information in that  
6 context?

7 A. No, he did not.

8 Q. Let's go to paragraph 26.

9 We're not going to do every paragraph of the complaint,  
10 Your Honor.

11 It says, Puchalski has no legal or contractual right to  
12 insist upon a new shareholders agreement or to withhold  
13 shares from Dr. Gunnlaugsson.

14 Other than conferences with your lawyer, who provided  
15 you with the information relating to this paragraph?

16 A. Dr. Puchalski.

17 Q. Did Dr. Dyce ever provide you with any information  
18 regarding these allegations?

19 A. No, sir.

20 Q. We're almost done. Let's go to 27. It says, Dyce has  
21 declined to agree to any new shareholders agreement, has no  
22 obligation to do so, and this is the only reason Puchalski is  
23 refusing to issue shares to Dr. Gunnlaugsson and is refusing  
24 to recognize Dr. Gunnlaugsson as a shareholder. Do you see  
25 that?

1 A. Yes, sir.

2 Q. Who provided you with the information that Dr. Dyce had  
3 declined to sign the shareholders agreement?

4 A. Dr. Puchalski told me that.

5 Q. Did Dr. Dyce tell you that?

6 A. No.

7 Q. Who provided you with the other information that you  
8 used to make this allegation?

9 A. Dr. Puchalski.

10 Q. Did Dr. Dyce ever provide you with any of the  
11 information leading to the allegations in this paragraph?

12 A. No, he did not.

13 Q. One more, paragraph 28. It says, because Dyce refused  
14 to agree to the new shareholders agreement because of  
15 disagreements over Puchalski's management of SCENT's finances  
16 Puchalski terminated his employment. This termination  
17 violated the provisions of the existing shareholders  
18 agreement.

19 Did Dr. Dyce ever tell you about his disagreements over  
20 Puchalski's management of SCENT's finances?

21 A. No.

22 Q. Who did?

23 A. Dr. Puchalski.

24 Q. What did Dr. Puchalski tell you?

25 A. Dr. Puchalski told me that Dr. Dyce and his attorneys

1 had lots of questions about the practice and were holding the  
2 practice hostage.

3 Q. So did Dr. Dyce ever provide you with any information  
4 that supported the allegations in this paragraph of the  
5 complaint?

6 A. No, sir.

7 Q. Who provided you with that information?

8 A. Dr. Puchalski.

9 Q. Dr. Gunnlaugsson, to the best of your knowledge did you  
10 ever provide any confidential information to Dr. Dyce?

11 A. No, sir.

12 Q. To the best of your knowledge did he ever provide any  
13 confidential information to you?

14 A. No, sir.

15 Q. To the best of your knowledge did he ever share any  
16 harmful e-mails with you, harmful to the practice?

17 A. No.

18 Q. To the best of your knowledge did you ever share any  
19 harmful e-mails to the practice with him?

20 A. Is the affidavit harmful, because that's the only e-mail  
21 that I can recall ever sharing with him, so I guess my answer  
22 is no.

23 Q. Did Dr. Dyce ever provide you with a copy of the draft  
24 shareholder agreements?

25 A. No, he did not.

1 Q. Did Dr. Dyce provide you with a copy of the draft 2009  
2 shareholders agreement?

3 A. No.

4 Q. Who provided that to you?

5 A. Dr. Puchalski.

6 Q. Did you ever have a coordinated legal strategy prior to  
7 the institution of this litigation --

8 A. No.

9 Q. -- with Dr. Dyce?

10 A. No.

11 Q. Did Dr. Dyce ever share in any insurance contracts with  
12 you?

13 A. No.

14 MR. ELLISON: Your Honor, I have nothing else.

15 THE COURT: Counsel, let me see you just a second.

16 (Judge and attorneys confer.)

17 Q. Dr. Gunnlaugsson, I'm not quite through. I thought I  
18 was. Not quite. Can you describe for the Court what the  
19 atmosphere of the practice was like prior to June 1st, 2008?

20 A. It was good.

21 Q. When you say good, that's a relative term. What do you  
22 mean by good?

23 A. We were three young physicians trying to build a  
24 practice at multiple locations. It was an exciting time.

25 Q. When did the atmosphere in the practice change or start



1 A. Yes, sir.

2 MR. SHEHEEN: Your Honor, it's been asked and answered.

3 THE COURT: Sustained.

4 MR. ELLISON: That's fine, Judge. I'm done.

5 THE COURT: Very well. It's time for lunch. We're  
6 going to start back at 2:30. During the lunch you cannot  
7 talk about your testimony. You can talk about anything else,  
8 but you cannot talk about your testimony.

9 MR. ELLISON: Judge, can we approach for a minute?

10 (Judge and attorneys confer.)

11 (Lunch recess held.)

12 THE COURT: Okay. Cross-examination.

13 MR. SHEHEEN: Thank you, Your Honor.

14 CROSS-EXAMINATION BY MR. SHEHEEN:

15 Q. Dr. Gunnlaugsson, I'm Vincent Sheheen. We've met  
16 before.

17 A. Yes, sir.

18 Q. It's good to see you. I just have a few questions for  
19 you, Dr. Gunnlaugsson. Dr. Gunnlaugsson, during your direct  
20 testimony you mentioned, I believe, that on April 22nd you  
21 had a meeting with Dr. Puchalski, is that right?

22 A. That is correct.

23 Q. If you would just make sure I get my question out,  
24 sometimes I talk slow and people want to answer before I ask  
25 it, I apologize, but so April 22nd you met with Dr.

1 Puchalski?

2 A. Yes, I did.

3 Q. And I believe you said that it was, I don't want to put  
4 words in your mouth, but essentially a meeting where whatever  
5 he said to you you didn't agree with and you left.

6 A. I left the next day.

7 Q. And then you filed a lawsuit the next day.

8 A. That's correct.

9 Q. But Dr. Gunnlaugsson, in fact, you had requested April  
10 23rd off as a vacation day weeks before, didn't you?

11 A. That's correct.

12 Q. Because you knew you were going to file a suit April  
13 23rd?

14 A. I figured that would be the point of no return. That  
15 April 22nd conversation was really a last chance for me to  
16 see how Dr. Puchalski was going to behave and act, and I  
17 thought it would -- I had planned that day would be a  
18 possible outset for the lawsuit, and once I met with him I  
19 had no doubt we were going to have to do what we did.

20 Q. Dr. Gunnlaugsson, you knew before that you were filing a  
21 lawsuit because you took off that day three weeks in advance  
22 so you wouldn't be there when it got served, right?

23 A. Yes. May I explain, Your Honor?

24 THE COURT: Yes, you may explain.

25 THE WITNESS: You don't file a lawsuit in 12 hours.

1 There's a lot of preparation that goes into it. With the  
2 number of things that I had seen, I had made preparations to  
3 file a lawsuit, I had taken that day off thinking that that  
4 might be the last day and indeed that was the last day.

5 Q. And Dr. Gunnlaugsson, that meeting that you've talked  
6 about so dramatically that you knew you had to file the  
7 lawsuit the next day, you had already created your company to  
8 compete against SCENT prior to that, hadn't you?

9 A. I'd filed an LLC I believe around April 9th or April  
10 19th, thinking that the inevitable was going to happen.

11 Q. Well, Dr. Gunnlaugsson, you weren't just thinking the  
12 inevitable was going to happen. You were planning on  
13 leaving, weren't you? You spent great amounts of time  
14 planning the departure on April 22nd, including multiple  
15 e-mails back and forth with the company that was setting up  
16 your competing practice, right?

17 A. Yes. After hours I spent quite a bit of time, all of  
18 this after Dr. Dyce was fired, preparing for either my, what  
19 I thought, I would be fired or that I would have to leave the  
20 practice. I did all of this after hours on my own time on my  
21 own dollar, and I believe I hired Resource One around March  
22 25th of 2010.

23 Q. Dr. Gunnlaugsson, there's a little book in front of you,  
24 a black book. The Judge has one in front of her as well.  
25 And I'm going to refer to just a couple exhibits in it, and I

1 want you to turn to Tab M which contains Defendant's Exhibit  
2 65. It says at the top Julie Dunn, do you see that?

3 A. Yes, sir.

4 Q. You've seen this e-mail before, right? We've talked  
5 about it before.

6 A. I'm sure I've seen it before. I just have to read it.  
7 It's been quite a while.

8 Q. I want to direct you to the fourth paragraph where you  
9 tell Mike Grabowski while you're working at SCENT, I get paid  
10 on Monday and this will at least secure one extra paycheck  
11 before any possible suspicions are raised, do you see that?

12 A. Yes, sir.

13 Q. You were taking as much money out of SCENT as you could  
14 before you quit and started your competing practice, right?

15 A. No, sir. I was earning the income that I was producing  
16 while working for SCENT before I was leaving.

17 Q. Why didn't you just tell him, hey, I'm leaving I want my  
18 paycheck? Instead you kept it secret so you could make sure  
19 you got that paycheck and then went up and set up your  
20 competing practice, right?

21 A. Yes, sir. And if I may explain, if you look at the  
22 history of the practice, that was probably a really  
23 intelligent decision because if you go up to Dr. Puchalski  
24 and say, I don't agree with you, you can be fired, and you  
25 can bet the paychecks stop at that time, and I didn't want

1 that to happen to me.

2 Q. Dr. Gunnlaugsson, excuse me, you discussed the fact that  
3 you had, I think you called it -- some exams in November that  
4 you were taking with Dr. Dyce. What was that?

5 A. That would be the sleep medicine boards.

6 Q. Right, so you weren't trained in sleep medicine when you  
7 came to SCENT, were you?

8 A. Not board fellowship trained.

9 Q. And they paid for you to attend that and paid for you to  
10 take the class, right?

11 A. The corporation did, of which I also contributed moneys  
12 to.

13 Q. SCENT.

14 A. SCENT, yes, sir.

15 Q. And you said that that was one of the things that caused  
16 the spike in your calls, is that right, and your texts?

17 A. Yes, probably a very minor one, but we did have  
18 discussions over that time.

19 Q. That's not what caused your spike because you took those  
20 in November and your spikes started seriously in December,  
21 didn't they?

22 A. December and January, once the profits sweeps stopped  
23 there was probably a spike as well as the patient in  
24 December.

25 Q. Because that's what you all were talking about, profit

1 sweeps and things that you weren't happy about with Dr.

2 Puchalski, right?

3 A. We didn't discuss them. I would simply call Orville and

4 say, where are the profit sweeps and where are my shares.

5 They weren't long discussions. I was upset. I was scared.

6 Q. Are you aware that Dr. Dyce has already testified that

7 you guys would talk about the things you didn't like Dr.

8 Puchalski was doing in the management of the practice?

9 A. No, I'm unaware of that.

10 Q. Are you denying that's what you were doing because

11 that's what you denied on direct when you went through what

12 you were talking about. Do you still deny it?

13 A. Yes, I don't have any recollection of Dr. Dyce and I

14 getting on the phone and complaining about Dr. Puchalski.

15 Q. Would it surprise you to know that the night that you

16 sent that e-mail with the affidavit to Dr. Dyce that you had

17 a long conversation on the phone with Dr. Dyce, would that

18 surprise you?

19 A. No.

20 Q. Why don't you tell us what that phone conversation was

21 about when that affidavit went to him?

22 A. Sir, I have no idea. That was three years ago.

23 Q. Okay. Would it surprise you that on the call log that

24 you would call Dr. Dyce, you all would talk, then you would

25 call your attorney, and then you and Dr. Dyce would talk

1 again, would that surprise you?

2 A. No.

3 Q. And you're still testifying that you weren't discussing  
4 with Dr. Dyce any legal matters at SCENT or any coordination  
5 of the legal strategy?

6 A. No. I'd be calling and complaining about what went on  
7 in those meetings, how my shares are refused to be given to  
8 me, why, after one year for Orville Dyce, why am I not  
9 getting my shares. These are reasonable responses when there  
10 are two shareholders and one of them is unilaterally keeping  
11 you from making the step that a previous shareholder did and  
12 is not going to show you the time of day, which was Dr.  
13 Puchalski, you're going to want to reach out to the other guy  
14 who has that vote, who has that say.

15 Q. Are you sure you weren't telling Dr. Dyce whatever it  
16 was your lawyer told you?

17 A. No, not at all.

18 Q. You would just call him back after the phone call with  
19 your lawyer.

20 A. Absolutely. These were about the share issues that we  
21 put in the letters and all the other subsequent information.  
22 These were serious legal issues.

23 Q. And you stole hundreds of documents from SCENT, didn't  
24 you, confidential documents?

25 A. No, sir. There were e-mails that I downloaded from my

1 personal e-mail, from my corporate e-mail account to my  
2 personal account that I wanted to have as evidence later  
3 should I be fired or should I leave the practice.

4 Q. Dr. Gunnlaugsson, you had to return hundreds of pages of  
5 information that you stole from SCENT because Judge Cooper  
6 ordered you to -- Judge Barber ordered you to do that May  
7 24th, 2010, didn't you?

8 A. Which included an allergy manual, sir.

9 Q. If you can answer yes or no?

10 A. The answer is yes, sir. While in my time at SCENT I was  
11 privy to a great deal of confidential information, some of  
12 these things I produced such as allergy manual, such as  
13 testing sheets, these are things that -- I was basically  
14 ordered by Judge Barber to remove anything in my hands that  
15 was SCENT proprietary information, and I did that.

16 MR. ELLISON: Your Honor, Mr. Sheheen during direct  
17 examination objected to my talking about anything involving  
18 that other litigation.

19 THE COURT: Yes.

20 MR. ELLISON: If he wants to open it up, that's okay  
21 with me, but what's good for the goose is good for the  
22 gander. Just like he doesn't think it's appropriate, it's  
23 not appropriate for him if it's inappropriate for me.

24 MR. SHEHEEN: Your Honor, it dealt with records, that's  
25 why I brought it up, and also credibility, not what was going



1 A. Once this individual was contacted and we were told that  
2 there was a hard copy on a computer just sitting there in an  
3 office at SCENT's office and that the file indeed existed, my  
4 attorney contacted them, and within a week my buy-in folder,  
5 Dr. Dyce's buy-in folder turned up. It was at another  
6 hearing then about a week after that where we requested  
7 another buy-in sheet for Macy Vidrine.

8 Q. I'm not interested in what anybody said. Was that  
9 buy-in sheet for Dr. Vidrine, was that eventually produced?

10 A. It was.

11 MR. ELLISON: That's it, Your Honor.

12 THE COURT: Okay. That's all the redirect?

13 MR. ELLISON: That's all the redirect.

14 THE COURT: Recross.

15 MR. SHEHEEN: Nothing, Your Honor. Thank you.

16 THE COURT: Is this witness free to leave?

17 (No response.)

18 THE COURT: You're free to go.

19 All right. Call your next witness.

20 MR. CLEVELAND: Call Richard Livingston, Your Honor.

21 (Examination of Richard Livingston contained in separate  
22 volume.)

23 TAMMY SZYMANSKI,

24 being first duly sworn, testified as follows:

25 THE COURT: Thank you. Your witness.

1 MR. SHEHEEN: On the basis that she's not authorized to  
2 say things that I think she's going to say she said.

3 THE COURT: I think that goes to the weight and not to  
4 the admissibility. She's a managing agent it appears to me.  
5 Go ahead.

6 MR. SHEHEEN: I'll just have a running objection.

7 THE COURT: Yes, absolutely.

8 Q. Can you describe the conversation, please?

9 A. Sure. She said, when we terminated Dr. Dyce, and I  
10 stopped her, and I said, what do you mean terminated, you  
11 said that he quit, and she said we lied, he was terminated,  
12 and I said why was he terminated, she said because he didn't  
13 want to get on board with the building in Lugoff.

14 Q. Was there any conversation with Ms. Williams as to  
15 whether he had been terminated for cause or not for cause?

16 A. No.

17 MR. ELLISON: I think that's it, Ms. Szymanski. Answer  
18 any questions Mr. Sheheen may have.

19 THE COURT: Cross-examination.

20 MR. SHEHEEN: Thank you.

21 THE COURT: Yes.

22 CROSS-EXAMINATION BY MR. SHEHEEN:

23 Q. Ms. Szymanski, I'm Vincent Sheheen. We met under  
24 similarly wonderful circumstances previously.

25 A. Yes.

1 Q. I hope that one day we can meet in better circumstances.  
2 I'm sorry you're here. I'm sorry you were subpoenaed. I'm  
3 sorry you had to come back twice.

4 A. I appreciate it.

5 Q. And I'm sorry you're here so late.

6 MR. SHEHEEN: I think this might move quicker if I can  
7 get a little leeway if I can give her a copy of her  
8 deposition.

9 THE COURT: Sure.

10 Q. Ms. Szymanski when we met the first time we were taking  
11 your deposition, right?

12 A. Yes.

13 Q. And I'm just going to ask you some questions, and I can  
14 refer you to your deposition if we need to as we go forward,  
15 but do you recall I asked you if you ever had any problems  
16 with your employment while you were at SCENT?

17 A. Yes.

18 Q. And you said no, correct?

19 A. Correct.

20 Q. And then we talked a little bit about why you said it  
21 was a negative atmosphere.

22 A. Yes.

23 Q. And you said it was because 90 percent of the staff was  
24 unhappy.

25 A. Yes.

1 Q. And you said that after Dyce left, right?

2 A. Yes, it began after Dyce left.

3 Q. And I said what do you mean, and you said, well, with  
4 money being as tight as it was the first thing that happened,  
5 employees lost 10 percent of their pay.

6 A. Yes.

7 Q. And then I said anything else, and you said, well, there  
8 was quite a bit of turnover.

9 A. Yes.

10 Q. That's what you meant by it was a negative?

11 A. Yes.

12 Q. You didn't have any problems with Dr. Puchalski while  
13 you worked there, did you?

14 A. No, I didn't.

15 MR. SHEHEEN: May I approach the witness again?

16 THE COURT: You may.

17 MR. SHEHEEN: Your Honor, there's a little small  
18 notebook called trial notebook four.

19 THE COURT: Got it.

20 MR. SHEHEEN: Just a couple exhibits we'll look at.

21 Q. Ms. Szymanski, you had a problem at some point with  
22 getting Dr. Dyce to sign documents, right? We talked about  
23 that in your deposition.

24 A. Yes.

25 Q. And you didn't know why he wasn't signing them.

1 A. Correct.

2 Q. You have the book there, and if you would look behind  
3 Tab P, you'll see an exhibit that is marked Defendant's  
4 Exhibit 226.

5 A. Yes.

6 Q. And was this one of those you were trying to get the  
7 malpractice insurance signed, Dr. Dyce wouldn't sign it, you  
8 told Dr. Puchalski and you had been communicating with Dr.  
9 Dyce about it, right?

10 A. Yes.

11 Q. And if you'll look at the next one, Q, Exhibit 92, this  
12 would have been trying -- this is again the malpractice  
13 insurance, having trouble with him signing that, is that  
14 right?

15 A. Yes.

16 Q. And again, you didn't know why.

17 A. Correct, I didn't.

18 Q. That wasn't part of what you did.

19 A. No.

20 Q. And then if you look at the next one, 93, this is a  
21 Respironics invoice, same problem, he's not signing documents  
22 and returning them to you, is that right?

23 A. Correct.

24 Q. What was Respironics, was that equipment?

25 A. Yes.

1 Q. SCENT was trying to lease or purchase new equipment?

2 A. Yes.

3 Q. And then look at the next one which is exhibit -- SCENT  
4 Exhibit 209.

5 A. Okay.

6 Q. This one is interesting. This is you telling Dr.  
7 Puchalski and Theresa Williams that I believe that they're  
8 going to be kicked out of the SCENT office space, it's 63010,  
9 is that what you're telling them?

10 A. Let me read it.

11 Yes, correct.

12 Q. There was some pressure going on at the practice about  
13 moving out of the lease space, right?

14 A. Yes.

15 Q. Look at the next one, under Tab T, it's SCENT Exhibit  
16 Defendant's 87. Do you see that?

17 A. Yes.

18 Q. This is you to Robert Puchalski. Looks like you got a  
19 bill to Pocasin Court in Amy Puchalski's name and you were  
20 asking him should that be sent by SCENT or Amy and he said?

21 A. To forward it to Amy, yes.

22 Q. You were asked if there were any problems about personal  
23 charges by Dr. Puchalski?

24 A. Yes.

25 Q. You said in your deposition you don't think Dr.

1 Puchalski was trying to take money from SCENT, right?

2 A. I don't think so, no.

3 Q. You testified your understanding was the CPA firm was  
4 tasked with going through any expenses, right?

5 A. Yes.

6 Q. They were supposed to tell you and/or Dr. Puchalski if  
7 any didn't qualify.

8 A. Yes.

9 Q. And when they said something wasn't appropriate that Dr.  
10 Puchalski would say do whatever they say.

11 A. Right, yes.

12 Q. Your testimony, I believe, was that the Sheheen, Hancock  
13 and Godwin firm to your experience was very responsible  
14 toward that.

15 A. I believe so.

16 Q. And your working experience with them was what?

17 A. Professional and very good.

18 Q. Okay. I think your asked questions about Amy Puchalski.

19 A. I may have been.

20 Q. Just now.

21 A. Just now, I don't think so.

22 Q. Well, I'll ask you.

23 A. Okay.

24 Q. Because I swear I thought that they did, but it's late  
25 in the afternoon. Was Amy Puchalski sometimes paid from

1 SCENT?

2 A. Yes.

3 Q. Okay. And was that moneys that had been earned by Dr.  
4 Puchalski?

5 A. I believe so.

6 Q. You have no awareness or no knowledge that Amy Puchalski  
7 was taking moneys that were not -- that her family was not  
8 entitled to.

9 A. I was not aware of anything like that, no.

10 Q. You didn't think she was trying to steal money from  
11 SCENT.

12 A. No.

13 Q. You didn't think she was trying to take anything she or  
14 her husband were not entitled to.

15 A. No.

16 Q. Did Dr. Puchalski tell you why sometimes she would do  
17 it, whether it was for convenience or --

18 A. No. It was just an assumption on my part that it was  
19 for tax reasons but nobody ever said.

20 Q. You talked about when Dr. Dyce asked for these records  
21 that you discussed.

22 A. Yes.

23 Q. I don't want to go into those, but I want to ask you,  
24 did he ever ask you for any other human resources records,  
25 financial records, bookkeeping records, anything else at any



1 other time?

2 A. No.

3 Q. Were you aware that Dr. Dyce stole some insurance  
4 contracts from SCENT?

5 MR. ELLISON: Objection, Your Honor.

6 THE COURT: Sustained.

7 Q. Were you -- can I rephrase the question?

8 THE COURT: Sure.

9 Q. Were you aware that Dr. Dyce took some insurance  
10 contracts from SCENT for personal use?

11 A. No.

12 Q. Were you aware that Dr. Dyce took a financial binder  
13 from SCENT --

14 A. No.

15 Q. -- off the premises?

16 Beg the Court's indulgence for a minute.

17 THE COURT: Yes.

18 Q. You were aware that there was a loan from SCENT to SCENT  
19 Land Holdings to help with construction of the building,  
20 weren't you?

21 A. Yes.

22 Q. You were told that's what the money was for.

23 A. Yes.

24 Q. If Dr. Puchalski took a business trip, would that be  
25 considered a business expense?

1 A. Yes.

2 Q. Is the same true if it was Dr. Dyce?

3 A. Yes.

4 Q. And anybody else at the practice?

5 A. Yes.

6 Q. Would they sometimes go to get I think they're called  
7 CME's?

8 A. Yes.

9 Q. CME's are continuing medical education?

10 A. Yes.

11 Q. They were in some nice places sometimes, weren't they?

12 A. Oh, yes.

13 Q. Sometimes they were in I think New York.

14 A. Yes.

15 Q. And sometimes they were over seas even, does that sound  
16 familiar?

17 A. That I'm not sure of but...

18 Q. Okay. You never saw Dr. Puchalski change the ledger or  
19 anything like that, did you?

20 A. No.

21 Q. And Sheheen, Hancock and Godwin, did they review the  
22 ledger?

23 A. Yes.

24 Q. And if they told you all something needed to be done  
25 there, did you do it?

1 A. Yes.

2 Q. And did Dr. Puchalski agree to whatever they said was  
3 appropriate?

4 A. Yes.

5 MR. SHEHEEN: That's all I have. Thank you, Your Honor.  
6 Thank you so much for being here.

7 THE COURT: Redirect?

8 MR. ELLISON: Very little bit.

9 REDIRECT EXAMINATION BY MR. ELLISON:

10 Q. At the end of the year were there issues with regard to  
11 moneys that had been paid to Dr. Puchalski that were  
12 allegedly for expense reimbursements and questions as to  
13 whether they were really his or whether they were SCENT's?

14 A. More in the beginning, 2008.

15 Q. At the beginning of the year?

16 A. No, in 2008, that's where most of the questions came in,  
17 2009 a little bit, but once I started doing the bookkeeping  
18 on a regular basis that really was very limited.

19 Q. Was there movement back and forth as to whether it was a  
20 personal expense or whether it was a business expense?

21 A. Yes.

22 Q. Did you have to do that with any of the other doctors?

23 A. No.

24 MR. ELLISON: Nothing further, Your Honor.

25 THE COURT: Recross.

1 MR. SHEHEEN: Nothing further.

2 THE COURT: You're free to go. Thank you. That's it  
3 for today.

4 (Trial of the case adjourned at 6:06 p.m.)

