

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-CP-04-00041
Appellate Case No. 2013-001518

Harold P. Threlkeld d/b/a Harold P.
Threlkeld, Attorney at Law.....Plaintiff,

v.

Lyman Warehouse, LLC, Lyman Pacific, LLC,
Mills Demolition, LLC, Susan C. Stanley,
Peter M. Stanley and Donald J. McWhirter.....Defendants,

Of Whom Lyman Warehouse, LLC is the.....Appellant,

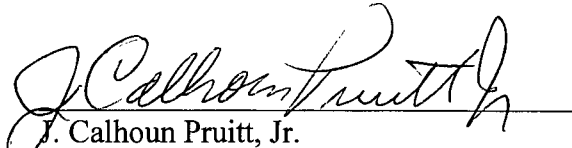
Of Whom Donald J. McWhirter is the.....Respondent.

RECORD ON APPEAL

RECEIVED
JUN 19 2014
SC Court of Appeals

PRUITT & PRUITT

June 3, 2014.


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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Harold P. Threlkeld d/b/a Harold P.
Threlkeld, Attorney at Law

Plaintiff,

vs.

Lyman Warehouse, LLC, Lyman
Pacific, LLC, Mills Demolition, LLC,
Susan C. Stanley, Peter M. Stanley
and Donald J. McWhirter.

) IN THE CIRCUIT COURT

) TENTH JUDICIAL CIRCUIT

) C/A No. 2012-CP-04-00041

ORDER

A TRUE COPY

MAY 15 2013

Richard D. Hixley
CLERK OF COURT

This interpleader action came before me for non-jury trial on March 6, 2013. Present at the trial were the Plaintiff Harold Thelkeld, Defendant Lyman Warehouse, LLC and Defendant Donald J. McWhirter. Defendants Mills Demolition, LLC, Lyman Pacific, LLC, Susan C. Stanley, and Peter M. Stanley were not present and did not answer the call of the case for trial. After considering the evidence, arguments of Counsel, and the parties' submissions, I find that Donald J. McWhirter is the rightful party to receive the interpleaded monies.

PROCEDURAL HISTORY

On January 4, 2012, Plaintiff brought this interpleader action to determine the parties' respective rights to One Hundred Thousand (\$100,000.00) Dollars. Defendant Lyman Warehouse, LLC answered the complaint asserting it was entitled to the monies. Defendant, Donald McWhirter ("McWhirter") through his Amended Answer and Cross Claim asserted he was entitled to the monies and further asserted causes of action for breach of contract against Lyman Warehouse, LLC ("Lyman Warehouse"), unjust

enrichment against Lyman Warehouse, Declaratory Judgment against all parties, civil conspiracy against Susan C. Stanley and Peter M. Stanley ("Stanley), Warehouse, Mills Demolition, LLC ("Mills) and Lyman Pacific, LLC ("Pacific"), and breach of fiduciary duty against Stanley and Pacific. Lyman Warehouse asserted in its filings that it is entitled to the money pursuant to an April 7, 2011 contract with Pacific.

FINDINGS OF FACT

1. This controversy involves the proposed purchase of 22 +/- acres of land in Lyman, South Carolina ("the Property"). Defendant Lyman Warehouse **Exhibit 1**.
2. Initially, Peter Stanley (and his company Lyman Pacific LLC), Don McWhirter, and Elliott Edwards sought to purchase the Property from Lyman Warehouse for demolition and reclamation of steel.
3. On April 7, 2011, Pacific and Lyman Warehouse entered into a contract. Defendant Lyman Warehouse **Exhibit 1**.
4. The contract was signed at a meeting at Stax's Restaurant in Greenville, SC. Present at the meeting were Peter Stanley, Richard Bennett, Elliott Edwards and Don McWhirter.
5. The closing date on the contract was May 7, 2011.
6. The contract set forth a purchase price of \$1.3 million with \$100,000 placed in trust.
7. McWhirter individually wrote a check for \$100,000 to satisfy the earnest money provision of the contract. Defendant Lyman Warehouse **Exhibit 2**.
8. Paragraph 15 of the contract states in pertinent part:

REMEDIES FOR BREACH: In the event of default or breach of this Agreement on behalf of Purchaser, Seller's remedy against Purchaser shall be limited to receipt of all monies paid by Purchaser. In other words, if Purchaser does not pay any or all of subsequent payments mentioned in paragraph four (4) then seller's sole remedy for breach against Purchaser shall be limited to all monies paid by the Purchaser thru the date of default.

9. The contract did not close on May 7, 2011.

10. On May 27, 2011, an Agreement for Rescission of Contract and Full and Final Release ("Release") was reached between Lyman Warehouse, Mills Demolition, Lyman Pacific, Bennett, and Stanley. Defendant Lyman Warehouse **Exhibit 5**.

11. The Release was drafted by the Plaintiff on behalf of his client, Lyman Warehouse.

12. The Release states in pertinent part that Lyman Warehouse:

[F]orever discharge Lyman Pacific, Mills, Peter and Susan from all of the Claims, both past and present, including but limited to all claims, demands, actions, and causes of action including without restricting the foregoing generality, any and all claims for damages, liquidated damages, exemplary damages, punitive damages, incidental, special, indirect or consequential damages, damages and all losses of money and economic opportunity and for mental anguish or emotional distress, damages for loss of reputation damages for fraud, civil conspiracy, interference with contractual relations . . .

It being the specific intent of the releasing Parties to fully release the Parties herein released of and from any Claims or right of the releasing Party to claim or to make any of the Claims against the Parties herein released for any losses or damages the releasing Party may have sustained or may hereafter sustain, known or unknown, **arising out of the Circumstances or arising out of any other transaction** or relationship between or among the releasing Party and the Parties herein released and all incidents and consequences thereof.

See Defendant Lyman Warehouse **Exhibit 5** at p. 5-6 **emphasis** added.

13. Lyman Warehouse received Twenty Seven Thousand Five Hundred Dollars (\$27,500) in exchange for the release.

CONCLUSIONS OF LAW

McWhirter asserts five causes of action to recover the \$100,000: (1) McWhirter is a third party beneficiary to the contract, (2) civil conspiracy, (3) breach of fiduciary duty (4) unjust enrichment against Lyman Warehouse, and (5) Declaratory Judgment against all parties. Lyman Warehouse asserts it is entitled to the money as a result of the default provision for the April 7, 2011 contract. The Court addresses each in turn.

1. McWhirter's Third Party Beneficiary Claim Fails.

I find that Defendant McWhirter failed to prove he was a third party beneficiary to the April 7, 2011 contract. Under South Carolina law, a contract between two persons for the benefit of a third person can be enforced by the third person, even if he or she is not named in the contract. Svenningsen v. Knight, 286 S.C. 299, 304; 333 S.E.2d 78, 81 (Ct. App. 1985). The third person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to the third person. Bob Hammond Const. Co., Inc. v. Banks Const. Co., 312 S.C. 422, 424; 440 S.E.2d 890, 891 (Ct. App. 1994). Sloan Const. Co., Inc. v. Southco Grassing, Inc., 377 S.C. 108, 120, 659 S.E.2d 158, 165 (S.C. 2008). McWhirter asserts that he is a third party beneficiary by virtue of the language in the April 7, 2011 contract referring to demolition, testimony that he was intended to do the demolition, and his check for \$100,000.

Here, the contract is clearly between two parties, Lyman Pacific, LLC and Lyman Warehouse LLC. There is no reference to McWhirter anywhere in the contract. The reference to demolition of the building in the contract is not sufficient to give rise to a third party beneficiary claim. Furthermore, I find the check itself was to bind the actual

parties to the contract, not to make McWhirter a party to the contract. McWhirter's interest in the contract was incidental and consequential rather than direct. As a result, he cannot recover under this theory.

2. McWhirter's Civil Conspiracy Claim Fails.

McWhirter has failed to prove a conspiracy was entered against him. Civil Conspiracy is a combination of two more persons for the purposes of injuring a third person which causes special damages. The difference between civil and criminal conspiracy is in criminal conspiracy, the gravamen of the offense is the agreement itself, whereas in civil conspiracy, the gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design. Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct.App. 2009). McWhirter argued that a conspiracy existed between Lyman Warehouse, Lyman Pacific and Stanley because the parties entered into a back-up contract for the sale of the property on May 4, 2011. **See Defendant Lyman Warehouse Exhibit 9.** By its very terms, the May 4, 2011 contract is conditioned upon the April 7, 2011 contract failing. As a result, rather than evidence of a conspiracy, it is merely a back-up contract.

3. McWhirter's Breach of Fiduciary Duty Claim Fails

A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. Ellis v. Davidson, 358 S.C. 509, 519, 595 S.E.2d 817, 822 (Ct.App.2004); Regions Bank v. Schmauch, 354 S.C. 648, 670, 582 S.E.2d 432, 444 (Ct.App.2003); Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 476, 581 S.E.2d 496, 505 (Ct.App.2003). To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust

in another has some foundation for believing the one so entrusted will act not in his own behalf but in the interest of the party so reposing. The evidence must show the entrusted party actually accepted or induced the confidence placed in him. Here no competent evidence was introduced that would create a fiduciary relationship between the parties and, therefore, McWhirter cannot recover on this theory.

4. Unjust Enrichment.

McWhirter asserts that Lyman Warehouse would be unjustly enriched if it obtains the \$100,000. Unjust enrichment (quantum meruit) requires a showing that a benefit was conferred upon the defendant by the plaintiff, realization of the benefit by the defendant, and retention by the defendant of the benefit under circumstances that make it unjust for the defendant to retain the benefit. JASDIP Properties SC, LLC v. Estate of Richardson, 395 S.C. 633, 640, 720 S.E.2d 485, 488 (Ct. App. 2011).

On April 7, 2011, Don McWhirter tendered \$100,000 to be placed into the escrow account of Mr. Threlkeld. By law, the \$100,000 in Mr. Threlkeld's escrow account does not belong to Mr. Threlkeld. See Rule 1.15, RPC, SCACR Rule 407 and Moore v. Weinberg, 373 S.C. 209, 225, 644 S.E.2d 740, 748 (Ct. App. 2007). At no time did the money leave Mr. Threlkeld's escrow account.

Lyman Warehouse's claim to the \$100,000 is contingent on Lyman Warehouse's contractual rights under the April 7, 2011 agreement. The April 7, 2011 agreement called for a May 7, 2011 closing date³ and no closing occurred. On May 27, 2011, Lyman Warehouse, Lyman Pacific, Mills Demolition, Richard Bennett, Peter Stanley, and Susan Stanley (the Parties) entered into full and final Release. See Lyman Warehouse **Exhibit 5**. The release states in pertinent part:

[F]orever discharge Lyman Pacific, Mills, Peter and Susan from all of the Claims, both past and present, including but limited to all claims, demands, actions, and causes of action including without restricting the foregoing generality, any and all claims for damages, **liquidated damages**, exemplary damages, punitive damages, incidental, special, indirect or consequential damages, damages and all losses of money and economic opportunity and for mental anguish or emotional distress, damages for loss of reputation damages for fraud, civil conspiracy, interference with contractual relations . . .

It being the specific intent of the releasing Parties to fully release the Parties herein released of and from any Claims or right of the releasing Party to claim or to make any of the Claims against the Parties herein released for any losses or damages the releasing Party may have sustained or may hereafter sustain, known or unknown, **arising out of the Circumstances or arising out of any other transaction** or relationship between or among the releasing Party and the Parties herein released and all incidents and consequences thereof.

See Lyman Warehouse **exhibit 5** at p. 5-6 **emphasis** added. In addition to addressing the May 4, 2011 contract, the release affects any claim for damages arising out of any other transaction or relationship between or among the parties. This language is inclusive of the April 7, 2011 contract.

In South Carolina, when the terms of a Release are clear and unambiguous, they are enforced by their terms. Bowers v. Dept. of Transp., 360 S.C. 149, 156, 600 S.E.2d 543, 546 (Ct. App. 2004) ("In construing [a] release, the court must seek to ascertain and give effect to the intention of the parties."). Gardner v. City of Columbia Police Dep't, 216 S.C. 219, 223, 57 S.E.2d 308, 309 (1950); The Wilson Group, Inc. v. Quorum Health Resources, Inc., 880 F.Supp. 416, 425 (D.S.C.1995). S. Glass & Plastics Co. v. Duke, 367 S.C. 421, 428, 626 S.E.2d 19, 22-23 (Ct. App. 2005) (A release is a contract, and the scope of a release is gathered by its terms). Here, the release itself reveals the parties' intent: "It being the specific intent of the releasing Parties ..."

Lyman Warehouse released all claims to the earnest money in exchange for \$27,500. See Exhibit 5 pp. 4-6. As a result of the release, Lyman Warehouse would be unjustly enriched if were to obtain the \$100,000.

5. Lyman Warehouse's claim to the Interpleaded Money

Even if the Release did not end this matter, McWhirter would still be entitled to the interpleaded funds as Lyman Warehouse has failed to prove any damages from the default of the April 7, 2011 contract.¹

Generally, the construction of a contract is a question of law for the court. Soil Remediation Co. v. Nu-Way Envtl., Inc., 325 S.C. 231, 234, 482 S.E.2d 554, 555 (1997). If the language employed by the agreement is plain and unambiguous, the contract should be enforced by its terms. First-Citizens Bank Trust Co. v. Conway Nat'l Bank, 282 S.C. 303, 305, 317 S.E.2d 776, 777 (Ct.App.1984).

The April 7, 2011 contract provides the following remedy for Lyman Warehouse if Pacific does not close:

Remedies For Breach: In the event of default or breach of this Agreement on behalf of Purchaser, Seller's remedy against Purchaser shall be limited to receipt of all monies paid by Purchaser. In other words, if Purchaser does not pay any or all of subsequent payments mentions in paragraph four (4) then Seller's sole remedy for breach against Purchaser shall be limited to all monies paid by the Purchaser thru the date of default.

By its plain terms, the April 7, 2011 contract requires Lyman Warehouse to prove its damages from the Seller's default for up to the amount of monies paid prior to the default. The monies paid prior to default are the \$100,000 dollars.

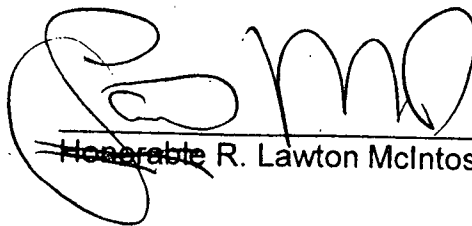
¹ This section addresses Lyman Warehouse's claim to the money held in escrow through the interpleader action and also addresses McWhirter's declaratory judgment action.

At trial, Lyman Warehouse failed to present competent evidence of any damages from Lyman Pacific's default. Rather, evidence was presented that Lyman Warehouse entered into two other contracts, a May 4, 2011 contract and a June 6, 2011 contract. The June 6, 2011 contract closed for more money than the April 7, 2011 contract. See Defendant McWhirter **Exhibits 2, 3, and 4**. As a result, Lyman Warehouse has failed to prove any damages from the default.

CONCLUSION

Based on the foregoing, I find that Lyman Warehouse released any claim it had to the One Hundred Thousand Dollars (\$100,000.00) that is the subject of this action. I further find that even if Lyman Warehouse had not released its claim, Lyman Warehouse failed to prove any damage resulting from Lyman Pacific's default under the April 7, 2011 contract. Accordingly, I find and conclude that McWhirter is entitled to the One Hundred Thousand Dollars (\$100,000.00) held in escrow.

AND IT IS SO ORDERED.



Honorable R. Lawton McIntosh, Presiding Judge

5-7, 2013.
Anderson, South Carolina

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CLERK OF COURT

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-04-00041

FILED-CLERK'S OFFICE
ANDERSON SC

Harold P. Threlkeld, d/b/a Harold P. Threlkeld

2013 JUN - 1 A 11: 32

Lyman Warehouse, LLC, Lyman Pacific, LLC,
Mills Demolition, LLC, Susan C. Stanley, Peter
M. Stanley and Donald J. McWhirter

Attorney

PLAINTIFF(S)

COMMON PLEAS AND
GENERAL SESSIONS

DEFENDANT(S)

Submitted by:

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

A TRUE COPY

JUN 10 2013

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Defendant, Lyman Warehouse, LLC's Motion to Reconsider, Alter or Amend the Court's Order filed May 15, 2013 is denied.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2155

Judge Code

Date

6-6-13

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) CASE NO.: 2012-CP-04- 00041

Harold P. Threlkeld d/b/a Harold P. Threlkeld,
Attorney at Law,

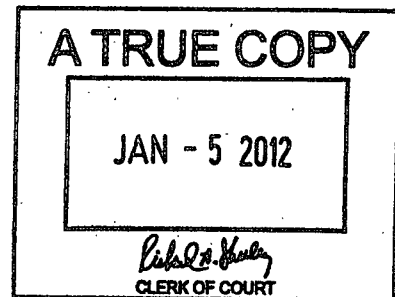
Plaintiff,

vs.

Lyman Warehouse, LLC, Lyman Pacific, LLC,
Mills Demolition, LLC, Susan C. Stanley, Peter
M. Stanley and Donald J. McWhirter,

Defendant.

COMPLAINT
NON-JURY ROSTER



The Plaintiff, complaining against the Defendants, alleges:

BACKGROUND ALLEGATIONS

1. This is a stakeholders action seeking an interpleader pursuant to Rule 22(b), South Carolina Rules of Civil Procedure, for purposes of determining to whom the Plaintiff can safely pay trust funds.

2. Plaintiff is a resident and citizen of and practices law in the County of Anderson, State of South Carolina.

3. The Defendant, Lyman Warehouse, LLC, is a limited liability company organized under the laws of the State of South Carolina with its office and principal place of business in the County of Anderson, State of South Carolina.

4. The Defendant, Lyman Pacific, LLC, is a limited liability company organized under the laws of the State of South Carolina with its office and principal place of business in the County of Charleston, State of South Carolina.

5. The Defendant, Mills Demolition, LLC, is a limited liability company organized under the laws of the State of South Carolina with its office and principal place of business in the County of Greenville, State of South Carolina.

Page #1
HPS

6. The Defendants, Peter M. Stanley and Susan C. Stanley, according to information and belief of Plaintiff are citizens and residents of the County of Greenville, State of South Carolina.

7. The Defendant, Donald J. McWhirter, according to information and belief of the Plaintiff is a citizen and resident of a city and county in the State of New Hampshire.

8. On April 7, 2011, the Defendant, Lyman Warehouse, LLC, owned title to certain (the "Real Property").

9. On April 7, 2011, the Defendant, Lyman Warehouse, LLC, entered into an agreement with Lyman Pacific, LLC for Lyman Warehouse, LLC to sell and Lyman Pacific, LLC to purchase a portion of the Real Property.

10. As a memorial to the agreement, on April 7, 2011 Lyman Warehouse, LLC and Lyman Pacific, LLC entered into an Agreement to Sell and Purchase Real Estate Contract, a copy of which is attached hereto as Exhibit "1", said contract being hereinafter referred to as the "Contract".

11. Pursuant to the Contract, Lyman Pacific, LLC agreed to deposit One hundred thousand dollars (\$100,000.00) earnest money with Harold P. Threlkeld as escrow agent, to be held to bind good faith performance of Lyman Pacific, LLC.

12. On April 7, 2011, Lyman Pacific, LLC delivered to the Plaintiff a check drawn on the account of the Defendant, Donald J. McWhirter, payable to Attorney Harold P. Threlkeld as escrow for good faith performance by Lyman Pacific, LLC, a copy of the check being attached hereto as Exhibit "2".

13. The Plaintiff is holding on deposit in the Plaintiff's trust account the earnest money deposit.

14. Pursuant to the Contract, Lyman Pacific, LLC agreed to close on the purchase and sale on or before May 7, 2011.

15. The Plaintiff is informed and believes that Lyman Pacific, LLC has notified Lyman Warehouse, LLC that it does not intend to close pursuant to the Contract.