5 (Trial of the case resumed on 11/22/13 at 10:00 a.m.)

6 THE COURT: Call your next witness.

7 MS. BAKER: Your Honor, we would like to call Tammy  
8 Amerson.

9 TAMMY AMERSON SMITH,  
10 being first duly sworn, testified as follows:

11 CLERK OF COURT: State your full name for the record.

12 THE WITNESS: Tammy Smith.

13 DIRECT EXAMINATION BY MS. BAKER:

14 Q. Good morning, Mrs. Smith.

15 A. Good morning.

16 Q. Mrs. Smith did you recently get married?

17 A. I did, I got married on Friday.

18 Q. Congratulations.

19 THE COURT: Like last Friday?

20 THE WITNESS: Last Friday.

21 THE COURT: Like this is your first anniversary, a week?

22 THE WITNESS: Yes, a week.

23 Q. Mrs. Smith, where do you currently work?

24 A. HMA Hartsville.

25 Q. And so is Hartsville HMA your current employer?

1 insurance benefits?

2 A. I did, but I got a phone call that they were going to  
3 drop my hours to about 14 hours a week and I would not be  
4 able to have benefits then.

5 Q. And is that the reason why you left SCENT?

6 A. Yes, it is.

7 Q. And as far as you know, did SCENT consider you to be a  
8 good employee?

9 A. Yes.

10 Q. And before you left SCENT was Dr. Dyce popular with the  
11 patients?

12 A. Yes.

13 Q. Now, let's talk about your leaving SCENT and going to  
14 work for HMA. You just explained to the Court that your main  
15 reason was you needed health insurance, correct?

16 A. Correct.

17 Q. Now, how did you find out about a position with HMA?

18 A. After I received a phone call cutting my hours to 14  
19 hours a week, I went home that night and went online and  
20 Carolina Pines and the position was posted online.

21 Q. What did you find out about the position when you looked  
22 online?

23 A. That there was a position opening for office coordinator  
24 at Dr. Dyce's office.

25 Q. And you found that out just by the website?

1 A. Yes.

2 Q. And when did you begin to work for HMA?

3 A. The 25th of October 2011.

4 Q. And just to be clear, when you were online you applied  
5 for the position with HMA, correct?

6 A. Yes, I did.

7 Q. Did Dr. Dyce recruit you?

8 A. No.

9 Q. Did you apply for a position with Dr. Dyce?

10 A. With his office, yes.

11 Q. But with HMA though, correct?

12 A. With HMA, through HMA.

13 Q. And did you speak with Dr. Dyce at all about this job  
14 position?

15 A. No.

16 MS. BAKER: No further questions.

17 THE WITNESS: Thank you.

18 THE COURT: Cross-examination.

19 MR. SHEHEEN: Thank you, Your Honor.

20 CROSS-EXAMINATION BY MR. SHEHEEN:

21 Q. I'm all screwed up now because I was ready for Ms.  
22 Amerson and now I've got Ms. Smith.

23 A. Yes, sir.

24 Q. How are you doing, Ms. Smith?

25 A. I'm good. How are you?

1 Q. Very good. Good to see you. Thank you for being here.  
2 Happy anniversary.

3 A. Thank you.

4 Q. What a wonderful way to spend your honeymoon.

5 A. Absolutely.

6 Q. Thank you for being here. You and I met once before --  
7 I believe once before. I'm Vincent Sheheen, and I represent  
8 SCENT and some other defendants.

9 A. Yes.

10 Q. It's good to see you again and congratulations.

11 A. Thank you.

12 Q. I just have a few questions as well, and I appreciate  
13 you being here also.

14 Ms. Smith, you remember I took your deposition?

15 A. Yes.

16 Q. And if we need to refer to it, I have a copy for you and  
17 a copy for the Court as well.

18 A. Okay.

19 Q. And I'll just put it up in front of you in case we do  
20 need to refer to it, okay?

21 A. Okay.

22 Q. But we may not need to.

23 MR. SHEHEEN: May I approach, Your Honor?

24 THE COURT: Of course.

25 MR. SHEHEEN: Thank you.

1 Q. Ms. Amerson, you testified -- well, let me ask you this,  
2 do you work under Dr. Dyce right now, you schedule him, that  
3 kind of thing?

4 A. Yes.

5 Q. And before that you worked for SCENT?

6 A. Correct.

7 Q. And you were familiar with some of their operations?

8 A. Correct.

9 Q. And you worked primarily in the Hartsville and Cheraw  
10 offices?

11 A. Yes.

12 Q. There was a Hartsville office and then there was a  
13 Cheraw office; Cheraw is about 20 minutes away from  
14 Hartsville, is it fair to say?

15 A. About 40.

16 Q. 40. And there was kind of a link between those two  
17 offices, you would help do stuff in Cheraw as well?

18 A. Yes.

19 Q. And SCENT -- we talked about this previously, but SCENT  
20 marketed itself aggressively, didn't it?

21 A. Yes.

22 Q. It would do billboards, right?

23 A. Yes.

24 Q. And it aggressively marketed itself in Hartsville and  
25 Cheraw, right?



1 A. Correct.

2 Q. In fact, I think we talked about that they would  
3 actually sponsor lunches for referring physicians in those  
4 areas.

5 A. Yes.

6 Q. And the goal there was to get those physicians to refer  
7 to the doctors of SCENT, right?

8 A. Correct.

9 Q. And at some point a really nice building was built in  
10 Hartsville for SCENT, is that right?

11 A. Yes.

12 Q. And you and I discussed that, and Dr. Dyce was  
13 supportive of building that building in Hartsville, right?

14 A. Yes.

15 Q. And new equipment was purchased for that building,  
16 right, like CT scanners and things like that?

17 A. Yes.

18 Q. If you'll just let me finish asking the question, you're  
19 doing fine, it's just that she's writing it down and  
20 sometimes it's hard.

21 A. Okay.

22 Q. And to the best of your knowledge the patient load there  
23 at that time justified purchasing that equipment, right?

24 A. Yes.

25 Q. And I believe you testified that you had a good

1 relationship with Dr. Puchalski as well?

2 A. I did.

3 Q. And I think we talked a little bit about the fact that  
4 there was a nurse practitioner named Stephanie Tetterton?

5 A. Yes.

6 Q. You recall Stephanie?

7 A. Yes.

8 Q. She worked in the Hartsville office sometimes as well?

9 A. Yes.

10 Q. And she would do procedures and see patients, that kind  
11 of thing, is that right?

12 A. Yes.

13 Q. And Dr. Dyce was -- now I'm still at the time that he  
14 was at SCENT. He was popular in the SCENT Hartsville office,  
15 right?

16 A. Yes.

17 Q. And Stephanie was popular as well with patients?

18 A. Yes.

19 Q. And now at your -- where you work now and working with  
20 Dr. Dyce, he sees many of the patients that were formerly  
21 seen at SCENT, right?

22 A. We do see, yes, a lot of Hartsville SCENT patients.

23 MR. SHEHEEN: Beg the Court's indulgence one minute,  
24 please.

25 THE COURT: Certainly.

1 Q. Ms. Smith, to the best of your knowledge, did Dr.  
2 Puchalski manage the SCENT practice?

3 A. Yes.

4 Q. The business side of the practice, he handled that?

5 A. Yes.

6 Q. And would he come to Hartsville a day or half a day --  
7 prior to Dr. Dyce leaving would he come to Hartsville a day  
8 or a half a day or something like that to also work?

9 A. Yes.

10 Q. Were you able to get more hours when you went to work at  
11 HMA?

12 A. Yes, yes, absolutely.

13 MR. SHEHEEN: I think that's all the questions I have,  
14 Your Honor. Thank you.

15 THE COURT: All right. Redirect.

16 MS. BAKER: We don't have any further questions, Your  
17 Honor. Ms. Smith is under a trial subpoena.

18 THE COURT: Is she free to leave?

19 MS. BAKER: She's free to leave from our end.

20 THE COURT: Any objection?

21 MR. SHEHEEN: No, ma'am.

22 THE COURT: Thank you. Call your next witness, please.

23 MR. CLEVELAND: Your Honor, we would like to publish a  
24 few of the excerpts of the deposition of Lance Jones.

25 THE COURT: Lance Jones?

1 MR. CLEVELAND: Yes, Your Honor. He was the head of HMA  
2 and now he lives in Tennessee or someplace.

3 THE COURT: Sure.

4 MR. CLEVELAND: We have coordinated with Mr. Wright. We  
5 designated with him what we wanted to read, so we're just  
6 going to read in order.

7 THE COURT: That's great.

8 MS. BAKER: Your Honor, we're going to mark as  
9 Plaintiff's 299 the plaintiff's designations and the  
10 defendant's designations as one.

11 THE COURT: Great.

12 (Plaintiff's Exhibit 299 marked for identification.)

13 MS. BAKER: May it please the Court.

14 THE COURT: Yes, ma'am.

15 LANCE JONES,  
16 deposition testimony read as follows:

17 Q. Mr. Jones, you've been sworn, could you state your name  
18 and speak loudly for the record?

19 MR. CLEVELAND: I apologize. I thought we were starting  
20 on page 7 at line 19.

21 MS. BAKER: Page 4, line 20 through 23.

22 MR. CLEVELAND: Yes, indeed.

23 A. Yes, Lance Warren Jones.

24 Q. Mr. Jones, where do you currently work?

25 A. Knoxville, Tennessee.

1 Q. And who do you work for?

2 A. Health Management.

3 Q. And how long have you worked for Health Management?

4 A. Coming up, four and a half years.

5 Q. And what is your position?

6 A. I'm CEO of the Turkey Creek Medical Center.

7 Q. And what other jobs have you held for Health Management?

8 A. CEO of Carolina Pines.

9 Q. Okay. And I think I call Health Management HMA. Is  
10 that the same entity?

11 A. Yes, it is.

12 Q. Okay. So if I refer to it as HMA you'll know what I'm  
13 talking about?

14 A. Yes.

15 Q. Great. You mentioned that you worked, I believe you  
16 said as CEO for Carolina Pines in Hartsville, is that right?

17 A. Yup, that's correct.

18 Q. And is that a hospital that is owned or affiliated with  
19 HMA?

20 A. Yes.

21 Q. What is the exact relationship?

22 A. Health Management owns that facility.

23 Q. Okay. And at some point -- oh, well let me ask you  
24 this, how long were you the CEO at Carolina Pines?

25 A. I was there for approximately two years.

1 Q. Okay. And during that time did you interact at all with  
2 South Carolina ENT, also known as SCENT?

3 A. Yes.

4 Q. And did you interact with Dr. Puchalski? Do you know  
5 who I'm talking to -- talking about?

6 A. Yes.

7 Q. And did you interact with Dr. Dyce?

8 A. Yes.

9 Q. Okay. Now, at some point Dr. Dyce no longer worked with  
10 SCENT as we've discussed and at some point he went to work  
11 with HMA, is that right?

12 A. Right.

13 Q. Sure. I'll make it a little more specific, I left it  
14 general just in case you wanted to kind of talk about it  
15 generally, but when did you -- were you involved in that  
16 decision to employ Mr. -- Dr. Dyce?

17 A. Yes, I was.

18 Q. All right. When did that -- when did you first discuss  
19 employing Dr. Dyce?

20 A. Sort of recall that timeframe a couple of years ago.  
21 Dr. Dyce had left his employment with the SCENT group, and I  
22 was made aware through members of the medical staff that he  
23 was exploring opportunities outside of the market. The  
24 medical staff there were adamant that they wanted to retain  
25 ENT services from someone that lived locally, so I would

1 anticipate it was in the -- at some point in the summer of  
2 the 2000 -- what would have been in 2010.

3 Q. Okay. And who was it that first approached you about  
4 it. I'm sorry?

5 A. Dr. Areephanthu.

6 Q. Okay. And do you recall -- tell me what Dr. Areephanthu  
7 told you or said to you.

8 A. I -- I don't recall the exact conversation but to the  
9 effect that Orville was exploring leaving the market. He's  
10 exploring opportunities in the -- in the -- in the northeast  
11 there, the Washington through Boston market and that we want  
12 to hold -- we want to keep him in the market.

13 Q. And what kind of doctor was Dr. Aree --

14 A. Areephanthu.

15 Q. Yes, sir.

16 A. Yes, he was a primary care physician.

17 Q. Okay. And you mentioned, I believe, that he said that  
18 he wanted to have somebody live in the area, stay in the area  
19 or something like that?

20 A. That was something important to a great number of the  
21 physicians with the medical group there. They all felt that  
22 physicians residing locally provided them with coverage and  
23 support that was stronger than physicians that were  
24 commuting.

25 Q. All right. And when you say the medical group, was that

1 an actual entity?

2 A. The Hartsville Medical Group is an entity of employed  
3 physicians, that's correct.

4 Q. And they're employed by whom?

5 A. There are a subsidiary there of Health Management.

6 Q. Okay. So Health Management owns the company that  
7 employees those physicians?

8 A. They do.

9 Q. Okay. All right. Tell me when you first spoke to Dr.  
10 Dyce -- approximately when you first spoke to Dr. Dyce about  
11 coming to work at HMA.

12 A. I would say it was probably mid summer, late summer  
13 timeframe when he first indicated that he had an interest in  
14 exploring an opportunity with Health Management.

15 Q. Did he come to you?

16 A. Yes.

17 Q. Okay. And just did he come to your office?

18 A. I don't recall where we met.

19 Q. Okay. And did he tell you anything about SCENT or his  
20 relationship with SCENT at that point?

21 A. I -- I don't recall the exact conversation.

22 Q. Okay. Well, what do you recall if anything?

23 A. I -- I was aware that he had left the SCENT practice but  
24 that's -- that's about the -- probably the extent of my  
25 recollection.



1 Q. Okay. Did you ever talk with him about SCENT or his  
2 experience at SCENT?

3 A. No, I -- I really didn't.

4 Q. Okay. Did he ever talk to you, did he ever say anything  
5 to you about it?

6 A. Oh, he was always very respectful not to talk about the  
7 SCENT practice.

8 Q. Do you recognize this document and can you turn to the  
9 back it will help you?

10 A. Yes, I do recognize it.

11 Q. Okay. Is this an agreement that you entered in -- when  
12 I say you I mean HMA -- entered into with Orville Dyce?

13 A. That's correct.

14 Q. Okay. Is that standard in your -- in your industry that  
15 you include covenants not to compete with doctors that --  
16 that are hired by HMA?

17 A. It -- this was the standard template that the home  
18 office legal counsel provided for employment contracts.

19 Q. Okay. And to your knowledge was this provision in  
20 those -- in that standard template?

21 A. Yes, this is the standard template, Mr. Sheheen.

22 Q. Okay. I see in there it says you -- and I'll just read  
23 it to save some time. It says you won't practice your  
24 medical specialty or otherwise compete with the practice's  
25 operation directly or indirectly within a radius of 30 miles

1 of the practice locations where you worked for a period of 12  
2 months after this agreement expires or is terminated, do you  
3 see that?

4 A. Yes, yes, sir.

5 Q. Do you believe that a 30-mile restriction was  
6 reasonable?

7 A. Again, that was something that our -- working with our  
8 home office that the physician practice group would typically  
9 put together.

10 Q. Okay. Let's see who signed -- is it -- whose signature  
11 is at the back of this? Is that yours or somebody else's?  
12 It says president and chief executive officer.

13 A. Yes, that -- that is mine.

14 Q. Okay. So back to page 6.7, the 30-mile radius, is that  
15 what the company believed was reasonable?

16 A. Yes. Typically what we looked at there was the Florence  
17 marketplace as a competitive element so that's -- that's  
18 correct to your question.

19 Q. Okay. And then it said a period of 12 months. Did the  
20 company believe that 12 months was reasonable?

21 A. The other documents that I have seen for other  
22 employment relationships also had 12 months as a restricted  
23 time.

24 Q. And did -- is that -- did the company put that in there  
25 because the company believes those are reasonable terms?

1 A. Yes.

2 Q. Okay. I want you to turn to page 44.

3 A. That's your Bates stamp 44?

4 Q. Yes, sir, I'm sorry.

5 A. Okay. I'm there.

6 Q. Okay. There's a provision called 6.2, do you see that,  
7 called confidentiality?

8 A. Yes.

9 Q. Why is confidentiality important to the company in these  
10 employment agreements?

11 A. It -- I'm -- I'm not an attorney, but in regards to all  
12 items being confidential, which discussions that we have and  
13 are protected and exclusive with individual physicians as we  
14 look to employ them it -- it could create quite a degree of  
15 unrest amongst other members of the medical staff if  
16 physicians are talking about their contracts publicly,  
17 particularly in employment relationships.

18 Q. Okay. And that provision also says -- it also says in  
19 the second sentence, moreover, unless otherwise permitted by  
20 law, neither you, that would be the employee, nor we will use  
21 or disclose certain confidentiality -- confidentiality,  
22 proprietary, nonpublic, financial and other information  
23 concerning patients, so was there other information that's  
24 supposed to be maintained confidential that a -- that a  
25 doctor that works for you is exposed to?

1 MR. CLEVELAND: Would you tell me -- I've got it  
2 stopping there and my not responding.

3 MS. BAKER: That's exactly right.

4 MR. CLEVELAND: Okay.  
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1 Q. But tell me how you knew that Dr. Dyce had a covenant  
2 not to compete with SCENT.

3 A. Dr. Puchalski had indicated that.

4 Q. Okay. And did he indicate that to you directly?

5 A. Oh, from Dr. Puchalski, yes.

6 Q. Okay. Tell me about that conversation.

7 A. I -- I have to -- I mean, I -- I remember Dr. Puchalski  
8 indicating that there was a covenant in his agreement with  
9 Dr. Dyce and my response that he would have to work that out  
10 with Dr. Dyce.

11 Q. Okay. Were you involved in --

12 A. No.

13 Q. Okay. Did you discuss the covenant with Dr. Dyce?

14 A. No.

15 Q. Okay. Did Dr. Dyce ask HMA for protection for any legal  
16 fees he might incur if the covenant with SCENT was enforced?

17 A. Dr. Dyce had indicated that he was anticipating legal  
18 expenses, correct.

19 Q. Did he ask HMA to help him cover those legal expenses?

20 A. What was -- what was discussed and when we looked at the  
21 offer you have an outline when typically recruiting a  
22 physician to the market versus retaining someone that you  
23 would have various -- part of our recruitment package would  
24 include fees such as sign-on bonuses, student loan  
25 repayments, relocation, recruiters' fees, etc. When the

1 agreement was put together, there was only sign-on bonuses  
2 and/or commencement bonuses that were offered, and Dr. Dyce  
3 had indicated that he anticipated some legal expenses, and  
4 this was part of, when we looked at a total compensation  
5 package that was put together -- that was put together --  
6 that the home office had gone ahead and approved.

7 Q. All right. So let me understand that. Are you saying  
8 that because Dr. Dyce said that he anticipated legal expenses  
9 that that went into figuring out the amount that he would be  
10 paid based on the different portions you just discussed?

11 A. Yes. In essence we as a company would have a -- a  
12 portion of dollars that would be allocated to the court of  
13 recruiting, and depending on how a particular physician  
14 needed those moneys apportioned, and we would work with the  
15 physician to try and meet his or her needs.

16 Q. All right. And in this case specifically with Dr. Dyce  
17 was that a consideration, the fact that he was -- told you  
18 that he may face legal fees?

19 A. Yes.

20 Q. Okay.

21 A. We had no recruiter's fee and no relocation that would  
22 be associated with this, so the company certainly felt  
23 comfortable heading down that track in regards to -- in  
24 regards to use the dollars as commitment bonuses or a sign-on  
25 bonus.

1 Q. Okay. So in other words the commitment bonus or the  
2 sign-on bonus was in part to help defray his legal fees?

3 A. Well, those are bonuses that are for his discretion for  
4 him to use how he saw appropriate.

5 Q. Okay. But you -- you took into consideration -- the  
6 company took into consideration the fact that he said he was  
7 likely to face legal fees?

8 A. Yes.

9 Q. Okay. Did he tell you if he had been offered other jobs  
10 outside of South Carolina during this time?

11 A. I -- I don't recall Dr. Dyce telling me personally. I  
12 do recall, again, conversations from Dr. Areephanthu that Dr.  
13 Dyce was in discussions -- negotiations with other entities  
14 outside the market.

15 Q. Okay. What would you expect they would take into  
16 consideration with a doctor who works for these people?

17 A. Yes, yes, I would.

18 Q. Okay. Were you aware that at least two of the employees  
19 that worked with Dr. Dyce had formally worked with SCENT?

20 A. No.

21 Q. Were you aware that scores of the patients that were  
22 seen by Dr. Dyce once he came to work for HMA had formerly  
23 been patients of SCENT?

24 A. I wouldn't have any idea where the patients had come  
25 from.

1 Q. Okay. Would that surprise you?

2 A. I don't know. It's -- it's not typically something that  
3 the CEO would find himself involved in or herself involved  
4 in, the terms of where the patients had come from.

5 Q. What made hiring Dr. Dyce attractive to HMA?

6 A. They -- the medical staff felt strongly that retaining a  
7 known entity in the market was important, and Dr. Dyce  
8 resided in the Hartsville marketplace, and from a hospital  
9 perspective there was certainly -- made to ensure that we had  
10 stability obviously the -- the concerns as to what was  
11 occurring in the market was instability as well and -- and  
12 ultimately our obligation to provide services 24/7 to the  
13 community.

14 Q. Is that net revenue number in your -- let me rephrase  
15 the question. Is that net revenue number, in your experience  
16 recruiting physicians, a high number, a low number or an  
17 average number for a new physician coming into the --

18 A. If -- it really depends on the specialty. For a  
19 neurosurgeon or an orthopedist not necessarily but certainly  
20 in comparison to a family practitioner, yes.

21 Q. Do you believe that Dr. Dyce's relationships he had  
22 built in the Hartsville area in previous years benefited him  
23 when he went to work for HMA?

24 A. Yes.

25 Q. Did you know that SCENT had marketed Dr. Dyce in the



1 Hartsville area and in the Cheraw area for a number of years  
2 prior to him working for HMA?

3 A. No, I wasn't aware of that.

4 Q. Did you know that SCENT paid for his certifications in  
5 sleep and allergy?

6 A. No.

7 Q. Did he provide you with any copies of insurance  
8 contracts that he took from SCENT?

9 A. No.

10 Q. Did he tell you he took some insurance contracts from  
11 SCENT?

12 A. No.

13 Q. Did Dr. Dyce ever talk to you about the potential --  
14 about potentially going to work with Dr. Gunnlaugsson?

15 A. No, not to me.

16 Q. Yes, sir. Thank you. Did you talk to any other doctors  
17 about Dr. Dyce?

18 A. Two, two other physicians, Dr. Chapman and Dr. Harless  
19 had had conversations with me in regards to retaining Orville  
20 in the market.

21 Q. And was it -- would this have been during the time that  
22 Dr. Dyce had left SCENT but not gone to work for HMA yet?

23 A. Yes.

24 Q. The first thing I want to get straight in my mind is the  
25 timing of Dr. Dyce's going to work for the hospital in

1 Hartsville. If I understand you correctly, you said that Dr.  
2 Dyce had already left the hospital, is that right -- not the  
3 hospital, had already left SCENT, is that right?

4 A. Right.

5 Q. And then you were approached by members of the medical  
6 staff at the hospital about the possibility of or really  
7 their insistence that you try to retain Dr. Dyce in the  
8 Hartsville market, is that right?

9 A. Dr. Areephanthu was the first one to approach me.

10 Q. But there are two other doctors whose names you gave as  
11 well you also indicated had approached you and telling you  
12 basically that they felt it was important to try to keep Dr.  
13 Dyce from going to the northeast and convince him to stay in  
14 the Hartsville market.

15 A. That's right, Dr. Harless and Dr. Chapman.

16 Q. Okay. So it's the -- it was the medical staff not Dr.  
17 Dyce who approached you about work -- Dr. Dyce working for  
18 the hospital after he had left SCENT, is that right?

19 A. Correct.

20 Q. Okay. And I -- as I recall, you said that this occurred  
21 in the mid to late summer of 2010, is that right?

22 A. That would be right.

23 Q. All right. The last sentence says that the noncompete  
24 would not be enforceable in the event that a physician was  
25 terminated without cause, is that right?

1 A. Right.

2 Q. So if the hospital had terminated Dr. Dyce without  
3 cause, there would be no noncompete, is that right?

4 A. That's correct.

5 Q. All right. Now, Mr. Sheheen asked you a couple of  
6 questions about whether the hospital enforced noncompetes,  
7 didn't enforce noncompetes and that sort of thing. Are you  
8 familiar with a Dr. Long?

9 A. Dr. Long, yes, that name does ring a bell, yes.

10 Q. Okay. And are you familiar with a Dr. Ropp?

11 A. Yes.

12 Q. All right. Now, those are two physicians who left the  
13 hospital, correct?

14 A. They did.

15 Q. And they actually went into practice within 30 miles of  
16 the hospital's location, did they not?

17 A. They did.

18 Q. Okay. I -- I understand, and it's, as I understand --  
19 it's been a little while but -- and I -- I don't want to get  
20 into what Dr. Long and Dr. Ropp left, to get to why Dr. Long  
21 and Dr. Ropp left, that sort of thing, but the bottom line is  
22 that the hospital chose not to try to enforce the noncompete  
23 with those two physicians as well as with the other  
24 physicians; is that correct?

25 A. I can't tell you in terms of other physicians but in

1 terms of those two physicians, yes, that's correct.

2 Q. Okay. Now let's look at the noncompete in a little bit  
3 more detail. Do you see where it talks about that, it talks  
4 about competition, and hold on for a second, in the very  
5 first line it talks about this is the -- let me back up.  
6 This is the noncompete that you are most familiar with, is it  
7 not?

8 A. That's right.

9 Q. And you see on the first line where it says that the  
10 noncompete prohibits the practicing of your medical  
11 specialty, do you see that?

12 A. Yes.

13 Q. Do you recall ever seeing a noncompete that prohibited a  
14 physician from practicing any medicine whatsoever regardless  
15 of specialty?

16 A. No. This is the -- again, this is the standard template  
17 that our attorneys provide us from the home office.

18 Q. Okay. So you've never seen that you can recall another  
19 noncompete which says that a physician can't practice any  
20 form of medicine, have you?

21 A. No, no, I have not.

22 MS. BAKER: I'm going to start on page 63, the bottom,  
23 with the beginning of the question.

24 Q. And Dr. Dyce is looking at other -- you knew that Dr.  
25 Dyce was looking at other locations in the northeast, right?

1 A. Right.

2 Q. And you were negotiating to try to retain Dr. Dyce in  
3 the market in Hartsville, right?

4 A. I -- correct. After he approached me of his interest to  
5 stay in the market, yes.

6 Q. And that approach took place after you had been  
7 approached by the members of your medical staff, correct?

8 A. That's correct.

9 Q. All right. So what Exhibit 4 really represents in many  
10 respects is, to use what might not be a particularly good  
11 word, it's a negotiation?

12 A. Yes.

13 Q. And you're negotiating for what the hospital wants to do  
14 in order to retain the physician that's been requested by  
15 your medical staff from the hospital's standpoint, right?

16 A. Correct.

17 Q. Lance, Vincent Sheheen, one last clarifying question,  
18 you were asked by Mr. Ellison about the doctors that  
19 approached you about retaining Dr. Dyce, but I want to ask  
20 you so I understand did -- when you first had discussions  
21 with Dr. Dyce personally about him coming to work for HMA,  
22 did he initiate the conversation or did you?

23 A. He did.

24 Q. Okay. Thank you. All right. And just -- just recross,  
25 I want to get the timing right, Dr. Dyce had left SCENT in

1 May 2010, is that your understanding, Lance?

2 A. Yes.

3 Q. And then physicians on staff, at least three of whom  
4 we've named, approached you about hiring Dr. Dyce, is that  
5 right?

6 A. Yes.

7 MS. BAKER: Your Honor, that completes designations from  
8 Lance Jones's deposition.

9 THE COURT: Thank you so much. Excellent job. Call  
10 your next witness.

11 MR. CLEVELAND: Your Honor, the plaintiff rests.

12 THE COURT: Very well. All right. Do you all want to  
13 make motions, or are you ready to rock and roll?

14 MR. SHEHEEN: Your Honor, I'd be happy to make motions.

15 THE COURT: Okay.

16 MR. SHEHEEN: Your Honor, first we'd make a directed  
17 verdict on all cause of actions in both cases. And then I  
18 want to talk specifically about some of the causes if you'll  
19 allow me.

20 THE COURT: Okay.

21 MR. SHEHEEN: Your Honor, there were multiple causes of  
22 action. These two cases have been combined together,  
23 obviously. There's multiple causes of action in the Dyce  
24 case, so I'll address those first, and the ones I want to  
25 specifically talk about are, number one, the accounting

1 requests. The testimony from Dr. Dyce yesterday, I believe,  
2 or the day before, you'll recall there was a little sheet on  
3 the board and the Court went through what they got. My  
4 recollection of that, and the Court will of course use her  
5 recollection, was that of those items -- and they were quite  
6 lengthy, the last one was like everything under the -- in the  
7 sink and under the moon -- had been provided. There was some  
8 reservation about a few credit card receipts or something  
9 like that, but that was it. You'll recall the testimony of  
10 the accountant who was hired by the plaintiffs, and I asked  
11 him, did you have as much access as you needed in the CPA's  
12 office. He said yes. He said he spent, I believe, a whole  
13 solid day. I said did you actually go to the premises of the  
14 corporate office and were records made available to you, and  
15 he said yes. We talked about that. And, you know, the irony  
16 of that, Judge, which I have to point out is that is exactly  
17 what had been offered to Dr. Dyce in the fall and the winter  
18 of 2009 and 2010 was to come on the premises, go to the  
19 accounting office and look through everything. If you'll  
20 recall, I asked Dr. Dyce that question, and he said it wasn't  
21 convenient for my -- I think he said lawyer, I don't recall  
22 exactly what he said, but he said it wasn't convenient,  
23 that's why he didn't take it up. That's what was offered  
24 then. That's what has been done. SCENT has provided all of  
25 the records, the corporate records that have been requested,

1 the financial records, and that is what an accounting is, an  
2 accounting of the records to the -- so we'd ask for a  
3 directed verdict on that issue.

4 Your Honor, there was a claim for, there's a claim  
5 against Dr. Puchalski individually, and we would ask for a  
6 directed verdict on that. The evidence put forth in the case  
7 of the plaintiff has always been, and you've heard it, is  
8 that he's been acting in his capacity as the managing  
9 shareholder or the president of SCENT. They have not  
10 presented any evidence -- any evidence related to Dr. Dyce's  
11 buyout when he left, any of those things, where he wasn't  
12 acting in that capacity. Furthermore, there's an indemnity  
13 provision in the articles of incorporation that Your Honor's  
14 aware of. Furthermore, it's clear that Dr. Puchalski, in his  
15 capacity as managing shareholder of SCENT he was relying on  
16 counsel as they moved forward, and Your Honor's familiar with  
17 the business judgment rule that gives essentially a  
18 heightened standard for them to be able to move past him in  
19 that capacity as the manager of SCENT. So we ask for him  
20 individually to be -- a directed verdict on him individually.

21 Your Honor, the issues I have to take them up because  
22 there are so many of them. There has been a claim -- well,  
23 there hasn't been a claim, and that's what's a little bit  
24 difficult here -- relating to the 2007 shareholder agreement.  
25 There's been some evidence put in, but there's never been a



1 claim that he's owed moneys under that. There were some  
2 calculations done by the accountant, but if you look in the  
3 complaint, you'll see that there's a breach of the 2008  
4 shareholders agreement claim, there's a breach of contract  
5 covered by fraudulent act claim that refers to the 2008  
6 shareholders agreement, but there's never been a claim and  
7 there was not an actual claim made by Dr. Dyce on the stand  
8 for that. Furthermore, the controlling document has been  
9 agreed from the stand on the shareholder issue to be the  
10 document that was executed in 2008, and within that document  
11 there is specific language that says that it supersedes and  
12 replaces any prior agreements, etc., etc. And we discussed  
13 that briefly yesterday, and I pointed Your Honor to that  
14 section, which I can do again, but I know you've kept up with  
15 it. So for those two grounds and primarily the ground that  
16 the 2008 agreement is the controlling agreement and  
17 superseded everything clearly, we would ask a directed  
18 verdict on any claims from the 2007 that weren't alleged in  
19 the complaint but that we've heard some discussion about  
20 during the trial.

21 Your Honor, there is also a claim for breach of contract  
22 of the company by a fraudulent act. There's been no  
23 fraudulent acts that I have -- there's been no testimony  
24 about fraudulent acts. There's a claim for unpaid wages  
25 statute. The only thing I've heard from the stand -- I

1 shouldn't say I. The only thing the Court has heard on  
2 testimony has really been issues relating to shareholder  
3 moneys, not wages, and we know that Dr. Dyce was a  
4 shareholder at the time, so that claim of course we're asking  
5 for a directed verdict on as well. There was a claim for  
6 damages pursuant to South Carolina Code 33-18-410 A9, and I'm  
7 happy to hand to the Court a copy of the complaint if you  
8 don't have it. I don't know if you have it or not. I don't  
9 believe there's been any evidence presented or any discussion  
10 of that, and we should get a directed verdict on that.

11 There's been -- there is an odd claim in their complaint  
12 for constructive trust. I believe this relates generally to  
13 Amy Puchalski, so we're moving that Amy Puchalski be  
14 dismissed as an individual defendant, number one. She should  
15 have never been joined in the case. The only testimony has  
16 been she was receiving funds that were allocated to Bob  
17 Puchalski. That's it. If you look at the expert's report,  
18 he's got this list of Amy Puchalski moneys, and then you'll  
19 see that that's actually, even in his report, charged up to  
20 Dr. Puchalski. Amy Puchalski does not need to be an  
21 individual defendant in this case. There's been no  
22 allegation of any wrongdoing on her behalf. There's been no  
23 evidence of any wrongdoing on her behalf. She simply got  
24 funds that were due her husband, and there is nothing wrong  
25 with that, Your Honor. So we would ask the constructive

1 trust claim needs to be dismissed as well as Amy Puchalski  
2 individually.

3       There's also a conversion claim, and Your Honor's well  
4 aware of the elements of conversion. They haven't been  
5 proved and they haven't been presented as fact. Your Honor,  
6 we're also asking for a directed verdict on the claim for the  
7 post-termination profits that has been made. It's odd --  
8 it's like a double recovery they're seeking. I'm sure the  
9 Court caught that in the expert's testimony. They want to be  
10 paid out as of May -- of his termination date, and yet they  
11 want to also get profits after that, so they're asking for a  
12 double recovery that doesn't make any sense. And, secondly,  
13 under the contract he's clearly no longer a shareholder once  
14 he is terminated, and we talked about the portions of that  
15 previously. The real issue before the Court is what was he  
16 owed when he left and is there an offset that applies that  
17 would recover that. That's the issue relating to the  
18 shareholder status, so we're asking for directed verdict on  
19 post-termination profits if the Court follows what I'm  
20 saying.

21       THE COURT: Mm-hmm.

22       MR. SHEHEEN: And, Your Honor, the last specific thing I  
23 want to talk about -- and again, I'm asking for a directed  
24 verdict on all causes of action, just to protect the  
25 record -- is the position we're in with SCENT Land, and it is

1 interesting. The Court was not presented with any evidence  
2 in the plaintiff's case. Let me backtrack just a little bit.  
3 There were two things I asked for in the complaint of SCENT  
4 Land, for judicial dissolution and judicial supervision of  
5 the winding up of SCENT Land Holdings, okay.

6 THE COURT: It's my understanding that the dissolution  
7 has been ordered by summary judgment, yes?

8 MR. SHEHEEN: That's correct.

9 THE COURT: Okay. What happened with the judicial  
10 supervision?

11 MR. SHEHEEN: It appears to have been abandoned because  
12 there was nothing put before the Court. There are specific  
13 criteria.

14 THE COURT: Is it contained in the order? Is it Judge  
15 Benjamin?

16 MR. SHEHEEN: Judge Benjamin. It was a very limited  
17 ruling. It was a Form 4 and it -- I'm happy to hand it up.  
18 Would the Court like a copy of it?

19 THE COURT: You can read it to me.

20 MR. SHEHEEN: Okay. I'll read it. Your Honor, just for  
21 a little bit of background, there was an allegation under a  
22 particular statute that we owed -- that we sent, SCENT, owed  
23 a purchase agreement to her upon her departure, okay. That's  
24 what the grounds were. And our argument was we didn't for a  
25 variety of reasons that were briefed. Judge Benjamin granted

1 summary judgment. Plaintiffs' motion for summary judgement  
2 against SCENT Land seeking dissolution of the company is  
3 granted solely on the grounds that the company failed to  
4 deliver her a purchase agreement as required by South  
5 Carolina Code Section 33-44-702. Okay. That's all the order  
6 said. So the second claim in here was for judicial  
7 supervision, and to do that even under the complaint it  
8 quotes the code section. It says that if there's an  
9 application and if there is good cause made and shown to the  
10 Court, and then there's other things that are asked for.  
11 They're asking for a receiver to be appointed. That you  
12 determine who the bona fide creditors of SCENT Land Holding  
13 are and their respective rights. Other things within there.  
14 There was no testimony put before you, no evidence put before  
15 you, there's no mention of the claim for the supervision, for  
16 having judicial supervision of the winding up of SCENT Land  
17 Holdings, which is a separate request, and so we're asking  
18 for a directed verdict on that. And that's it, and I'm sorry  
19 to have taken so much time.

20 THE COURT: Let me ask you this question, let's talk  
21 about the relationship between the 2007 and the 2008  
22 occurrences and agreements.

23 MR. SHEHEEN: Okay.

24 THE COURT: Because that's sort of one of the areas, and  
25 of course I'm going to want to hear from the plaintiffs about

1 this as well.

2 MR. SHEHEEN: Sure.

3 THE COURT: Because there were certain activities that  
4 were put in place in '07, inferentially, pursuant to the '07  
5 agreement which would be the crediting of the monthly sweeps  
6 and the biweekly moneys, the 21,000 and then those moneys.  
7 How does the defendant characterize that activity in '07?

8 MR. SHEHEEN: Your Honor --

9 THE COURT: Two things -- and let me just -- here's the  
10 rest of the sausage. I gave you three-quarters of the  
11 sausage. Let me give you the rest of it because there are  
12 two things that go through my head about that. The first  
13 thing is that there wasn't a K-1 issued.

14 MR. SHEHEEN: No.

15 THE COURT: And I don't understand that. I don't  
16 understand that. And, secondly, I don't understand -- and so  
17 at that point where my mind goes is that, well, then there's  
18 just an issue about whether or not that amount of money was  
19 in fact to be credited as a buy-in provision because there  
20 was no K-1 issued.

21 MR. SHEHEEN: Right.

22 THE COURT: But what flies in the face of that is this  
23 business about, well, I got taxed on your contributions in  
24 2007, and therefore you're responsible for the taxable  
25 consequence to me because I got taxed, and you've got to pay

1 my income, you've got to do that, and that absolutely flies  
2 in the face of that -- of those moneys not being a buy-in, as  
3 I see it, and those two events fly in the face of the 2008  
4 agreement, and it's really those events that I'm trying to  
5 put into context. I'm trying to put that into legal context,  
6 and I guess it's there that I'm having difficulty, what is  
7 that, because I've got a 2008 agreement that abrogates 2007  
8 completely.

9 MR. SHEHEEN: Makes it pretty easy.

10 THE COURT: However, 2007 happened. It happened. And  
11 what do I do with that? I mean, I've got -- it happened. It  
12 happened in two ways. The moneys were -- my task would be a  
13 whole heck of a lot easier if, in fact, there was just 2008,  
14 no K-1, and Dr. Puchalski paid income tax, end of discussion.  
15 My problem is if, in fact, Dr. Dyce paid or reimbursed an  
16 income tax event for Dr. Puchalski as a result of Dr.  
17 Puchalski's receipt of the biweekly payments of \$21,000 and  
18 the -- I love that term monthly sweeps. I don't know, it  
19 sounds like Publisher's Clearinghouse or something. I love  
20 that term.

21 MR. SHEHEEN: Kind of was.

22 THE COURT: But that fact, if in fact it occurred, and  
23 it seems to me everybody basically agrees that that occurred,  
24 there can be some -- you had wonderful discussions about what  
25 that was mathematically, but if it occurred, that means to me

1 that 2007 has to be explained in some way because, I mean,  
2 why would -- I mean, it just has to be explained in some way.  
3 So it's those transactions that really, I think, have got to  
4 be dealt with by the Court, and it may just be at this point  
5 all that needs to be done is that the motions be denied at  
6 this moment and I just keep trucking because I don't know  
7 that I need an explanation or even want an explanation at  
8 this point, to be honest with you.

9 In terms of the accounting, yes, they got it, but I  
10 don't know what else arises out of it. I mean, it may be  
11 that, yes, they were entitled to it and, guess what, they got  
12 it, end of discussion. So there's no question in my mind but  
13 that they were entitled to it, that the doctor was entitled  
14 to an accounting because there's no question but that at some  
15 point he became a shareholder and he was entitled to an  
16 accounting. Whether or not he received it is a horse of a  
17 different color, and I'm not prepared to handle that until  
18 the end of the case. So with regards to the accounting at  
19 this point I would deny it just because he was entitled to it  
20 and he may not have received it all. Now, so that's the  
21 first one.

22 The second one, the second cause of action would be the  
23 claim against Dr. Puchalski individually, and I'm going to  
24 hear from them about that in just a second. And with regards  
25 to the unpaid wages, I want to hear obviously from the



1 plaintiff about that because depending on how 2007 gets  
2 handled, then I have a sneaking suspicion I'm going to hear  
3 from them that that's where the claim for unpaid wages comes  
4 in is 2007 as well as the constructive trust and the  
5 conversion with regards to '07, but I'm going to hear from  
6 them about that in just a moment. So let me hear from them  
7 about it and then I'll make a determination.

8 MR. SHEHEEN: Thank you, Your Honor.

9 MR. CLEVELAND: I can very quickly respond, Your Honor.  
10 You're talking about the wage payment?

11 THE COURT: All of it. The accounting don't worry  
12 about.

13 MR. CLEVELAND: Let me address the wage claim because  
14 that's the easy one.

15 THE COURT: Yes.

16 MR. CLEVELAND: Our accountants discovered that Dr. Dyce  
17 had not received some call pay that he was entitled to. Once  
18 we were able to get the subsequent records within the last --  
19 very recently discovered that that was caught up, and so that  
20 claim, the wage payment claim should be dismissed. We'll  
21 withdraw it.

22 THE COURT: Okay. Got it.

23 MR. CLEVELAND: What can I address on the other issues  
24 that would be helpful?

25 THE COURT: You understand I think from my conversation,

1 it seems to me that conversion and constructive trust, that  
2 those causes of action are really caught up in what happened  
3 in '07 as opposed to this contract in '08, yes?

4 MR. CLEVELAND: I'm not sure. I think that under the  
5 '07 and/or the '08 contract they were both equal  
6 shareholders, and our claim is largely, other than the  
7 redemption part of the case, is that as coequal shareholders  
8 under the law they are required to be compensated equal  
9 distributions and they weren't.

10 THE COURT: Except '08 changes the date. I mean, '08  
11 changes -- stands the world on its head. That's the '07.  
12 '07 is pretty straightforward. '05 is the most  
13 straightforward. Then '07 is straightforward. And then '08  
14 is like (indicating).

15 MR. CLEVELAND: If the Court is suggesting that perhaps  
16 Dr. Dyce doesn't become a shareholder until '08, is that  
17 what's --

18 THE COURT: What is so troubling -- here's what's  
19 troubling about that, here's what's troubling about that for  
20 me is that '07 says, you're a shareholder, and this is when  
21 you're a shareholder, moneys are withheld, but there's no K-1  
22 given and that just -- you know, at that point I'm like --  
23 it's at that point that I heard the testimony about '07 and  
24 the money's going and there's no K-1, that I really began to  
25 think, what the in the world -- what is going on. And then I

1 hear that there's the charge-up, and then I'm really, whoa,  
2 what is going on, okay, and why, and what is going on. And  
3 then '08 -- and I have not heard from the defense -- and then  
4 '08 adds a whole other overlay of, huh? Because the dates  
5 are changed, but the dates are agreed to be changed, and it's  
6 like -- it almost has a feel, after the plaintiff's case of,  
7 okay, we'll rewrite history, and I'm going to agree to it.  
8 It's a restatement of what has already occurred, and it's  
9 okay with me. And so from a perspective of really your  
10 conversion claim which is, what, which is your equity claim,  
11 your equitable claim, as well as constructive trust, I mean,  
12 you know, I think that they're in existence to try to put  
13 some context to what happened in '07 as opposed to what  
14 happened in '08.

15 MR. CLEVELAND: Well, we tried to streamline the case  
16 and simplify these legal issues because I agree with you that  
17 were it the case that we were making a claim that there were  
18 moneys taken away from us or not paid in '07, then we would  
19 have to wrestle with the issue, well, are we a shareholder in  
20 '07 or not, and it would be important whether we were or not.  
21 But what we did was we looked at everything and thought,  
22 well, if we pick the date of February 1st of '08 when he's  
23 incontestably bought in, and under the '07 bill of sale he  
24 has paid the money under the bill of sale that acknowledges  
25 that he's a shareholder, and from that point forward we do

1 have damages in '08, there is no contest that he's a  
2 shareholder in '08. The question may be what month is he a  
3 shareholder. I don't think that the July '08 shareholders  
4 agreement affects it at all because imagine if he hadn't been  
5 terminated and then we come to 2010, and imagine that he  
6 didn't object to the new shareholder agreement, and so they  
7 would have changed the terms in 2010 and would go forward.  
8 There would be no dispute, I don't think, that between '08  
9 and '10 that he's a shareholder, and I'm not sure --

10 THE COURT: We don't know that.

11 MR. CLEVELAND: We don't know that.

12 THE COURT: That is one thing we don't have to grapple  
13 with.

14 MR. CLEVELAND: That's right, but I think it's -- the  
15 documents I think establish that by no later than January  
16 31st, '08 he's a shareholder. You've got all the '07  
17 documents.

18 THE COURT: Yes.

19 MR. CLEVELAND: And I think it may be as simple as this,  
20 Your Honor, that the legal issue on the '07 documents is, do  
21 the documents make him a shareholder as of the date of the  
22 documents, or do they make him a shareholder as of the date  
23 that he finishes buying in. And if you think it's the date,  
24 well then maybe he was a shareholder in '07. That's actually  
25 what our experts say. But if you think it's when the buy-in

1 occurs, then that's January 31st.

2 THE COURT: When it's concluded.

3 MR. CLEVELAND: When it's concluded, and so rather than  
4 mess up the case --

5 THE COURT: You're leaving it in '08.

6 MR. CLEVELAND: We're leaving it in '08.

7 THE COURT: That explains no K-1 in '07.

8 MR. CLEVELAND: Right. It doesn't matter.

9 THE COURT: I got it. Now talk to me about the  
10 individual liability. What is that claim really at the end  
11 of the day -- talk to me about that.

12 MR. CLEVELAND: It's fiduciary duties. Dr. Puchalski as  
13 the manager and controller, he made a promise to Dr. Dyce  
14 when he terminated him, that he was going to redeem him, and  
15 he said one of the reasons that I'm terminating you is  
16 because your conduct has caused mechanic's liens to be filed  
17 on our property. One of the exhibits in evidence are the  
18 records from the Kershaw county -- I can find the exhibit if  
19 you want to see it -- that there was never a mechanic's lien  
20 filed at any time. It was just a lie, just a lie to try and  
21 misrepresent why he was terminated and make him seem -- cast  
22 him in a bad light. And Professor McWilliams, in addition to  
23 all that, said that these changes that he was trying to put  
24 in the shareholders agreement was bad faith for him to be  
25 doing that. Given the agreement that they had, to insist

1 that nothing could go forward until Dr. Dyce signed this  
2 agreement without changing any of the terms. We think that's  
3 bad faith.

4 THE COURT: Let me ask you this question: There is  
5 the -- both the immunity as well as the indemnification in  
6 the articles of incorporation. It would be your position  
7 that these particular acts of which you speak are ultra  
8 vires, yes?

9 MR. CLEVELAND: Yes, yes.

10 THE COURT: Got it. I got it.

11 MR. CLEVELAND: With respect to Mrs. Puchalski --

12 THE COURT: Yes.

13 MR. CLEVELAND: -- Mr. Sheheen misstated our evidence  
14 slightly, not too much but slightly. The \$2 million of money  
15 that she took or was paid, I'm not claiming that she took it,  
16 but that was distributed to her, that's -- much of that is  
17 SCENT money that under the evidence in the case belongs to  
18 Dr. Dyce, and she now has possession of it rather than Dr.  
19 Puchalski, so she is an appropriate defendant if that money  
20 shouldn't have been paid to her because he didn't deserve it,  
21 then she's got to give it back. And, secondly, there's  
22 about --

23 THE COURT: Let me ask you this, and I ask this question  
24 really because I don't know. I don't know that the  
25 evidence -- is Mrs. Puchalski Dr. Puchalski or Mrs.

1 Puchalski?

2 MR. CLEVELAND: She is a doctor. I only call her that  
3 to differentiate. I mean no disrespect.

4 THE COURT: No, no, no, I actually asked for a reason.  
5 She is a medical doctor.

6 MR. CLEVELAND: That's my understanding.

7 THE COURT: Okay. Because the reason I ask, quite  
8 frankly, is because part of the moneys that go to her for  
9 things like call, well, obviously if you are not a medical  
10 doctor, you cannot be paid for having done call, if you will,  
11 and that's another issue. That's the reason I asked for  
12 that.

13 MR. CLEVELAND: I don't think there's any contention,  
14 maybe Vincent can correct me, that Mrs. Puchalski actually  
15 provided services for any of that money.

16 THE COURT: Okay.

17 MR. CLEVELAND: I don't think there's that contention.  
18 And I'd like to remind the Court that in addition to the \$2  
19 million, most of which was money that we concede would have  
20 gone to her husband but went to her and she's got it --

21 THE COURT: I understand. You're just tracing it to  
22 her.

23 MR. CLEVELAND: -- but there is about \$62,000 that was  
24 not money that he was entitled to that went straight to her  
25 for which there's no offsetting distribution to Dr. Dyce, so

1 there's no defense to her having gotten that.