16. The Plaintiff is informed and believes that Lyman Pacific, LLC has breached the Contract as contained in the letter of Lyman Pacific, LLC to Lyman Warehouse, LLC, dated May 7, 2011, a copy of which is attached hereto as Exhibit "3".

17. The Plaintiff is informed and believes that the remedy of Lyman Warehouse, LLC in case of breach by Lyman Pacific, LLC is to retain the earnest money as liquidated damages and for the Contract to Terminate.

HJ Page # 2

18. The Defendant, Lyman Warehouse, LLC, has demanded payment of the earnest money held in trust by the Plaintiff. ✓

19. On May 10, 2011, the Plaintiff received a letter on behalf of the Defendant, Lyman Pacific, LLC notifying the Plaintiff that the Defendant, Lyman Pacific, LLC, contends that the Plaintiff as escrow agent has no right to distribute the escrow funds to the Defendant, Lyman Warehouse, LLC, a copy of the letter of Kelly D. H. Lowry, Esquire being attached hereto as Exhibit "4". ✓

20. Because of the dispute that may exist between Lyman Warehouse, LLC and Lyman Pacific, LLC, the Plaintiff, as escrow agent, cannot safely distribute the escrow funds without risk that a court may determine the distribution was improperly made. ✓

FOR A FIRST CAUSE OF ACTION

21. The preceding allegations are made part hereof by this reference.

22. The Defendant, Lyman Warehouse, LLC, demands payment of the earnest money because it contends the Defendant, Lyman Pacific, LLC, has stipulated its default.

23. The Defendant, Lyman Pacific, LLC, indicates that it claims or may claim some right, title or interest in the earnest money because of the lack of authorization by the agent of Lyman Pacific, LLC in consummating this transaction.

24. The Plaintiff is informed and believes that the Defendants, Mills Demolition, LLC, Susan C. Stanley, Peter M. Stanley and Donald J. McWhirter, have or claim to have some right, title and interest in the escrow funds.

25. Because of the counter demands, the Plaintiff cannot safely disburse the earnest money.

26. Because of the risk in disbursing the funds, the Plaintiff is entitled an interpleader of all Defendants by Order requiring the Defendants to assert any claims any one or more of them may have to the earnest money or any part thereof.

FOR A SECOND CAUSE OF ACTION

27. The preceding allegations are made part hereof by this reference.

28. In the event all Defendants other than the Defendant, Lyman Warehouse, LLC, fail to make a claim for any part or all of the escrow funds, the Court order the Plaintiff to pay the balance of the funds to the Defendant, Lyman Warehouse, LLC.

HMM page # 3

FOR A THIRD CAUSE OF ACTION

29. The preceding allegations are made part hereof by this reference.

30. The Plaintiff herein by commencing this action is creating a common fund for the benefit of all parties to this action and therefore benefiting them through this proceeding.

31. Because of the benefit conferred, the Plaintiff is entitled to a reasonable amount of attorney's fees for services rendered in this matter and for the costs of this action.

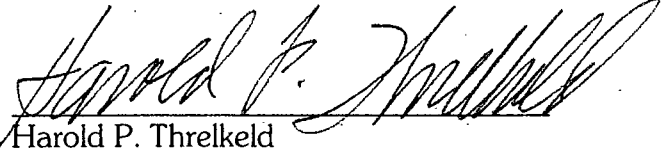
WHEREFORE, Plaintiff prays that:

1. The Court grant interpleader by ordering all Defendants to assert any claim they may have to the escrow funds.

2. In default of claims by Defendants other than Lyman Warehouse, LLC, the Court order the Plaintiff to disburse the funds to the Defendant, Lyman Warehouse, LLC.

3. The Court order payment of reasonable attorney's fees to the Plaintiff for services rendered in this matter and for the costs of this action.

4. For other and further relief as to this Court may seem just and proper.



Harold P. Threlkeld
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Anderson, SC 29622-1385
Telephone No.: 864.226.1305
Fax No.: 864.226.1685
Plaintiff

Anderson, South Carolina
Date: January 4th, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Harold P. Threlkeld d/b/a Harold P.)
Threlkeld, Attorney at Law,)
)
Plaintiff,)

-vs-

Lyman Warehouse, LLC, Lyman Pacific,)
LLC, Mills Demolition, LLC, Susan C.)
Stanley, Peter M. Stanley and Donald J.)
McWhirter,)
)
Defendants.)

ANSWER AND
CROSS-COMPLAINT
2012-CP-04-00041

The Defendant, Lyman Warehouse, LLC, in making an answer to the complaint of the Plaintiff would respectfully show and allege as follows:

FOR A FIRST DEFENSE

AS TO THE BACKGROUND ALLEGATIONS

1. That each and every allegation of the complaint not hereinafter admitted, modified or explained is expressly denied and strict proof demanded thereof.

2. That Paragraphs One (1) through Twenty (20) is admitted.

FOR A SECOND DEFENSE

3. That the allegations of the above defense is incorporated herein by reference thereto.

4. That Paragraphs Twenty-Two (22), Twenty-Five (25) and Twenty-Six (26) are admitted.

5. That Paragraphs Twenty-Three (23) and Twenty-Four (24) are denied.

FOR A THIRD DEFENSE

6. That the allegations of the above defenses are incorporated herein by reference thereto.
7. That Paragraph Twenty-Eight (28) is admitted.

FOR A FOURTH DEFENSE

8. That the allegations of the above defenses are incorporated herein by reference thereto.
9. That Paragraphs Thirty(30) and Thirty-One (31) are admitted.

**FOR A FIFTH DEFENSE AND BY WAY OF CROSS-COMPLAINT
AGAINST THE DEFENDANTS, LYMAN PACIFIC, LLC,
MILLS DEMOLITION, LLC, SUSAN C. STANLEY, PETER M. STANLEY
AND DONALD J. McWHITER**

10. That the allegations of the above defenses are incorporated herein by reference thereto.

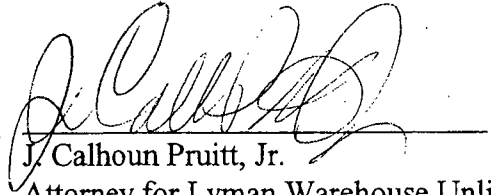
11. That the Defendant, Lyman Warehouse Unlimited, LLC, would show and allege that the Defendant, Lyman Pacific, LLC, defaulted on his contract and should have no further claim to the monies held in escrow by the Plaintiff. That the remaining Defendants had no interest in the funds being held by the Plaintiff and that the court should decree their lack of interest in same.

WHEREFORE, having fully answered the Lyman Warehouse Unlimited, LLC prays as follows:

1. That the Court grant an interpleader relating to the escrow funds.
2. That the right of Lyman Warehouse Unlimited, LLC, to the escrow funds be confirmed.

3. That the Court decree that the other Defendants have no interest in said funds.
4. For such other and further relief as to the Court seems just and proper.

PRUITT & PRUITT

A handwritten signature in dark ink, appearing to read "J. Calhoun Pruitt, Jr.", is written over a horizontal line.

J. Calhoun Pruitt, Jr.
Attorney for Lyman Warehouse Unlimited
101 N. Murray Avenue
Anderson, SC 29625
(864)224-3121

Anderson, South Carolina

February 1, 2012

*served 3/15/12
By mail*

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
COUNTY OF ANDERSON	)	C/A No. 2010-CP-04-4505
Harold P. Threlkeld d/b/a Harold P. Threlkeld, Attorney at Law	)	
Plaintiff,	)	
	)	
Vs.	)	ANSWER & CROSS CLAIM
	)	(Jury Trial Demanded)
Lyman Warehouse, LLC, Lyman Pacific, LLC, Mills Demolition, LLC, Susan C. Stanley, Peter M. Stanley and Donald J. McWhirter.	)	

A TRUE COPY

MAR 13 2012

Diana A. Huley
CLERK OF COURT

COMES NOW, THE DEFENDANT DONALD J. MCWHITER, ("MCWHIRTER") WHO SUBMITS THE FOLLOWING ANSWER, AND CROSS CLAIM AS FOLLOWS:

ANSWER

FOR A FIRST DEFENSE

1. All allegations not specifically herein admitted are denied and strict proof demanded.
2. The contents of paragraph one (1) of the Plaintiff's complaint are hereby admitted.
3. The contents of paragraph two (2) of the Plaintiff's complaint are hereby admitted.
4. The contents of paragraph three (3) of the Plaintiff's complaint are hereby admitted.
5. The contents of paragraph four (4) of the Plaintiff's complaint are hereby admitted.
6. The contents of paragraph five (5) of the Plaintiff's complaint are hereby admitted.

7. Defendant McWhirter is without sufficient knowledge to admit or deny the allegations contained in paragraph six (6) of the Plaintiff's complaint and therefore denies the same demands strict proof.
8. Defendant McWhirter admits the allegations of paragraph eight (7) of the complaint.
9. The contents of paragraph eight (8) of the Plaintiff's complaint are hereby admitted.
10. The contents of paragraph nine (9) of the Plaintiff's complaint are hereby denied and strict proof demanded.
11. The contents of paragraph ten (10) of the Plaintiff's complaint are hereby denied and strict proof demanded.
12. The contents of paragraph eleven (11) of the Plaintiff's complaint are hereby denied and strict proof demanded.
13. Defendant McWhirter admits the allegations of paragraph (12) of the Plaintiff's complaint in that the amount of one hundred thousand (\$100,000) dollars was drawn on his account to serve as escrow money for the contemplated transaction. The remainder of the paragraph is denied and strict proof demanded.
14. Upon information and belief, the allegations contained in paragraph thirteen (13) of the Plaintiff's complaint are true and accurate and therefore admitted.
15. The contents of paragraph fourteen (14) of the Plaintiff's complaint are hereby denied and strict proof demanded.
16. The contents of paragraph fifteen (15) of the Plaintiff's complaint are hereby denied and strict proof demanded.

17. The contents of paragraph sixteen (16) of the Plaintiff's complaint are hereby denied and strict proof demanded.
18. The contents of paragraph seventeen (17) of the Plaintiff's complaint are hereby denied and strict proof demanded.
19. Defendant McWhiter is without knowledge sufficient to form an opinion as to paragraph eighteen (18) of the Plaintiff's complaint and therefore denies the same and demands strict proof.
20. Defendant McWhirter hereby admits the allegations contained in paragraph nineteen (19) of the Plaintiff's complaint.
21. Defendant McWhirter hereby admits and agrees with the allegation contained in paragraph twenty (20) of the Plaintiff's complaint.
22. Paragraph twenty-one (21) of the Plaintiff's complaint makes no allegation and therefore requires no response.
23. Defendant McWhirter admits the allegations contained in paragraphs twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25) and twenty-six (26) of the Plaintiff's complaint insomuch as Defendant McWhirter agrees that there is a real dispute over the disposition of the earnest money and therefore request that the funds be interplead the funds unto the Clerk of Court for Anderson County, South Carolina. The remainder of the allegations contained in paragraphs twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25) and twenty-six (26) of the Plaintiff's complaint are denied and strict proof demanded.
24. Defendant McWhirter denies the allegations contained in paragraphs twenty-seven (27) and twenty-eight (28) of the Plaintiff's complaint. Defendant

McWhirter objects to the escrow proceeds being distributed prior to the full adjudication of this case.

25. The Defendant denies the allegations contained in paragraphs twenty-nine (29), thirty (30) and thirty-one (31) of the Plaintiff's complaint and demands strict proof.

FOR A SECOND DEFENSE

26. Retention of the \$100,000 earnest money would be an unenforceable penalty banned by South Carolina law.

FOR A THIRD DEFENSE AND BY WAY OF A CROSSCLAIM
(Breach of Contract as to Lyman Warehouse, LLC)

27. The preceding paragraphs are incorporated by reference herein as if stated verbatim.
28. Defendants McWhirter, Stanley and Edwards ("The Partners") entered into a partnership agreement for the purpose of demolishing old mills in the Carolinas for their salvage value.
29. To effectuate their plans the, Peter Stanley, acting in his capacity as a partner formed a Limited Liability Corporation under the laws of South Carolina named Lyman Pacific, LLC.
30. The property was placed under contract with Lyman Pacific, LLC as the purchaser and Lyman Warehouse, LLC as the seller.
31. Defendant McWhirter, individually placed one hundred thousand (\$100,000) dollars as earnest money for the contractual relationship. The partners agreed that should the property not close that Defendant McWhirter would have his earnest money returned.

32. The contract also called for the seller to furnish to the Partners any abstracts of title or other documents in its possession that will facilitate obtaining of title insurance.
33. Seller failed to provide any abstracts or other documents in its possession to the Partners.
34. As a result of Seller's failure to abide by the contract, the property did not close and McWhirter is entitled to return of his \$100,000 along with pre-judgment interest.

FOR A FOURTH DEFENSE AND BY WAY OF A CROSSCLAIM
(Unjust Enrichment as to Lyman Warehouse, LLC)

35. The preceding paragraphs are incorporated by reference herein as if stated verbatim.
36. Defendant McWhirter deposited one hundred thousand and no/100 (\$100,000.00) dollars into Attorney Threlkeld's trust account as a deposit for the purchase of property owned by Lyman Warehouse, LLC.
37. The property was under contract from April 7, 2011 until May 7, 2011 when it became clear that the transaction would not be consummated between the parties.
38. The benefit of one hundred thousand and no/100 (\$100,000.00) dollars will be conferred to Lyman Warehouse, LLC if this entity is allowed to retain the deposit.
39. Such a benefit would be realized should the funds in the Trust account of Harold Threlkeld, Attorney at Law are allowed to be disbursed the funds to Lyman Warehouse, LLC.
40. It is unjust and inequitable for Lyman Warehouse, LLC to retain such a large sum of money given the fact that the property was removed from the Real Estate market for only thirty (30) days.
41. Defendant McWhirter alleges that the funds held in trust should therefore be returned to him under the theory of Quantum Meruit.

FOR A FIFTH DEFENSE AND BY WAY OF A CROSSCLAIM
(Declaratory Judgment as to all Parties)

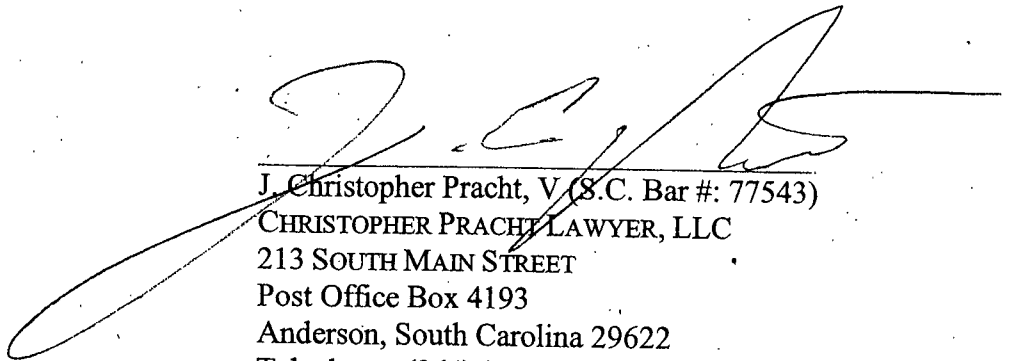
42. This cause of action seeks a declaratory judgment pursuant to South Carolina Code Ann. § 15-53-30, and Rule 57 of the South Carolina Rules of Civil Procedure, for the purposes of determining a question of actual controversy between the parties.
43. South Carolina Code Ann. § 15-53-30 provides that any party whose rights or status have been affected by a contract may have determined any question of construction or validity arising under the contract, and obtain a declaration of rights, status or other legal relations.
44. There is an actual controversy as to who is entitled to the one hundred thousand (\$100,000) dollars now sitting in the trust account of the Plaintiff. Defendant McWhirter asserts herein that he is entitled to the one hundred thousand (\$100,000) dollars.
45. Defendant McWhirter further asserts that any claim competing claim for the \$100,000 fails in law and equity.
46. It is specifically alleged that Lyman Warehouse did not fulfill its obligations under the contract and is not entitled to any of the one hundred thousand (\$100,000) dollars in escrow.
47. Defendant McWhirter further alleges that the partners of Lyman Pacific, LLC had an agreement that McWhirter would have the one hundred thousand (\$100,000) dollars returned if the transaction was not consummated; therefore Defendant McWhirter asserts that he is the only party to this action entitled to the proceeds held in trust.

**WHEREFORE DEFENDANT MCWHIRTER REQUEST THAT THIS
HONORABLE COURT FOR AN ORDER GRANTING THE FOLLOWING
RELIEF:**

- a) Directing that the Plaintiff pay the sums held in his trust account to Defendant McWhirter.
- b) Finding that the Defendant Lyman Warehouse, LLC breached the contract with Lyman Pacific, LLC.

- c) Ordering that Defendant Lyman Warehouse, LLC pay pre-judgment interest to Defendant McWhirter on the sum of one hundred thousand (\$100,000) dollars.
- d) Finding that no other party, excepting Defendant McWhirter has a claim to the funds held in the trust account of the Plaintiff.
- e) For attorneys fees and costs as allowed by contract or statute.
- f) For a trial by jury as permitted by law.
- g) For such other relief as the Court deems just and proper.

Respectfully submitted,



J. Christopher Pracht, V (S.C. Bar #: 77543)
CHRISTOPHER PRACHT LAWYER, LLC
213 SOUTH MAIN STREET
Post Office Box 4193
Anderson, South Carolina 29622
Telephone: (864) 965-9660
Fax: (864) 965-9661

Peter Protopapas (S.C. Bar # 68304)
Rikard & Protopapas
PO Box 6640
Columbia, SC 29250

Dated: 3/13/12
Anderson, South Carolina.

**ATTORNEYS FOR DEFENDANT
MCWHIRTER**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

ANDERSON COUNTY

HAROLD P. THRELKELD d/b/a HAROLD
P. THRELKELD, Attorney at Law,

Plaintiff,

v.

LYMAN WAREHOUSE, LLC, LYMAN
PACIFIC, LLC, MILLS DEMOLITION,
LLC, SUSAN C. STANLEY, PETER M.
STANLEY and DONALD J. MCWHIRTER,

Defendant(s).

**REPLY TO CROSSCLAIM
OF LYMAN WAREHOUSE, LLC**

C/A No. 2012-CP-04-0041

NOW COMES the Defendants Lyman Pacific, LLC, Mills Demolition, LLC, Susan C. Stanley and Peter M. Stanley (the "Defendants"), responding to the allegations contained in the Cross Claims of Defendant Lyman Warehouse, LLC and says as follows:

FOR A GENERAL DEFENSE

(General Denial)

1. Defendants deny each and every allegation of the answer and cross claims not hereinafter expressly admitted, denied or otherwise addressed or explained.

FOR A SECOND DEFENSE

(Explicit Answers)

2. The foregoing paragraph is hereby reasserted as if restated verbatim as part of this defense.

Responding to the Fifth Defense – First Cross Claim Cause of Action

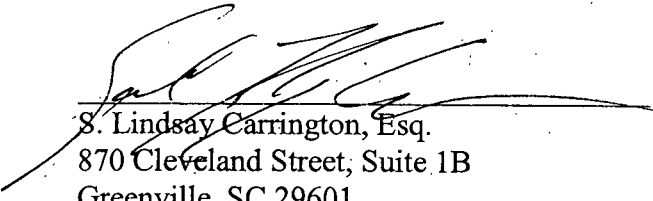
3. The preceding responses are incorporated herein and made a part hereof by reference.

4. Specifically responding to the allegations of Paragraph 11, Defendants admit that Lyman Pacific, LLC placed the subject property under a contract to purchase with Lyman Warehouse, LLC and that Lyman Warehouse, LLC breached said contract entitling Defendants to a return of the funds. Except as admitted, the allegations of Paragraph 11 are denied.

WHEREFORE, the Defendants pray this Court grant the following relief:

1. That it inquire into the matters set forth herein and make a determination on the matter;
2. That it award the escrow monies to the Defendants;
3. For such other and further relief as this Court deems necessary, just and proper.

BELL CARRINGTON, LLC



S. Lindsay Carrington, Esq.
870 Cleveland Street, Suite 1B
Greenville, SC 29601
P: (864) 272-0556
E: lindsaycarrington@bellcarrington.com
Attorney for the Defendants

March 21, 2012
Greenville, S.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

ANDERSON COUNTY

HAROLD P. THRELKELD d/b/a HAROLD)
P. THRELKELD, Attorney at Law,)
)
Plaintiff,)

v.)

LYMAN WAREHOUSE, LLC, LYMAN)
PACIFIC, LLC, MILLS DEMOLITION,)
LLC, SUSAN C. STANLEY, PETER M.)
STANLEY and DONALD J. MCWHIRTER,)
)
Defendant(s).)

**REPLY TO CROSSCLAIMS
OF DONALD J. MCWHIRTER**

) C/A No. 2012-CP-04-0041

NOW COMES the Defendants Lyman Pacific, LLC, Mills Demolition, LLC, Susan C. Stanley and Peter M. Stanley (the "Defendants"), responding to the allegations contained in the Answer and Cross Claims of Defendant Donald J. McWhirter and says as follows:

FOR A GENERAL DEFENSE
(General Denial)

1. Defendants deny each and every allegation of the answer and cross claims not hereinafter expressly admitted, denied or otherwise addressed or explained.

FOR A SECOND DEFENSE
(Explicit Answers)

2. The foregoing paragraph is hereby reasserted as if restated verbatim as part of this defense.

Responding to the Third Defense – First Cross Claim Cause of Action

3. The preceding responses are incorporated herein and made a part hereof by reference.

4. Specifically responding to the allegations of Paragraphs 28-34, Defendants admit that Lyman Pacific, LLC placed the subject property under a contract to purchase with Lyman Warehouse, LLC and that Lyman Warehouse, LLC breached said contract entitling Defendants to a return of the funds. Except as admitted, the allegations of Paragraphs 28-34 are denied.

Responding to the Fourth Defense – Second Cross Claim Cause of Action

5. The preceding responses are incorporated herein and made a part hereof by reference.

6. Specifically responding to the allegations of Paragraphs 36-41, Defendants admit that Lyman Pacific, LLC placed the subject property under a contract to purchase with Lyman Warehouse, LLC and that Lyman Warehouse, LLC breached said contract entitling Defendants to a return of the funds. Except as admitted, the allegations of Paragraphs 36-41 are denied.

Responding to the Fifth Defense – Third Cross Claim Cause of Action

7. The preceding responses are incorporated herein and made a part hereof by reference.

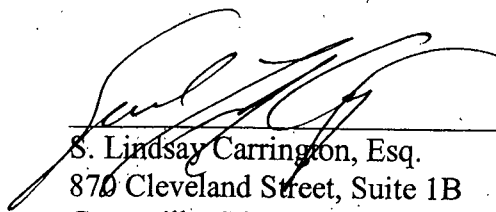
8. Specifically responding to the allegations of Paragraph 43-44, Defendants assert that the allegations contained therein are conclusions of law to which no response is needed. To the extent a response is deemed necessary, the allegations are denied.

9. Specifically responding to the allegations of Paragraph 45-47, Defendants admit that Lyman Pacific, LLC placed the subject property under a contract to purchase with Lyman Warehouse, LLC and that Lyman Warehouse, LLC breached said contract entitling Defendants to a return of the funds. Except as admitted, the allegations of Paragraphs 36-41 are denied.

WHEREFORE, the Defendants pray this Court grant the following relief:

1. That it inquire into the matters set forth herein and make a determination on the matter;
2. That it award the escrow monies to the Defendants;
3. For such other and further relief as this Court deems necessary, just and proper.

BELL CARRINGTON, LLC



S. Lindsay Carrington, Esq.
870 Cleveland Street, Suite 1B
Greenville, SC 29601
P: (864) 272-0556
E: lindsaycarrington@bellcarrington.com
Attorney for the Defendants

March 21, 2012
Greenville, S.C.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF ANDERSON) CASE NO.: 2012-CP-04-00041

Harold P. Threlkeld d/b/a Harold P. Threlkeld,)
 Attorney at Law,)

Plaintiff,)

vs.)

Lyman Warehouse, LLC, Lyman Pacific, LLC,)
 Mills Demolition, LLC, Susan C. Stanley, Peter)
 M. Stanley and Donald J. McWhirter,)

Defendant.)

REPLY TO ANSWER AND
 CROSS CLAIM OF DEFENDANT,
 DONALD J. McWHIRTER

The Plaintiff, replying to the Cross Claim of the Defendant, Donald J. McWhirter ("McWhirter"), alleges:

1. The Plaintiff denies each and every allegation of the McWhirter Cross Claim not hereinafter expressly admitted.

2. Plaintiff denies the allegations of paragraph 27 of the Third Defense and By Way of Cross Claim of the Defendant McWhirter.

3. Plaintiff lacks sufficient knowledge and information with which to form an opinion or belief concerning the truth or accuracy of the allegations of paragraph 28 of the Third Defense and By Way of Cross Claim, therefore denies the same.

4. Plaintiff lacks sufficient knowledge and information with which to form an opinion or belief concerning the truth or accuracy of the allegations of paragraph 29 of the Third Defense and By Way of Cross Claim, therefore denies the same.

5. Plaintiff admits the allegations of paragraph 30 of the Third Defense and By Way of Cross Claim.

6. Plaintiff lacks sufficient knowledge and information with which to form an opinion or belief concerning the truth or accuracy of the allegations of paragraph 31 of the Third Defense and By Way of Cross Claim of Defendant McWhirter, therefore denies the same.

7. Plaintiff lacks sufficient knowledge and information with which to form an opinion or belief concerning the truth or accuracy of the allegations of paragraph 32 of the Third Defense and By Way of Cross Claim of Defendant McWhirter, therefore denies the same.

8. Plaintiff lacks sufficient knowledge and information with which to form an opinion or belief concerning the truth or accuracy of the allegations of paragraph 33 of the Third Defense and By Way of Cross Claim of Defendant McWhirter, therefore denies the same.

9. Plaintiff lacks sufficient knowledge and information with which to form an opinion or belief concerning the truth or accuracy of the allegations of paragraph 34 of the Third Defense and By Way of Cross Claim of Defendant McWhirter, therefore denies the same.

10. Plaintiff denies the allegations of paragraph 35 of the Fourth Defense and By Way of Cross of Defendant McWhirter and demands strict proof thereof.

11. Plaintiff lacks sufficient knowledge and information with which to form an opinion or belief concerning the truth or accuracy of the allegations of paragraph 36 of the Fourth Defense and By Way of Cross Claim, therefore denies the same.

12. Plaintiff admits so much of the allegations of paragraph 37 of the Fourth Defense and By Way of Cross Claim of Defendant McWhirter as alleges the sale and purchase contemplated by the contract was never consummated. The remaining allegations of paragraph 37 are denied.

13. The Plaintiff lacks sufficient knowledge and information with which to form an opinion or belief concerning the truth or accuracy of the allegations of paragraph 38 of the Fourth Defense and By Way of Cross Claim of Defendant McWhirter, therefore denies the same.

14. The Plaintiff denies the allegations of paragraph 39 of the Fourth Defense and By Way of Cross Claim of Defendant McWhirter.

15. The Plaintiff lacks sufficient knowledge and information with which to form an opinion or belief concerning the truth or accuracy of the allegations of paragraph 40 of the Fourth Defense and By Way of Cross Claim of Defendant McWhirter, therefore denies the same.

16. The Plaintiff denies the allegations of paragraph 41 of the Fourth Defense and By Way of Cross Claim of Defendant McWhirter and demands strict proof thereof.

17. The Plaintiff denies the allegations of paragraph 42 of the Fifth Defense and By Way of Cross Claim of Defendant McWhirter and demands strict proof thereof.

18. The Plaintiff denies the allegations of paragraph 43 of the Fifth Defense and By Way of Cross Claim of Defendant McWhirter and demands strict proof thereof.

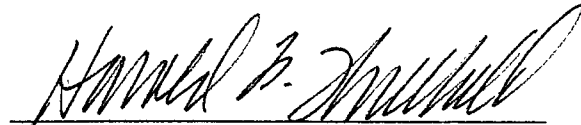
19. The Plaintiff denies the allegations of paragraph 44 of the Fifth Defense and By Way of Cross Claim and Defendant McWhirter and demands strict proof thereof.

20. The Plaintiff denies the allegations of paragraph 45 of the Fifth Defense and By Way of Cross Claim of Defendant McWhirter and demands strict proof thereof.

21. The Plaintiff lacks sufficient knowledge and information with which to form an opinion or belief concerning the truth or accuracy of the allegations of paragraph 46 of the Fifth Defense and By Way of Cross Claim of Defendant McWhirter, therefore denies the same.

22. The Plaintiff denies the allegations of paragraph 47 of the Fifth Defense and By Way of Cross Claim of Defendant McWhirter and demands strict proof therefore.

WHEREFORE, Plaintiff, having fully replied, prays that the Cross Claim of Defendant McWhirter be dismissed and for other and further relief as to this court may seem just and proper.



Harold P. Threlkeld
P. O. Box 1385
Anderson, SC 29622-1385
Telephone No.: 864.226.1305
Fax No.: 864.226.1685
Plaintiff

Anderson, South Carolina
Date: March 22, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Harold P. Threlkeld d/b/a Harold P.)
Threlkeld, Attorney at Law,)
)
Plaintiff,)

-vs-

Lyman Warehouse, LLC, Lyman Pacific,)
LCC, Mills Demolition, LLC, Susan C.)
Stanley, Peter M. Stanley and Donald J.)
McWhirter,)
)
Defendants.)

ANSWER TO CROSS-CLAIM
OF DEFENDANT,
DONALD J. McWHIRTER
2012-CP-04-00041

The Defendant Lyman Warehouse, LLC, in making an answer to the cross claim of the Defendant Donald J. McWhirter, would respectfully show and allege as follows:

FOR A FIRST DEFENSE

1. That each and every allegation of the cross claim not hereinafter admitted, modified or explained is expressly denied and strict proof demanded thereof.
2. That Paragraphs Twenty-Eight (28) and Twenty-Nine (29) are denied on lack of information and belief.
3. That Paragraph Thirty (30) is admitted.
4. That Paragraph Thirty-One (31) is denied except that in behalf of Lyman Pacific, Defendant McWhirter, deposited earnest money with Harold Threlkeld. The remainder of said paragraph is denied and is irrelevant to this action.
5. That Paragraphs Thirty-Two (32) and Thirty-Four (34) are denied, except that if the seller had any abstract of title in its possession, it would have forwarded same, except that the

seller did not possess any such documents or any other documents that would facilitate the obtaining of title insurance.

6. That Paragraph Thirty-Four (34) is denied.

FOR A SECOND DEFENSE

7. That the allegations of the above defenses are incorporated herein by reference thereto.

8. That Paragraphs Thirty-Six (36) is denied except that McWhirter in behalf of Lyman Pacific deposited said funds in Harold Threlkeld's escrow account.

9. That Paragraphs Thirty-Seven (37), Thirty-Eight (38), Thirty-Nine (39) are admitted.

10. That Paragraphs Forty (40) and Forty-One (41) are denied.

FOR A THIRD DEFENSE

11. That the allegations of the above defenses are incorporated herein by reference thereto.

12. That Paragraphs Forty-Two (42) and Forty-Three (43) are admitted.

13. That Paragraph Forty-Four (44) is denied except for it is admitted that Defendant McWhirter asserts an interest in same.

14. That Paragraph Forty-Six (46) is denied.

15. That Paragraph Forty-Seven (47) is denied and that the Defendant Lyman Warehouse suggests that the Defendant McWhirter seek his remedy from Lyman Pacific, LLC.

FOR A FOURTH DEFENSE

16. That the allegations of the above defenses are incorporated herein by reference thereto.

17. That the true party in interest in the real estate transaction described herein is Lyman Pacific, LLC, and that the managing member of Lyman Pacific, LLC expressly authorized the

distribution of funds to Lyman Warehouse, LLC as described in Exhibit 3, attached to the complaint.

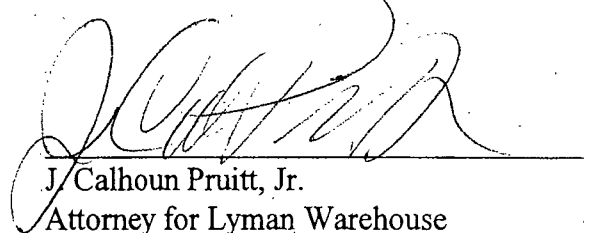
18. That the Defendant Lyman Warehouse pleads said letter as a contract authorizing the release of said funds and ratifying the original contract of May 7th and it's terms relative to liquidated damages.

19. That in addition to the letter as described in Paragraph 18 above, the principal Lyman Pacific, LLC, released Lyman Warehouse, LLC from any and all claims then and there existing as of May 27, 2011, and that said release is a bar to the interest of Lyman Pacific in said funds and said release likewise bars the Defendant McWhirter.

WHEREFORE, the Defendant Lyman Warehouse having fully answered prays as follows:

1. That the cross claim of the Defendant McWhirter be dismissed.
2. That the court order the Plaintiff to pay over to it the sums held in escrow.
3. For reasonable attorney's fees and costs.
4. For such other and further relief as to the court seems just and proper.

PRUITT & PRUITT



J. Calhoun Pruitt, Jr.
Attorney for Lyman Warehouse
101 N. Murray Avenue
Anderson, SC 29625
(864)224-3121

Anderson, South Carolina

April 3, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Harold P. Threlkeld d/b/a Harold P.
Threlkeld, Attorney at Law,

Plaintiff,

-vs-

Lyman Warehouse, LLC, Lyman Pacific,
LCC, Mills Demolition, LLC, Susan C.
Stanley, Peter M. Stanley and Donald J.
McWhirter,

Defendants.

AMENDED
ANSWER TO CROSS-CLAIM
OF DEFENDANT,
DONALD J. McWHIRTER
2012-CP-04-00041

The Defendant Lyman Warehouse, LLC, in making an amended answer to the cross claim of the Defendant Donald J. McWhirter, would respectfully show and allege as follows:

FOR A FIRST DEFENSE

1. That each and every allegation of the cross claim not hereinafter admitted, modified or explained is expressly denied and strict proof demanded thereof.
2. That Paragraphs Twenty-Eight (28) and Twenty-Nine (29) are denied on lack of information and belief.
3. That Paragraph Thirty (30) is admitted.
4. That Paragraph Thirty-One (31) is denied except that in behalf of Lyman Pacific, Defendant McWhirter, deposited earnest money with Harold Threlkeld. The remainder of said paragraph is denied and is irrelevant to this action.

5. That Paragraphs Thirty-Two (32) and Thirty-Four (34) are denied, except that if the seller had any abstract of title in its possession, it would have forwarded same, except that the seller did not possess any such documents or any other documents that would facilitate the obtaining of title insurance.

6. That Paragraph Thirty-Four (34) is denied.

FOR A SECOND DEFENSE

7. That the allegations of the above defenses are incorporated herein by reference thereto.

8. That Paragraphs Thirty-Six (36) is denied except that McWhirter in behalf of Lyman Pacific deposited said funds in Harold Threlkeld's escrow account.

9. That Paragraphs Thirty-Seven (37), Thirty-Eight (38), Thirty-Nine (39) are admitted.

10. That Paragraphs Forty (40) and Forty-One (41) are denied.

FOR A THIRD DEFENSE

11. That the allegations of the above defenses are incorporated herein by reference thereto.

12. That Paragraphs Forty-Two (42) and Forty-Three (43) are admitted.

13. That Paragraph Forty-Four (44) is denied except for it is admitted that Defendant McWhirter asserts an interest in same.

14. That Paragraph Forty-Six (46) is denied.

15. That Paragraph Forty-Seven (47) is denied and that the Defendant Lyman Warehouse suggests that the Defendant McWhirter seek his remedy from Lyman Pacific, LLC.

FOR A FOURTH DEFENSE

16. That the allegations of the above defenses are incorporated herein by reference thereto.

17. That the true party in interest in the real estate transaction described herein is Lyman Pacific, LLC, and that the managing member of Lyman Pacific, LLC expressly authorized the distribution of funds to Lyman Warehouse, LLC as described in Exhibit 3, attached to the complaint.

18. That the Defendant Lyman Warehouse pleads said letter as a contract authorizing the release of said funds and ratifying the original contract of May 7th and it's terms relative to liquidated damages.

19. That in addition to the letter as described in Paragraph 18 above, the principal Lyman Pacific, LLC, released Lyman Warehouse, LLC from any and all claims then and there existing as of May 27, 2011, and that said release is a bar to the interest of Lyman Pacific in said funds and said release likewise bars the Defendant McWhirter.

FOR A FIFTH DEFENSE

20. That the allegations of the above defenses are incorporated herein by reference thereto.

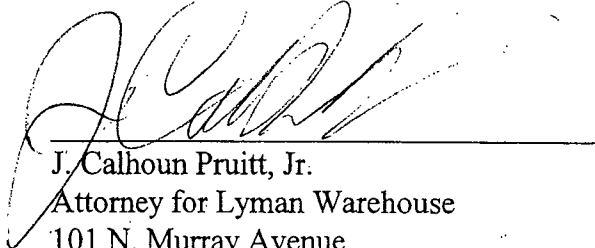
21. That the Defendant Donald J. McWhirter has no standing to complain of any actions between Lyman Warehouse, LLC and Lyman Pacific, LLC in that he is not a party to the contract and any rights that he might have would be derivative of the rights of Lyman Pacific, LLC.

WHEREFORE, the Defendant Lyman Warehouse having fully answered prays as follows:

1. That the cross claim of the Defendant McWhirter be dismissed
2. That the court order the Plaintiff to pay over to it the sums held in escrow.

3. For reasonable attorney's fees and costs.
4. For such other and further relief as to the court seems just and proper.

PRUITT & PRUITT



J. Calhoun Pruitt, Jr.
Attorney for Lyman Warehouse
101 N. Murray Avenue
Anderson, SC 29625
(864)224-3121

Anderson, South Carolina

April 18, 2012

7. Defendant McWhirter is without sufficient knowledge to admit or deny the allegations contained in paragraph six (6) of the Plaintiff's complaint and therefore denies the same demands strict proof.
8. Defendant McWhirter admits the allegations of paragraph eight (7) of the complaint.
9. The contents of paragraph eight (8) of the Plaintiff's complaint are hereby admitted.
10. The contents of paragraph nine (9) of the Plaintiff's complaint are hereby denied and strict proof demanded.
11. The contents of paragraph ten (10) of the Plaintiff's complaint are hereby denied and strict proof demanded.
12. The contents of paragraph eleven (11) of the Plaintiff's complaint are hereby denied and strict proof demanded.
13. Defendant McWhirter admits the allegations of paragraph (12) of the Plaintiff's complaint in that the amount of one hundred thousand (\$100,000) dollars was drawn on his account to serve as escrow money for the contemplated transaction. The remainder of the paragraph is denied and strict proof demanded.
14. Upon information and belief, the allegations contained in paragraph thirteen (13) of the Plaintiff's complaint are true and accurate and therefore admitted.
15. The contents of paragraph fourteen (14) of the Plaintiff's complaint are hereby denied and strict proof demanded.
16. The contents of paragraph fifteen (15) of the Plaintiff's complaint are hereby denied and strict proof demanded.