2 What else?

3 THE COURT: Got it. I've got it.

4 MR. CLEVELAND: Thank you.

5 THE COURT: That's the constructive trust. That's the  
6 conversion.

7 MR. CLEVELAND: Right.

8 THE COURT: I've got it.

9 MR. CLEVELAND: Thank you.

10 MR. SHEHEEN: I haven't argued a lot of that because you  
11 said you might not want to hear it, but I'm happy to reply to  
12 anything that you want me to. First of all, I don't think  
13 it's particularly important, but there was a question about a  
14 mechanic's lien, and there is a letter from the gentleman we  
15 talked about who was the builder that references a lien,  
16 which is where the discussion of a lien comes from. There  
17 was not a mechanic's lien ever filed. I went and checked as  
18 well to see because when I got involved in the case, there  
19 was this discussion of there being a mechanic's lien but  
20 there's a letter that you'll see, and you'll hear testimony  
21 on that, of what the interpretation was of that. They  
22 thought it was a mechanic's lien. I just want to clear up,  
23 nobody's lying about that, and that's why I state it to you.  
24 Your Honor, I want to briefly touch on the question you  
25 asked, and I understand -- I think you understand you don't



1 want me to talk about it a long time. You asked me -- well,  
2 let me put it this way, what was going on in 2007 and then in  
3 2008 and the pay and the biweeklies and the sweeps.

4 THE COURT: I think they concede. Here's where I think  
5 they are: I think that where the plaintiffs are is forget  
6 about 2007. We are taking the position that he became a  
7 shareholder in 2008. The only question is whether or not  
8 it's February or July, and I think what Mr. Cleveland was  
9 telling me was forget about, don't worry about 2007 because  
10 we're not worried about it.

11 MR. SHEHEEN: Well, Your Honor, I will do two things  
12 related to that. I'll tell you -- you have asked first do I  
13 look at it legally, I heard you say that, or legally what  
14 does that mean, that's what you said. I want to make two  
15 points on that. Number one, in their complaint their claim  
16 is for a breach of the 2008 shareholder agreement, the one  
17 that was signed. That's what's in their complaint.

18 THE COURT: And Mr. Cleveland is right there with you.

19 MR. SHEHEEN: That's July of 2008. I think Mr.  
20 Cleveland is saying February of 2008. Their claim is on the  
21 July -- they reference it, that's their claim.

22 THE COURT: Right.

23 MR. SHEHEEN: And that's what's in the complaint.

24 THE COURT: Got it.

25 MR. SHEHEEN: And there's a reason for that and they

1 don't like it now because the 2008 agreement supersedes all  
2 other agreements, which is why you don't have to go to the  
3 other things that happened, but I understand that we're  
4 discussing it. But I want the Court to understand this as we  
5 move forward: There's three types of pay these people were  
6 getting, and I don't think that's really been clarified yet,  
7 but you'll understand if you plug it in after I mention it,  
8 hopefully. There was their base pay.

9 THE COURT: Right.

10 MR. SHEHEEN: Everybody knows what that was and how it  
11 worked. When they got on the shareholder track agreement --

12 THE COURT: Yes.

13 MR. SHEHEEN: -- they began to get biweekly pay, which  
14 was increased pay, and that's what it was. It was increased  
15 pay and it was W-2, and that's why there were no K-1's  
16 related to it.

17 THE COURT: Okay.

18 MR. SHEHEEN: Are you with me? And that's different  
19 than sweeps, and that's what I don't think has really -- what  
20 sweeps have been were moneys after those W-2's were all paid,  
21 the base pay -- and there was other pay floating around too,  
22 there was the call pay we discussed, and each doctor had a  
23 little separate income coming from things they were doing and  
24 what have you. But the three main ones were the base pay,  
25 the biweeklies, which were W-2 pay -- and you know, Your

1 Honor, an owner of a company can pay somebody whatever they  
2 want to, within the parameters of any agreements they have,  
3 and they can increase the pay, and that's what happened here.  
4 And the sweeps are what would happen after those were paid  
5 only if there was money because if they were paying debt with  
6 it --

7 THE COURT: Yes, I understand.

8 MR. SHEHEEN: -- there weren't any sweeps. And if they  
9 were paying for a building --

10 THE COURT: That's the profits, those are the K-1's.

11 MR. SHEHEEN: That's exactly right.

12 THE COURT: Got it.

13 MR. SHEHEEN: Once they became a shareholder, then the  
14 base pay was the W-2 pay and everything else --

15 THE COURT: Was a K-1.

16 MR. SHEHEEN: -- was a K-1.

17 THE COURT: Got it.

18 MR. SHEHEEN: All right. I hope that helps a little  
19 bit.

20 THE COURT: Yes, it does help a lot.

21 MR. SHEHEEN: The only thing I also want to go back to,  
22 just to protect the record, I want to make sure the Court  
23 knows that I was also asking for directed verdict on all  
24 causes of action in the case, and that included the damages  
25 pursuant to the South Carolina code section I referenced,

1 breach of contract accompanied by a fraudulent act, you  
2 discussed the others, and then we had the land company  
3 issue --

4 THE COURT: Got it.

5 MR. SHEHEEN: -- that I raised.

6 THE COURT: Got it.

7 MR. SHEHEEN: If I can give the Court anything else, I'm  
8 happy to.

9 THE COURT: Here's where we are, there is a cause of  
10 action which was withdrawn.

11 MR. SHEHEEN: Yes, ma'am.

12 THE COURT: And that is --

13 MR. SHEHEEN: The wage claim.

14 THE COURT: The wage claim, gone. At this point I think  
15 the constructive trust is in, conversion is in, I think the  
16 accounting is in, I think the suit against Ms. Dr. Puchalski,  
17 and I apologize, I do not know her first name.

18 MR. SHEHEEN: Amy.

19 THE COURT: Amy.

20 MR. SHEHEEN: Can I address that just one minute?

21 THE COURT: Sure.

22 MR. SHEHEEN: I think it's important. There was the  
23 moneys that were Dr. Puchalski's that she got.

24 THE COURT: Right.

25 MR. SHEHEEN: Which is nothing short of if it was

1 directly deposited into their joint account or it was  
2 directly deposited in her account from the company, so I  
3 don't understand the argument that somehow because she got  
4 money that was her husband's, therefore she should be a party  
5 to the action. It was her husband's money. He's the  
6 appropriate party to the action.

7 THE COURT: It's just tracing.

8 MR. SHEHEEN: If he wrote a check to the wife, you can't  
9 trace it to her, and that's effectively what happened.

10 THE COURT: But what is occurring, based on the  
11 accountant now -- we're half way -- this is half time.

12 MR. SHEHEEN: Yes, ma'am.

13 THE COURT: The accountant has indicated that there were  
14 funds that should have been distributed to Dr. Dyce that  
15 were, in fact, checks written and distributed to Dr. Amy  
16 Puchalski. It's those that are at this point that are being  
17 traced. That's why it remains.

18 MR. SHEHEEN: You can look at that exhibit, but the way  
19 I read that exhibit and heard that testimony, he had two  
20 sheets on purpose one were the funds she was cut which were  
21 Dr. Puchalski's paychecks, and those matched up to Dr. Dyce,  
22 I believe. You can look back and see.

23 THE COURT: Yes, they did.

24 MR. SHEHEEN: And then there was a sheet of what they  
25 were I think saying were like personal charges.

1 THE COURT: Yes, there were.

2 MR. SHEHEEN: And those were charged against Dr.  
3 Puchalski's income on his K-1.

4 THE COURT: Yes.

5 MR. SHEHEEN: And he testified to that.

6 THE COURT: Yes.

7 MR. SHEHEEN: And in his calculations they were included  
8 in what he allocated to Dr. Puchalski as he showed it was  
9 uneven.

10 THE COURT: Right.

11 MR. SHEHEEN: And those moneys she never -- those were  
12 charges. Those were not money she received.

13 THE COURT: That's not what he testified to. What he  
14 testified to is that those were checks that actually went to  
15 her. Now, they may have been credited back to him for tax  
16 purposes, but the moneys went to her. The checks were  
17 written to her, and what had happened from an accounting  
18 standpoint is the checks that were written to her for tax  
19 purposes were brought back and then credited to him from a  
20 tax standpoint, but the checks themselves were written to  
21 her, which means that the money, the green stuff, went to  
22 her. This is, for tracing purposes, it is the position at  
23 this time --

24 MR. SHEHEEN: I understand.

25 THE COURT: -- it is the position of the plaintiff that

1 those moneys are -- you got my money because I didn't get a  
2 proper distribution, you got some of it, I want it, so that  
3 that's where the conversion comes in and that's where the  
4 constructive trust comes in, that's mine, and therefore in  
5 terms of tracing the money, they've got to join her as a  
6 party for tracing purposes, so that's why at this point --

7 MR. SHEHEEN: Right, I understand.

8 THE COURT: -- she would remain as a party at this point  
9 because of the tracing and because of conversion. I mean, I  
10 get that, but you're right, even though the moneys went to  
11 her, they were credited to him for tax purposes on a K-1  
12 which means it just went on the joint tax return, but they  
13 don't care about his taxes. They care about the moneys and  
14 where they went. They're just following the money is where  
15 we are. Now, regards to the, if you will, the ultra vires  
16 allegations, they're good at this point. There was testimony  
17 that there was a telephone call that was received, I think by  
18 Dr. Gunnlaugsson I want to say, that there was a mechanic's  
19 lien that had been filed. Clearly Dr. Dyce testified  
20 regarding his being told that there was a mechanic's lien  
21 that had been filed, and at this point that issue just is in  
22 at this point.

23 MR. SHEHEEN: First of all, we don't dispute that he  
24 said it because he thought it. Our position is going to be  
25 it wasn't ultra vires because he was acting in the capacity

1 and we'll renew that when we get to it.

2 THE COURT: Exactly.

3 MR. SHEHEEN: Right, I understand.

4 THE COURT: The supervision business, what about the  
5 supervision vis-à-vis Judge Benjamin's order, that's like --  
6 that's not still in the case, right?

7 MR. SHEHEEN: Say that again.

8 MR. CLEVELAND: It's in the case. And I sure wish my  
9 partner were here to respond to this, but let me do the best  
10 we can. It's my understanding we have a judicial  
11 dissolution, judicially ordered dissolution of an LLC, and  
12 it's my understanding of the law that the Court has broad  
13 discretion in how to dissolve, one is to order a liquidation,  
14 another would be to order other relief.

15 THE COURT: Yes.

16 MR. CLEVELAND: And there's evidence in the case as to  
17 what the value is. The appraisals of the assets are in  
18 evidence. Mr. Livingston testified as to what the  
19 liabilities were as of the time he left. There is other  
20 evidence in the record as to the value that I can find and  
21 present to you, and so at the end of the case we're going to  
22 be submitting to you a number of alternatives that we, since  
23 it's been dissolved, what you can do. One would be to order  
24 court ordered liquidation and liquidate the whole thing, but  
25 they didn't liquidate, when it was dissolved, and so we think



1 probably other remedies would probably be appropriate rather  
2 than that.

3 THE COURT: I understand. And Judge Benjamin's order is  
4 on a Form 4, does it say anything like a more formal order to  
5 follow, no?

6 MR. SHEHEEN: No, ma'am, and I did not hear anything in  
7 the plaintiff's case relating to why there needed to be a  
8 judicial supervision at dissolution.

9 MR. CLEVELAND: We already won that.

10 THE COURT: I understand. So if there's a judicial --  
11 and this is just on the land company.

12 MR. SHEHEEN: Yes, ma'am.

13 THE COURT: If there's a judicial dissolution which is  
14 ordered --

15 MR. SHEHEEN: Two separate claims.

16 THE COURT: We'll talk about that. We will take a  
17 five-minute comfort break, and you all come in chambers and  
18 we'll chat about that.

19 MR. SHEHEEN: Your Honor, just to protect the record,  
20 the ones you didn't grant for directed verdict you denied or  
21 we're going to come back and take them up?

22 THE COURT: I thought I did good. Did I miss one?

23 MR. SHEHEEN: Mr. Wright tells me there was a breach of  
24 contract with a fraudulent act claim.

25 THE COURT: Oh, yes, that's in right now. That's in

1 right now. It's in right now because of the lien business.

2 MR. SHEHEEN: Thank you.

3 THE COURT: What else, any other ones?

4 MR. SHEHEEN: I believe that's it.

5 (Lunch recess held.)

6 THE COURT: Mr. Sheheen, are you ready to proceed?

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

8 THE COURT: Are the plaintiffs ready to proceed?

9 MS. BAKER: Yes, we are, Your Honor.

10 MR. CLEVELAND: We are, Your Honor.

11 THE COURT: Call your first witness, please.

12 MR. SHEHEEN: May I approach, Your Honor?

13 THE COURT: Absolutely.

14 MR. SHEHEEN: Your Honor, we compiled some of the  
15 documents we'll go through with Professor Freeman so that you  
16 can look at them.

17 JOHN FREEMAN,  
18 being first duly sworn, testified as follows:

19 DIRECT EXAMINATION ON VOIR DIRE BY MR. SHEHEEN:

20 Q. Professor Freeman, would you please state your name and  
21 address for the record?

22 A. I'm John Freeman. I live at 2329 Wilmot, W-I-L-M-O-T,  
23 Avenue, Columbia, South Carolina 29205.

24 Q. And why are you here today?

25 A. I'm here to testify as an expert witness in this case.

1 I'm here to give my opinions concerning the -- as a  
2 professional in the corporate governance field, business  
3 entity management field to give my opinions concerning the  
4 conduct of Dr. Dyce and other participants in the business  
5 entities that are at the heart of this case.

6 Q. Would you please state your record of experience that  
7 you believe qualifies you to testify as an expert in such  
8 matters?

9 A. Well, yes, I taught -- you know, I sat here while  
10 Professor McWilliams testified. I was one of those involved  
11 in hiring Professor McWilliams at the law school. I noticed  
12 that he taught the bar review course for several years, or 10  
13 or 15 years. I taught it for over 20. Agency, partnership,  
14 corporations, also taught professional responsibility. I  
15 have addressed the South Carolina legislature on issues of  
16 governance and in particular issues of standards of conduct  
17 for officers and directors and shareholders. When the  
18 corporate code was most recently amended in 1989, I, like  
19 Professor McWilliams, was an official reporter for portions  
20 of the code. My particular portions dealt with shareholders'  
21 rights and obligations and officers' and directors' rights  
22 and obligations including such matters as business judgment  
23 rule and indemnity of those individuals. I've testified in  
24 various cases as to the conduct of executives and business  
25 entities and standards of behavior, and I've written about

1 the duties that are owed by people entrusted with  
2 responsibility when it comes to management issues and, as far  
3 as I know, I've never failed to be qualified as an expert in  
4 a case such as this.

5 MR. SHEHEEN: Thank you very much, Professor Freeman.  
6 Your Honor, we would submit Professor John Freeman as an  
7 expert in the field of duties owed by shareholders, managers,  
8 officers and directors of South Carolina business entities of  
9 the type that have been involved in this lawsuit and are  
10 involved in this lawsuit.

11 THE COURT: Anything other than duties owed?

12 MR. SHEHEEN: We would offer him as an expert in the  
13 duties owed and the standards --

14 THE WITNESS: Of conduct.

15 MR. SHEHEEN: -- of conduct.

16 THE COURT: Anything else?

17 MR. SHEHEEN: Corporate governance, Your Honor.

18 THE COURT: Okay. Mr. Cleveland, Ms. Baker, is there  
19 any voir dire?

20 MR. CLEVELAND: No, Your Honor. The plaintiffs  
21 acknowledge that Professor Freeman is well qualified in these  
22 areas. The plaintiffs object to Professor Freeman testifying  
23 as to duties owed or standards of conduct or corporate  
24 governance, those being legal matters that are within the  
25 purview of the Court to decide, not a witness to testify to.

1 THE COURT: I understand. What I would do then in those  
2 regards is just hold those because discussions regarding  
3 fiduciary duties are certainly an area I think that can be  
4 testified to as an expert. The ultimate decision of whether  
5 or not fiduciary duties were breached or not, that would be  
6 for me clearly, but I certainly think he could talk about  
7 those. I may even have a couple of questions myself with  
8 regards to that. And I think and with regards to the  
9 corporate governance I may have some questions too with  
10 regards to that, and I wanted -- that's why I kept pushing  
11 because one of the issues that we -- and I don't mind sharing  
12 this, but one of the issues that we were discussing and I  
13 have really been contemplating -- again, you're watching the  
14 sausage being made -- is the relationship between the  
15 performance of contract A and the complete performance of  
16 contract A and then a rewriting of history after contract A  
17 has been complied with and certain rights commensurate with  
18 contract A are in place and completed, what then happens when  
19 contract B comes into being and re-writes history, and I  
20 guess that's corporate governance.

21 MR. SHEHEEN: Sure. And, Your Honor, just as we've  
22 given each other a little bit -- I think what we're going to  
23 say over time here is, so you'll understand where we're going  
24 with this, is that contract A, which I think you're saying is  
25 the '05 agreement.

1 THE COURT: '07.

2 MR. SHEHEEN: Okay. We'll go forward. I think what  
3 we're going to lay out is the intentions of the parties from  
4 the beginning were fulfilled and they were fulfilled in July  
5 of 2008.

6 THE COURT: That's the piece of this that kind of stands  
7 me a little bit on my head because of this position of the  
8 plaintiff that all matters were complied with in February, so  
9 what do we do, are we a shareholder February until July and  
10 then we're no longer a shareholder? I don't know. You can  
11 contract whatever you want to contract. So that's one of the  
12 issues that I'm grappling with, so that's why I pushed you to  
13 get corporate governance.

14 MR. SHEHEEN: Thank you, Your Honor.

15 MR. CLEVELAND: Let me state for the record that,  
16 whereas I agree that Professor Freeman would be a wonderful  
17 resource on all those issues you've talked about, I don't  
18 believe that it's appropriate for him to be retained by one  
19 party to be advising the Court on those legal issues, and so  
20 I would object. I think if there were a need to refer to an  
21 expert in the area, it ought to be somebody that the Court  
22 retains as an independent expert.

23 THE COURT: I agree with that absolutely and completely,  
24 yes.

25 MR. CLEVELAND: Thank you.

1 THE COURT: But I sort of did the same thing with  
2 Professor McWilliams.

3 MR. SHEHEEN: Your Honor, Professor McWilliams had wide  
4 latitude to testify. He was given wide latitude to testify.

5 THE COURT: Yes.

6 MR. SHEHEEN: And we would expect the same.

7 MR. CLEVELAND: I don't want to argue with counsel, but  
8 counsel was very successful keeping Professor McWilliams from  
9 testifying about legal conclusions.

10 THE COURT: Yes, and I would expect the same to be true.

11 MR. CLEVELAND: Thank you.

12 THE COURT: Exactly, as I said to you, although it's  
13 tempting, not appropriate. Okay.

14 MR. SHEHEEN: I'm not sure if you made a finding that he  
15 was qualified.

16 THE COURT: I did. Voir dire?

17 MR. CLEVELAND: No. Again, I've stipulated to his  
18 qualifications.

19 THE COURT: Your objection wouldn't be beyond what  
20 you've already stated, as I understand it.

21 MR. CLEVELAND: Excuse me, Your Honor?

22 THE COURT: Let me say this, obviously there are some  
23 objections, and I think that -- you know, you can go about  
24 qualifying an expert. Obviously Professor Freeman is an  
25 expert in corporate law, if you will, and the relationships

1 for corporate entities just as Professor McWilliams was.  
2 There were some areas, though, that we got into with  
3 Professor McWilliams that wasn't appropriate for him to  
4 testify regarding. There may be objections along that line  
5 as well. So while in general he is an expert in those fields  
6 and would be qualified in those fields, I think what I'm more  
7 comfortable in giving your objection is that if you will  
8 object when those questions are asked, and then I'll be able  
9 to make a more exquisite determination at that time.

10 MR. CLEVELAND: Thank you, Your Honor.

11 THE COURT: Yes. Thank you, Mr. Cleveland. Okay.

12 MR. SHEHEEN: Thank you, Your Honor.

13 THE COURT: Yes.

14 DIRECT EXAMINATION BY MR. SHEHEEN:

15 Q. Professor Freeman, what did you do to prepare yourself  
16 to testify here today?

17 A. I did the sort of thing that an expert in this position  
18 would do which is to say I familiarized myself with the facts  
19 and, among other things, I read deposition testimony on the  
20 part of Dr. Dyce both in the Gunnlaugsson case and in this  
21 case, read Dr. Gunnlaugsson's testimony in his case. I read  
22 Dr. Puchalski's testimony. I've considered an affidavit, a  
23 factual affidavit that Dr. Puchalski rendered. I have read  
24 Dr. Vidrine's testimony which has been taken. I have looked  
25 at, and reviewed the corporate documents, the pleadings in



1 this case, done research, and that's the meat of it. There's  
2 a vast number of documents, and I didn't memorize them all,  
3 but that's a good start.

4 Q. Professor Freeman, did you hear some testimony in the  
5 courtroom in this case as this week went by, did you hear --

6 A. Oh, yes, well, okay, I've been in this courtroom for a  
7 couple days listening to testimony. I heard the opening  
8 arguments, all of which I've taken into account, as well as  
9 conferred with counsel, conferred with Dr. Puchalski, Dr.  
10 Vidrine, gathering information as best I could.

11 Q. And what do you consider to be the key operative  
12 documents concerning the relationships between Dr. Dyce and  
13 SCENT and Dr. Puchalski?

14 A. I consider for my purposes the key documents to be the  
15 articles of incorporation, to be the 2008 shareholders  
16 agreement, the 2008 employment agreement, those are to me  
17 central documents, and I consider them key. There are other  
18 documents that I consider important, but those are to me the  
19 most important.

20 Q. Okay. And are there certain provisions in those  
21 documents that you consider important to framing the opinions  
22 that you hold that you'll elucidate?

23 A. Sure.

24 Q. And tell me why there are certain provisions that do  
25 seem important?

1 A. Well, in any document it's a lot of English language,  
2 and all words aren't the same, all the sentences aren't  
3 equally important, some stand out, some to me have special  
4 significance, and I'd like to maybe take some of these  
5 documents and explain what I consider significant about them.

6 MR. CLEVELAND: Objection, Your Honor. I think it's  
7 improper for the witness to discuss, I assume, what's legally  
8 significant about a document. That's the legal conclusion  
9 that the Court is going to be required to make and it's, I  
10 don't think, appropriate for the witness to go through and  
11 just talk about what he thinks is important.

12 THE WITNESS: By significant I meant significant for  
13 purposes of my opinions in this case.

14 MR. SHEHEEN: Your Honor, there's no way for him to talk  
15 about his opinions without talking about the things that he  
16 thinks are important in forming his opinions.

17 THE COURT: We haven't gotten there yet. In other  
18 words, I think what Mr. Cleveland is saying at this point,  
19 it's difficult to just jump in and say this word is more  
20 important than that word when you haven't begun the opinion,  
21 and I would sustain the objection insofar as that's concerned  
22 because those words that are more important than other words  
23 would be associated with the opinion, so we'll hear that when  
24 we get to the opinion.

25 MR. SHEHEEN: So let's go to the documents.

1 THE COURT: Yes, absolutely.

2 Q. Professor Freeman, I want you to look at Plaintiff's --  
3 and I want to give time for opposing counsel to look at the  
4 documents -- Plaintiff's Exhibit 261 and Plaintiff's Exhibit  
5 108 which I will say are the articles of incorporation, and  
6 they're behind Tabs A and B, Your Honor.

7 THE COURT: Got them.

8 Q. Let's look at the original articles first.

9 A. Yes, sir.

10 Q. Would you agree that it is a statutory close  
11 corporation?

12 A. Yes, it is a statutory close corporation.

13 Q. Tell me why that's important for your opinions.

14 A. I take that into account because it's a special  
15 provision that we have in the code basically to deal with  
16 smaller businesses and businesses that oftentimes don't  
17 follow rigorously corporate formalities, and they have  
18 special default settings by statute, and they also have a  
19 very valuable provision that is an anti-piercing provision  
20 that basically recognizes that because it's well known that  
21 these types of enterprises may not always dot their i's and  
22 cross their t's, have meetings, motions, great paper records  
23 and so forth, that the failure to follow regular corporate  
24 formalities is not a basis for piercing, and that's right in  
25 the statute, and that is something that you get when you're a

1 statutory close corporation as this one was.

2 Q. Are there any other points that are important that you  
3 consider the fact it's a statutory close corporation, are  
4 there other things that you considered in this document?

5 A. Yes.

6 MR. CLEVELAND: Objection, Your Honor. I think the  
7 question what does Professor Freeman think is important, one,  
8 it's not relevant to this case, what Professor Freeman thinks  
9 is important, with all due respect, and the question allows  
10 him just to start talking about the documents without any  
11 anchor to the requirement of relevance and that it be  
12 admissible. It's an open-ended question that I think  
13 requires an objection and a rephrasing so that when he asks  
14 the question we can determine whether the question calls for  
15 a response that meets the rules of evidence.

16 THE COURT: I understand. I would qualifiedly admit it  
17 for this reason, and I'm taking it as we go through these  
18 documents that there are certain portions that are being  
19 illuminated at this point so that I can mark them, and then  
20 when the opinions are rendered, go back to those provisions,  
21 that's the way that I'm taking it, so they would be  
22 conditionally admitted at this point, and if they're proven  
23 not to be relevant at that point, then I would exclude the  
24 testimony, but I would conditionally admit it at this point,  
25 as I'm allowed to do, because what I'm taking it to be is

1 just going through these documents and looking at different  
2 provisions so that I can hold those and then go back and  
3 refer to it and put the opinion in context much like  
4 Professor McWilliams did as well, but at this point they  
5 would be conditionally admitted, being tied up at the end.