17. The contents of paragraph sixteen (16) of the Plaintiff's complaint are hereby denied and strict proof demanded.
18. The contents of paragraph seventeen (17) of the Plaintiff's complaint are hereby denied and strict proof demanded.
19. Defendant McWhiter is without knowledge sufficient to form an opinion as to paragraph eighteen (18) of the Plaintiff's complaint and therefore denies the same and demands strict proof.
20. Defendant McWhirter hereby admits the allegations contained in paragraph nineteen (19) of the Plaintiff's complaint.
21. Defendant McWhirter hereby admits and agrees with the allegation contained in paragraph twenty (20) of the Plaintiff's complaint.
22. Paragraph twenty-one (21) of the Plaintiff's complaint makes no allegation and therefore requires no response.
23. Defendant McWhirter admits the allegations contained in paragraphs twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25) and twenty-six (26) of the Plaintiff's complaint insomuch as Defendant McWhirter agrees that there is a real dispute over the disposition of the earnest money and therefore request that the funds be interplead the funds unto the Clerk of Court for Anderson County, South Carolina. The remainder of the allegations contained in paragraphs twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25) and twenty-six (26) of the Plaintiff's complaint are denied and strict proof demanded.
24. Defendant McWhirter denies the allegations contained in paragraphs twenty-seven (27) and twenty-eight (28) of the Plaintiff's complaint. Defendant

McWhirter objects to the escrow proceeds being distributed prior to the full adjudication of this case.

25. The Defendant denies the allegations contained in paragraphs twenty-nine (29), thirty (30) and thirty-one (31) of the Plaintiff's complaint and demands strict proof.

FOR A SECOND DEFENSE

26. Retention of the \$100,000 earnest money would be an unenforceable penalty banned by South Carolina law.

FOR A THIRD DEFENSE AND BY WAY OF A CROSSCLAIM
(Breach of Contract as to Lyman Warehouse, LLC)

27. The preceding paragraphs are incorporated by reference herein as if stated verbatim.
28. Defendants McWhirter, Stanley and Edwards ("The Partners") entered into a partnership agreement for the purpose of demolishing old mills in the Carolinas for their salvage value.
29. To effectuate their plans the, Peter Stanley, acting in his capacity as a partner formed a Limited Liability Corporation under the laws of South Carolina named Lyman Pacific, LLC.
30. The property was placed under contract with Lyman Pacific, LLC as the purchaser and Lyman Warehouse, LLC as the seller.
31. Defendant McWhirter, individually placed one hundred thousand (\$100,000) dollars as earnest money for the contractual relationship. The partners agreed that should the property not close that Defendant McWhirter would have his earnest money returned.

32. The contract also called for the seller to furnish to the Partners any abstracts of title or other documents in its possession that will facilitate obtaining of title insurance.
33. Seller failed to provide any abstracts or other documents in its possession to the Partners.
34. To the extent that Lyman Warehouse asserts that McWhirter is a stranger to the contract, the contract between the Lyman Pacific and Lyman Warehouse was made for the benefit of McWhirter.
35. The contract was knowingly going to directly benefit McWhirter as evidenced by his check for \$100,000.
36. McWhirter is not a stranger to the contract but rather an essential party to the contract.
37. McWhirter is the real party in interest to the contract and the money held in escrow.
38. As a result of Seller's failure to abide by the contract, the property did not close and McWhirter is entitled to return of his \$100,000 along with pre-judgment interest.

FOR A FOURTH DEFENSE AND BY WAY OF A CROSSCLAIM
(Unjust Enrichment as to Lyman Warehouse, LLC)

39. The preceding paragraphs are incorporated by reference herein as if stated verbatim.
40. Defendant McWhirter deposited one hundred thousand and no/100 (\$100,000.00) dollars into Attorney Threlkeld's trust account as a deposit for the purchase of property owned by Lyman Warehouse, LLC.

41. The property was under contract from April 7, 2011 until May 7, 2011 when it became clear that the transaction would not be consummated between the parties.
42. The benefit of one hundred thousand and no/100 (\$100,000.00) dollars will be conferred to Lyman Warehouse, LLC if this entity is allowed to retain the deposit.
43. Such a benefit would be realized should the funds in the Trust account of Harold Threlkeld, Attorney at Law are allowed to be disbursed the funds to Lyman Warehouse, LLC.
44. It is unjust and inequitable for Lyman Warehouse, LLC to retain such a large sum of money given the fact that the property was removed from the Real Estate market for only thirty (30) days.
45. Defendant McWhirter alleges that the funds held in trust should therefore be returned to him under the theory of Quantum Merit.

FOR A FIFTH DEFENSE AND BY WAY OF A CROSSCLAIM

(Declaratory Judgment as to all Parties)

46. This cause of action seeks a declaratory judgment pursuant to South Carolina Code Ann. § 15-53-30, and Rule 57 of the South Carolina Rules of Civil Procedure, for the purposes of determining a question of actual controversy between the parties.
47. South Carolina Code Ann. § 15-53-30 provides that any party whose rights or status have been affected by a contract may have determined any question of construction or validity arising under the contract, and obtain a declaration of rights, status or other legal relations.

48. There is an actual controversy as to who is entitled to the one hundred thousand (\$100,000) dollars now sitting in the trust account of the Plaintiff.
- Defendant McWhirter asserts herein that he is entitled to the one hundred thousand (\$100,000) dollars.
49. Defendant McWhirter further asserts that any claim competing claim for the \$100,000 fails in law and equity.
50. It is specifically alleged that Lyman Warehouse did not fulfill its obligations under the contract and is not entitled to any of the one hundred thousand (\$100,000) dollars in escrow.
51. Defendant McWhirter further alleges that the partners of Lyman Pacific, LLC had an agreement that McWhirter would have the one hundred thousand (\$100,000) dollars returned if the transaction was not consummated; therefore Defendant McWhirter asserts that he is the only party to this action entitled to the proceeds held in trust.

FOR A SIXTH DEFENSE AND BY WAY OF CROSS CLAIM

**(Civil Conspiracy as to Lyman Warehouse, Mills Demolition,
Lyman Pacific and Stanley)**

52. The preceding paragraphs are incorporated by reference herein as if stated verbatim.
53. Lyman Warehouse (Warehouse), Mills Demolition (Mills), Lyman Pacific (Pacific), and Stanley (collectively referred to as "Conspirators") entered into a civil conspiracy against Defendant McWhirter.
54. Conspirators joined together for the purposes of injuring McWhirter and taking his \$100,000 and depriving him of a business opportunity.

granted

55. Conspirators did so covertly and clandestinely by hiding the true nature of their intentions.

56. In particular, Conspirators entered into a second contract on May 4, 2011 while the first contract was pending to close on May 7, 2011.

57. Conspirators were directly acting to prevent the May 7, 2011 closing from occurring so that they could then take the \$100,000 in escrow.

58. In furtherance of the conspiracy and in addition to the second contract, Conspirators exchanged correspondence whereby they "agreed" to "forfeit" the \$100,000 in escrow that is the subject of this action while at the same time posturing that an extension was being requested. The sequence of events are as follows:

April 7, 2011 Pacific through Stanley and Warehouse enter into a sales contract;

Donald McWhirter tenders a check for 100,000 to be held in escrow

April 30, 2011 Stanley sends correspondence stating that it will forfeit the \$100,000 if the sale does not close on May 7, 2011 and that it recognizes time is of the essence.

May 3, 2011 Stanley purportedly requests an extension of the closing date to May 14th.

May 4, 2011 Peter Stanley, through a second company he controls, Mills, enters into a contract with Warehouse for the same property.

May 7, 2011 Stanley sends a second letter on behalf of Pacific to Warehouse echoing the April 30th correspondence.

May 27, 2011 Stanley, Pacific, Mills, Warehouse and others enter into an agreement releasing each other of claims for payments totaling \$50,000.

59. The above sequence of events was an elaborate scheme to steal McWhirter's \$100,000 and prevent McWhirter from making significant profits on the property, which caused special damage to him, his business, and his reputation.
60. As a direct and proximate result of Conspirators actions, McWhirter has suffered direct damages, special damages in the form of lost profits, loss of business reputation and injury to business.

FOR A SEVENTH DEFENSE BY WAY OF CROSSCLAIM

(Breach of fiduciary duty as to Lyman Pacific and Stanley)

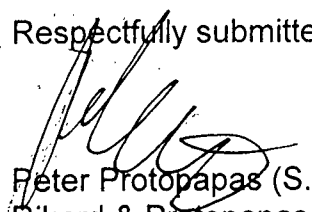
61. The preceding paragraphs are incorporated by reference herein as if stated verbatim.
62. To the extent that Lyman Pacific and McWhirter fail to secure the return of the \$100,000, such is the result of Pacific's and Stanley's breach of its fiduciary duties to McWhirter.
63. McWhirter placed trust and confidence in the integrity and fidelity of Stanley and Pacific.
64. McWhirter believed that Stanley and Pacific were protecting McWhirter's interest in the property, contract, and McWhirter's \$100,000.
65. If the \$100,000 is lost, it would be lost due to the actions of Stanley and Pacific without communication or coordination with McWhirter.
66. In particular, Stanley and Pacific did not advise McWhirter of their correspondence to Warehouse, their May 4th contract with Pacific, nor of the "settlement" of all claims.

67. As a direct and proximate result, of Pacific and Stanley's actions, McWhirter has suffered direct and proximate damages in an amount be proven at trial.

**WHEREFORE DEFENDANT MCWHIRTER REQUEST THAT THIS
HONORABLE COURT FOR AN ORDER GRANTING THE FOLLOWING
RELIEF:**

- a) Directing that the Plaintiff pay the sums held in his trust account to Defendant McWhirter.
- b) Finding that the Defendant Lyman Warehouse, LLC breached the contract with Lyman Pacific, LLC.
- c) Ordering that Defendant Lyman Warehouse, LLC pay pre-judgment interest to Defendant McWhirter on the sum of one hundred thousand (\$100,000) dollars.
- d) Finding that no other party, excepting Defendant McWhirter has a claim to the funds held in the trust account of the Plaintiff.
- e) Finding for McWhirter on all of his crossclaims and claims for damages.
- f) For attorneys' fees and costs as allowed by contract or statute.
- g) For such other relief as the Court deems just and proper.
- h) For trial by jury as permitted by law.

Respectfully submitted,


Peter Protopapas (S.C. Bar #68304)
Rikard & Protopapas
PO Box 6640
1803 Hampton Street (29201)
Columbia, SC 29250
PH: 803-978-6111
FAX: 803-978-6112
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213 SOUTH MAIN STREET
Post Office Box 4193
Anderson, South Carolina 29622
Telephone: (864) 965-9660
Fax: (864) 965-9661

Dated: 5/3/1
Columbia, South Carolina.

**ATTORNEYS FOR DEFENDANT
MCWHIRTER**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

ANDERSON COUNTY

HAROLD P. THRELKELD d/b/a HAROLD)

P. THRELKELD, Attorney at Law,)

Plaintiff,)

v.)

LYMAN WAREHOUSE, LLC, LYMAN)

PACIFIC, LLC, MILLS DEMOLITION,)

LLC, SUSAN C. STANLEY, PETER M.)

STANLEY and DONALD J. MCWHIRTER,)

Defendant(s).)

**REPLY TO CROSSCLAIM
OF DONALD J. MCWHIRTER**

C/A No. 2012-CP-04-0041

NOW COMES the Defendants Lyman Pacific, LLC, Mills Demolition, LLC, Susan C. Stanley and Peter M. Stanley (the "Defendants"), responding to the allegations contained in the Cross Claims of Defendant Donald J. McWhirter and says as follows:

FOR A GENERAL DEFENSE

(General Denial)

1. Defendants deny each and every allegation of the answer and cross claims not hereinafter expressly admitted, denied or otherwise addressed or explained.

FOR A SECOND DEFENSE

(Explicit Answers)

2. The foregoing paragraph is hereby reasserted as if restated verbatim as part of this defense.

Responding to the Sixth Defense –Cross Claim Cause of Action

3. The preceding responses are incorporated herein and made a part hereof by reference.

4. Specifically responding to the allegations of Paragraphs 53-60, Defendants deny the existence of a conspiracy or scheme to damage Donald J. McWhirter. Further, Defendants deny that any one of the Defendants was part of or took acts in furtherance of a conspiracy. Except as admitted, the allegations of Paragraphs 53-60 are denied.

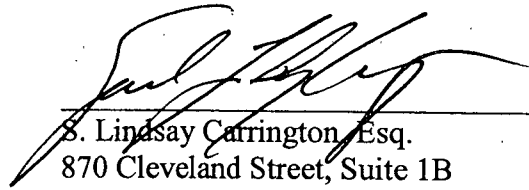
Responding to the Seventh Defense – Cross Claim of Action

5. Specifically responding to the allegations of Paragraphs 62-67, Defendant Lyman Pacific, LLC and Stanley deny the existence of a fiduciary relationship. In the event a court or jury finds that a fiduciary relationship existed, Defendant Lyman Pacific, LLC and Stanley deny that such relationship was breached. Except as admitted, the allegations of Paragraphs 62-67 are denied.

WHEREFORE, the Defendants pray this Court grant the following relief:

1. That it inquire into the matters set forth herein and make a determination on the matter;
2. Direct that all issue of fact be determined by a jury;
3. That it award the escrow monies to the Defendants;
4. For such other and further relief as this Court deems necessary, just and proper.

BELL CARRINGTON, LLC


S. Lindsay Carrington, Esq.
870 Cleveland Street, Suite 1B
Greenville, SC 29601
P: (864) 272-0556
E: lindsaycarrington@bellcarrington.com
Attorney for the Defendants

May 9, 2012
Greenville, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Harold P. Threlkeld d/b/a Harold P.)
Threlkeld, Attorney at Law,)
Plaintiff,)

-vs-

Lyman Warehouse, LLC, Lyman Pacific,)
LCC, Mills Demolition, LLC, Susan C.)
Stanley, Peter M. Stanley and Donald J.)
McWhirter,)
Defendants.)

ANSWER TO AMENDED
ANSWER AND CROSS CLAIM
OF DEFENDANT McWHIRTER

2012-CP-04-00041

The Defendant, Lyman Warehouse, LLC, in making an answer to the Amended Cross Claim of the Defendant, Donald J. McWhirter, would respectfully show and allege as follows:

FOR A FIRST DEFENSE

1. That each and every allegation of the cross claim not hereinafter admitted, modified or explained is expressly denied and strict proof demanded thereof.
2. That Paragraphs Twenty-Eight (28) and Twenty-Nine (29) are denied on lack of information and belief.
3. That Paragraph Thirty (30) is admitted.
4. That Paragraph Thirty-One (31) is denied except that in behalf of Lyman Pacific, Defendant McWhirter, deposited earnest money with Harold Threlkeld. The remainder of said paragraph is denied and is irrelevant to this action.

5. That Paragraphs Thirty-Two (32) and Thirty-Three (33) are denied, except that if the seller had an abstract of title in possession, it would have forwarded same, except that the seller did not possess any such documents or any other documents that would facilitate the obtaining of title insurance.

6. That Paragraphs Thirty-Four (34), Thirty-Five (35), Thirty-Six (36), Thirty-Seven (37) and Thirty-Eight (38) are expressly denied and strict proof demanded thereof.

FOR A SECOND DEFENSE

7. That the allegations of the above defense are incorporated herein by reference thereto.

8. That as to Paragraph Forty (40), same is denied except that McWhirter in behalf of Lyman Pacific deposited said funds in Harold Threlkeld's escrow account.

9. That Paragraphs Forty-One (41), Forty-Two (42) and Forty-Three (43) are admitted.

10. That Paragraphs Forty-Four (44) and Forty-Five (45) are denied and strict proof demanded thereof.

FOR A THIRD DEFENSE

11. That the allegations of the above defense are incorporated herein by reference thereto.

12. That Paragraphs Forty-Six (46), Forty-Seven (47) and Forty-Eight (48) are admitted.

13. That Paragraphs Forty-Nine (49) and Fifty (50) are denied.

14. That as to Paragraph Fifty-One (51), same is denied and that the Defendant Lyman Warehouse suggests the Defendant McWhirter seek his remedy from Lyman Pacific, LLC.

FOR A FOURTH DEFENSE

15. That the allegations of the above defense are incorporated herein by reference thereto.

16. That Paragraphs Fifty-Three (53), Fifty-Four (54), Fifty-Five (55), Fifty-Six (56), Fifty-Seven (57), Fifty-Eight (58), Fifty-Nine (59) and Sixty (60) are expressly denied and strict proof demanded thereof.

FOR A FIFTH DEFENSE

17. That the allegations of the above defense are incorporated herein by reference thereto.

18. That the true party in interest in the real estate transaction described herein in Lyman Pacific, LLC, and that the managing member of Lyman Pacific, LLC expressly authorized the distribution of funds to Lyman Warehouse, LLC as described in Exhibit 3, attached to the complaint.

19. That the Defendant Lyman Warehouse pleads said letter as a contract authorizing the release of said funds and ratifying the original contract of May 7th and it's terms relative to liquidated damages.

20. That in addition to the letter as described in Paragraph 18 above, the principal Lyman Pacific, LLC, released Lyman Warehouse, LLC from any and all claims then and there existing as of May 27, 2011, and that said release is a bar to the interest of Lyman Pacific in said funds and said release likewise bars the Defendant McWhirter.

FOR A SIXTH DEFENSE

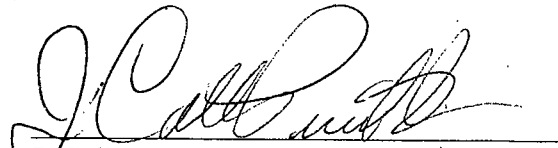
21. That the allegations of the above defenses are incorporated herein by reference thereto.

22. That the Defendant Donald J. McWhirter has no standing to complain of any actions between Lyman Warehouse, LLC and Lyman Pacific, LLC in that he is not a party to the contract and any rights that he might have would be derivative of the rights of Lyman Pacific, LLC.

WHEREFORE, the Defendant Lyman Warehouse having fully answered prays as follows:

1. That the cross claim of the Defendant McWhirter be dismissed.
2. That the court order the Plaintiff to pay over to it the sums held in escrow.
3. For reasonable attorney's fees and costs.
4. For such other and further relief as to the court seems just and proper.

PRUITT & PRUITT

A handwritten signature in dark ink, appearing to read "J. Calhoun Pruitt, Jr.", written over a horizontal line.

J. Calhoun Pruitt, Jr.
Attorney for Lyman Warehouse
101 N. Murray Avenue
Anderson, SC 29625
(864)224-3121

Anderson, South Carolina
May 11, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Harold P. Threlkeld d/b/a Harold P.
Threlkeld, Attorney at Law,

Plaintiff,

-vs-

Lyman Warehouse, LLC, Lyman Pacific,
LLC, Mills Demolition, LLC, Susan C.
Stanley, Peter M. Stanley and Donald J.
McWhirter,

Defendants.

POST TRIAL BRIEF

2012-CP-04-00041

THE ABOVE ENTITLED MATTER came before the Honorable R. Lawton McIntosh on
March 6, 2013 in a non-jury trial.

STANDING TO SUE

1. It is clear from the testimony of Donald McWhirter (hereinafter McWhirter) that he knew he was not a member of Lyman Pacific, LLC. He freely admitted on the witness stand that he and Elliot Edwards never were admitted as members because they could not agree to the terms of a proposed Operating Agreement.

2. Peter Stanley (hereinafter Stanley) in his deposition testimony related that he was the sole member of Lyman Pacific, LLC.¹ He further testified that Edwards and McWhirter never signed a proposed Operating Agreement, mainly because they could not obtain the financing for the project.²

¹ Stanley deposition Page 9, lines 4-17.

² Stanley deposition Page 10, line 9 - Page 11, line 1.

South Carolina law allows an LLC to be comprised of a single member. See §33-44-202(2)

(a) as follows:

One or more persons may organize a limited liability company consisting of one or more members by delivering Articles of Organization to the Office of the Secretary of State for filing.³

3. McWhirter holds a Master's Degree in business from the University of New Hampshire. He has been in the construction and demolition business for many years. Why would he be so reckless in organizing his business affairs? The answer is found in McWhirter's Exhibit #10, where he estimated the potential profit in the demolition of the Lyman Warehouse property at \$3,354,198.00. In his zeal to procure this lucrative property, he neglected to secure his investment. When the contract did not close, he was not protected.

4. Clearly and without contradiction in the evidence, McWhirter was not a party to the April 7, 2011 contract (Exhibit #1). His interest in pursuing a portion of the demolition business does not raise his position to that of a third party beneficiary⁴.

5. The April 7, 2011 contract governs the case and the other contracts in evidence are irrelevant. It follows that McWhirter has no standing in the April 7, 2011 contract and should seek redress from Lyman Pacific, LLC and/or Peter Stanley on a variety of theories such as breach of fiduciary duty, contribution, usurpation of corporate opportunity, breach of contract, "money had and received", and etc.

³See also comments to the above as follows: "As a matter of flexibility, a company may be organized and operated with only one member to enable sole proprietors to obtain the benefit of a liability shield.

⁴See *Bob Hammond Construction Company, Inc. v. Banks Construction Company, Inc. and SC Department of Highways and Public Transportation* 312 S.C. 422(1994), 440 S.E.2d 890

STATUS OF LYMAN WAREHOUSE

6. Lyman Warehouse was without fault in this entire matter and stood ready to comply with its contract, if financing had been obtained. Lyman Pacific, LLC was unable to close because of its lack of financing. This was not disputed in the testimony and time was found to be of the essence. Lyman Warehouse did not breach its contract with Lyman Pacific, LLC in any fashion.

7. The contract expiration and further release of Lyman Pacific and Lyman Warehouse of each other makes any defense of "penalty" or unjust enrichment unavailable to Lyman Pacific. These defenses are also unavailable to McWhirter because of his lack of standing against Lyman Warehouse.

ABILITY OF MCWHIRTER TO CLAIM UNJUST ENRICHMENT

8. The Defendant, Lyman Warehouse, as of yet, has obtained no benefit from the \$100,000.00 deposit held by attorney Threlkeld, as the contract of April 7, 2011, did not close. In candor to the Court, however, it could be argued that Lyman Warehouse received \$27,500.00 as a part of the release as shown by Exhibit #5, although these funds were primarily as a result of the failure of the second contract (Exhibit #9) to close. It, therefore, could possibly be argued that the Defendant, Lyman Warehouse, was unjustly enriched by \$27,500.00.

9. It is well known that unjust enrichment is an equitable doctrine, akin to restitution which permits the recovery of that amount that the Defendant has been unjustly enriched at the expense of the Plaintiff.⁵

However, in the same case, it is also said as follows:

⁵See Barret v. Miller, 283 S.C. 262, 321 SE2d 198 (1984).

Equitable relief should not ordinarily be furnished to a Plaintiff who has an adequate remedy at law.⁶

Here, as set forth above, McWhirter had his various remedies at law against Lyman Pacific, LLC and Peter Stanley and perhaps others.

10. Not only does McWhirter have a remedy at law, McWhirter attempted to exercise same against Lyman Warehouse, LLC as the Court can tell by reference to the Amended Answer and Cross-Claim of McWhirter, wherein it is shown as follows:

FOR A THIRD DEFENSE AND BY WAY OF A CROSSCLAIM
(Breach of Contract as to Lyman Warehouse, LLC)⁷

As further evidence of adequate remedies at law, the Court should review the following:

FOR A SIXTH DEFENSE AND BY WAY OF CROSSCLAIM

(Civil Conspiracy as to Lyman Warehouse, Mills Demolition,
Lyman Pacific and Stanley)

as well as the following:

FOR A SEVENTH DEFENSE AND BY WAY OF CROSSCLAIM

(Breach of fiduciary duty as to Lyman Pacific and Stanley)

CONCLUSION

The Court should make the following findings of fact:

1. The April 7, 2011 contract (Exhibit #1) is the contract which controls the case and the

⁶Id.

⁷Third Defense of McWhirter's Amended Answer and Cross-Claim, pages 4-5, thus identifying its remedy at law.

other contracts are irrelevant.

2. McWhirter and Edwards should have organized their affairs so as to protect themselves in the transaction.

3. McWhirter paid \$100,000.00 as a deposit in behalf of Lyman Pacific.

4. Lyman Pacific was unable to close due to a lack of financing. Lyman Warehouse was not requested to provide title information and this requirement would be moot due to the failure of financing.

5. The second contract between Lyman Warehouse and Mills Demolition was a back up contract and it likewise did not close.

6. McWhirter was not a party to the April 7th contract. Peter Stanley in Exhibit #6, breached his duty to the Defendant McWhirter.

7. The release between Lyman Pacific and Lyman Warehouse preclude each from suing the other and makes the defenses of penalty and unjust enrichment unavailable.

8. The Defendant Donald J. McWhirter had the burden of proof in his quest to prove standing regarding the retained escrow money. The release between Lyman Pacific and Lyman Warehouse did not include the Plaintiff, Attorney Harold Threlkeld.

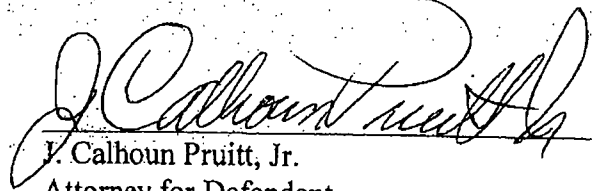
9. The Defendant, McWhirter, is not entitled to unjust enrichment on account of his lack of standing and his adequate remedies at law.

Based upon the above findings of fact and conclusions of law drawn therefrom, the court should order as follows:

a) That the Plaintiff distribute the \$100,000.00 that he is holding to the Defendant, Lyman Warehouse, LLC; and,

b) The court should consider granting a judgment in favor of Donald J. McWhirter against Lyman Pacific and Peter Stanley for breach of fiduciary duty or on some other theory.

PRUITT & PRUITT

A handwritten signature in dark ink, appearing to read "J. Calhoun Pruitt, Jr.", is written over a horizontal line.

J. Calhoun Pruitt, Jr.
Attorney for Defendant,
Lyman Warehouse, LLC
101 North Murray Avenue
Anderson, South Carolina 29625
(864) 224-3121

Anderson, South Carolina

March 29, 2013.

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Harold P. Threlkeld d/b/a Harold P.
Threlkeld, Attorney at Law,

Plaintiff,

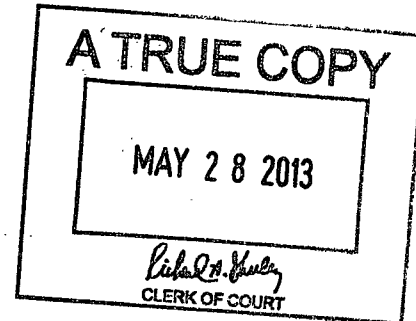
-vs-

Lyman Warehouse, LLC, Lyman Pacific,
LLC, Mills Demolition, LLC, Susan C.
Stanley, Peter M. Stanley and Donald J.
McWhirter,

Defendants.

**MOTION TO RECONSIDER,
ALTER OR AMEND**

2012-CP-04-00041



**TO: HAROLD P. THRELKELD, PLAINTIFF AND PETER D. PROTOPAPAS,
ATTORNEY FOR DONALD J. MCWHIRTER:**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant, Lyman Warehouse, LLC, will move before the Honorable R. Lawton McIntosh in his chambers at 12:00 noon on the 10th day after service hereof, or as soon thereafter as counsel can be heard, for an Order reconsidering, altering or amending his Order of May 7, 2013, filed May 15, 2013, and received by the undersigned on May 23, 2013. The undersigned's bases for said motion are as follows:

1. Having found that the contract is between two parties, Lyman Pacific, LLC and Lyman Warehouse, LLC, the Court should determine that McWhirter had no standing in the case.
2. The Court failed to find that McWhirter is not entitled to the equitable doctrine of unjust enrichment because he had adequate remedies at law and, in fact, sought same by seeking damages against Lyman Pacific, LLC and Peter M. Stanley.

3. In failing to find that if McWhirter has no standing to sue and is not a party to the contract, then any claim for unjust enrichment would fall to Lyman Pacific, LLC.

4. In failing to find that Donald J. McWhirter has no standing to raise or rely upon the release between Lyman Pacific, LLC and Lyman Warehouse, LLC.

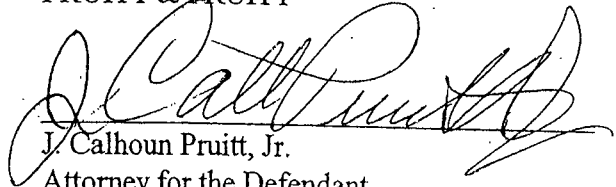
5. In failing to consider the damages testified to by Richard Bennett relative to his losses and continuing losses relative to the real estate in question.

6. In failing to determine whether the Defendants, Mills Demolition, LLC, Lyman Pacific, LLC, Susan C. Stanley and Peter M. Stanley, received notice of the trial in this case (see attached letter from Jennifer Pruitt relative to this as to who received notice).

Accordingly, the Defendant respectfully requests as follows:

1. That the Court reconsider its Order upon the above bases.
2. In the alternative, for a mistrial due to the failure of the Defendants, Mills Demolition, LLC, Lyman Pacific, LLC, Susan C. Stanley and Peter M. Stanley, to receive notice of the trial.

PRUITT & PRUITT



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Anderson, South Carolina
May 23, 2013.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-CP-04-00041

Harold P. Threlkeld d/b/a Harold P.
Threlkeld, Attorney at Law.....Plaintiff,

v.

Lyman Warehouse, LLC, Lyman Pacific, LLC,
Mills Demolition, LLC, Susan C. Stanley,
Peter M. Stanley and Donald J. McWhirter.....Defendants,

Of Whom Lyman Warehouse, LLC is the.....Appellant,

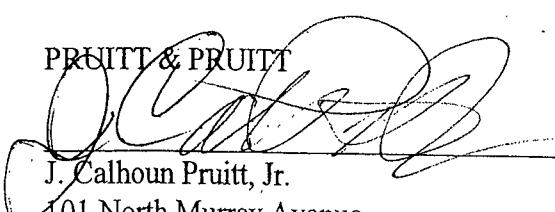
Of Whom Donald J. McWhirter is the.....Respondent.

NOTICE OF APPEAL

Lyman Warehouse, LLC appeals the Order of the Honorable R. Lawton McIntosh, dated May 7, 2013, and the denial of the reconsideration request by Order of Judge McIntosh, dated June 6, 2013, filed June 7, 2013. Appellant received written notice of the entry of the reconsideration denial on June 11, 2013.

July 9, 2013.

PRUITT & PRUITT


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State of South Carolina

County of Anderson

In the Court of Common Pleas

Harold P. Threlkeld,

Plaintiff,

-vs-

Lymon Warehouse, Lymon Pacific,

Donald J. McWhirter,

Defendant.

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2012-CP-04-41

March 6, 2013

Transcript of Record

BEFORE:

The Honorable R. Lawton McIntosh, Judge

APPEARANCES:

Harold Threlkeld, Esquire
Pro se Plaintiff

John Christopher Pracht V, Esquire
Peter Demos Protopapas, Esquire
Attorneys for Defendant McWhirter

J. Calhoun Pruitt, Jr., Esquire
Attorney for Defendant Lymon Warehouse

Renee Tollison
Circuit Court Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV
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1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 11:14 a.m.)

4 (WHEREUPON, Defendant Lymon Warehouse Exhibits
5 Number 1 through 8 were marked for identification
6 only.)

7 THE COURT: All right. Let me make sure I
8 understand where we are. We have the contract that was
9 entered into between Lymon Warehouse, LLC, as the vendor
10 versus Lymon Pacific, LLC, as the purchaser. The
11 Stanleys and McWhirters are members of Lymon Pacific,
12 LLC; is that correct?

13 MR. PRUITT: No, sir.

14 MR. PROTOPAPAS: No, sir.

15 THE COURT: No? Okay.

16 MR. PRUITT: No, sir.

17 THE COURT: Okay. Tell me where I'm incorrect.

18 MR. PRUITT: Your Honor, the contract as
19 described in the complaint was between Lymon Warehouse,
20 LLC, and Lymon Pacific, LLC.

21 THE COURT: That's what I said.

22 MR. PRUITT: The other -- well, the -- but the
23 only -- the only member of Lymon Warehouse -- the only
24 member of Lymon Pacific, LLC, is Mr. Stanley, Peter
25 Stanley. The others are not members of that LLC.

1 THE COURT: Okay. I got you. Okay. I'm
2 sorry.

3 MR. PRUITT: And that's going to be fairly ---

4 THE COURT: An issue?

5 MR. PRUITT: --- fairly critical there.

6 THE COURT: And was it McWhirter who filed --
7 who paid the deposit check -- or the earnest money rather
8 -- hundred-thousand-dollar check?

9 MR. PROTOPAPAS: Correct, Your Honor. On April
10 7th, the same day of the signing of the Pacific Warehouse
11 contract, that hundred-thousand-dollar check was written
12 by Dr. McWhirter.

13 THE COURT: Say that again, Mr. Protopapas?
14 Protopapas, excuse me.

15 MR. PROTOPAPAS: Yes, sir. On the same day as
16 the Warehouse Pacific contract, April 7, 2011, there is a
17 check, personal check, written by Don McWhirter out of
18 his personal bank account for one hundred thousand
19 dollars ---

20 THE COURT: Okay.

21 MR. PROTOPAPAS: --- to Mr. Threlkeld to be
22 held in escrow.

23 THE COURT: Now, there -- looking through an
24 order from Lindsey Carrington, she was removed by consent
25 as counsel for Lymon Pacific, LLC, correct?

1 MR. PROTOPAPAS: Correct, Your Honor.

2 THE COURT: And I gave -- I signed the order
3 saying they had thirty days to retain new counsel. And
4 has that been done?

5 MR. PROTOPAPAS: That has not been done, Your
6 Honor. We had reached out this week to Mr. Carrington,
7 and he is not aware of any new counsel being retained,
8 and he has not had contact with his client since then.

9 THE COURT: So Lymon Pacific is in this matter
10 unrepresented by counsel?

11 MR. PROTOPAPAS: Correct, Your Honor.

12 MR. PRUITT: Correct.

13 THE COURT: Okay. Mills Demolition, what
14 involvement did they have with the contract between Lymon
15 Warehouse and Lymon Pacific?

16 MR. PRUITT: None. It's a company that's --
17 Mills Demolition is a company that's owned by Susan
18 Stanley that participated in contract number two which is
19 -- which is a second contract and is the subject of the
20 civil conspiracy cross-claim.

21 THE COURT: Okay. Is contract number two in
22 the file?

23 MR. PRUITT: I don't know whether it is or not,
24 Your Honor.

25 THE COURT: I went through everything today,

1 and I saw where attached to Mr. Threlkeld's complaint ---

2 MR. PRUITT: And I've done a little bit of a
3 trial brief.

4 THE COURT: --- a contract that's dated the 7th
5 of April. Okay. You guys have a trial brief?

6 MR. PRACHT: Yes, sir, we do, Your Honor.

7 MR. PRUITT: And once Your Honor gets a handle
8 on the facts, we can have a slight discussion -- a slight
9 discussion of burden of proof and order of trial.

10 THE COURT: Okay.

11 MR. PRUITT: Mr. Threlkeld ---

12 THE COURT: Well, let me make sure I understand
13 things. Mr. Threlkeld filed essentially interclude to
14 say I've got this money, but he goes a little further and
15 says, I don't think that Pacific has any right to get the
16 money. Which I don't know as the earnest -- as the
17 account holder that that's necessarily that's right. But
18 you've asserted the same thing.

19 MR. PRUITT: Yes, sir. We agreed with the
20 Plaintiff. The Plaintiff's position is that he doesn't
21 believe that Lymon Pacific has any right to any money.
22 We agree with that, and we say that Lymon Warehouse has a
23 right to the money.

24 THE COURT: Let me ask y'all something. I saw
25 a release document that's -- Agreement for Recision of

1 Contract and Full and Final Release. Would that be the
2 result of any second sales contract that was entered
3 into?

4 MR. PRUITT: Yes, sir. It was a result -- it
5 was a release of the second contract that also failed to
6 close. But it included the language in it that it
7 released the parties from any and all other causes of
8 action that they might have had in existence at that
9 time.

10 THE COURT: Okay.

11 MR. PROTOPAPAS: Your Honor, if I may?

12 THE COURT: Yes, sir, absolutely. Time line-
13 wise, Your Honor, March is the first contract; April 7th
14 there's a second.

15 THE COURT: May -- is it March? I thought it
16 was April.

17 MR. PROTOPAPAS: Your Honor, there's actually a
18 contract that pre-dates April.

19 THE COURT: Oh, okay.

20 MR. PROTOPAPAS: There's a March 23rd contract,
21 then there's a May 7th change to that contract, and then
22 there's a May 4th contract with Lymon -- with Mills
23 Demolition. Then there is a May 27th release, and then
24 there's a June 6th closing with yet another party. Those
25 are the operative dates. And in between them ---

1 THE COURT: Give me those again.

2 MR. PROTOPAPAS: Yes, sir. May 23rd ---

3 THE COURT: Go back to the original. The
4 contract that I see here has the 21st of March, and it's
5 stricken out with April the 7th.

6 MR. PROTOPAPAS: Your Honor, I said May. And I
7 apologize. March 21st. You're correct, Your Honor.
8 Then it gets stricken out on April 7th.

9 THE COURT: So was there ever a signed contract
10 on the date of March 21st, or is that just the purported
11 date that's stricken out and modified to the 7th of
12 April?

13 MR. PROTOPAPAS: There is a signed contract on
14 March 21st, then it gets changed on April 7th.

15 THE COURT: Got you. Okay.

16 MR. PROTOPAPAS: And then there's a May ---

17 THE COURT: Just one second. Just one second.
18 Then there's a May what?

19 MR. PROTOPAPAS: --- 4th, 2011, contract with
20 Mills Demolition and Lymon Warehouse.

21 THE COURT: Okay. And then we have a closing
22 with a third party on when -- what day?

23 MR. PROTOPAPAS: In between those two dates,
24 Your Honor, there is a May 27th, 2011, release.

25 THE COURT: And that's a release about -- of

1 the second contract?

2 MR. PROTOPAPAS: Of all -- our argument is it's
3 of all contracts, Your Honor. But their argument is it's
4 only of one. That's one of our disputes. Then there's a
5 closing on June 3rd or 6th. The documents have, I think,
6 two dates on it. But suffice it to say, the first week
7 of June, there's an actual closing. There's actual money
8 paid by a company called ---

9 THE COURT: Between the sell -- between the
10 vendor and a third-party?

11 MR. PROTOPAPAS: Yes, Your Honor.

12 MR. PRUITT: That's not in the lawsuit.

13 THE COURT: Got you.

14 Mr. Eakes? Just one second.

15 (Off record discussion)

16 THE COURT: All right, guys. Now, there's some
17 issue raised as to the burden of proof and the manner in
18 which we proceed.

19 MR. PRUITT: Yes, sir. Well, I think first Mr.
20 Threlkeld ought to do his part.

21 THE COURT: Mr. Threlkeld has no burden of
22 proof in this matter ---

23 MR. PRUITT: That's right.

24 THE COURT: --- as an escrow agent. He just
25 says, here it is. And whoever gets it, gets it. I just

1 want to be able to disburse it safely.