6 MR. SHEHEEN: Thank you, Your Honor. And, Your Honor,  
7 just to clarify, I'm not asking him are these things -- I'm  
8 asking are these important to your opinions, tell the Court  
9 what --

10 THE COURT: I'm taking it that way. There are a couple  
11 ways you could go about it. You could go factually first and  
12 then come back to the documents, or you can go through the  
13 documents, talk about the different provisions of the  
14 documents that we'll be focusing on and then go to the facts.  
15 You can do it either way, but just doing it this way they  
16 have to be conditionally admitted because they have to be  
17 tied up with a factual basis. That's the reason for Mr.  
18 Cleveland's objection at this point. I am allowed to  
19 conditionally admit it waiting, under the rules of evidence,  
20 waiting for them to be tied up, and he is appropriate to  
21 object at this point. I am conditionally admitting the  
22 evidence at this point, looking for it to be tied up at the  
23 end.

24 MR. SHEHEEN: Thank you, Your Honor.

25 Q. Okay. Professor Freeman, we're still on Plaintiff's

1 Exhibit 261.

2 A. Right.

3 Q. Which was I believe the original articles of  
4 incorporation.

5 A. Yes.

6 Q. All right. Are there any other provisions in here that  
7 you are using as you developed your opinion?

8 A. Yes, and let me express one opinion right at the outset  
9 so maybe this will be set with more focus. I sat while  
10 Professor McWilliams described this enterprise, SCENT, as  
11 basically a partnership where there were two directors and  
12 they had the ability -- they managed the business, and Dr.  
13 Dyce was an equal manager and he was entitled to and to be  
14 treated as a codirector essentially approving everything, and  
15 my view is different.

16 MR. CLEVELAND: Objection. I don't think it's  
17 appropriate for one witness to be trying to compare the  
18 testimony of another witness, particularly two experts.

19 THE COURT: You're concerned about the pitting of the  
20 witness, and so your objection is the pitting of the witness?

21 MR. CLEVELAND: Yes.

22 THE COURT: I understand. And you're exactly right. We  
23 can't pit witnesses. But let me say this, I'm taking this  
24 testimony -- because I remember that, and what I did when  
25 Professor McWilliams went into that is I went back to and

1 looked at a form of corporate entity under South Carolina law  
2 which is called a licensed limited partnership, which is a  
3 different entity -- it has characteristics of both a  
4 partnership and of a corporation, it has to be registered  
5 with the Secretary of State, you have to have certain  
6 insurance requirements -- and pondered that myself. So we're  
7 not going to pit witnesses, but I am taking that to talk  
8 about whether or not they were partners. There is an entity  
9 under South Carolina law that does allow, if you will, a  
10 hybrid partnership and corporate entity. As the testimony,  
11 again, as the testimony ended up really at the end of the  
12 case the question, as I saw it, rather than one of control  
13 was one of information.

14 MR. CLEVELAND: Thank you.

15 THE COURT: Mm-hmm.

16 MR. SHEHEEN: Your Honor, just because I want to  
17 clarify, my position is there is absolutely nothing wrong  
18 with Professor Freeman testifying where he may disagree with  
19 opinions that were given by Professor Freeman.

20 THE COURT: It's called pitting witnesses. You can't  
21 pit witnesses, but I get what he's doing.

22 MR. SHEHEEN: It's important for him to be able to say  
23 what his conclusions are.

24 THE COURT: Exactly, and I got that.

25 MR. SHEHEEN: Trying to figure out where I left off

1 before the objection.

2 THE COURT: He just wanted that opinion to be  
3 established, that he did not see this as in any way, shape or  
4 form a partnership by virtue of fact it was a closed  
5 corporation.

6 Q. Are there any other provisions in 261, this would be the  
7 original articles, that you found important to inform your  
8 opinion?

9 A. Let me be clear on what my opinion is. My opinion is  
10 that this business operation was set up as a statutory close  
11 corporation, that it did do away with the board of directors,  
12 so it moved to a different level. I disagree with the  
13 idea -- in one sense it's true that shareholders of a  
14 statutory close corporation without a board of directors can  
15 function as partners, but I strongly believe that it's  
16 incorrect, based on what I've seen, to also follow that and  
17 say that these partners are jointly then invested in  
18 management, responsible for management, to be consulted in  
19 management, etc., because that's not the way it works and  
20 that's not the way this company works. And I was here when  
21 the Court pointed out, and it's quite true, if you look at  
22 Exhibit 261, Item 7, the board of directors is done away  
23 with. That's fine. You can do that, and what you're really  
24 kind of saying then is we want more informality. But then  
25 that is followed up by Item 9B, and an opinion I hold is that



1 Bob Puchalski is the founder of this business, he was the  
2 driving force in this business, and for all intents and  
3 purposes for all times relevant in this case he was the  
4 manager. He was the main man in this business. It wasn't  
5 Dr. Dyce. It wasn't Dr. Gunnlaugsson. It wasn't Dr.  
6 Vidrine. It wasn't a combination of all of the above, it was  
7 Bob Puchalski was pulling the cart, and we see that because  
8 9B expressly vests him with, quote, all authority to transact  
9 the business and so forth of any kind. Not just buying paper  
10 clips, erasers for pencils but of any kind and so forth and  
11 so on. And that's the bedrock -- this is the bedrock  
12 document. From day one Bob Puchalski is driving the bus.  
13 That's my opinion.

14 Q. Let's look at the next exhibit. It would be Exhibit 108  
15 which would be the amended and restated articles of  
16 incorporation.

17 A. Yes, sir.

18 Q. Are there any provisions relating to your opinion,  
19 you've already given opinions, are there any provisions in  
20 this document that informed you in arriving at the  
21 conclusions that you've already expressed?

22 A. Okay. Another conclusion I draw is that the scope of  
23 this business is broader than just the practice of, in  
24 looking at Item Exhibit 108, 3, otolaryngology -- is that a  
25 reasonable way of saying it? The noncompete talks about

1 medicine, and there's an argument in this case that that's  
2 overbroad because the articles are limited to that word,  
3 otolaryngology.

4 THE COURT: Can we say ENT?

5 THE WITNESS: Otolaryngology.

6 Q. Okay. Please go ahead.

7 A. But of course the articles say otolaryngology medical  
8 services and all other services ancillary to such services  
9 which are permitted or authorized by the licensing authority  
10 of South Carolina, so there's a lot of breadth to that  
11 because there's a lot of medicine that can be ancillary as  
12 well --

13 MR. CLEVELAND: Objection.

14 THE WITNESS: -- and I point that out.

15 MR. CLEVELAND: On a number of grounds. First, I object  
16 to the form. Mr. Sheheen's question was were there any other  
17 provisions of this document that informed the opinion you  
18 just gave, and Professor Freeman, rather than answering that,  
19 is now telling us about other opinions he's got, so it's not  
20 responsive, and I object to that manner of his testifying,  
21 that he just, when asked one question, decides just to wax  
22 eloquently on other issues. Secondly, he's been admitted for  
23 the purposes of duties owed and standards and corporate  
24 governance, and he's now talking about the noncompete and  
25 talking about the breadth of ENT kind of the whatever,

1 otolaryngology, and so I think that's not what he was  
2 admitted for and is beyond the scope of his admission and I  
3 object.

4 THE COURT: Thank you for that. I don't think it is --  
5 again, I think it can be conditionally admitted because I  
6 still think he's pointing to the different provisions that he  
7 finds to be relevant to his opinion, although I have got to  
8 ask you all a question because I have, since this case  
9 started on Tuesday I have struggled with this particular  
10 document, and I'm finally going to give it up. Please tell  
11 me the date that this document was filed. I keep thinking  
12 I'm going to get a document that I can read, and I cannot  
13 read -- I can read June and that's it, and I think that might  
14 have some relevance.

15 THE WITNESS: June 12, '08.

16 MR. CLEVELAND: If you look in the book that we gave  
17 you.

18 THE COURT: That was the first place I looked, and  
19 that's where I thought I got the closest.

20 THE WITNESS: Your Honor, at the very bottom of 108 at  
21 the very bottom here it says filed 6/12/2008.

22 THE COURT: I just wanted to be sure that's what it was.

23 MR. SHEHEEN: In the top left you can't see it very  
24 well, the stamp from Secretary of State Hammond, but the bar  
25 code at the bottom where you pay the filing fees, you can

1 read it.

2 THE COURT: I read that one, but I just wanted to be  
3 sure it was consistent.

4 MR. SHEHEEN: I can't read it either.

5 THE COURT: So it's June the 12th, 2008?

6 MR. CLEVELAND: That's what the plaintiff thinks.

7 THE COURT: That's because of the bottom part -- okay.  
8 Well I'm going to presume, everybody's presuming that it is  
9 what's on the bottom. Don't we love it that paying the money  
10 is what we rely on more than the stamped filing? All right.

11 MR. SHEHEEN: Thank you, Your Honor.

12 Q. Are there any other provisions in Plaintiff's Exhibit  
13 108 that you think are important to forming the opinions that  
14 you formed in this case?

15 A. Yes, there are. Four is of some importance and that is,  
16 again, Bob Puchalski is the registered agent, which is  
17 indicative of him playing a lead role in this business. Item  
18 8, page 108, the corporation elects not to have a board of  
19 directors. That is consistent with what we saw earlier.  
20 It's being preserved here. And as well the shareholders are  
21 given the permission to delegate to the managing shareholder  
22 different responsibilities, which in fact happened. All  
23 through this time I hold the opinion that Bob Puchalski was  
24 pulling the wagon. Subchapter S election is discussed here  
25 and has been discussed at length, and I have the opinion

1 which I hold as -- which informs my opinions, and I want to  
2 state what the opinion is and explain how it informs my  
3 opinions.

4 Q. Do you have any other opinions you've formed which you  
5 want to share with the Court?

6 A. At this point, yes, that the subchapter S election was  
7 never blown, that that's a red herring.

8 MR. CLEVELAND: Objection, Your Honor.

9 THE COURT: Okay.

10 MR. CLEVELAND: And again, he was not offered as a tax  
11 expert, and Subchapter S election being, quote, blown is an  
12 issue for a tax lawyer or the IRS, and so I don't  
13 understand -- I do object to the qualifications of Professor  
14 Freeman on tax issues and testifying about whether something  
15 qualifies under the tax code of the Internal Revenue Service.

16 MR. SHEHEEN: Your Honor, I'm pretty sure that Professor  
17 McWilliams testified about this issue, but I don't have 100  
18 percent recollection, but I remember him testifying about the  
19 Sub S election and things related to it.

20 THE COURT: I would overrule the objection for this  
21 purpose, because Professor Freeman is testifying that based  
22 upon his review of the evidence, if you will, in this case  
23 that he finds no evidence in this case that there was a  
24 violation of the Subchapter S election provision within the  
25 terms of the agreement based on his review of the

1 depositions, the documents, the testimony given that based on  
2 what he has reviewed, based on his corporate knowledge that  
3 he sees no evidence that this provision was ever violated.

4 MR. SHEHEEN: Thank you, Your Honor.

5 THE COURT: And I take it to be no more, no less.

6 THE WITNESS: May I explain my answer?

7 Q. Would you continue your answer, please?

8 A. The argument as I understand it in this case as to  
9 Subchapter S is that somehow this company had two different  
10 classes of stock because supposedly distributions were  
11 treated differently for withdrawing shareholders as opposed  
12 to other shareholders. I reject that view. There's only one  
13 class of stock. That particular provision pertains to a  
14 special circumstance in that one class of stock which has a  
15 certain payout arrangement to keep the person who is being  
16 paid out from getting distributions after the terminating  
17 event, and that to me is clearly not a separate class.  
18 Everybody is treated equally as to that if you fall into that  
19 category, and I just consider that to be a red herring, and  
20 that's my opinion. I also have an opinion as to Item E on  
21 page 3 of these new articles, and that is that this immunity  
22 provision does not apply.

23 Q. Could you explain that to the Court?

24 A. It doesn't apply to the parties because it seeks to  
25 incorporate, to the extent permitted under 33-2-102 E,

1 certain protections, however this corporation doesn't  
2 qualify, and so that becomes a moot point. As a matter of  
3 fact it does not qualify because it doesn't fall into that  
4 category.

5 MR. CLEVELAND: I want to avoid interrupting Professor  
6 Freeman because it doesn't help the record, but I object.  
7 That's a classic legal conclusion that he's just testified to  
8 that he concludes that on this issue the document has to be  
9 interpreted in a particular way. That's the Court's  
10 province, not Professor Freeman's.

11 THE COURT: I understand. I think what he's talking  
12 about is that this corporation, based on his view of the  
13 factual and the testimony and what he understands about this  
14 qualification that the immunity doesn't apply because by  
15 statute it only applies to corporations that meet certain  
16 requirements with the SEC that have a certain value that are  
17 traded at a certain level and that this is just not what this  
18 corporation is. Only reason I know that is because I went  
19 and looked at it myself because I raised that issue of the  
20 immunity myself, and so I went and looked at that, and I  
21 think what he's saying is that's not this kind of  
22 corporation, so that I don't know if you remember but I was  
23 talking about immunity on Tuesday, whether or not the  
24 shareholders and/or the managing shareholders had immunity  
25 under it, and they don't because this kind of corporation is

1 not the kind of corporation that is contemplated by 33-2-102.  
2 You've got to reach a certain level. I don't think it's of  
3 any moment, actually. I think it's a red herring too.

4 THE WITNESS: So anyhow, it's my testimony the facts  
5 don't fit.

6 Q. Professor --

7 A. Yes, sir.

8 Q. -- are there any other provisions in this document that  
9 are important to any of the opinions that you have rendered?

10 A. Yes. There may be issues as to indemnification. The  
11 Court is well able to make determinations as to  
12 indemnification under the code. I have had experience with  
13 indemnification issues. It was part of the code when I  
14 worked on it. I've been involved in indemnification issues  
15 as a lawyer, and I have yet to see somebody start a lawsuit  
16 and be eligible for corporate indemnification. The statute  
17 really talks about executives who have been indicted or sued  
18 being entitled to receive indemnification, but that entire  
19 matter is for the Court, and I'm just not going to say more  
20 than I've said.

21 Q. Let me ask you, are there any facts that you've observed  
22 that are relevant to the determination of indemnification?

23 A. Well, yes, a fact is whether or not you've been wholly  
24 successful on the merits or otherwise, and that remains to be  
25 seen. We don't have any ruling yet as to who's successful or



1 who isn't. I think my testimony will be clear to the Court  
2 by the time I'm off the stand as to whether I think Mr. Dyce  
3 has been wholly successful, but again, that's a ruling for  
4 the Court to make, and it's also a ruling as to Dr.  
5 Puchalski's right of indemnification. I will say that our  
6 indemnification provisions, which I have worked on and taught  
7 for many years, in South Carolina are intentionally,  
8 deliberately set to be very, very liberal to protect  
9 executives called into court to be able to defend themselves.

10 Q. All right. I think you also mentioned a -- are there  
11 any other provisions in here that are relevant to any of the  
12 opinions that you have formed?

13 A. Yes. To buttress an opinion I've given already and may  
14 give again about Dr. Puchalski being the man driving the bus  
15 here, you see, H preserves his control powers carried forward  
16 from the previous articles. And, again, that informs this  
17 concept that this is really a partnership and everybody's  
18 equal and Dr. Dyce gets a say so in everything and Dr. Dyce  
19 runs it as much as Dr. Puchalski. Not at all. And in a  
20 partnership you may have a power to control which partners  
21 do, but that doesn't mean that you exercise that, you can  
22 delegate, and that's exactly what's going on in these  
23 articles, and I call that to the Court's attention.

24 Q. Okay. Plaintiff's Exhibit 07, excuse me, 07 is the  
25 shareholders agreement.

1 A. Yes, sir.

2 Q. And I'm also going to hand you, because I don't think  
3 it's in the record yet, the signed copy of the covenant not  
4 to compete just so we'll have it in the record. I believe,  
5 Your Honor, this is Defendant's Exhibit 233 without  
6 objection, and if I may approach, I'll hand the Court a copy  
7 too.

8 (Defendant's Exhibit 233 marked for identification.)

9 THE COURT: Sure.

10 MR. SHEHEEN: Thank you.

11 THE COURT: We don't have this already?

12 MR. SHEHEEN: No. We had a discussion in chambers.

13 THE COURT: We did. Okay.

14 MR. SHEHEEN: I just want to make sure that the signed  
15 version is in the record, Your Honor, because I know there  
16 was an unsigned version in the record.

17 THE COURT: Yesterday we talked about how they looked  
18 different.

19 MR. SHEHEEN: Yes, ma'am.

20 THE COURT: This is Defendant's 233.

21 MR. SHEHEEN: Yes.

22 THE COURT: 233, that's right.

23 Q. Let's right now talk about not the covenant and not the  
24 employment agreement but the shareholder agreement, which is  
25 Plaintiff's Exhibit 7.

1 A. Yes, sir.

2 Q. Are there any provisions of this shareholder agreement,  
3 the 2008 shareholder agreement, that are relevant to  
4 conclusions that you have drawn in this case?

5 A. Yes.

6 MR. CLEVELAND: Same objection, Your Honor.

7 THE COURT: Yes, I understand.

8 THE WITNESS: Yes. I've already spoken about my views  
9 on the what I consider to be the Subchapter S red herring.  
10 If you look at page 6 of the document, in the middle you see  
11 a definition of departing shareholders and that's basically  
12 somebody, quote, transferring shares.

13 Q. Which section are you in? I'm sorry.

14 A. In the lower right-hand corner, can you see the page  
15 number 6, 7.006?

16 Q. Let me look over your shoulder real quick. If you'll  
17 use the section number, we'll all be able to find it.

18 A. The section number is 2.1, which is definitions, and  
19 then if you go to the second page of the definitions, you see  
20 a definition of, quote, departing shareholders, and that  
21 would be a shareholder who was transferring.

22 Q. Okay.

23 A. Fair enough. And to button down what I was saying  
24 before about Subchapter S, if you go to page 12 of the  
25 document.

1 Q. What section again?

2 A. 12 at the very bottom.

3 Q. Right, but they're different.

4 A. I know. This is section 4.5.

5 Q. Thank you.

6 A. Notwithstanding anything in this agreement, a departing  
7 shareholder, that would be the one who is leaving, isn't  
8 entitled to distributions. Now, that's not all the  
9 shareholders. It's just people, basically, who have for  
10 whatever reason embarked on a path that's going to cause them  
11 to cease to be shareholders. And they, having done that and  
12 having accepted a different mechanism for payment, they give  
13 up their right to have the other parties who are left behind  
14 working for them indefinitely and sharing in the profits when  
15 these people have taken a different path, and so that's --  
16 that's why I consider this Subchapter S thing to be a red  
17 herring. That's more evidence. It's a completely isolated,  
18 distinct, understandable fact situation. Now, on page 3, the  
19 next page, you see managing shareholders, again, the theme  
20 being --

21 Q. What section are you in? I'm sorry.

22 A. This is carried over from the definitions. If you would  
23 look at -- it says at the top, managing shareholder, the  
24 third page of the agreement.

25 Q. Okay. So back to 2 -- the definitions.

1 A. Yes, managing shareholders shall mean the president.

2 Well, and we know who ended up being the president, and that

3 was Dr. Puchalski, and Dr. Puchalski is the driving force

4 here, and this is a constant theme in this matter. Further

5 down on that same page, remaining shareholders. That fits

6 back into this Subchapter S mishmash because you have

7 remaining shareholders and departing shareholders, and the

8 remaining shareholders are the ones who are sticking around.

9 The departing shareholders are the ones who are selling out

10 based on certain terms, at least under this document. And,

11 again, that's not uncommon, that when you decide you're going

12 to leave and a price is struck, then you leave, and you don't

13 continue to share profits because you've made your decision,

14 okay.

15 Q. Okay. Any other provisions in this agreement that

16 you --

17 A. Sure. On the next page, 3.32 Roman 4 deals with

18 dismissal without cause.

19 Q. Okay.

20 A. And I believe I heard Mr. Cleveland stipulate that he

21 was dismissed without cause in his opening statement, so

22 there's that. There's an issue as to whether it was for

23 cause too but, you know, clearly that's a provision that is

24 going to be important and is important to my decision making.

25 Informal action by shareholders, the next section, 3.33, you

1 have that but, again, my opinion and view is that very often  
2 in your close corporations action is taken reasonably and  
3 properly by consensus, by hallway meetings, maybe a short  
4 phone call without any real formalities. The president is  
5 listed as an officer, and the president is called the  
6 managing shareholder, and that's, again, very consistent with  
7 what I've said all along. And then toward the bottom on  
8 Section 3.4.4 more articulation about what the president's  
9 rights are, and he is in general to supervise what's going  
10 on, quote, subject to the control of the shareholders, and  
11 there may be a vast delegation of control in my estimation  
12 not just based on these documents but also based on the way  
13 the business was being run.

14 Q. Okay. Are there any other provisions that are important  
15 to your conclusions?

16 A. Yes, 3.7, duty of confidentiality, the shareholders are  
17 barred and agree that they're barred from passing on  
18 information in a potentially anticompetitive way. You have  
19 on section 3.9 what are called founding shareholder  
20 protection provisions covering Dr. Puchalski. And then 3.10  
21 deals with special protections concerning the noncompete that  
22 would favor Dr. Dyce, and I call attention to this because I  
23 don't think it was in any former agreement, and to the extent  
24 that there's an issue as to whether or not something  
25 factually happened that conferred some right to Dr. Dyce or

1 benefit to Dr. Dyce in '08 that was new and could possibly  
2 serve as consideration, this is a new right that he has, a  
3 new protection that he has as far as I am able to determine.

4 MR. CLEVELAND: Objection, Your Honor, for the same  
5 grounds as stated earlier about. One, qualifications. I  
6 don't think Professor Freeman is qualified to talk about  
7 noncompetition agreements. He wasn't admitted to talk about  
8 noncompetition agreements, and I have to renew my objection  
9 to the rolling testimony through these documents as being  
10 inappropriate. It should be limited to opinions on matters  
11 that don't call for a legal conclusion. All of the opinions  
12 so far have been it's my conclusion that because of this you  
13 get this legal result, because of this you get this legal  
14 result, and that's the purview of the Court, not an expert  
15 witness, thank you.

16 THE COURT: Thank you so much.

17 MR. SHEHEEN: And, Your Honor --

18 THE COURT: Yes.

19 MR. SHEHEEN: -- Professor McWilliams clearly testified  
20 about consideration and whatnot. I recall that testimony  
21 clearly. And he is giving his opinions as to the factual  
22 matters that he's determined in his expert capacity, and I  
23 will continue to ask questions.

24 THE WITNESS: And I was speaking about noncompete there  
25 for the reason that it goes to the issue of duties and

1 whether you have -- duties and rights of shareholders and  
2 proper governance, and part of proper governance is to obey  
3 your contractual --

4 THE COURT: I'm still just accumulating that these are  
5 the provisions that will be the underpinning of the opinions.

6 MR. SHEHEEN: Thank you.

7 THE COURT: That's where I am with it. And again, at  
8 this point they are conditionally admitted at this point.

9 Q. Thank you, Your Honor. Just while we're on the note,  
10 have you reviewed or has it come to your attention in review  
11 of the documents or the testimony that there was also  
12 increased pay as a result of --

13 A. That's what I understand is that that was an additional  
14 benefit factually received by Dr. Dyce in connection with  
15 this 2008 agreement which imposes for the first time the  
16 noncompete that was discussed and mentioned and referred to  
17 in the 2005 earlier agreement. All that's coming to fruition  
18 here. Section 3.13, again, managing shareholder given  
19 considerable authority, the right to hire/fire folks. There  
20 is a limit on expenditures, need to consult and have  
21 agreement by the majority of the shareholders with the  
22 exception of recurring ordinary, that is in here.

23 Q. Professor Freeman, in your experience with these types  
24 of companies how are those decisions made, are there official  
25 board meetings, do they do it informally, in your expert



1 opinion what have you seen?

2 A. I've seen everything. I've seen it ignored. I've seen  
3 it informally where people know what's going on and they know  
4 that a company car has to be bought. Nobody's thinking back  
5 to this \$10,000 limitation. And I've seen -- I've seen it  
6 where it's acted upon.

7 Q. Okay.

8 A. One reason I mentioned about the lack of formality that  
9 you typically see in a close corporation, because oftentimes  
10 it's kind of doing things by consensus and it's normal, okay.  
11 Compulsory, 4.4 deals with a redemption of stock, compulsory  
12 redemption, of which there's been a great amount of  
13 discussion already, and a buyout formula in 4.6 which there's  
14 been discussion about. I note that but I also note toward  
15 the bottom 4.64 dealing with setoff, which raises a question  
16 of how on earth you get your numbers right where there are  
17 setoff rights where there are disputes, and inevitably you're  
18 going to have this take a while to the extent everybody is  
19 not on the same page and cannot compromise to begin with, but  
20 anyhow, it's in the agreement this formula and this time  
21 schedule and I noted it. I noted again the covenants  
22 regarding Subchapter S further on in the document. I noted  
23 on page 19, Section 8.8, the parties' agreement that this is  
24 their entire agreement with respect to the subject matter  
25 covered. I did not see a full merger clause, but that's

1 trending in the merger clause.