2 Is that pretty much your position?

3 MR. PRUITT: Well, he may want to talk about
4 several of the exhibits that he offered.

5 THE COURT: Well, I understand that. But I'm
6 just saying ---

7 MR. PRUITT: But he doesn't have any burden of
8 proof.

9 THE COURT: I agree.

10 MR. PRUITT: He's going to abide by the
11 decision of the Court.

12 THE COURT: Does anybody disagree with that?

13 MR. PROTOPAPAS: No, Your Honor.

14 THE COURT: Okay.

15 MR. PRUITT: Now, next Lymon Warehouse is
16 taking the position that McWhirter is not in privity of
17 contract with any of the contracts that we talked about
18 and, therefore, has no standing to be heard or to claim
19 any of the proceeds. The evidence will show -- of
20 course, we -- that Lymon Pacific wrote a letter
21 disclaiming all interest in the escrow money which was
22 supplemented by the release later on, releasing all it's
23 claim to the money. So the only person who is here that
24 was in the original contract is Lymon Warehouse.
25 McWhirter is ---

1 THE COURT: So do you -- I'm sorry. Go ahead.

2 MR. PRUITT: --- not mentioned. So our first
3 position is that they don't have standing to be in the
4 case even though Mr. Threlkeld brought them in. They
5 don't have standing to make a claim because they were not
6 part of Lymon Pacific. And Lymon Pacific released, and
7 their name is not mentioned in any of the contracts. So
8 in regard to those particular issues, I think -- I think
9 the burden of proof is on them to show that they have
10 some kind of standing to be in the case. And that's
11 before we get into the conspiracy which is the subject of
12 cross-claims.

13 The conspiracy issue is largely -- accused Lymon
14 Warehouse of being in cahoots with Stanley to void the
15 first contract so that Stanley could take the second
16 contract, which didn't close either. So it's our
17 position that, seeing as though we agree with the
18 Plaintiff, Mr. Threlkeld, that the burden of proof would
19 fall upon the Defendant McWhirter to show first that he
20 has standing, and then that he's somehow in privity of
21 contract or has some third-party beneficiary rights.
22 Other than that, we don't think they should be in the
23 case.

24 THE COURT: Just one second. Well, let me ask
25 this question, if I may. We have the contract dated

1 March 21st which is not in the court record. But then we
2 have a contract dated the 7th of April between Lymon
3 Warehouse and Lymon Pacific, LLC, which is part of the
4 record. Okay?

5 MR. PRUITT: Yes, sir. We don't think that
6 first contract really has any relevance.

7 THE COURT: Well, I mean, I'm just getting my
8 arms wrapped around this case. Okay? Then we have an
9 agreement for rescission of contract and full and final
10 release which has apparently been signed by Mr. Bennett
11 -- Mr. Bennett is a member of Lymon Warehouse -- Mr.
12 Stanley, Ms. Stanley, Mills Demolition, LLC, and Lymon
13 Pacific, dated May 27th, 2011.

14 MR. PRUITT: Yes, sir.

15 THE COURT: Okay.

16 MR. PRUITT: Yes, sir.

17 THE COURT: Now, in that release under the
18 definitions and meanings, paragraph 1.6, specifically
19 refers to a contract dated May 4th, 2011, which is not
20 the same, I take it, as the one that's dated April 7th,
21 2011.

22 MR. PRUITT: That's correct, Your Honor.

23 THE COURT: Is there anything in that release
24 that you can construe as applying to the April 7th, 2011,
25 contract?

1 MR. PRACHT: Yes, definitely.

2 MR. PROTOPAPAS: And if I may, Your Honor, I
3 point you to a couple of items in that contract. First,
4 Your Honor, the May 4th, 2011, contract is between two
5 parties, Mills Demolition and Lymon Warehouse. However,
6 our release includes a third party, Lymon Pacific, as
7 signatory in the release. Why would they be a signatory
8 to this release if they're not part of the May 4th
9 contract? Fortunately, it's answered by the release
10 itself.

11 THE COURT: Let me see the May 4th contract.

12 MR. PROTOPAPAS: Do you need the contract?

13 MR. PRUITT: No. I've got a copy.

14 THE COURT: How do you extrapolate that Lymon
15 Pacific is part of this May 4th contract when it clearly
16 says Lymon Warehouse, LLC, and Mills Demolition, although
17 granted it's signed by Mr. Bennett individually, not as a
18 member of the LLC, but it is signed by Ms. Stanley as a
19 member of the LLC?

20 MR. PROTOPAPAS: I do not contend, Your Honor,
21 that Lymon Pacific is part of the May 4th contract. I do
22 contend though that the parties created a release on May
23 27th of 2011 including Lymon Pacific. Why would Lymon
24 Pacific be part of the release? Because they were trying
25 to release, Your Honor, this transaction or any other

1 transaction between the releasing parties.

2 THE COURT: And that's what it says in the
3 release?

4 MR. PROTOPAPAS: The bottom of page five and
5 the top of page six of the release. That's the release
6 of Lymon Pacific and Lymon Warehouse.

7 THE COURT: Hang on. Hang on. Hang on. How
8 about, if y'all would, could you give me copies of the
9 release, the original contracts and whatnot, so I don't
10 have to keep flipping back and forth.

11 MR. PROTOPAPAS: We can -- we can give you our
12 exhibit notebook if you want, Your Honor.

13 THE COURT: Well, I received all your stuff.
14 I'm just looking at what -- what language in the recision
15 of the release are you talking to -- talking about?

16 MR. PROTOPAPAS: At the bottom of page five,
17 Your Honor, there's a header in the middle of the page,
18 the complete release of all claims against Lymon Pacific.
19 And so we have a complete release against Lymon Pacific
20 by Lymon Warehouse. And the scope of that release, Your
21 Honor, is set forth in the following two paragraphs. At
22 the bottom of page five, the second paragraph, they say,
23 it is the intent of the parties to fully release each
24 other from any transaction -- if you turn the page --
25 arising out of any other transactions -- at the top of

1 page six -- arising out of any other transaction -- at
2 the top of page six -- can only relate to one transaction
3 because there's only one other transaction that Lymon
4 Pacific was involved in with Lymon Warehouse.

5 THE COURT: Well, just one second. Let me look
6 at -- again, page five said, it is the specific intent of
7 the releasing parties to fully release the parties herein
8 of and from any claims or right of the releasing party or
9 to make any of the claims against the parties released
10 herein for any losses or damages the releasing party may
11 have sustained or may hereinafter sustain, known or
12 unknown, arising out of the circumstances or arising out
13 of any other transactional relationship or among the
14 releasing party and the parties released herein, all
15 incidents and consequences hereof. Going back to the
16 definition of circumstances certainly refers to in
17 paragraph two, as they relate to a contract between
18 Demolition. Okay.

19 So Mr. Pruitt, unless that language I just -- why
20 would you -- why would it mean not the other transaction
21 as well by having that other language contained in it?

22 MR. PRUITT: It does mean the -- it means there
23 would be a release of the April 7 contract as well as the
24 May 4 contract. But what it doesn't say, and is not
25 meant to say, is it didn't release Harold Threlkeld from

1 disbursing according to his original agreement. It just
2 says that those parties won't sue each other.

3 THE COURT: Well, that -- weren't there monies
4 paid into that release? I mean, it seemed like I saw
5 twenty-seven or twenty-eight ---

6 MR. PRUITT: Yeah. But that was monies paid
7 for the second contract, the May 4th contract.

8 THE COURT: Okay. So what would you propose
9 would be the burden of proof in this case? I want to
10 hear everybody on it before -- I mean, you guys know it
11 better than I do. But go ahead.

12 MR. PRUITT: Yes, sir. Well, I think that the
13 -- McWhirter has got -- he's not in -- he's not in the
14 May 4 contract. He's not in the April 7 contract. If
15 you look at the four corners of the contract, his name
16 appears nowhere. The testimony -- so we don't think he
17 has standing to claim the proceeds despite the fact that
18 he loaned the money or provided the deposit for Lymon
19 Pacific to execute the April 7 contract.

20 THE COURT: So hold on. So the burden of proof
21 of standing of McWhirter is on McWhirter. I agree. And
22 I'm not going to hear anything else on that because I
23 don't need to. Okay?

24 MR. PRUITT: And if he has no standing, then
25 ---

1 THE COURT: The case is over.

2 MR. PRUITT: --- that part of the case is over.

3 THE COURT: Do you agree with that?

4 MR. PROTOPAPAS: Your Honor, yes. I would
5 agree that this was heard at summary judgment stage and
6 denied. We have uncontradicted evidence in the record
7 that he was in direct ---

8 THE COURT: That's not the question. The
9 question is ---

10 MR. PROTOPAPAS: I agree.

11 THE COURT: --- if Mr. McWhirter has no
12 standing, is the case over?

13 MR. PROTOPAPAS: Yes, sir. And the only -- the
14 only thing that we could possibly still be here on is a
15 declaratory judgment statute on an interpleader rule.
16 The Court can assess the rights of all the parties either
17 by saying you don't have a right by standing. That's how
18 I'd ask the Court to rule.

19 THE COURT: Okay. I got you.

20 MR. PROTOPAPAS: I would ask the Court not to
21 rule that way. But if you do ...

22 THE COURT: Okay. The burden is on ...

23 You're Mr. McWhirter? McWhirter? Is it McWhirter?

24 MR. MCWHIRTER: Yes.

25 THE COURT: Okay. He has the burden of proving

1 his right to standing in bringing this suit. I'm going
2 to go ahead -- I'm going to tell you now I'm going to
3 listen to evidence. I'm not going to rule on standing
4 until I've heard the evidence in this case, and then I'll
5 make a decision.

6 It would seem next then somebody has -- is asserting
7 if they're here that Pacific -- no, Warehouse breached a
8 contract of sale. Is anybody here to do that?

9 MR. PROTOPAPAS: Your Honor, we have made that
10 allegation that they have ---

11 THE COURT: How could you ever make that
12 allegation when you're not even remotely close to being a
13 party to the initial contract for sale?

14 MR. PROTOPAPAS: Your Honor, on -- the April 7,
15 2011, contract was signed in Stax Restaurant where four
16 people were present, Mr. McWhirter, Mr. Bennett ---

17 THE COURT: I don't care where -- is there
18 anything ambiguous or -- about the contracts that we need
19 to get into latent information? I mean, parole
20 information?

21 MR. PROTOPAPAS: Well, yes, Your Honor.
22 Attached to that contract is a check from Donald
23 McWhirter which was given that day.

24 THE COURT: Okay.

25 MR. PROTOPAPAS: And that's the one hundred

1 thousand dollars that's referenced in the contract. The
2 contract also references Demolition Services, which
3 everyone has testified to is Mr. McWhirter. It clearly
4 was for his benefit according to every piece of testimony
5 and every witness in this case. The four at the
6 restaurant have all testified consistently.

7 And what we would say is that Lymon Pacific, Your
8 Honor, at that time was in a relationship, but not as a
9 member. Mr. McWhirter, as he was the person sitting at
10 the table that day, provided the funds that day to do the
11 work called for by the contract that day. We convene
12 intended beneficiary of the contract. We understand we
13 have that burden to prove that we were a third-party
14 beneficiary to that contract. That would then gives us
15 the standing and the right to sue for breach of contract.
16 We agree. We accept the burden.

17 THE COURT: Okay. Let me tell you what else.
18 You're also going to have the burden of proving that
19 Defendant Lymon Warehouse breached the contract.

20 MR. PROTOPAPAS: Yes, Your Honor.

21 THE COURT: As far as the May 7th closing date
22 or whatever that closing date is. Okay?

23 MR. PROTOPAPAS: Yes, Your Honor.

24 THE COURT: Then the next would be the
25 contention that the release is a release as to any and

1 all claims. And that is your contention, Mr. Pruitt?

2 MR. PRUITT: Yes, sir. I did plead that. And
3 we would stand the -- we would accept the burden of proof
4 on proving that the release released all the claims of
5 Lymon Pacific and those other parties who were named in
6 the release. Although I don't know that anybody
7 disagrees with that.

8 MR. PRACHT: Your Honor, we -- we don't
9 necessarily disagree. However, I would say that if we
10 meet our burden of proof and show that we are a third-
11 party beneficiary, then the case is over because he's
12 released all his claims as the only person that's a party
13 to this contract, the third-party beneficiary, who has a
14 right to the money in Mr. Threlkeld's escrow account.

15 MR. PRUITT: But Mr. Threlkeld didn't sign the
16 release, and so he's still got his obligations under the
17 contract.

18 MR. PROTOPAPAS: Your Honor, before we get too
19 far into the weeds, the decision tree of -- this decision
20 tree of what does the release pertain to. Or
21 essentially, is Mr. McWhirter a third-party beneficiary?
22 If he's not a third-party beneficiary, we still win this
23 case. We win this case because nobody has a legal
24 equitable right to the money in Mr. Threlkeld's bank
25 account ---

1 THE COURT: I disagree with your right there.

2 MR. PROTOPAPAS: What's that, Your Honor?

3 THE COURT: I can tell you, I disagree with you
4 based on my reading of the facts. And you'll maybe
5 convince me otherwise. But what I read, I disagree with
6 you on that proposition.

7 MR. PROTOPAPAS: If he is a third-party
8 beneficiary, then, of course, there is that logical train
9 that we've gone through today. But that is the decision
10 tree, I think, on the third-party beneficiary versus not
11 third-party beneficiary.

12 THE COURT: Well, hold on. I may have spoken
13 too soon. You're saying that if the release applies to
14 everyone. Since the monies have been paid pursuant to
15 the release and this money is in his account, then he's
16 -- it defaults back to him?

17 MR. PROTOPAPAS: So on April 7th, we know legal
18 title and equitable title to the money is in the hand of
19 Don McWhirter.

20 THE COURT: All right. All right. Anything
21 else I need to hear pre-trial before we go forward?

22 MR. PROTOPAPAS: None from McWhirter, Your
23 Honor.

24 THE COURT: I want to thank all of the
25 attorneys for sufficiently muddying up the waters.

1 (Laughter)

2 THE COURT: All right. Call your first
3 witness. I'm going to put the burden, primarily on you
4 guys. That's the way I look at it. The release is on
5 you. Any other burdens of proof we need to discuss in
6 this case?

7 MR. PROTOPAPAS: None from McWhirter, Your
8 Honor.

9 MR. PRUITT: Unless, you want to -- you
10 probably need to ---

11 THE COURT: And burden -- just to the extent I
12 haven't said it on the record. The burden of proving
13 that even if he's not the third-party beneficiary, Mr.
14 McWhirter's entitled to the money by somehow the mask of
15 default is on you as well. Okay?

16 MR. PRUITT: What about Mr. Threlkeld? Should
17 he not go first and then be released?

18 THE COURT: Right. And then let him get on his
19 way. That'll be fine.

20 MR. PROTOPAPAS: One other witness issue, Your
21 Honor. Mr. Stanley, is not here today. As a party, we
22 have both designated his deposition. We have talked and
23 we're fine with highlighting two copies, one for you to
24 give your law clerk providing to you.

25 THE COURT: I saw -- I think I received

1 something from Calhoun yesterday showing designations.
2 If y'all would just give me designations, it would make
3 it a lot easier for me. But if not, I'll read the whole
4 thing.

5 MR. PRUITT: Yes, sir. I think you could -- I
6 mean, I think, Your Honor could just read the
7 designations and read the sections or we can highlight
8 them or ---

9 THE COURT: You need to get that done. I know
10 you're supposed to do it ahead of trial. This is non-
11 jury, so it's fine. You know, I'm going to let you do it
12 later if you haven't done it.

13 Okay. Mr. Threlkeld, would you step around, please?
14 (WHEREUPON, the witness was duly sworn.)

15 THE COURT: Mr. Threlkeld, do you prefer just
16 to give us your narrative ---

17 MR. THRELKELD: Yes.

18 THE COURT: --- and then subject to cross-
19 examination? I think that would be the way to go for
20 both sides in this case.

21 MR. THRELKELD: Yes, sir.

22 THE COURT: Okay.

23 **HAROLD P. THRELKELD,**

24 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

25 **DIRECT TESTIMONY**

1 BY MR. THRELKELD:

2 All right. Your Honor, on April the 7th, 2011, I
3 was contacted by Mr. Richard Bennett of Lymon Warehouse
4 who asked me to serve as an escrow agent involving the
5 contract involving a plant in Lyman, South Carolina. The
6 contract was with Lymon Pacific, LLC. And I was given
7 the principle's name as Peter Stanley.

8 On April the 7th, 2011, I received a check that was
9 delivered to me from a Donald McWhirter payable to me as
10 attorney at law in the face amount of a hundred thousand
11 dollars which I deposited.

12 THE COURT: What's that check number?

13 MR. THRELKELD: I do not have the check number.

14 THE COURT: Okay. It's in the file. I'm
15 sorry.

16 MR. THRELKELD: Then on May the 4th of 2011, I
17 received an additional contract between Lymon Warehouse,
18 LLC, signed by Mr. Bennett, and Mills Demolition, LLC,
19 signed by Susan Stanley. Now, the first contract was
20 signed by Peter Stanley for Lymon Pacific, LLC.

21 THE COURT: And Susan Stanley was principle of
22 Mills Demolition?

23 MR. THRELKELD: Yes. At that time, on May the
24 5th, 2011, I also received a check drawn by Susan Stanley
25 payable to me in the sum of fifty thousand dollars. The

1 closing date on the April 7, 2011, contract was -- let's
2 see. It was set up for May 7th, 2011.

3 On May the 9th, 2011, I received a telephone message
4 from an attorney in Spartanburg by the name of Kelly
5 Lowery, I believe is his name, asking some questions
6 about the contract of April the 7th. And I wrote him a
7 letter dated May the 9th, 2011, which I believe was part
8 of the record. In response, he sent me a letter dated
9 May the 10th, 2011.

10 THE COURT: What's that date, please?

11 MR. THRELKELD: May the 10th. In none of these
12 correspondence or communications was any particular
13 person identified as being involved in this transaction.
14 There was reference in the correspondence and
15 communications about members of Lymon Pacific, LLC, but
16 not identifying those persons. And prior to that time,
17 or even after that time, I had never heard of Mr.
18 McWhirter except I did know that there was a check given
19 to me drawn by Mr. McWhirter. But there was no
20 relationship given to me showing that he was part of
21 Lymon Pacific or any other entity. And I had no
22 knowledge of his involvement in the transaction other
23 than providing the check.

24 Now, the closing date for the second contract was
25 scheduled May 14th, 2011. That never happened. Later, I

1 was informed that there was a -- an agreement had been
2 reached between Lymon Warehouse and Mills Demolition
3 concerning the fifty thousand dollars earnest money I was
4 holding. So I prepared documents in connection with that
5 with the intent of trying to solve any questions raised
6 by Mr. Lowery or anyone else concerning my ability to
7 safely distribute these funds.

8 THE COURT: Is that the Agreement for Recision
9 of Contract and Full and Final Release?

10 MR. THRELKELD: Yes, sir. Yes, sir. And in
11 response to that, I paid Mr. -- Ms. Mills, I believe it
12 was, twenty-two thousand, five hundred dollars. And the
13 rest of those funds went to Lymon Warehouse, LLC. There
14 was remaining uncertainty in my mind concerning Mr.
15 Lowery about the information he'd given me. I didn't
16 know what it meant. And I was concerned it might have
17 some effect, so -- and by that time, I think somebody
18 else had called me concerning possible claims that may be
19 raised. So I determined that the safe course of action
20 would be for me to interplead everyone who could claim
21 any possible rights in these funds and let the Court
22 decide who actually -- who actually owned those funds.

23 But again, it was my observation that the claimants
24 were really Lymon Warehouse and Lymon Pacific, LLC. And
25 to that extent, it was my impression the transaction was

1 resolved, but I still wanted to go further and make sure
2 that there were no other outstanding ---

3 THE COURT: Were you to be the closing attorney
4 for the April 7th transaction? Do you know?

5 MR. THRELKELD: I would not have been the
6 closing attorney. I might have represented the seller,
7 but I would not have represented the purchaser.

8 THE COURT: Did anybody indicate to you or do
9 you know why the April 7th contract did not close?

10 MR. THRELKELD: As I understood it, they
11 couldn't raise the money. It was what I was informed by
12 Mr. Stanley.

13 THE COURT: Mr. Stanley?

14 MR. THRELKELD: Yes. And there was certainly
15 never any information available to me that there was
16 anyone that was moving for or requesting or seeking to
17 have any closing or to do anything in regard to the
18 consummation of this contract. To my knowledge, nobody
19 ever attempted to consummate either contract or indicated
20 any intent to consummate any contract.

21 THE COURT: Okay, sir.

22 MR. THRELKELD: And that's pretty much
23 everything.

24 THE COURT: All right.

25 Mr. Pruitt, cross-examination?

1 MR. PRUITT: Your Honor, we'd like to offer
2 into evidence these several documents here. I have
3 labeled them. And for the convenience of my opposing
4 counsel, I have also put the references to the exhibit
5 book that we had at all the depositions. We had one
6 exhibit book that had all of the documents in it. And I
7 think these are all in there.

8 THE COURT: Any objection to any of these
9 documents?

10 MR. PROTOPAPAS: No, Your Honor, I don't have
11 any objection.

12 THE COURT: Let me tell you, this is non-jury
13 and it's going to be a little bit wide-open, as you know.
14 If you would, Mr. Pruitt, would you announce which
15 exhibits those are on the record?

16 MR. PRUITT: Yes, sir. We have denominated
17 this as Defendant Lymon Warehouse as D-Lymon Warehouse.
18 Number 1 would be the contract dated April 7 between
19 Lymon Warehouse and Lymon Pacific. Exhibit number 2 for
20 this Defendant would be the check of Mr. McWhirter and
21 somebody dated April 7 for one hundred thousand dollars
22 payable to Harold Threlkeld with a memo of Lymon deposit.
23 Number 3 would be a letter of April 30 on Lymon Pacific
24 stationery forwarded to Mr. Bennett by Lymon Pacific.
25 Number 4 would be a letter dated May 3rd, 2011, a letter

1 from Lymon Pacific to Richard Bennett regarding the April
2 7 contract. Defendant's Number 5 would be the agreement
3 for rescission of contract and full and final release.
4 Number 6 would be a letter of May 7th of Lymon Pacific to
5 Richard Bennett concerning the April 7 contract.

6 THE COURT: Say that again. What number and
7 what was it?

8 MR. PRUITT: Number 6 is a letter dated May 7th
9 from Lymon Pacific to Lymon Warehouse relating to the
10 April 7 contract. Number 7 would be the letter that Mr.
11 Threlkeld spoke of that he wrote to Kelly Lowery who was
12 representing Lymon Pacific.

13 THE COURT: What's the date of that letter?

14 MR. PRUITT: May 9, 2011. And Defendant's 8
15 would be a letter dated May 10, 2011, to Harold Threlkeld
16 from Attorneys Johnson/Smith in Spartanburg disagreeing
17 about the release of the escrow funds in behalf of Lymon
18 Pacific.

19 THE COURT: Okay. All right. Thank you, sir.
20 Those will be admitted subject to objection.

21 MR. PRACHT: None, Your Honor.

22 THE COURT: Hearing no objection.

23 (WHEREUPON, Defendant Lymon Warehouse Exhibits
24 Number 1 through 8 were admitted into evidence.)

25 MR. PRUITT: Your Honor, you want me to ---

1 THE COURT: I'd like to see them.

2 MR. PRUITT: They're in opposite order.

3 CROSS-EXAMINATION

4 BY MR. PRUITT:

5 Q. Now, Mr. Threlkeld, I want to direct your attention
6 to the contract of April 7. And if you have a copy of it
7 there -- if not, I'll be glad to -- that would be our
8 number 1. Who is that contract between?

9 A. It's between Lymon Warehouse, LLC, and Lymon
10 Pacific, LLC. And it says in parenthesis S.C., close
11 parenthesis, period.

12 Q. All right. Now, in reviewing that particular
13 document, do you find the name of Mr. McWhirter anywhere?

14 MR. PROTOPAPAS: Your Honor, I'm going to
15 object to this line of questioning. This witness did not
16 prepare the document. He was not familiar with the
17 document. I don't know if he has any knowledge of this
18 document. He said he did get the April 7th check, but I
19 never heard him say this was a document he prepared,
20 reviewed, or anything along those lines.

21 THE COURT: All right. Overruled.

22 A. All right. I received the contract at the time I
23 received the check. And I reviewed the contract, and
24 there was no mention of Mr. McWhirter or anybody other
25 than Lymon Pacific. And it was signed by -- I believe it

1 was Peter Stanley is what I read the signature to be.

2 And it showed him as the, as I understand it, the

3 authorized member or manager or whatever he was.

4 Q. All right. And did -- did that contract of April 7

5 have any provisions in it for any particular person or

6 entity to demolish this old textile mill?

7 A. I think the only one -- the only one would be Lymon

8 Pacific.

9 Q. All right. Now, this contract, was it a contract

10 for Lymon Warehouse to deliver fee-simple title to the

11 ground being transferred?

12 A. I believe it was a contract for the ground to be

13 transferred.

14 Q. Yes, sir. Now, when was that contract to expire?

15 A. My recollection is May the 7th, 2011. That's when

16 the closing would occur.

17 Q. Right. And do you know whether -- did anyone

18 contact you for you to send the hundred thousand dollars

19 that you were holding to a closing attorney?

20 A. No.

21 Q. Do you know whether or not the balance of the funds,

22 which would have been one point two million dollars, was

23 ever procured by the proposed purchaser?

24 A. I had no knowledge of any money being paid other

25 than the one hundred thousand dollars.

1 Q. All right. Now, thereafter, did you receive the
2 contract of April -- I mean, the second contract?

3 A. May 4th?

4 Q. Yes, sir.

5 A. Yes.

6 Q. And who was that contract between?

7 A. It was between Lymon Warehouse, LLC -- it was signed
8 by Mr. Bennett -- and Mills Demolition, LLC. And it was
9 signed, as I recall, by Susan C. Stanley which signed in
10 her capacity as member.

11 Q. All right, sir. Now, in regard to that particular
12 contract, did you receive a -- any escrow monies on that
13 contract?

14 A. Fifty thousand dollars.

15 Q. Yes, sir. Now, that particular contract, did it
16 specify a closing date?

17 A. May 14th, 2011.

18 Q. Now, was that contract very similar to the contract
19 of -- the earlier contract?

20 A. Yes. It looks like it was prepared by the same
21 person. I did not prepare it.

22 Q. Yes, sir. Now, in regard to the second contract,
23 did the name of McWhirter appear anywhere in that
24 contract?

25 A. I did not see it. I do not believe it did.

1 Q. All right. And what was the projected closing date
2 of the second contract?

3 A. I believe that was May 14th.

4 Q. All right. Now, did you ever receive any request to
5 transfer the earnest money to any closing attorney in
6 regard to that contract?

7 A. No, I did not. And ---

8 Q. Did you -- go ahead.

9 A. And I'll explain the short time frame work involving
10 the price of steel at the time. Steel was going up and
11 down almost daily. And it required closing these
12 transactions quickly in order to conform to the existing
13 market conditions of steel. That's what this was all
14 about.

15 Q. All right. Now, directing your attention to the
16 first page of the May 4th contract, did it -- was it
17 signed as a backup offer in case the earlier contract
18 fell through?

19 A. It appeared to be.

20 Q. And ---

21 THE COURT: Is that into evidence?

22 MR. PRUITT: Yes, sir. That'll be the second
23 one, Your Honor. I think it would be my second exhibit.

24 THE COURT: The second exhibit is the escrow.

25 MR. PRUITT: Okay. Well, try 3.

1 THE COURT: That's the ...

2 MR. PRUITT: You got it?

3 MR. PROTOPAPAS: Your Honor, I don't think it
4 was introduced yet, but we have no objection to Mr.
5 Pruitt proffering it into evidence.

6 THE COURT: All right. Hold on. I've got it.
7 Here you go. Mark this one. You handed it up earlier.
8 That's what it was that I was asking for. That'll be
9 Number 9? Thank you.

10 (WHEREUPON, Defendant Lymon Warehouse Exhibit Number
11 9 was marked and admitted into evidence.)

12 Q. All right. Directing your attention now to the
13 contract that's been marked as Defendant's Number 9, was
14 that a -- was that contract contingent upon the first
15 contract expiring?

16 A. I believe it was.

17 Q. All right. Now, did that particular contract, the
18 second contract shown as Defendant's Number 9, ever
19 expire?

20 A. Yes. It would have expired May 14.

21 Q. Right. And with no closing?

22 A. No closing.

23 Q. Okay. Now, in regard to -- what did you later learn
24 the parties to the second contract had agreed relative to
25 the fifty thousand dollars you were holding?

1 A. Well, I can tell you that I was informed by the
2 parties that there was to be, I believe, twenty-seven
3 five hundred going to Lymon Warehouse and twenty-two five
4 hundred going to Mills Demolition. And that was to be an
5 agreement to rescind the -- that particular contract.

6 Q. All right. And did you prepare the document that
7 we've described as the release document?

8 A. Yes.

9 Q. And who did that document release?

10 A. Well, it was designed to release Mills Demolition,
11 LLC, Lymon Pacific, Peter Stanley, and Susan Stanley.
12 And it was also designed to release Lymon Warehouse, LLC,
13 and Richard Bennett from the obligations under that
14 contract.

15 THE COURT: Would you go over those names again
16 for me, Mr. Threlkeld?

17 MR. THRELKELD: Well, the agreement named Lymon
18 Warehouse, LLC, Mills Demolition, LLC, Lymon Pacific,
19 LLC, Richard K. Bennett, Peter M. Stanley, and Susan C.
20 Stanley.

21 Q. All right. Did that release also include general
22 language releasing the named parties from any previous
23 causes of action that they might have had against one --
24 one and the other?

25 A. Yes.

1 Q. Okay. Now, did that release release Harold
2 Threlkeld from his duties as escrow agent under the
3 original contract?

4 A. No. It was designed to have any cross-actions or
5 contests between them so that I could safely perform my
6 duties by distributing the money to the party it was
7 supposed to go to, and that was to Lymon Warehouse.

8 Q. All right. And at that particular time, had you
9 received any notice that Mr. McWhirter claimed a personal
10 interest in that hundred thousand dollars that you were
11 holding?

12 A. No.

13 Q. All right. When is the first time that -- or have
14 you ever received any notice from Mr. McWhirter or a
15 lawyer representing him that he claimed the proceeds
16 under the contract of April 7?

17 A. Well, I never heard anybody, any lawyer, prior to
18 the time that I filed the action talk in terms of
19 representing Mr. McWhirter. It is possible, would be
20 pure speculation, that the people in Spartanburg were
21 representing him, but I don't know that. Anyway, what I
22 did in preparing this action is I looked at the check
23 that was submitted by Mr. McWhirter and used that to name
24 him as a party in case he had any kind of claim and sent
25 it to him at his -- that wasn't his correct address.

1 Ultimately, I did find him. And after I served him,
2 there was a claim asserted that he owned an interest in
3 the residue.

4 Q. Now, directing your attention to the letter that you
5 received from Johnson, Smith, Hibbard and Wildman ---

6 THE COURT: Is that Number 8?

7 MR. PRUITT: Yes, sir.

8 Q. --- does that letter indicate that Mr. McWhirter is
9 disputing anything?

10 A. No.

11 Q. Now, other than the check that Mr. McWhirter wrote
12 in behalf of Lymon Pacific, is his name mentioned
13 anywhere in your documents?

14 A. No.

15 MR. PRUITT: That's all the questions I have.

16 THE COURT: Mr. Protopapas?

17 MR. PROTOPAPAS: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. PROTOPAPAS:

20 Q. Mr. Threlkeld?

21 A. Yes, sir.

22 Q. The only place in your documents that Mr.
23 McWhirter's name is mentioned is the check; is that
24 right? Is that what you just said a minute ago? I
25 thought I heard you say that.

1 A. As far as I know.

2 Q. Would you look at your May 9th letter, sir? It's
3 Defendant's Exhibit 7. His name is mentioned there is it
4 not, sir, right in the subject line?

5 A. Yes.

6 Q. Mr. McWhirter.

7 A. Yes, I see that.

8 Q. Okay. And then there was a response to this letter
9 from Mr. Thesing (phonic); is that not correct, sir?

10 A. I don't think so.

11 Q. There was no response to your May 9th letter by
12 Thesing, sir?

13 A. I don't think so.

14 Q. Look at Defendant's Exhibit 8 that you were just
15 looking at moment ago.

16 A. I see a letter from Mr. -- Johnson Smith.

17 Q. I apologize. From Mr. Lowery. Did you get a
18 response from Mr. Lowery?

19 A. Yeah, I got a -- well, I got a response from Mr.
20 Lowery on May the 10th, yes.

21 Q. Okay. And in that response, does he say that he
22 represents Mr. McWhirter?

23 A. I don't see that -- I didn't see anything in there.
24 I'm sorry.

25 THE COURT: Are you referring to the May 10th,

1 2011, letter from Johnson, Smith, Hibbard and Wildman
2 from Mr. Lowery to Mr. Threlkeld?

3 MR. PROTOPAPAS: Yes, Your Honor.

4 THE COURT: Okay.

5 Q. So we know this on May 9th -- first of all, you
6 represent Mr. Bennett, correct?

7 A. Yes.

8 Q. Okay. And you had a fiduciary relationship to him
9 as his attorney?

10 A. Yes.

11 Q. Is that right?

12 A. Yes.

13 Q. And you've represented him for a long period of
14 time?

15 A. Yes.

16 Q. Okay. We know on May 9th of 2011, you wrote a
17 letter referencing Don McWhirter. Okay? Did you take
18 any effort to reach out to Mr. McWhirter prior to filing
19 this lawsuit, prior to filing this lawsuit, to see what
20 his position was as it pertains to the one hundred
21 thousand dollars?

22 A. I did not.

23 Q. Okay. The only response you got was from Lymon
24 Pacific; is that correct, sir?

25 A. (No verbal response)

- 1 Q. Was on behalf of Lymon Pacific through Mr. Lowery?
- 2 A. I don't -- that's right. The only response I got
- 3 was on behalf of Lymon Pacific.
- 4 Q. Let's look at Defendant's Exhibit Number 1.
- 5 A. Attached to the complaint?
- 6 Q. The one that's the exhibit for trial that was marked
- 7 as Defendant's Exhibit 1. It's the April 7th, 2011,
- 8 contract, sir.
- 9 A. All right, sir.
- 10 Q. Have you got that?
- 11 A. Yes, sir.
- 12 Q. Now, you've represented Mr. Bennett for a long
- 13 period of time; is that not right?
- 14 A. Well, I've represented him for four or five years.
- 15 He's a young fellow. So a long time -- I wouldn't say
- 16 it's all that's long, but he's -- but I have represented
- 17 him for a number of years.
- 18 Q. Do you know that he individually is under strain of
- 19 somewhere in area of four million dollars in judgments;
- 20 is that not correct?
- 21 A. I don't know about that.
- 22 Q. It's a significant amount though?
- 23 A. I don't know about that. I'm not involved in that.
- 24 Q. You don't know either way?
- 25 A. No.

1 Q. Okay. I see that there's a Greg Shoals Acquisitions
2 in the wind-up version of Defendant's Exhibit Number 1?

3 A. Yes.

4 Q. Has Greg Shoals ever owned this property?

5 A. No.

6 Q. Okay.

7 A. Not to my knowledge.

8 Q. Has never owned it, right?

9 A. Not to my knowledge.

10 Q. Okay. In fact, Lymon Warehouse, to the best of your
11 knowledge, has owned it all along, correct?

12 A. To the best of my knowledge.

13 Q. Okay. When you look at the second page, the
14 Seller's Warranties of Title. You see that?

15 A. Yes.

16 Q. When this was signed -- when Defendant's Exhibit
17 Number 1 was signed originally on March 21st of 2011,
18 sir, you would agree with me that Greg Shoals could not
19 warrant and covenant that it had any title to this
20 property?

21 A. All I can tell you is that to my knowledge he's
22 never had any ownership of this property.

23 Q. Are you aware that on April 7th of 2011, the
24 property itself was in foreclosure?

25 A. I know it -- I know there was a foreclosure action.

1 Q. And you can agree with me, sir, that at paragraph
2 one on Defendant's Exhibit -- I'm sorry -- Defendant's
3 Exhibit Number 1, the April 7th contract, page two, the
4 first numbered paragraph one, there is no way for Lymon
5 Warehouse to convey fee simple or -- I apologize.
6 There's no way that Lymon Warehouse has fee simple, free
7 of encumbrances, as of April 7th because it's under
8 foreclosure. Is that fair?

9 A. I don't think a foreclosure has anything to do with
10 it. It says that -- it says it's -- that's subject only
11 to matters of record. And there was a mortgage of
12 record.

13 Q. There was a mortgage of record?

14 A. Yes.

15 Q. Don't you think though the foreclosure clouds the
16 title?

17 A. Not any more than a mortgage.

18 Q. Not any more than a mortgage?

19 A. I mean, you could pay it off at any time.

20 Q. So when someone makes a reference or a
21 representation that a fee simple contract or that I have
22 title and fee simple, free of encumbrances except those
23 of record, that's inclusive of foreclosures; is that
24 right?

25 A. Foreclosure would not prohibit the conveyance of

1 title under that warranty.

2 Q. Well, they're making a current statement in
3 paragraph one. A statement of current existence.

4 A. I'm telling you, though, that that foreclosure
5 action would not alter anything that -- any more than the
6 mortgage would. If the mortgage was on the record -- and
7 that would have been listed here on the record -- and the
8 foreclosure of that would not alter the ability to
9 transfer title if you paid the mortgage. And that's what
10 was contemplated by this contract.

11 Q. Right. I understand the next line that says it will
12 convey. But what I'm saying is Lymon Warehouse could not
13 properly represent its property was free of encumbrances
14 when it's in foreclosure, sir. Isn't that fair?

15 A. He certainly had a mortgage on it.

16 Q. And he also had a foreclosure on it. Is that fair?

17 A. And I'm saying that doesn't matter.

18 Q. We know that you didn't pay out the money on May
19 27th, did you, sir? After the release was signed?

20 A. No, I didn't pay out the money.

21 Q. And you didn't pay it out because you weren't sure
22 where Don McWhirter was in all of this. Is that fair?

23 A. I wasn't sure on whether or not Mr. Lowery was going
24 to follow through with his threat to bring some kind of
25 legal action about something that I wasn't sure what he

1 was going to do.

2 Q. Did you send him the release his client signed and
3 said, hey, your client went ahead and signed a document
4 releasing things?

5 A. No.

6 Q. Did you think that it was appropriate for you to
7 have a release signed by Lymon Pacific without their
8 attorney, Mr. Lowery, knowing about the release?

9 A. I think they can decide what they want to do
10 themselves.

11 Q. Okay. They were represented though at the time,
12 were they not?

13 A. I don't know.

14 Q. Well, you had a letter dated May 10th saying they
15 were represented, didn't you?

16 A. I had a letter dated May the 10th about -- but this
17 was May 27th.

18 Q. So seventeen -- seventeen days later, they could
19 have fired Mr. Lowery. You didn't choose to contact Mr.
20 Lowery and say your clients are about to sign a release?

21 A. That's true.

22 Q. I'm going to go ahead and let them sign it?

23 A. That's true.

24 Q. You didn't give them that courtesy?

25 A. I didn't do that.

1 Q. And you didn't reach out to Mr. McWhirter either,
2 did you?

3 A. No. I didn't know anything about Mr. McWhirter.

4 Q. Except that you referenced him in your letter of May
5 9th. Is that fair?

6 A. That's fair.

7 Q. Let's look at the May 27th -- well, stay with
8 Defendant's Exhibit Number 1, the April 7th contract.
9 The hundred thousand dollars was paid pursuant to that
10 April 7th contract, right?

11 A. Yes.

12 Q. Okay. Who had legal title to the one hundred
13 thousand dollars on April 6th?

14 A. I have no idea.

15 Q. Well, it would be Don McWhirter, would it not? It's
16 his money on April 6th of 2011, one day before he writes
17 the check?