2 Q. Professor Freeman, let me direct you to 8.1 and ask you  
3 if you were able to review that.

4 A. Oh, okay, there it is. Superseded -- prior agreements  
5 are superseded and folded into this document, so it  
6 becomes --

7 Q. Have you seen that type of language in your experience  
8 with companies like this previously with documents?

9 A. You often see language of that sort in major contracts,  
10 yes.

11 Q. Okay.

12 A. Similar. And then in 8.10 something that I considered  
13 important, and it meshes with the legend at the top of the  
14 document, and that is arbitration is the way that you're  
15 supposed to resolve disputes, and we see this increasingly  
16 now in all kinds of documents. You buy a set of new tires,  
17 practically, or cable television or dental floss, and you're  
18 going to get some kind of arbitration provision and -- but I  
19 want to say this, for this type of -- there's a reason for  
20 this, particularly when you're dealing with professional  
21 people and particularly when you're dealing with medical care  
22 providers and very logical and very reasonable and that is it  
23 keeps your dirty laundry from being hung out in a public  
24 forum and newspaper reporters showing up, making a spectacle  
25 out of you. There's a reason why it's in here, and both

1 parties agreed to this.

2 MR. CLEVELAND: Objection, Your Honor.

3 THE COURT: Why?

4 MR. CLEVELAND: There's no relevance to this testimony.  
5 There's no dispute here about arbitration. Neither side is  
6 making a claim that has anything to do with arbitration, and  
7 I appreciate that Professor Freeman is chastising us, I  
8 guess, for not arbitrating the case, but it's not relevant  
9 that he thinks that, and so I object to it.

10 MR. SHEHEEN: Maybe I could follow up with a question.

11 THE COURT: Okay. I sort of wondered that myself. I  
12 was glad I didn't have to deal with the issue, to be honest  
13 with you, but I did notice it was there. Yes.

14 Q. Thank you. If the point there is to avoid public  
15 exposure of the issues that are a problem, once the lawsuit's  
16 filed is it then defeated?

17 A. Well, you've got the toothpaste out of the tube, and now  
18 you're going to have to spend money to fight to get it to  
19 arbitration once it's in Court to begin with. I take the  
20 arbitration versus go to court fork in the road to be  
21 significant for my opinions because it was Dr. Dyce, who had  
22 a contractual provision calling for arbitration, who didn't  
23 adhere to that contract opinion -- contract provision and who  
24 instead, contrary to the contract provision, within days  
25 after being discharged threw all of this into court, suing

1 Dr. Puchalski, making charges of misconduct against Dr.  
2 Puchalski, seeking an accounting, which is a very major type  
3 of lawsuit, not the same as just debits and credits and X's  
4 and O's and simple math but getting to the bottom of all the  
5 affairs of the business. Suddenly it's in a completely  
6 different forum where you'd have to fight your way out of it,  
7 and in this contract here that's the only option. In the  
8 employment contract executed at the same time --

9 MR. CLEVELAND: Your Honor, I waited until the end of  
10 that before I stood up to give my objection. Again, there's  
11 no claim in the case by either side that the other side did  
12 something wrong by keeping the case in Court, and so I  
13 believe that his testimony on this issue is irrelevant and  
14 I'd move to have it struck.

15 THE COURT: I understand.

16 MR. SHEHEEN: Our claim is obviously we didn't move to  
17 enforce arbitration.

18 THE COURT: Right.

19 MR. SHEHEEN: But that doesn't mean that he didn't  
20 breach the contract by filing the lawsuit and violating what  
21 is a provision in here. The question of breach is ultimately  
22 up to you. I think what the professor is opining is that in  
23 his expert opinion there is a reason why arbitration  
24 provisions are contained in these agreements in close  
25 corporations, in these types of corporations, and once the

1 lawsuit's filed that reason has been destroyed.

2 THE COURT: Okay. Now let me ask you this question, has  
3 the failure to arbitrate been raised in the pleadings?

4 MR. SHEHEEN: There was a -- in the answer?

5 THE COURT: Yes, that thing.

6 MR. SHEHEEN: Yes, and this was before my time, but it  
7 was raised there in one of the answers.

8 THE COURT: As a breach or a we're not supposed to be  
9 here.

10 MR. SHEHEEN: There's a lot of general languages about  
11 the breach. Just for example -- well there's a lot of  
12 general language about the breach of contract. No, it did  
13 not say you breached the contract by failing to --

14 THE COURT: As a result.

15 MR. SHEHEEN: Right, but if I can get the answer --

16 THE COURT: That's Mr. Cleveland's point is that if it's  
17 not raised as an issue in the case --

18 MR. SHEHEEN: Maybe we could look.

19 THE COURT: -- I still got a job.

20 MR. SHEHEEN: We'll go through the answer, so maybe you  
21 can just hold that and we'll look at the answer.

22 THE COURT: Okay. That's fine. Yes.

23 Q. Okay. Professor Freeman, is there anything else in the  
24 shareholders agreement that you find relevant to forming your  
25 opinions?

1 A. I'll say no and wait.

2 THE COURT: And hold on one second. Counsel, can I see  
3 you all? I've got to see you just a second. It actually has  
4 to do with this exhibit.

5 (Judge and attorneys confer.)

6 Q. Okay. Professor Freeman, are there any other provisions  
7 in this agreement that are relevant to your opinions?

8 A. No, not at this time is my answer.

9 THE COURT: I've got the same objection with the same  
10 conditional admissibility.

11 MR. SHEHEEN: Sure.

12 Q. Let's look at the employment agreement, okay?

13 A. Yes, sir.

14 Q. And let's look at the shareholder agreement. Are you  
15 aware that the -- in your review of the depositions and the  
16 testimony are you aware that the covenant not to compete,  
17 which I've also provided you, was attached to the employment  
18 agreement?

19 A. Yes, sir.

20 Q. And are you aware it was referenced in the employment  
21 agreement?

22 A. Yes, sir.

23 Q. Are you aware -- is it your understanding that there was  
24 increased compensation as a result of the employment  
25 agreement?

1 A. Yes.

2 Q. And what provisions in the employment agreement are --  
3 are there any provisions in the employment agreement that are  
4 relevant to the conclusions which you've reached in this  
5 case?

6 A. Yes.

7 MR. CLEVELAND: Same objection I made on that question  
8 before, Your Honor.

9 MR. SHEHEEN: It's the same question.

10 Q. What provisions are you focusing on as you make your  
11 determination?

12 A. Starting with the caption which calls for arbitration  
13 again.

14 Q. Okay.

15 A. I then go down to the second whereas clause on the first  
16 page, physician has entered into a separate covenant not to  
17 compete with the group which is an essential element of this  
18 contractual --

19 Q. What provision are you on? I'm sorry.

20 A. The second whereas clause.

21 Q. Okay.

22 A. So that introduces us to the concept of there being at  
23 this time a noncompete, much talked about in this case. We  
24 then go on to 2.3 talks about termination, and that gives us  
25 discussion of termination with cause or without cause as well

1 as a provision covering payout following 2.4. I see that and  
2 I, you know, considered that to be significant.

3 Q. Okay. Anything else?

4 A. Yes. Further discussion of the covenant not to compete  
5 in 3.9 as well as non-solicitation, basically to protect the  
6 practice from being attacked competitively, and those are  
7 relevant, and I have taken them into account, as with 5.1,  
8 confidentiality, again, consistent with the idea of  
9 protecting the interests of the practice and tying that down  
10 to a contractual provision. Then 6.1 deals with the entire  
11 agreement and specifies that the shareholder agreement may  
12 modify this agreement.

13 Q. Okay. And where is that?

14 A. This would be 6.1.

15 Q. Okay.

16 A. And in the event that there's any conflict the  
17 shareholder agreement controls.

18 Q. Well, the Court has raised an issue that I think we  
19 ought to address head on, okay?

20 A. Yes, sir.

21 Q. I want you to look at the date of the, of this  
22 agreement.

23 A. June 1?

24 Q. Yes, 2010.

25 A. Got it.



1 Q. And then I want you to look at the date of the  
2 shareholder agreement.

3 A. July 16.

4 Q. Okay. Now, I want you to look with me at the section in  
5 the shareholder agreement that references the employment  
6 agreement, but it says it was executed simultaneously with  
7 this agreement. Do you know, after reviewing -- is it your  
8 understanding that the shareholder agreement was referring to  
9 this employment agreement?

10 MR. CLEVELAND: Objection.

11 THE WITNESS: I don't follow your --

12 MR. CLEVELAND: Objection.

13 THE COURT: Sustained.

14 THE WITNESS: I don't follow your question, sir.

15 MR. SHEHEEN: Okay. Maybe he's just not the right  
16 witness to ask.

17 THE COURT: Might not be.

18 Q. Okay. Let's just keep going through. We'll go back to  
19 the -- let's go back to the employment agreement?

20 A. Yes, sir.

21 Q. Any other provisions that you find relevant to your  
22 decisions?

23 A. There's a provision -- I think Mark McWilliams talked  
24 about this in his testimony. 6.9 deals with expenses, and  
25 it's interesting because this particular provision dealing

1 with expenses talks about if you bring an action in court or  
2 in arbitration.

3 Q. Okay.

4 A. But it also says that the shareholders agreement  
5 controls. The shareholders agreement has got a one-way  
6 avenue for redress, which is to bring an arbitration, which  
7 was not done in this case and it controls according to the  
8 intent of the parties.

9 MR. CLEVELAND: Objection, that's a legal conclusion.

10 THE COURT: Yes.

11 MR. SHEHEEN: Withdrawn.

12 THE WITNESS: It says it controls.

13 MR. CLEVELAND: I object again.

14 MR. SHEHEEN: I think it was the intent of the parties.

15 THE COURT: Yes. That would be a determination, yes.

16 MR. CLEVELAND: Thank you.

17 Q. Any other provisions that inform your opinions?

18 A. Of course the noncompete itself.

19 Q. Okay. Let's look at the 2005 agreement that's been  
20 referenced. It was Plaintiff's Exhibit 2.

21 A. Yes, sir.

22 Q. All right. Did you review this as part of your  
23 evaluation?

24 A. Yes, sir.

25 Q. Does any of it inform your opinions that you have

1 reached?

2 A. Yes. I've already referred to it, and that would be the  
3 provision on page 9 of Exhibit 2 that in my own words, when  
4 you become a shareholder, you're going to have to enter into  
5 a noncompete. That's part of the deal -- part of the deal of  
6 coming aboard this company.

7 Q. All right. Anything else within this agreement that  
8 went into your conclusions that you will talk about that  
9 you've reached?

10 A. No. I just hold the opinion that that -- that that  
11 promise was then fulfilled later on when in fact shares were  
12 issued, shareholders agreement was signed and the noncompete  
13 was effective.

14 Q. All right. Professor Freeman, are there other documents  
15 that you've reviewed that you believe are relevant to this  
16 discussion? Did you review the original complaint and  
17 answer?

18 A. Yes, I did.

19 Q. Tell the Court how that informs your decisions and any  
20 conclusions you've reached as reviewing these documents that  
21 we've discussed.

22 MR. CLEVELAND: Same objection as to the form of the  
23 question.

24 THE COURT: I understand. Conditionally. You're about  
25 to get to the end of it, the conditional part of it, but yes,

1 just conditionally admitted.

2 MR. SHEHEEN: I'm trying not to lead him, so I'm just  
3 asking the question.

4 THE WITNESS: The answer to your question is yes.

5 Q. How does the complaint play into your conclusions?

6 A. I take into account several things. Dr. Dyce was  
7 separated I believe on 3/10/2010. I believe that the  
8 complaint was filed on the 12th or thereabouts, which is two  
9 days later, and served around the 21st of March and I take --  
10 to me that's significant because one of the issues in this  
11 case is whether or not Dr. Puchalski and SCENT failed by not  
12 getting an accounting to Dr. Dyce under the shareholder  
13 agreement, and my view is that he's thrown everything into  
14 court and thrown everything into court contrary to the  
15 requirements of the shareholders agreement because it's  
16 supposed to be in arbitration, but anyhow, that's what he  
17 did. He made his choice. And in making his choice he asked  
18 for an accounting, and an accounting in a business type  
19 setting like this, again, is not just X's and O's and debits  
20 and credits. It's get to the bottom of things, get  
21 everything in court, let everybody vent, let everybody point  
22 their fingers, let everybody accuse and then get it all, get  
23 all the numbers here, get all the disputes resolved, draw a  
24 line and figure out who owes whom.

25 MR. CLEVELAND: Objection.

1 THE WITNESS: That is my understanding of what an  
2 accounting is in a business setting.

3 MR. CLEVELAND: Objection.

4 THE COURT: Yes, sir.

5 MR. CLEVELAND: Professor Freeman's descriptions and  
6 opinions about the court process are not the subject of his  
7 expertise. I think it's inappropriate and I object to his  
8 line of testimony that he just gave and his characterizations  
9 of the legal process.

10 THE COURT: Very well, noted.

11 Q. How does him filing the complaint affect the corporate  
12 governance of SCENT at that time under the shareholder  
13 agreement?

14 A. Well, it first of all creates an adversary relationship.  
15 One way of looking at it is and these -- accountings are  
16 standard in partnerships. Partners can't sue each other  
17 without bringing an accounting proceeding. That's a  
18 requirement, and that's typically the first shot that's  
19 fired. But here what you would see is double tracking.  
20 Under the agreement there's one setup, and Dr. Puchalski is  
21 being sued here, charged with misconduct, and an accounting  
22 is being sought in Court, and of course he has to defend  
23 himself, and here we are. This is the same outgrowth of that  
24 decision that was made. So in a sense what I see is from a  
25 business standpoint a shareholder who has contract rights has

1 decided to take, for whatever reason, has decided to take a  
2 different path, and having made that decision and stuck with  
3 it, here we are, I mean, that's --

4 MR. CLEVELAND: I object to this characterization of Dr.  
5 Dyce's motives by this witness. I think that's improper and  
6 objectionable.

7 MR. SHEHEEN: Your Honor, I don't think he talked about  
8 motives. He just said once you choose your remedy, there you  
9 are, and that affects the obligations and the way that the  
10 corporation can then respond. In other words, the  
11 corporation at that point has to defend the lawsuit.

12 THE COURT: Okay.

13 Q. And was an answer filed?

14 A. Do you want me to talk about the complaint or do you  
15 want me to talk about an answer?

16 Q. I'm sorry. Go ahead and finish with the complaint,  
17 please. How else did the complaint affect the governance and  
18 the obligations of SCENT and the parties?

19 MR. CLEVELAND: Objection, also on the grounds I've  
20 previously asserted but as to relevance as well.

21 MR. SHEHEEN: This is directly relevant.

22 THE COURT: First of all, I don't think I understand the  
23 question, so ask the question again.

24 MR. SHEHEEN: Let me take the courtesy that was extended  
25 to opposing counsel when he was talking to his expert witness

1 yesterday, perhaps, to kind of lay the groundwork if that  
2 would be okay.

3 MR. CLEVELAND: I'm happy for you to tell the Court your  
4 contentions if that's what we're talking about.

5 MR. SHEHEEN: Right.

6 THE COURT: Yes.

7 MR. SHEHEEN: Okay. Judge, there has been a question  
8 raised as to what should have happened within the 60 days  
9 after Dr. Dyce was terminated.

10 THE COURT: Right.

11 MR. SHEHEEN: And one of our -- there's a number of  
12 contentions about what happened during that 60 days, but one  
13 of our contentions is that the filing of a summons and  
14 complaint affected the obligations and the ability of SCENT  
15 to then continue down the road that would have occurred under  
16 the shareholders agreement. There was a lawsuit filed, and  
17 that affects the ability of SCENT and the requirement of  
18 SCENT -- we've pled estoppel in this case. We've said that  
19 Dr. Dyce could have continued with the remedies that were  
20 there under the contract but instead he chose to file a  
21 lawsuit, which meant then we had to file an answer. In this  
22 lawsuit he asked the Court to inquire into the matters and  
23 things and determine the rights of the parties. At that  
24 point he's asking the Court to make those decisions, not  
25 SCENT. He's estopped from saying that we're supposed to have

1 done something within that 60 days. There's other things  
2 that happened in that days that we've talked about  
3 previously. He preemptively violates the covenant not to  
4 compete. We know he was setting up the practice. One of the  
5 things he does is files a summons and complaint asking for a  
6 full blown determination of the rights of the parties.

7 THE COURT: So here comes reflective listening, so I  
8 gather what then the question is is does the filing of a  
9 summons and complaint for an accounting abrogate the  
10 responsibilities to comply with the agreement.

11 MR. SHEHEEN: Or alter the responsibilities under the  
12 agreement, yes.

13 THE COURT: Wouldn't alter it, it would abrogate it  
14 because we're here.

15 MR. SHEHEEN: We are here.

16 THE COURT: And we're years past the 60 days.

17 MR. SHEHEEN: Right.

18 THE COURT: So does the filing of a summons and  
19 complaint under the theory of governance of a corporation  
20 excuse or abrogate the obligation of a corporation to follow  
21 the terms of a buyback provision.

22 MR. SHEHEEN: Yes, ma'am.

23 THE COURT: Okay. That's where we're going.

24 MR. CLEVELAND: I would object to going there. I don't  
25 think that's ever been raised as an issue in the case before



1 now, and if that's so I think that it's not relevant to any  
2 issues that we're litigating before the Court.

3 THE COURT: Let me tell you what I think it has to do  
4 with, and you tell me that I caused this sticky wicket  
5 because I may have caused the sticky wicket, and that is my  
6 question being when there is a breach of an agreement, what  
7 is the effect of the breach of the agreement on a covenant  
8 not to execute, so maybe I -- I mean, I don't think I caused  
9 that. I think you're in that too.

10 MR. CLEVELAND: That's a fundamental part of our case.

11 THE COURT: Okay. So then in terms of corporate  
12 governance then I think why isn't that then relevant?

13 MR. CLEVELAND: Because in order for it to be relevant  
14 the defendants would have to have raised as an issue in the  
15 pleadings, we have not paid you because you brought a  
16 lawsuit, and then we would determine whether that's a viable  
17 defense, but that's not in this case. Nobody's ever said  
18 that.

19 MR. SHEHEEN: He raised it as an issue. They have not  
20 raised exactly -- if you read their complaint, it's not  
21 exactly what they say, but we raised many defenses including  
22 that we didn't breach it, that they were estopped from  
23 asserting these things, and we certainly have to be able to  
24 present a defense to what they're alleging, and that's what  
25 we're doing.

1 THE COURT: What Mr. Cleveland is saying, though, is  
2 it's not raised in the pleadings. Is it not raised in the  
3 pleadings?

4 MR. SHEHEEN: Is what not raised in the pleadings, the  
5 filing of the summons and complaint?

6 THE COURT: Yes.

7 MR. SHEHEEN: Yes, we raised in the pleadings --

8 THE COURT: The reason that you haven't been paid is you  
9 sued us for accounting and we've been real busy.

10 MR. SHEHEEN: I'd like to look at the pleadings when I  
11 answer.

12 THE COURT: Sure.

13 MR. SHEHEEN: Again, there was two answers, one  
14 personally by Dr. Puchalski and one by the company.

15 THE COURT: I understand. Either one will work.

16 MR. SHEHEEN: We denied all the allegations including  
17 the allegations they made, so that would certainly do it.

18 THE COURT: Okay. Yes, because they say you breached it  
19 by not paying within the 60 days.

20 MR. SHEHEEN: We denied that, and now we're proving why  
21 we didn't breach it.

22 THE COURT: Okay. I think it's raised.

23 Q. Okay. Could you continue with your answer?

24 MR. CLEVELAND: Well, they denied that they didn't  
25 breach, but they never raised as an issue that the reason

1 that they didn't breach it is because we brought a lawsuit to  
2 get what we couldn't get voluntarily from the company.

3 THE COURT: I know.

4 MR. SHEHEEN: It's not an affirmative defense, Your  
5 Honor.

6 THE COURT: Yes. You may proceed.

7 MR. SHEHEEN: Thank you. Your Honor, we'd also -- just  
8 to inform the Court, we also allege they failed to satisfy  
9 all conditions precedent to us performing that, that it's  
10 barred by the doctrine of unclean hands, that they're just  
11 barred by their own conduct, so there's lots of things that  
12 would cover that besides the fact that we just denied it.

13 MR. CLEVELAND: In response to those allegations we  
14 served contention interrogatories saying tell us what serves  
15 as the basis for these allegations you're making, and they  
16 never suggested that filing the complaint somehow constituted  
17 an act that forfeited the rights to be redeemed.

18 THE WITNESS: Is there a question before me?

19 MR. CLEVELAND: I think I'm waiting for the Judge.

20 THE COURT: Let me hear a question again. I think  
21 that's cross-examination, but let me hear your question.

22 MR. SHEHEEN: Let me resurrect my question, Your Honor.

23 THE COURT: Sure.

24 Q. Maybe I need to backtrack to do it so we don't get lost.  
25 How does the filing of the complaint affect the corporate

1 obligations and responsibilities of SCENT?

2 MR. CLEVELAND: Objection.

3 THE COURT: Under what? I'm going to sustain that for  
4 foundation. Under what?

5 MR. SHEHEEN: Under the shareholder agreement.

6 THE COURT: Under the shareholder agreement.

7 MR. SHEHEEN: Yes, ma'am, under the shareholder  
8 agreement.

9 THE COURT: All right.

10 THE WITNESS: In my opinion it affects it this way: The  
11 shareholders agreement calls for a buyout read in tandem with  
12 the employment agreement, and it puts certain strictures on  
13 the timeliness of the windup. At the same time the  
14 beneficiary of that provision has taken a completely  
15 different path to reach the exact same objective that would  
16 be reached under the contract by affording a buyout at a  
17 certain price because under an accounting proceeding of the  
18 type that's brought here that is exactly where you go. That  
19 is exactly what you seek, and that is exactly where you're  
20 headed and exactly what you're going to get, so it strikes me  
21 as a logical point, first off, that the hurry up and get a  
22 number approach, which becomes pretty much mission impossible  
23 when setoffs have to be factored in anyhow, is excused, or at  
24 least in a reasonable businessperson's eyes can be seen as  
25 being excused by the option taken here by Dr. Puchalski (sic)

1 to basically throw all these issues into court and all the  
2 numbers into court and all the behavior into court and let a  
3 judge decide who gets what as to his dealings. And in  
4 support of that I note that you couldn't resolve the issue of  
5 what to pay him without having a resolution of the issue of  
6 whether or not Bob Puchalski has committed wrongs to the  
7 extent that Dr. Dyce is accusing Puchalski or would accuse  
8 Puchalski of that, and that's exactly what he does in this  
9 proceeding. He accuses Dr. Puchalski of having acted  
10 oppressively and unfairly prejudicially, having mismanaged  
11 corporate affairs, having wrongfully excluded the plaintiff  
12 from property and information and basically having mismanaged  
13 the company to Dr. Dyce's detriment. And so a forum has been  
14 chosen, not the forum that's listed in the shareholder  
15 agreement but a different forum, to get to the bottom of  
16 everything. And in my view it becomes relevant later then  
17 that you have issues like estoppel and waiver raised in  
18 defense, the issue of whether or not Dr. Dyce's conduct has  
19 been wrongful itself, which is alleged here, along with a  
20 waiver and estoppel. These things come to the fore as well,  
21 and just from a governance standpoint, it would be very  
22 difficult to say, yes, we are obligated to give to Dr. Dyce  
23 two different bites out of the apple just because he wants it  
24 that way. In essence there's an issue in my mind whether as  
25 a shareholder he has turned his back on his contract and gone

1 in a different direction, and if he did, there may be  
2 consequences for Your Honor to consider.

3 Q. At the point the complaint is filed is the -- is SCENT  
4 obligated to then file an answer?

5 A. Yes.

6 Q. Okay. And in this case was an answer filed?

7 A. By both SCENT and Dr. Puchalski.

8 Q. And does that inform your opinions?

9 A. Yes.

10 Q. How so?

11 A. Well, first of all, as I mentioned, these answers raise  
12 back to Dr. Dyce issues as to his behavior such as the eighth  
13 defense, plaintiffs claims are barred because of plaintiff's  
14 own conduct; the fourth defense plaintiffs claims are barred  
15 by the doctrine of laches, waiver and estoppel. But on top  
16 of that you've got the entity and Dr. Puchalski having been  
17 accused of misconduct and particularly personal misconduct on  
18 the part of Dr. Puchalski. And then discovery takes over.  
19 You've got the principle of compulsory counterclaims out  
20 there, and it's just a natural course of events in litigation  
21 that things get bigger and roll on with a lawsuit. And I  
22 take this into account in judging Dr. Puchalski's decision to  
23 turn the attention to either litigating or settling the  
24 litigation as opposed to trying, on a different track, give  
25 Dr. Dyce that which he has already been decided to seek in

1 court.

2 Q. It's been talked about a little bit in court, but during  
3 your review of the evidence and the documents and the  
4 testimony you've heard did you see where there were offers to  
5 mediate the case or hire Dr. Dyce back in some capacity until  
6 it was worked out or offers to somehow --

7 A. Yes, I've seen that information.

8 MR. CLEVELAND: Your Honor, objection. I don't know  
9 what relevance it has that Professor Freeman may have seen  
10 e-mails. Just to ask him to comment on the evidence in the  
11 case I think is improper, it's irrelevant, it's outside the  
12 scope of what he was admitted to talk about.

13 MR. SHEHEEN: Your Honor, he was talking about his  
14 opinions of obligations to try to resolve the dispute  
15 somehow, and I simply asked him if he had heard, seen or in  
16 particular has reviewed those facts, and he can say no or  
17 yes.

18 THE COURT: It goes to corporate governance.

19 MR. SHEHEEN: Yes, ma'am, what their obligation is.

20 THE COURT: As to corporate governance I'll allow it.

21 MR. SHEHEEN: Thank you.

22 Q. Okay. Professor Freeman --

23 A. Yes, sir.

24 Q. -- let's look at, and I want to give counsel the time to  
25 look at this, Defendant's Exhibit 129.

1 A. Yes, sir.

2 MR. SHEHEEN: Let me let counsel have a minute to look  
3 at it.

4 MR. CLEVELAND: Thank you.

5 Q. Okay. This is a letter. Could you tell the date to the  
6 Court?

7 A. April 16, 2010.

8 MR. SHEHEEN: It's behind H in your book.

9 Q. Could you say that date again?

10 A. April 16, 2010, 129.

11 Q. And did you review this record as part of your review of  
12 the documents and testimony in this case?

13 A. Yes, sir.

14 Q. Did it go into helping you form your opinions?

15 A. Yes.

16 Q. And just describe to the Court briefly what it is.

17 A. It's a letter from Dr. Dyce's counsel to a lawyer at  
18 Nelson Mullins criticizing communications by SCENT to Dr.  
19 Dyce's patients, demanding changes in that and then making  
20 certain other statements.

21 Q. And does it discuss the covenant not to compete in that  
22 letter?

23 A. Yes, on the second page at the top.

24 Q. Could you read a little bit of it?

25 A. The references -- this is first paragraph, third



1 sentence -- the references in your most recent e-mail to me  
2 to intentionally leaving out an address in order to attempt  
3 to enforce a noncompetition provision which we believe is  
4 unenforceable --

5 Q. Okay. Could you stop right there for a minute?

6 A. Yes.

7 Q. This is within the 60-day time period we were discussing  
8 earlier?

9 A. Yes, sir.

10 Q. Okay. And what is being told to SCENT in that paragraph  
11 there, that sentence? How did you interpret that as you  
12 reached your conclusions?

13 A. I think a reasonable interpretation is it's sort of the  
14 first robin in spring that we intend to compete or at least  
15 we are certainly of a mind that we're free to compete if we  
16 want to compete and that it's -- I take it further in the  
17 context of we want our clients to know where we are, our  
18 patients to know where we are so they can reach us.

19 Q. Do you know where Dr. Dyce was at that time?

20 A. Hartsville, I believe.

21 Q. Thank you. In your preparation did you review certain  
22 secret tape recordings made by Dr. Dyce?

23 A. I did.

24 Q. Describe how those go into your opinions about the  
25 proper role of corporate governance?

1 A. I take the tape recording into account this way: Dr.  
2 Dyce is an educated man, he's a professional man, he's  
3 represented by counsel. I believe even in 2007 he was  
4 represented by counsel in negotiating with Dr. Puchalski.

5 Q. Everybody was represented by counsel during what we're  
6 discussing, this time period, weren't they, from your review?

7 A. That's the way it looks to me. In any event -- he as a  
8 general rule in my experience professional people don't  
9 surreptitiously tape-record.

10 MR. CLEVELAND: Objection. I object on the grounds of  
11 relevance that Professor Freeman's experience about what  
12 people do or don't do is not relevant for the consideration  
13 of the Court. If you've got some standard, statute,  
14 regulation, I still think it would be inadmissible because  
15 then he'd be testifying about the ultimate issue in the case,  
16 but what he's doing now just opining about what he thinks is  
17 appropriate conduct without establishing some basis for it,  
18 laying a foundation, I believe is inappropriate and I object  
19 to it.

20 MR. SHEHEEN: Your Honor --

21 THE COURT: I'm with you.

22 It seems to me that what he's saying is that based on  
23 his experience and knowledge that it's atypical for educated  
24 people who are either currently represented or have been  
25 represented to tape-record one another.

1 MR. SHEHEEN: Let me maybe change the question.

2 THE COURT: Sure.

3 Q. Are you experienced in your level -- in your expertise  
4 in corporate governance have you been involved with  
5 shareholders, managers, presidents as they interact with each  
6 other in that setting?

7 A. Sure.

8 Q. And do you use that experience as you determine the  
9 appropriate corporate governance and how -- the obligations  
10 owed to each other?

11 A. Yes, in terms of normal behavior and whether something  
12 is in the mainstream or out of line, I take my background  
13 into account in making those judgments.

14 Q. Regarding that expertise what's your experience of  
15 people tape-recording others in those situations?

16 MR. CLEVELAND: Same objection, Your Honor. For  
17 Professor Freeman to talk about what he thinks is in the  
18 mainstream is well outside what he was offered to be, which  
19 is an expert in corporate governance, not somebody who's  
20 opining about the mores of contemporary society.

21 THE COURT: I'm taking it as corporate governance.

22 MR. CLEVELAND: It's the mainstream part of it that I  
23 think is --

24 THE COURT: I understand, I'm with you, corporate  
25 governance.

1 MR. SHEHEEN: In the context of corporate governance.

2 Q. And also does that relate to fiduciary duties owed to  
3 each other?

4 A. Yes, it relates to the way people interact and trust and  
5 confidence between them.

6 Q. Were you surprised to see it happening, given your  
7 experience?

8 MR. CLEVELAND: Objection. Whether Professor Freeman  
9 was surprised or not is not relevant.

10 THE COURT: I agree. I'll sustain that. I mean, I  
11 think he's indicated that's outside the norm.

12 MR. SHEHEEN: Okay. Great.

13 Q. Anything else that that informs you related to corporate  
14 governance and what was going on at SCENT?

15 A. Sure. There's been a lot of discussion about lack of  
16 access to information.

17 Q. Let's talk about that.

18 A. Okay. Well, we know that Dr. Dyce has complained  
19 mightily, may still be complaining, about not getting all the  
20 books and records to which he is entitled, and Dr. Puchalski  
21 has been criticized at considerable length for being --  
22 ruling with an iron fists, being uncaring, being  
23 unsympathetic, being dismissive and kind of bringing all this  
24 down on himself by his recalcitrance and his own kind of, for  
25 want of a better word, my impression, domineering view of

1 things. In fact, there was some talk about a dictator, and  
2 for that reason I took into account some of the -- of course  
3 I have talked to Dr. Puchalski, and I have read a lot of  
4 testimony, and there's an exhibit, Exhibit 34 which to me is  
5 a significant exhibit, and this is -- was talked about in  
6 court when I was here before, and it was actually up on the  
7 screen.

8 Q. That's the exhibit where there was the six things --

9 A. Yes, the listing. This is right -- it's important to me  
10 in evaluating governance and in evaluating behavior from a  
11 factual, experiential standpoint to take this into context.  
12 Where are we in March of 2010.

13 MR. SHEHEEN: Your Honor, it's at I in your book, just  
14 so you know.

15 Q. Okay. Go ahead.

16 A. Where are we, okay, and where we are is the economy is  
17 cratering, particularly the commercial real estate market is  
18 falling apart, basically at its depth.

19 MR. CLEVELAND: Objection, objection.

20 THE WITNESS: May I finish my answer?

21 MR. CLEVELAND: Just a minute. Professor Freeman is now  
22 commenting about the state of the economy, the state of the  
23 real estate market. He's not qualified to talk about all  
24 that. He's not been offered as an expert to talk about all  
25 that. And to give his opinions that that somehow matters in

1 what was going on I think is absolutely inappropriate. I  
2 object.

3 THE COURT: Very well.

4 MR. SHEHEEN: Your Honor --

5 THE COURT: Overruled. Go ahead.

6 Q. Thank you. Go ahead.

7 A. To continue my answer, things are bad. They're bad for  
8 people who have big construction projects. They're bad for  
9 people who have contractors out there. They're bad for  
10 lenders who are starting to put pressure down the line, and  
11 the record that I have reviewed shows that a lien was being  
12 threatened by the builder, that cash was drying up, that Dr.  
13 Puchalski was between a rock and a hard place. He had this  
14 building that had to be finished and he had a lease that was  
15 expiring, and so he had to get the money to get this built,  
16 and getting the money meant getting bank loans closed. Now,  
17 this is SCENT Land, but of course Jamie Curley, Dr. Dyce's  
18 wife, is instrumental in that. And then you have, with all  
19 this kind of trauma going on, Dr. Dyce and Jamie Curley  
20 unwilling to kind of step up and help solve the problem of  
21 getting this building built and an argument and a refrain  
22 that keeps resonating in this case is, well, we wanted  
23 information, and you just stiffed us. You just were  
24 uncaring. And I look at this. When it was on the screen,  
25 you know, I drank it in, and this is a very, very broad

1 request by Dr. Dyce for information -- copies of all bank  
2 statements, electronic Excel spreadsheets, and it goes down  
3 to access to all supporting documentation on file at or at a  
4 location controlled by SCENT relating to disbursements made  
5 since inception to the present. In other words, we want to  
6 see every scrap of paper that concerns every single outlay of  
7 any sort for this business from the time the articles were  
8 filed to today and you might -- if you got a discovery  
9 request like this, you might object to it and say, it's  
10 overbroad, and I have known lawyers to do that, but look at  
11 what the answer is up above from Dr. Puchalski, who  
12 supposedly is uncaring, dismissive, etc., quote, Orville,  
13 you're welcome to review this information, and I will answer  
14 any questions; in other words, I'll work with you on this.  
15 We'll get there.

16 MR. CLEVELAND: Objection, Your Honor, objection, Your  
17 Honor. Professor Freeman's now restating what the exhibit  
18 says and putting it into some form -- this is just pure  
19 argument to the Court as to what these exhibits mean. I  
20 think that's objectionable and inadmissible.

21 THE COURT: It says what it says. I mean, it certainly  
22 says what it says.

23 MR. SHEHEEN: It does.

24 THE COURT: All right.

25 Q. And, Professor Freeman, how does this, what you're

1 reading here, how does it inform your conclusions related to  
2 this issue?

3 A. Well, it informs my conclusions because it is a response  
4 to any effort to demonize Bob Puchalski in his defense and is  
5 favorable to him in my opinion.

6 Q. You've been involved in corporate governance, you talked  
7 about that, you've been involved in individuals and their  
8 interactions in corporate governance. How common in that  
9 realm, in that real-world realm that you've been involved in,  
10 would a request like this be?

11 MR. CLEVELAND: Objection. Whether it's common or not  
12 is not relevant to any issue before the Court.

13 MR. SHEHEEN: This is directly going to corporate  
14 governance and what can be expected in these types of  
15 situations between shareholders, and it's directly related to  
16 what we're talking about.

17 THE COURT: Okay. He can respond to it.

18 THE WITNESS: I have not seen such a broad request,  
19 particularly in the context of requiring truckloads of data  
20 like this, as a condition precedent to closing a vitally  
21 needed, extremely important, crucial real estate loan so that  
22 the practice after June of 2010 has a place for its patients.

23 Q. And you said you reviewed the transcripts of the  
24 telephone conversations as well?

25 A. Yes.



1 Q. Were there any interactions between them related to  
2 information in those transcripts?

3 A. Yes.

4 Q. Okay.

5 A. And I want to be more specific. There were interactions  
6 where that it appeared to me Dr. Puchalski was willing to  
7 indulge Dr. Dyce, was not dismissive, uncaring, mean in any  
8 sense.

9 Q. Let's talk a little -- you mentioned SCENT Land,  
10 Professor Freeman.

11 A. Yes.

12 Q. And that Jamie Curley, I believe you said you recognized  
13 that she was a member of SCENT Land. Based on your review of  
14 the evidence and the documents and your experience in how  
15 these different companies operate, did it appear that Jamie  
16 Curley was acting through Orville Dyce in regards to SCENT  
17 Land?

18 A. I would say it slightly differently. It appeared to me  
19 that they were working in tandem in their treatment of this  
20 SCENT Land financing emergency and the refusal to cooperate  
21 which I believe caused five closings to be canceled.

22 Q. And, Professor Freeman, let's discuss the various  
23 manifestations of adverse behavior on Dr. Dyce's part. Did  
24 you note in reviewing the facts any instances where Dr. Dyce  
25 hindered business operations at SCENT?

1 A. Well, the SCENT Land thing is crucial. That to me is  
2 just like a Mount Everest of importance because, you know, if  
3 you have a medical practice, you've got patients coming, they  
4 need a place, you're losing your lease, the place needs to be  
5 finished. And it seems that Dr. Puchalski was very, very  
6 focused if not fixated on getting that done. You can  
7 understand why, given the exigencies of the time.

8 Q. And did your analysis -- beg the Court's indulgence one  
9 moment.

10 THE COURT: Mm-hmm.

11 Q. Were there any other manifestations of adverse behavior  
12 on Dr. Dyce that are relevant to your conclusions?

13 A. Yes. There's some evidence of sharing information with  
14 Dr. Gunnlaugsson where Dr. Gunnlaugsson and his attorneys  
15 seem to be being fed information stemming from Orville Dyce.

16 MR. CLEVELAND: Objection. I think he needs to lay a  
17 foundation if he's going to make that accusation, so I object  
18 to it.

19 THE COURT: Okay. Are you going to lay a foundation?

20 MR. SHEHEEN: Sure.

21 Q. Did you review the deposition of Dr. Gunnlaugsson in  
22 this case?

23 A. I did.

24 Q. Did you rely in part on it in making your  
25 determinations?

1 A. I did, specifically on information.

2 MR. SHEHEEN: May I approach, Your Honor?

3 THE COURT: Sure.

4 Q. I've given you an excerpt of some of the deposition  
5 testimony of Dr. Gunnlaugsson. What in there did you rely on  
6 in making your conclusions?

7 A. Okay. Can I give background first of all of what we're  
8 looking at.

9 Q. Please, yes.

10 A. This is Dr. Gunnlaugsson's deposition in his own case  
11 after Dr. Dyce's deposition in that case, and the questioning  
12 is in the context of the affidavit, which I believe is in the  
13 record and been talked about that was prepared by Chuck  
14 Thompson and given to Dr. Dyce, and I read these pages and  
15 take these pages into account because the pages deal with  
16 communications between the parties, and evidently there's  
17 been testimony that --

18 MR. CLEVELAND: Your Honor, I need to object. I'm going  
19 to object to this. This is hearsay. It is not admissible in  
20 this Court. He couldn't say what he thinks Dr. Gunnlaugsson  
21 said, so I object to any attribution to Dr. Gunnlaugsson of  
22 anything he may have said or repeating anything Dr.  
23 Gunnlaugsson said as hearsay. It doesn't help it may have  
24 been from a deposition.

25 MR. SHEHEEN: Your Honor, of course he's an expert. He

1 can testify about things that form the basis of an opinion,  
2 and that's what he's doing. That's black letter law.

3 THE COURT: Yes, certainly depositions are certainly the  
4 kind of information that experts use when testifying, and  
5 it's a little bit unusual because, I mean, I've heard about  
6 the affidavit and I have heard about -- I've heard from Dr.  
7 Gunnlaugsson and, I mean, I've heard about the affidavit,  
8 seen the affidavit, heard about it, and so it may be more  
9 appropriate for cross-examination. Typically, normally,  
10 while there can be inadmissible testimony that can be used by  
11 an expert in forming the opinion that the underlying  
12 inadmissible evidence can't come in through the expert where  
13 it couldn't come in otherwise, that's one of the differences,  
14 but it doesn't mean that the expert cannot use inadmissible  
15 evidence. I guess that's where I'm a little bit concerned,  
16 but the affidavit's in. It's an exhibit.

17 MR. SHEHEEN: They put in Dr. Gunnlaugsson's allegations  
18 about what he talked to Dr. Dyce about and what he didn't  
19 talk to Dr. Dyce about.

20 THE COURT: It's already in.

21 MR. SHEHEEN: This relates directly to that.

22 THE COURT: That's right, but whether or not the -- and  
23 the deposition is hearsay, it's actually double hearsay, but  
24 he can certainly -- but Professor Freeman can certainly use  
25 the deposition to form an opinion.

1 MR. SHEHEEN: Yes, ma'am, that's what we're doing.

2 THE COURT: If he wants to talk about the affidavit,  
3 I've reviewed his testimony and I believe there was an  
4 exchange of information based on the affidavit.

5 MR. SHEHEEN: I'm sorry.

6 THE COURT: What he can't do is specifically talk about  
7 parts coming from -- the inadmissible evidence cannot come in  
8 through the expert but he can certainly use it in forming his  
9 opinion.

10 Q. After reviewing Dr. Gunnlaugsson's testimony in that did  
11 you come to certain conclusions?

12 A. Yes, relevant to this proceeding, yes, sir.

13 Q. Relevant to this proceeding that dealt with the exchange  
14 of information between Dyce and Gunnlaugsson?

15 A. Yes.

16 Q. Could you tell the Court those opinions?

17 A. Yes, my understanding of the state of the evidence to  
18 this point is that there's testimony to the effect --

19 MR. CLEVELAND: Objection.

20 MR. SHEHEEN: This is restating --

21 MR. CLEVELAND: He was asked what his opinions were, and  
22 now he's about to say what testimony was, and you just ruled  
23 that inadmissible, so I object.

24 THE WITNESS: In this proceeding.

25 THE COURT: In this proceeding.

1           THE WITNESS: I'm talking about in this proceeding my  
2 understanding, and I haven't been here for all of it, is that  
3 there's been testimony to the effect that essentially Dr.  
4 Dyce and Dr. Gunnlaugsson were not exchanging confidential  
5 information, were not collaborating, that Dr. Dyce wasn't  
6 leaking any information of a proprietary nature to Dr.  
7 Gunnlaugsson, and my understanding is Dr. Gunnlaugsson was  
8 very firm on that point when he was in this chair yesterday.  
9 I beg to differ based on my understanding of the facts and  
10 the record of this matter going back to the Gunnlaugsson  
11 case. I think that that is incorrect.

12           MR. CLEVELAND: Objection. I think this is pitting a  
13 witness again. We have one witness coming and saying another  
14 witness didn't tell the truth. If he knows facts he's aware  
15 of, he can testify to those facts. I object to his opinions  
16 because I think they all go to legal conclusions, but he's  
17 not a fact witness, so I don't think it's appropriate for him  
18 to be doing that either, so I object.

19           THE COURT: I'm with you. And the opinion is?

20           Q. And the opinion is?

21           A. The opinion is that Dr. Dyce and Dr. Gunnlaugsson have  
22 got an obligation to speak accurately and truthfully  
23 concerning their behavior at SCENT, SCENT deserves that, they  
24 deserve that. I believe that it is inaccurate to say that  
25 there was not a considerable exchange of information between

1 Dr. Dyce and Dr. Gunnlaugsson concerning proprietary  
2 information at SCENT while Dr. Dyce was employed and while  
3 Dr. Gunnlaugsson was employed informing Dr. Gunnlaugsson, who  
4 was soon to go into competition with his operation in the  
5 same building as SCENT in short order.

6 Q. Thank you.

7 A. I just have a different view, based on my investigation  
8 and understanding and analysis, than the one that seems to be  
9 featured in this case.

10 Q. All right. Were there any other manifestations that you  
11 saw where Dr. Dyce hindered the business operations of SCENT?

12 A. Well, apparently a fee schedule -- do you have Exhibit  
13 81 -- gets leaked out and used, and I believe it was used by  
14 Dr. Gunnlaugsson.

15 Q. That would be --

16 A. 81.

17 Q. Exhibit 81, Defendant's Exhibit 81.

18 And, Your Honor, for your purpose that would be behind

19 M.

20 THE COURT: Okay.

21 MR. CLEVELAND: I don't understand the relevance of this  
22 to Dr. Dyce. Unless there is some, I would object.

23 THE COURT: I don't know what this is.

24 MR. SHEHEEN: Let me lay a foundation.

25 THE COURT: Yes.

1 Q. Is it your understanding after reviewing the evidence  
2 and the documents there were certain fee schedules that SCENT  
3 used to charge by?

4 A. Yes.

5 Q. Okay. And is it your understanding that's what this  
6 document represents?

7 A. Yes.

8 Q. Is it your understanding that the fee schedule here was  
9 used by Dr. Gunnlaugsson is the same as SCENT's?

10 A. Yes.

11 Q. And is it your opinion based on what you've reviewed  
12 that he got this from Dr. Dyce?

13 A. My understanding --

14 MR. CLEVELAND: I think he needs to do a little more  
15 than just say he has an opinion. There has to be some basis  
16 for it.

17 Q. What's your basis for that opinion?

18 A. He had to get it from somewhere and Dr. Puchalski says  
19 he didn't give it to Dr. Gunnlaugsson.

20 Q. Is this the type of confidential information that would  
21 be kept in a corporation such as this to your knowledge?

22 A. Yes, sir.

23 MR. CLEVELAND: Your Honor, I think that's entirely  
24 inappropriate for Professor Freeman to say, well, must have  
25 gotten it from somewhere, therefore I'm going to assume that



1 it came from Dr. Dyce, not one of the other employees, not  
2 something that Dr. Gunnlaugsson might have been able to get  
3 while he was there as an employee.

4 THE COURT: I understand. I'm with you.

5 MR. SHEHEEN: Those are factual disputes.

6 THE COURT: I understand.

7 MR. SHEHEEN: Yes, ma'am.

8 Q. All right. Is there anything else, Professor Freeman?

9 A. Yes, sir. If you look at SCENT Defendant's Exhibit No.  
10 99.

11 MR. SHEHEEN: Okay. That's behind P, Your Honor.

12 THE COURT: Okay.

13 Q. It's a little blurry. Could you tell the Court what  
14 that is?

15 A. If you look at the footnotes, this is a Carolina Pines  
16 spreadsheet on -- financial spreadsheet, and it refers to  
17 SCENT pricing -- actually, kind of the market segment served  
18 by SCENT. At the bottom it says, SCENT currently sees a very  
19 low percentage of self-pay business, the kind of proprietary  
20 information that would be unusual to find.

21 MR. CLEVELAND: Objection. Now Professor Freeman is  
22 testifying about the availability of medical market  
23 information in the marketplace, and I object that he has no  
24 professed qualifications as to the availability of that  
25 information and this exhibit --

1 THE COURT: I understand. Foundation.

2 Q. Have you reviewed the evidence and the testimony in this  
3 case?

4 A. Yes, I have.

5 Q. And have you talked to folks at SCENT about their  
6 information?

7 A. What kind of information? I have a lot of information.

8 Q. Whether or not this would be considered confidential  
9 information.

10 A. Yes, I did.

11 Q. Based on those discussions and based on your observation  
12 of the testimony and the documents in the case is it your  
13 opinion that this is the type of information that would be  
14 considered confidential in a corporate setting?

15 A. Yes, sir. That's why I get my understanding from, from  
16 SCENT people.

17 Q. And clearly this is obtained on this document by  
18 Carolina Pines, right?

19 A. It's their document as far as I can tell.

20 MR. CLEVELAND: I object that there's no foundation that  
21 Dr. Dyce had anything to do with providing that information.  
22 I think that ought to be struck.

23 THE COURT: I don't know if he can link it up. I  
24 certainly agree with you where you are now.

25 Q. Does Dr. Dyce work for -- is this a pro forma for Dr.

1 Dyce from Carolina Pines?

2 A. My understanding is that that is what it is.

3 Q. Okay. And it's prepared for him going to work there,  
4 right?

5 MR. CLEVELAND: Objection. I don't know how Professor  
6 Freeman knows how the document was prepared or who prepared  
7 it or what it was for.

8 THE COURT: That would be foundational, wouldn't it,  
9 yes.

10 MR. SHEHEEN: Your Honor, it was testimony in Orville  
11 Dyce's questioning about what this was.

12 THE COURT: Yes, right.

13 MR. SHEHEEN: And he heard it.

14 THE COURT: You've just got to do that. I know he's  
15 been coming and going, so that's part of the foundation, did  
16 you hear him talk about it.

17 Q. Did you hear him talk about this on direct examination?

18 A. Dr. Dyce talk about this?

19 Q. Yes.

20 A. You know, I may have. I had a really hard time  
21 following some of the documents on the screen.

22 Q. Okay. Assume --

23 A. And I'm not sure that I was here if it was cross. I  
24 don't know.

25 Q. Assume that this document -- assume that the information

1 obtained by Carolina Pines was given by Dr. Dyce. Would that  
2 be a breach of his fiduciary obligations?

3 A. It links Dr. Dyce to the construction of the document  
4 which refers to proprietary SCENT information. It connects  
5 those dots, yes, sir.

6 Q. Would that be a breach of his obligation?

7 A. If he divulged confidential SCENT information to  
8 Carolina Pines, it would be a breach.

9 Q. Okay. Anything else?

10 A. If you look at 114.

11 Q. Let's make an assumption on that one just to move along,  
12 Professor Freeman.

13 A. Okay.

14 Q. 114 is the e-mail that says from Mike Grabowski talking  
15 to Dr. Gunnlaugsson, we talked about it yesterday, that said  
16 if Dr. Dyce comes in early as a partner, I guess it would  
17 make the answer easy. Assuming that Dr. Dyce had talked with  
18 Dr. Gunnlaugsson about coming in as a partner, would that  
19 show their --

20 A. Interaction, yes, sir.

21 Q. Okay. How does that relate to your ultimate  
22 conclusions?

23 A. There's an issue as to whether or not information is  
24 being shared and whether they are working in a way adverse to  
25 SCENT's best interests and if -- that particular operation at

1 that time was working to set up a competing practice for Dr.  
2 Gunnlaugsson.

3 Q. Okay. Professor Freeman, let's talk about -- you  
4 mentioned the closings and the relationship between SCENT and  
5 SCENT Land. You mentioned the five failed closings. What is  
6 your opinion of how that went down and how that affects your  
7 conclusions in this case?

8 MR. CLEVELAND: Objection, it's not relevant what  
9 Professor Freeman thinks about how it went down.

10 MR. SHEHEEN: Let me rephrase the question.

11 THE COURT: Okay.

12 Q. Professor Freeman, what impact did the five failed  
13 closings have on your conclusions in this case?

14 MR. CLEVELAND: Objection. Objection. Professor  
15 Freeman is now being asked to testify about the business  
16 financial, I assume, effects that actually occurred as  
17 opposed to corporate governance or the other things he was  
18 admitted to testify about, so I object to his qualifications  
19 on this.

20 MR. SHEHEEN: Everything I'm asking him is in  
21 relationship to the corporate governance and the other things  
22 that he was qualified as an expert to, and I'm asking him  
23 that in this context, what did these five failed closings,  
24 how did they impact your opinion in that field, that's my  
25 question.

1 THE COURT: I didn't know that there were five failed --  
2 first of all, I didn't know there were five failed closings,  
3 and I don't know why there were five failed closings.

4 MR. SHEHEEN: Do you want me to ask that question?

5 THE COURT: I guess, right, because, I mean, for  
6 foundational purposes, I don't know that there are five  
7 failed closings, and I don't know that -- I guess I gather  
8 what you're sayings is that the plaintiff had -- the  
9 plaintiff caused the five failed closings, is that what you  
10 are saying?

11 MR. SHEHEEN: Yes, ma'am, yes, Your Honor.

12 THE COURT: I don't know any of that. Should I know any  
13 of that?

14 MR. SHEHEEN: I'll lay the foundation.

15 Q. Did you review how many closings failed in this case?

16 A. Yes.

17 Q. How many?

18 A. My understanding is there were five.

19 Q. In your review did it appear that Dr. Puchalski and  
20 SCENT were trying to get these closings finalized so that  
21 they could move out of the leased premises?

22 A. Yes.

23 Q. And in your review did you find that the leased premises  
24 was about to end and that they would not have a place to  
25 practice with SCENT?

1 MR. CLEVELAND: Your Honor, I'd have to object as  
2 leading.

3 THE COURT: Well, yes, okay, you are leading.

4 MR. SHEHEEN: Yes, ma'am.

5 THE COURT: I know all that but -- and it was expiring  
6 in June.

7 MR. SHEHEEN: Right.

8 THE COURT: I know that.

9 Q. How many closings were there that were failed?

10 A. My understanding is five.

11 Q. What caused the failures based on your review of the  
12 file?

13 A. The refusal of Jamie Curley and Orville Dyce to consent  
14 to go ahead and sign the closing documents, participate in  
15 the extension of the loan, and my understanding is that the  
16 justification for that reticence was the claim that Robert  
17 Puchalski had wrongfully deprived Dr. Dyce and his wife of  
18 crucial information and would not be forthcoming and Dr. Dyce  
19 drew a line in the sand, as I understand it, and basically  
20 said, we're not going to go ahead without this information.  
21 The time was short, the pressure was great, and I believe  
22 that that reluctance ended up being a major contributing fact  
23 to the termination of Orville Dyce.

24 Q. In your review of the documents and the testimony and  
25 the depositions did you notice a change in Dr. Dyce from 2008

1 into 2009 and '10 in his interactions with the company?

2 MR. CLEVELAND: Objection. For Professor Freeman now  
3 gleaning from e-mails how Dr. Dyce was interacting with the  
4 company I think is beyond the scope of any expertise he may  
5 have.

6 MR. SHEHEEN: Your Honor, to ask these questions -- he  
7 wants me to lay a foundation, which means I have to ask him  
8 about the facts he's observing, and that's what I just did.

9 THE COURT: Here's my concern --

10 MR. SHEHEEN: Yes, ma'am.

11 THE COURT: -- my problem with the question is because  
12 of the generality with the company. What does that mean?  
13 You know, that in and of itself, unfortunately, is very  
14 general because I've heard from Dr. Gunnlaugsson and I have  
15 heard from a number of employees who obviously held to this  
16 day this particular doctor in high esteem and liked him very  
17 much. I think that the question is was there a difference in  
18 the relationship between he and the managing shareholder. I  
19 mean, isn't that really the question?

20 MR. SHEHEEN: Well, I think at the end of the day the  
21 question is Dyce's, I think you said interaction,  
22 relationship, I would say interaction with the company and --

23 THE COURT: Okay.

24 MR. SHEHEEN: -- did it change and what was the result  
25 to the company because of the way --



1 THE COURT: Interaction with the company?

2 MR. SHEHEEN: You said relationship with Puchalski,  
3 SCENT, excuse me, SCENT.

4 THE COURT: Okay.

5 MR. SHEHEEN: I'll ask it the way you just framed it.

6 THE COURT: No, I just think I need to know what you're  
7 talking about because I have heard from a number of different  
8 people.

9 MR. SHEHEEN: Let me break it into people.

10 THE COURT: I've heard from a number of different people  
11 involved with the company, and so far everybody didn't have a  
12 problem with him, liked him very much, thought he was a  
13 workhorse, you know, thought that when he changed there was a  
14 tremendous difference in the atmosphere. Now, whether or not  
15 it was because there was less money because he was a  
16 workhorse or for something else, I've got to make that  
17 determination, but I haven't heard anything negative about  
18 his interaction because apparently the patients liked him,  
19 employees liked him.

20 MR. SHEHEEN: I'm talking about in the realm of  
21 corporate governance, not in the realm of patients and  
22 interaction, in the realm of corporate governance, how did he  
23 interact with the corporate governance over time.

24 THE WITNESS: Well, let's focus on the time period late  
25 2009 and into 2010 when the crunch is coming. My observation

1 and opinion is that Dr. Dyce had gotten lawyered up --

2 MR. CLEVELAND: Objection. I think that's, when he says  
3 all lawyered up --

4 THE WITNESS: I didn't say all lawyered up.

5 MR. CLEVELAND: This is closing argument, not  
6 appropriate testimony from an expert.

7 THE COURT: Right.

8 MR. CLEVELAND: So I object to it.

9 THE COURT: Okay. Overruled.

10 THE WITNESS: That he had counsel, that counsel was  
11 giving him advice, that he was tape-recording a lot and that  
12 friction existed which only seems to have gotten worse, that  
13 the bond of trust and confidence and respect that had  
14 formerly existed between Dr. Dyce and Dr. Puchalski was  
15 becoming frayed, that Dr. Gunnlaugsson too was becoming  
16 extremely weary, that economic pressures in this rapidly  
17 expanded and highly successful practice were mounting and the  
18 atmosphere was getting ready to boil over, and that as Dr.  
19 Dyce became more and more insistent, whether or not, I don't  
20 know, at a lawyer's suggestion or CPA's, that financial data  
21 be accumulated and the amounts of needed data multiplied, you  
22 can understand somebody in Dr. Puchalski's position, who  
23 built the practice, a successful practice and is working hard  
24 too day in and day out and has these financial obligations  
25 which must be met, becoming increasing exasperated and

1 frustrated, and it was a meltdown and that's what gives us  
2 this trial here.

3 Q. In your review of the record, and I won't dwell on this  
4 because I think the Court has already got this point, but  
5 just very briefly, in your review of the records up until the  
6 fall of 2009 did you see where Dr. Dyce was requesting much  
7 information or who was running the show?

8 A. I believe that I've seen some evidence that he had  
9 counsel as early as 2007 because I think that there was a  
10 reconfiguration of the partner buy-in, partially with the  
11 insistence, according to Dr. Puchalski of his Philadelphia  
12 lawyer who continued to represent him but things seemed to be  
13 going fairly smoothly right into the fall of 2008 and then,  
14 as I say, the bonds started to get frayed, and ultimately  
15 there was an explosion.

16 Q. I want you to assume that Dr. Dyce intentionally misled  
17 Dr. Puchalski into providing higher distributions to both  
18 shareholders in 2009 with the assurance that he would  
19 negotiate a new contract that would take into consideration  
20 debt. Would that be appropriate conduct if it wasn't, within  
21 the corporate sphere, if it wasn't followed through with?

22 A. No.

23 Q. Professor Freeman, please tell the Court -- you've given  
24 some conclusions today in your expert opinion. Tell the  
25 Court your ultimate conclusions in this case.

1 A. My conclusion --

2 MR. CLEVELAND: Objection to the form. It's not  
3 relevant what Professor Freeman's ultimate conclusions are.  
4 We don't know what's coming, can't evaluate whether it's  
5 relevant or -- so I object.

6 MR. SHEHEEN: Because I'm not leading him. I'm asking  
7 him what his --

8 Q. What are your conclusions based on your review and your  
9 expert opinions in this case?

10 A. My conclusions which I would frame in terms of being  
11 opinions.

12 Q. Yes, excuse me, opinions. I apologize. Counsel's  
13 correct?

14 THE COURT: I've heard a bunch of them. Do you have  
15 additional ones?

16 THE WITNESS: I just want to make sure that when you go  
17 back and are determining whether there was an opinion to  
18 match up with testimony that you actually do have one.

19 THE COURT: Right.

20 THE WITNESS: But I believe that -- I hold the opinion  
21 that this is a most unfortunate proceeding. Nobody wants to  
22 see friendships collapse, particularly when there's plenty of  
23 money to go around, and yet that's what happened here, and we  
24 have to deal with the aftermath, and my view of it is that  
25 Dr. Puchalski, taking into account what I've seen in the

1 record, makes a very good point that he was working as hard  
2 as he could, without getting into any attorney-client  
3 matters, with counsel at his elbow, as he's navigating this  
4 practice into tough and through a tough economic year and  
5 with the possibility of Obama Care, whatever that may be down  
6 the road, a lot of pressure on him. And I believe that there  
7 is evidence in the record of Dr. Puchalski's proper behavior,  
8 reasonable behavior, and that he made what you would call in  
9 business governance area sound business judgments or  
10 reasonable business judgments. I know that I heard Dr. Dyce  
11 say, and it wasn't the first time I had seen the testimony,  
12 that he was exasperated when he saw the wish list of perks  
13 that Dr. Puchalski was -- had listed in a proposed agreement  
14 and, you know, I take that into account. I can imagine Dr.  
15 Dyce, making a lot of money, million seven is what I  
16 understood he said that he made in '09, scratching his head  
17 and saying, you know, how's this guy entitled to that. At  
18 the same time, he, Dr. Dyce, has an obligation to negotiate  
19 in good faith, to work reasonably and constructively, and  
20 that's negotiation. That wasn't any cram-down deal. So to  
21 fault Dr. Puchalski for dreaming big or asking for some very  
22 nice perks is not the same thing as being able to say he  
23 stole money or has acted as a thief or something. I think  
24 his behavior has been in complete good faith. Dr. Dyce, my  
25 understanding is, by all indications seems to be a very good

1 doctor, and Dr. Puchalski still considers him to be a very  
2 good man and regrets that we're here with this lawsuit. I  
3 believe that there's evidence in the record that Dr. Dyce  
4 failed in his handling of his departure, failed in his  
5 dealings with Dr. Gunnlaugsson and ill served SCENT.

6 MR. CLEVELAND: Objection. The fact that there may be  
7 evidence in the record, for Professor Freeman -- he's not  
8 even giving opinions now. He's just saying there's some  
9 evidence. That's what lawyers do when they close. That's  
10 not what experts do when they swear that their opinions meet  
11 a standard, a standard according to the standards in the  
12 profession in which they practice to a reasonable degree of  
13 certainty, and none of Professor Freeman's opinions have been  
14 offered at that standard, and I would ask that they all be  
15 struck, and I object to them on that basis.

16 THE COURT: Very well. Thank you. Yes.

17 Q. The opinions you've voiced in this case thus far --

18 MR. CLEVELAND: Objection, leading.

19 Q. -- are they expressed to a reasonable degree of  
20 professional certainty as an expert --

21 MR. CLEVELAND: Objection.

22 Q. -- as you've been qualified?

23 THE COURT: Overruled.

24 THE WITNESS: Yes, they are and they have been, and I'm  
25 under oath, and they are what I believe. To amplify, I

1 believe if the argument -- if the sworn testimony in this  
2 courtroom is that Dr. Dyce and Dr. Gunnlaugsson didn't  
3 collaborate on confidential information while Dr. Dyce was  
4 employed by SCENT, information that he should not have been  
5 divulging, I believe that that is incorrect. I believe that  
6 there's evidence that he was working to establish a competing  
7 practice in Hartsville and he did so, and I believe that it's  
8 for the Court to determine whether or not the noncompete was  
9 violated, whether it was supported by adequate consideration,  
10 etc., whether it's reasonable and all that. I'm not going to  
11 tell the Court how I think the Court should rule, and I'll  
12 just leave it at that.

13 Q. In your opinion did Dr. Puchalski -- was he remaining  
14 inside his role as an officer of SCENT as he interacted and  
15 made decisions related to Dr. Dyce?

16 A. Yes, I believe he was functioning on behalf of SCENT  
17 when he did those things.

18 Q. And in your opinion did SCENT abide by its requirements  
19 under the shareholder agreement as Dr. Dyce departed?

20 MR. CLEVELAND: Objection, leading.

21 MR. SHEHEEN: He can say yes, he can say no.

22 THE COURT: Overruled.

23 THE WITNESS: I believe that the behavior of SCENT was  
24 under the circumstances presented, taking into account all of  
25 the parties' behavior, all of the timing of matters, all of

1 the actions that were taken, understandable and not worthy of  
2 criticism.

3 Q. Do you believe --

4 A. And proper.

5 Q. I'm sorry. Thank you. Is it your opinion, based on the  
6 standards we've already discussed that Dr. Puchalski and  
7 SCENT made appropriate business judgments based on the facts  
8 as they were presented to them?

9 A. Yes.

10 Q. Do you have any other opinions in this case?

11 A. No, but I may have some on cross.

12 Q. I'm sure you will.

13 THE COURT: We're going to take a break.

14 MR. SHEHEEN: Thank you, Your Honor.

15 THE COURT: Ten minutes.

16 (Recess held.)

17 THE COURT: All right. Cross-examination.

18 MR. CLEVELAND: May it please the Court.

19 MR. SHEHEEN: Your Honor, I want to introduce Amy  
20 Puchalski, who has been in court.

21 THE COURT: Okay. Thank you.

22 MR. SHEHEEN: Thank you.

23 CROSS-EXAMINATION BY MR. CLEVELAND:

24 Q. Professor Freeman, as you know, I'm Will Cleveland,  
25 known each other a long time. Welcome to Kershaw County.



1 A. Thank you, sir.

2 Q. Professor Freeman, let's look at Exhibit 34 that you  
3 talked about with Mr. Sheheen. Can you blow up that?

4 Professor Freeman, this is the list of things that Dr. Dyce  
5 had requested from SCENT, do you understand that to be the  
6 case?

7 A. Yes.

8 Q. Was Dr. Dyce entitled to get copies of bank statements  
9 and canceled checks?

10 A. I believe that he's entitled to everything on the list.

11 Q. Was he entitled to the check register?

12 A. If it's on the list, yes.

13 Q. Was he entitled to the credit card statements?

14 A. Yes.

15 Q. And the general ledger?

16 A. Yes.

17 Q. The tax returns?

18 A. I believe so.

19 Q. Wasn't Dr. Dyce entitled to any financial information  
20 that he wanted from SCENT, given his position in the company?

21 A. I believe he was entitled to see it, yes, sir.

22 Q. Now, let's turn to the July 2008 shareholders agreement  
23 that you said was one of the key documents, it's Plaintiff's  
24 Exhibit 7, and don't put it up just yet. Let me ask a  
25 preliminary question. Do you have it?

1 A. I have it here.

2 Q. Okay. Do you agree that Exhibit 7 is the agreement that  
3 controls the governance of SCENT as of the 2008, 2009, 2010  
4 timeframe up until it was amended in late 2010?

5 A. I will agree that it's one of the documents. You know,  
6 we've heard about the articles which trump this. There's a  
7 shareholders agreement -- excuse me, an employment agreement  
8 that may also in some part be relevant, but this would be an  
9 important document, yes, sir.

10 Q. And would you agree that this document expresses the  
11 agreement between the two equal shareholders as to what the  
12 policy is on at least some matters within the corporation?

13 A. I would agree that it expresses their intent, a meeting  
14 of the minds at that time as to the matters that are covered,  
15 yes, sir.

16 Q. All right. Would you put up Section 3.7? Would you  
17 turn to page 11 of Exhibit 7, and let's talk about the  
18 confidentiality provision. Isn't it true that paragraph 3.7  
19 of Exhibit 7 constitutes Dr. Dyce and Dr. Puchalski's  
20 agreement as to what the policy of SCENT is on  
21 confidentiality that would apply in 2009 and 2010 until the  
22 agreement is later modified or amended?

23 A. It's a declaration of their intent concerning  
24 confidentiality.

25 Q. Do you know of any other overriding statement of what

1 the company's policy is on confidentiality other than section  
2 3.7?

3 A. 3.7 is an articulation of the company's policy. There  
4 may or may not be common law principles or provisions that  
5 would supplement that.

6 Q. My question is are you aware of any other agreement  
7 between Dr. Dyce and Dr. Puchalski that modifies or affects  
8 the statement that they agreed to in the shareholders  
9 agreement in paragraph 3.7 concerning confidentiality.

10 A. No, not without going through the employment agreement  
11 to see if that's has any impact at all, which I have not  
12 done.

13 Q. Let's highlight the first four lines of 3.7. Professor  
14 Freeman, the first four lines say, in part, the shareholders  
15 shall not disclose any information relating to the  
16 corporation regarding the corporation's operations, records,  
17 patients or procedures to any persons other than employees of  
18 the corporation, federal and State regulatory agencies,  
19 third-party reimbursement agencies, etc. Now, you've told me  
20 that this is the only statement you know of in which Dr. Dyce  
21 and Dr. Puchalski agreed on what the policy of SCENT is on  
22 confidentiality.

23 MR. SHEHEEN: Your Honor, I object. He said without  
24 looking through the employment agreement.

25 MR. CLEVELAND: Yes, without looking at the employment

1 agreement, fair point.

2 THE WITNESS: Yes.

3 Q. Okay. Do you agree that Dr. Puchalski would not have  
4 had the unilateral right to change this policy if he thought  
5 it ought to be changed without getting Dr. Dyce's approval?

6 A. Subject to what's referred to as emergency authority,  
7 yes.

8 Q. And so isn't it true that Dr. Dyce had the express  
9 permission to share confidential information with the other  
10 employees of the corporation?

11 MR. SHEHEEN: Your Honor, could he look at the whole  
12 provision?

13 MR. CLEVELAND: He's got it in front of him.

14 THE COURT: Sure. He has it, I think. He can have mine  
15 too.

16 THE WITNESS: It says you can't disclose to these other  
17 people. It doesn't say you can disclose anything you want at  
18 any time to anybody so long as these persons are employees.

19 Q. Does the confidentiality agreement prohibit Dr. Dyce  
20 from disclosing confidential information to other employees  
21 of the company?

22 A. I have to read the whole provision now, not just the  
23 first four lines.

24 It can be read that way.

25 Q. Professor Freeman, knowing you, I know to take that as a

1 concession and leave it at that. Thank you.

2 A. I mean it can be.

3 Q. My next question --

4 A. I want to explain my answer, it can be --

5 MR. SHEHEEN: Your Honor, he has the right to explain  
6 his answer.

7 MR. CLEVELAND: He had finished, and I'd like to move on  
8 with my examination if I may, Your Honor.

9 THE COURT: If he needs to explain his answer and he  
10 says he needs to explain his answer, that's fine.

11 MR. CLEVELAND: He didn't say that until I commented,  
12 trying to be affable.

13 THE WITNESS: I think you misunderstood what I was  
14 saying.

15 MR. CLEVELAND: I object to this Your Honor.

16 THE WITNESS: You said is there any other provision in  
17 here that would bar, what I understood you to say --

18 Q. Yes.

19 A. -- disclosure to an employee, and I said it can be read  
20 that way.

21 Q. That's all right. Let's make sure. Do you agree that  
22 under the confidentiality provision as stated in 3.7 there's  
23 no prohibition on Dr. Dyce sharing confidential information  
24 with the corporation's employees?

25 A. I disagree, and I want to explain my answer.

1 Q. Okay.

2 A. Modifying this first four lines which you have on the  
3 screen.

4 Q. Let's put up the whole thing so we can see.

5 A. Okay. Good.

6 Q. Okay.

7 A. There is a provision that says, each shareholder shall  
8 use information related to the business of the corporation to  
9 advance the corporation's best interests and not to benefit  
10 their personal interests. If, for example, you had two  
11 employees who had decided that they were going to set up a  
12 competing business operation to the detriment of the company  
13 and one of them had access to confidential information and  
14 shared that and divulged that with a fellow shareholder for  
15 purposes of advancing their interests and to the detriment of  
16 the corporation, that would run afoul of that provision right  
17 there. It's not permitted, in my estimation that behavior  
18 would not be permitted by 3.7. It would be forbidden by 3.7.

19 Q. Do you agree that you know of no evidence that Dr. Dyce  
20 assisted Dr. Gunnlaugsson in the establishment of a competing  
21 practice?

22 A. I won't agree to that.

23 Q. What evidence are you aware of that Dr. Dyce assisted  
24 Dr. Gunnlaugsson in the establishment of a competing  
25 practice?

1 A. The pricing information that Dr. Gunnlaugsson had had to  
2 come from somewhere. Dr. Puchalski takes the position that  
3 he was not responsible for divulging. He is in a better  
4 position to know than I am, and I believe he points to Dr.  
5 Dyce as a source of that information. Likewise, it's very  
6 clear to me that when the rift occurred and deepened and  
7 widened in the timeframe say February-March of 2010 that they  
8 actually were sharing information about proprietary  
9 management matters, Dr. Dyce was, with Dr. Gunnlaugsson.

10 Q. What information are you referring to?

11 A. The information that I reviewed in preparing for this.

12 Q. No, what did they share, what do you allege that he  
13 shared?

14 A. Information, for example, concerning the dispute that he  
15 was having with Dr. Puchalski concerning the new  
16 shareholder -- proposed shareholders agreement.

17 Q. Do you believe that this paragraph prevents Dr. Dyce  
18 from talking with Dr. Gunnlaugsson about the new terms that  
19 Dr. Puchalski wanted to impose on the company?

20 A. I believe that that was confidential information.

21 Q. Do you think that this agreement precludes Dr. Dyce upon  
22 receiving the draft shareholders agreement from talking with  
23 Dr. Gunnlaugsson, another employee, about those terms?

24 A. Yes.

25 Q. Why?

1 A. Because I believe at that point it's a confidential  
2 matter between the two shareholders. It concerns Dr.  
3 Puchalski's role in the company prior to the entry into the  
4 company of Dr. Gunnlaugsson as a shareholder, with that being  
5 a disputed issue, of course, that Dr. Puchalski expected that  
6 to be confidential and it was not held confidential.

7 Q. I want to you assume for the purposes of my question  
8 that Dr. Dyce in no way aided Dr. Gunnlaugsson in setting up  
9 a competing practice. Will you accept that stipulation?

10 A. Okay.

11 Q. With that in mind, do you agree that the confidentiality  
12 agreement does not prohibit Dr. Dyce from talking about the  
13 new shareholder agreement with Dr. Gunnlaugsson because he's  
14 an employee with whom Dr. Dyce is allowed to discuss  
15 confidential matters?

16 A. Well, that's your --

17 Q. I want a yes or no, do you agree with that or not?

18 A. No, and I want to explain my answer. Your leap of faith  
19 is that do you agree that he's allowed to discuss it because  
20 he's allowed to discuss it. Well, where do you draw the  
21 line? Dr. Puchalski didn't think he was allowed to discuss  
22 it. He considered that a matter between the two shareholders  
23 who at that time were the two directors of the company. You  
24 had secretaries, you had others in the company who were  
25 employees. Were they entitled to all this information too?



1 Why do you draw the line the way you have? My view is Dr.  
2 Puchalski considered it confidential between him and Dr.  
3 Dyce. I can see that it's sensitive information because it  
4 concerns the various negotiating positions of the parties at  
5 the time, and I can understand why Dr. Puchalski doesn't want  
6 that being talked about outside of the two of them and that's  
7 my answer.

8 Q. Yes, sir, but you told me earlier that Dr. Puchalski  
9 does not have the unilateral right to change the policy of  
10 the company with regard to confidential information and you  
11 told me earlier that this policy can be read to mean that the  
12 people subject to it can talk among themselves, in other  
13 words, to other employees, about confidential information,  
14 and so that's why I draw the line there, because that's what  
15 the agreement says, doesn't it?

16 MR. SHEHEEN: Your Honor, I'm just going to object  
17 because I think he restated his testimony improperly. There  
18 was a little confusion at the beginning of this line of  
19 questioning. He did not say that you could interpret it to  
20 say that, in fact he said the opposite, and that's why he  
21 wanted to explain his answer. That's my only objection to  
22 the question.

23 THE COURT: Okay.

24 THE WITNESS: My view is that if the information is used  
25 in a way that reasonably does not advance the interest of the