18 A. I don't know anything about anything except I got a
19 check on April the 7th and deposited it in my trust
20 account, and it cleared.

21 Q. Let me try it again. Before you -- when you had it
22 in your hand, the check in your hand, legal title and
23 equitable title to that money was in Don McWhirter's
24 name. And then you deposited it in your escrow account
25 and you took legal title, but not equitable title. Isn't

1 that fair? Isn't that what you do in escrow accounts,
2 sir?

3 A. I took legal title.

4 Q. Correct. But you didn't take equitable title. It's
5 not your money?

6 A. I didn't take equitable title.

7 Q. Okay. So you're holding it? Your understanding is
8 that Lymon Warehouse has made a claim for that one
9 hundred thousand dollars, correct?

10 A. Yes.

11 Q. The claim that Lymon Warehouse makes for that money
12 is pursuant to Defendant's Exhibit Number 1, the contract
13 of April 7th?

14 A. Correct.

15 Q. Okay. When you look at the release you drafted --
16 you included Lymon Pacific in the release that you
17 drafted, Defendant's Exhibit Number 5, did you not, sir?

18 A. They were certainly included, yes.

19 Q. And that money was in dispute, was it not, sir?

20 A. There was disputes going on between the parties,
21 yes.

22 Q. And there was a dispute sufficient enough that you
23 end up filing an interpleader action seven months later?

24 A. Yes.

25 Q. Right?

1 A. Yes.

2 Q. So you include Lymon Warehouse and Lymon Pacific in
3 a release on May 27th, right?

4 A. Right.

5 Q. And Lymon Warehouse releases Lymon Pacific from all
6 liquidated damages, does it not?

7 A. Lymon Warehouse made a general release of any
8 further claims, any future claims, or any past claims it
9 had against Lymon Pacific. But ---

10 Q. Including liquidated damages. Page five of
11 Defendant's Exhibit Number 5 is the release language.
12 And you can see five lines down, it says liquidated
13 damages?

14 A. Whatever.

15 Q. Okay. It also says any damages, does it not?

16 A. Any damages.

17 Q. And the only relationship that Lymon Pacific and
18 Lymon Warehouse had was the April 7, 2011, contract that
19 you know of?

20 A. I don't know about that.

21 Q. You don't know about the April 7 contract?

22 A. I know that that -- I don't know that's the only
23 relationship. I was simply ---

24 Q. The only one you're aware of?

25 A. That's the only thing I was aware of.

1 Q. Right. And they released on -- they, being Lymon
2 Warehouse, released Lymon Pacific for all claims for
3 damages, including liquidated damages on May 27th, did
4 they not?

5 A. Yes.

6 Q. They didn't do it in return for one hundred thousand
7 dollars, did they?

8 A. The purpose of it was to do the one hundred thousand
9 dollars.

10 Q. The purpose of the agreement is found in the
11 agreement, is it not, sir?

12 A. The purpose if it -- the intent of Peter Stanley and
13 Susan Stanley and the two LLCs was for me to release
14 those funds to Lymon Warehouse.

15 Q. But you didn't put that in as consideration in your
16 release, did you?

17 A. I didn't put the hundred thousand dollars as
18 consideration, no.

19 Q. No. You put twenty-seven thousand five hundred
20 dollars in for consideration of that release?

21 A. Which is the money I paid to ---

22 Q. So we know this. Lymon Warehouse signed an
23 agreement that its lawyer prepared on May 27th, 2011,
24 releasing Lymon Pacific for twenty-seven thousand, five
25 hundred dollars, right?

- 1 A. It paid them -- it paid them twenty-seven thousand.
- 2 Q. Not a hundred and twenty-seven thousand five
- 3 hundred, right?
- 4 A. It did not have a hundred thousand in there.
- 5 Q. So the only claim that Lymon Warehouse has to this
- 6 money off of the April 7th, 2011, contract was released
- 7 on May 27th of 2011, right?
- 8 A. No.
- 9 Q. Well, you released Lymon -- well, we may disagree
- 10 then. You release Lymon Pacific from liquidated damages,
- 11 correct? Yes?
- 12 A. Whatever it says.
- 13 Q. Okay. You released them from all damages, correct?
- 14 A. Whatever it says.
- 15 Q. Well, you wrote it. I mean, look at page five.
- 16 Okay. Paragraph eight that you drafted that says,
- 17 complete release of all claims against Lymon Pacific, I
- 18 mean, you wrote this. I'm not ---
- 19 A. Yeah.
- 20 Q. --- trying to put words in your mouth.
- 21 A. Yeah.
- 22 Q. You wrote it. The first line, read it to its
- 23 conclusion, and make sure I read this part right.
- 24 A. In the ---
- 25 Q. No, no, I don't need you to read it out loud. I

1 just want to make sure I understand. Bennett and Lymon
2 Warehouse with spouse P.R., successors, heirs, attorneys,
3 and assigns, does hereby release forever discharge Lymon
4 Pacific. And then it releases all claims for damages and
5 liquidated damages. So a dispute was ongoing on May 27th
6 of 2011 as to who owned the hundred thousand dollars,
7 correct?

8 A. Whether anybody else had any interest in it other
9 than Lymon Warehouse.

10 Q. Right. So Lymon Warehouse's claim to that money is
11 the April 7th contract with Lymon Pacific, correct?

12 A. The breach of contract.

13 Q. Right. And it's released on May 27th without them
14 -- without Lymon Warehouse receiving the funds, correct?

15 A. I'm holding it for Lymon Warehouse.

16 Q. You're holding it. You didn't release it to them
17 though?

18 A. I did not pay it to them.

19 Q. Okay.

20 A. I was holding it for the benefit of Lymon Warehouse
21 subject to any other claims that anybody else raised.

22 Q. Sitting here today, Lymon Warehouse can't sue Lymon
23 Pacific for breach of contract, can it?

24 A. (No verbal response)

25 Q. You released it on May 27th?

1 A. Simply because it released the funds. It agreed to
2 release it for the hundred thousand dollars is what it
3 did.

4 Q. Okay. Show me in your six-page document where it
5 says we released the one hundred thousand dollars.

6 A. That was the intent.

7 Q. Intent? The intent is usually by the four corners
8 of the document. It's not here, is it? Let me proffer a
9 different scenario. You guys got cute with your release,
10 didn't you? You and your client, Mr. Bennett, sat down
11 and decided for a way for you to get the hundred thousand
12 dollars. That's what you did, isn't it?

13 A. No.

14 Q. And the way you decided you were going to get the
15 hundred thousand dollars was to concoct some sort of
16 release with Lymon Pacific, thinking that then your
17 client would get the hundred thousand dollars, which is
18 what y'all did, isn't it?

19 A. No.

20 Q. And you knew Mr. McWhirter had a claim to the money

21 ---

22 A. No.

23 Q. --- because you referenced his name in the May 9th
24 letter?

25 A. I didn't know anything about Mr. McWhirter.

1 Q. Then why is he in your subject line on May 9th?

2 A. I don't recall how his name came up, but I had never
3 had any contact, direct, indirect, or information about
4 him other than the check.

5 Q. Why did you sue him as part of this lawsuit in
6 January of 2011?

7 A. Because of the check. Because of the check.

8 Q. Because of the check. Because you knew he had a
9 right, and ---

10 A. No.

11 Q. --- you wanted to make sure it was cleared up.

12 A. I wanted to be in a position to where I could
13 distribute the money out to Lymon Warehouse free of any
14 claims and not have me to be responsible for improperly
15 disbursing escrow funds. That was the sole purpose of
16 it.

17 Q. And the only entitlement to the money from Lymon
18 Warehouse is that April 7th contract that you would agree
19 was released on May 27th, right?

20 A. I don't agree that it was released.

21 Q. Well, what were you releasing Lymon Pacific from?

22 A. Any kind of claims it has against Lymon.

23 Q. Okay.

24 A. Or any kind of claims ---

25 Q. So Lymon Warehouse was releasing any type of claims

1 it had against Lymon Pacific, including breach of
2 contract?

3 A. At that time, the money had already been paid.

4 Q. And you had to disburse the money, so you had legal
5 title?

6 A. For the benefit of Mr. -- of Lymon Warehouse.

7 Q. You hadn't -- you didn't release it to them before
8 that day. That was your money for whoever's it is.

9 Equitable title hadn't transferred hands yet, had it?

10 A. It transferred to Mr. Bennett and Lymon Warehouse.

11 Q. And so you just held that money for seven months,
12 and then you brought a lawsuit against Mr. McWhirter?

13 A. For the purpose of making sure he had no claim.

14 Q. And you didn't reach out to him except by lawsuit?

15 A. That's the only way I knew to reach out to him.

16 Q. All right. Let's talk about the Defendant's Exhibit
17 Number 6, the May 7th letter to Richard Bennett from Mr.
18 Stanley. Do you see that?

19 A. No.

20 Q. I thought Defendant's Exhibit 6 was placed before
21 you and marked into evidence.

22 A. I don't think so. Let's see.

23 Q. I've got another copy. Did you find it, sir?

24 A. No, I don't have it.

25 MR. PROTOPAPAS: McWhirter 1.

1 (WHEREUPON, Defendant's McWhirter Exhibit Number 1
2 marked for identification only.)

3 MR. PROTOPAPAS: Your Honor, is it before you
4 as Defendant's 7?

5 THE COURT: May 7, 2011, letter from Peter
6 Stanley to Lymon Warehouse, LLC?

7 MR. PROTOPAPAS: Yes, sir.

8 THE COURT: That's Defendant's Number 6.

9 MR. PROTOPAPAS: Madam Court Reporter, we don't
10 need to do that. I'm just going to put D-6 on it.

11 (WHEREUPON, Defendant's McWhirter Exhibit Number 1
12 was withdrawn.)

13 MR. THREKELD: Okay.

14 Q. Is this one of the letters you've been referring to
15 that means Lymon Warehouse somehow has a hundred thousand
16 dollars?

17 A. Yeah, that's one of the bases.

18 Q. What's the closing date for the contract, sir, of
19 April 7th of 2011? What's that closing date? Do you
20 remember?

21 A. I believe that was May 7th.

22 Q. May 7th. What's the date of this letter?

23 A. May 7th.

24 Q. May 7th. And it's written to Mr. Bennett?

25 A. Yes.

1 Q. For Mr. Stanley?

2 A. Yes.

3 Q. Do you see the first paragraph, the first line --
4 first sentence, second line. I recognize that time is of
5 the essence. Closing is scheduled for May 7th. You see
6 that?

7 A. Yes.

8 Q. So he's writing on May 7th that time is of the
9 essence of the May 7th contract?

10 A. Yes.

11 Q. And that he's -- I understand there's a hundred
12 thousand dollars in your trust account. You see that?

13 A. Yes.

14 Q. And he's saying on May 7th, in the event we don't
15 close on May 7th, I agree to direct Attorney Harold
16 Threlkeld to release the deposit pursuant to item
17 fifteen. Do you see that?

18 A. Yes.

19 Q. Do you find it odd that on May 7th Lymon Pacific is
20 writing a letter saying time is of the essence on May 7th
21 and that I'm authorizing you to release the money if we
22 don't close on May 7th? Do you find that odd?

23 A. I don't know whether it's odd or not.

24 Q. He never gave you the direction, by the way, did he?
25 Lymon Pacific never gave you the direction to release the

1 money, did it?

2 A. He never wrote me a letter or anything and told me
3 to release it.

4 Q. Never signed anything saying you could release it,
5 did he?

6 A. Yes.

7 Q. The release?

8 A. Yes.

9 Q. Is that the only document?

10 A. Well, I received a copy of this letter.

11 Q. I understand. But my question is, did you -- that
12 May 7th letter written about the closing on May 7th
13 saying that time is of the essence for the May 7th
14 closing was going to follow up with a letter to you to
15 release the hundred thousand dollars, and you never got
16 anything like that?

17 A. I didn't have any followup release.

18 Q. Okay. The item fifteen of the contract, Remedies
19 for Breach, is that the -- that's what it was referring
20 to, correct? I apologize. Defendant Exhibit 6, the last
21 line of the letter of May 7th of 2011.

22 A. All right. Paragraph fifteen says, Remedies for
23 Breach, yes.

24 Q. Okay. Do you agree with me that the release dated
25 May 27th of 2011 releases claims for damages against

1 Lymon Pacific for something. You can say it's for
2 consideration if you want to.

3 A. It didn't release the right to receive the escrow
4 fund I was holding.

5 Q. Did you ever carve that -- can you show me where you
6 carved out the escrow money in your release that you
7 drafted for your client on May 27th of 2011? Where's
8 that carved out?

9 A. It didn't -- it wasn't -- it didn't involve.

10 Q. In fact, it's not carved out at all? You just
11 include Lymon Pacific in there, but you don't include
12 anything else other than they're getting released?

13 A. That's right.

14 Q. Okay. And Susan Stanley and Peter Stanley are
15 husband and wife?

16 A. I don't know.

17 Q. Okay. But you just know Susan Stanley did it for
18 Mills?

19 A. Yes.

20 Q. Peter Stanley did it for Lymon. That's all you
21 know?

22 A. Yes.

23 Q. You never asked if the May 4th, 2011, contract
24 signed by Mills Demolition by Susan Stanley was anything
25 related to Peter Stanley?

1 A. No. The two people came to my office together. I
2 don't know what their relationship was.

3 Q. Got you. Okay. Let's look again at the first
4 exhibit, the April 7th contract.

5 A. All right, sir.

6 Q. I want you to go to paragraph twelve. It's on the
7 third page. Okay.

8 THE COURT: Just one second. I'm looking at
9 exhibit number 1.

10 MR. THRELKELD: I didn't see a paragraph ---

11 THE COURT: And I have the cover page ---

12 MR. PROTOPAPAS: I'm sorry.

13 THE COURT: --- and the second page is one
14 through five, and the third page is thirteen through
15 twenty-one. So we're missing paragraph six through
16 twelve.

17 MR. PROTOPAPAS: May I substitute a complete
18 copy?

19 THE COURT: Yes, you may.

20 MR. PROTOPAPAS: Your Honor, should I just
21 remark that as Defendant's 1?

22 THE COURT: That'll be fine.

23 Any objection to him remarking ---

24 MR. PRUITT: No, Your Honor. It's the same in
25 our exhibit. I don't know what happened to that page.

1 THE COURT: Okay.

2 MR. PRUITT: It's missing in the exhibit book,
3 too.

4 THE COURT: Just for the record, the one that
5 has been admitted, I'm going to mark this as withdrawn
6 and substitute it.

7 MR. PRUITT: Yes, sir.

8 THE COURT: You all right with that?

9 (WHEREUPON, Defendant Lymon Warehouse Number 1 was
10 withdrawn and substituted with another exhibit and
11 remarked and admitted as Defendant Lymon Warehouse
12 Number 1.)

13 Q. All right. Mr. Threlkeld, is your ---

14 A. I have it, another copy of the contract. The other
15 one said twelve involves -- this contract shall be
16 governed by the laws ---

17 Q. Yes, sir.

18 A. --- of the State of South Carolina.

19 Q. That would be the May 4th one that you have in front
20 of you. But on the April 7th one -- if you don't have
21 it, that's fine. I can give you my copy.

22 A. I don't have it.

23 Q. Okay.

24 THE COURT: Here you go. I've got a copy
25 attached to the complaint.

1 MR. PROTOPAPAS: I'm sorry, Your Honor.

2 THE COURT: That's all right.

3 Q. I'm sorry, sir.

4 A. All right.

5 Q. And there's a -- take a moment -- I believe the
6 third page has a paragraph twelve.

7 A. This agreement shall constitute the entire agreement
8 between the parties, and no prior verbal ---

9 Q. I need you to -- I don't need you to read it out
10 loud. I'm sorry. I just wanted to make sure you're
11 familiar. I don't want to ask a question to you that you
12 haven't had a chance to read the paragraph. I'm
13 interested in the last sentence that begins, in the event
14 of alteration ...

15 A. Okay.

16 Q. Okay. That last sentence states that if the
17 original agreement between Greg Shoals and Lymon Pacific
18 -- and Lymon Pacific is to be altered, it shall be in
19 writing and signed by all the parties.

20 THE COURT: Just one second. Let me ask you a
21 question. My paragraph -- what's attached to the
22 complaint says, whole agreement. This agreement shall
23 constitute the entire agreement between the parties, no
24 verbal, et cetera, et cetera, et cetera. Nowhere does it
25 reference any named parties in that paragraph.

1 MR. PROTOPAPAS: Fair enough, Your Honor. Let
2 me clean up ---

3 THE COURT: Okay. And what I'm asking you is
4 what's attached to the complaint is not the right copy,
5 or is there -- is that just you and your question that
6 you're asking?

7 MR. PROTOPAPAS: Let me be clear. I apologize,
8 Your Honor.

9 THE COURT: Okay.

10 Q. Could you look at -- when you look at the first page
11 of this contract, sir ---

12 A. Yes, sir.

13 Q. --- do you see there's strike-outs and lines?

14 A. Yes.

15 Q. Do you have any knowledge of the very first contract
16 -- or the first, the Greg Shoals contract, unmarked? Do
17 you have any knowledge of it?

18 A. I don't even know that there was one.

19 Q. That's fine then. I'm going to move on.

20 On paragraph fifteen, though, of that very same
21 exhibit you're looking at says, remedies for breach. Do
22 you see that?

23 A. Yes.

24 Q. Does it say liquidated damages anywhere in paragraph
25 fifteen?

1 A. I don't see the word liquidated damages.

2 Q. And you agree with me, sir, that there's -- for
3 liquidated damages clauses you reference liquidated
4 damages in those clauses, and you also put in that it's
5 too difficult for us to calculate damages at this time.
6 Those are the key phrases for liquidated damages clauses
7 in South Carolina, if you know?

8 A. I know those are key.

9 Q. And neither of ---

10 A. They're huge.

11 Q. Neither of those reference points are in paragraph
12 fifteen, are they?

13 A. No.

14 Q. The May 4th contract, sir -- you had it a moment
15 ago, I believe, in front of you?

16 A. Yes.

17 Q. It was -- I believe it was marked as Defendant's
18 Exhibit 9. Is that right, sir?

19 A. I have the contract.

20 Q. Yes, sir. Can you look in this -- in that contract
21 at paragraph fourteen, Remedies for Breach?

22 A. Paragraph fourteen?

23 Q. And you can read it to yourself. And my question
24 is, is it the same paragraph as in Defendant's Exhibit
25 Number 1, the April 7th contract, paragraph fifteen,

1 Remedies for Breach?

2 A. It appears to be.

3 Q. Okay. And we do know that that May 4th contract
4 between Mills Demolition and Lymon Warehouse was resolved
5 by the May 27th release?

6 A. Yes.

7 Q. And as part of the resolution, the fifty thousand
8 dollars didn't go to Lymon Warehouse, did it?

9 A. No.

10 Q. A portion of it went to Lymon Warehouse?

11 A. Right.

12 Q. And unresolved and unmentioned in the May 27th
13 release is the April 7 contract, correct?

14 A. Yes.

15 Q. However, the parties to the April 7th contract,
16 Lymon Pacific and Lymon Warehouse, are part of the May
17 27th release?

18 A. They are part of it.

19 Q. Give me one second, sir.

20 MR. PROTOPAPAS: No other questions, Your
21 Honor. Thank you.

22 THE COURT: Redirect -- or recross?

23 RECCROSS-EXAMINATION

24 BY MR. PRUITT:

25 Q. Mr. Threlkeld, at some point in time, were you

1 furnished a copy of the May 3rd letter of Lymon Pacific
2 to Richard Bennett concerning the contract?

3 A. I believe I was.

4 Q. Okay. Did you understand that Lymon Pacific was
5 renouncing all of its interest in and to the one hundred
6 thousand dollars?

7 A. Yes. That was my understanding of the intent.

8 Q. But you hadn't personally met at that time with Mr.
9 Stanley to verify the authenticity of the letter or his
10 signature?

11 A. No.

12 Q. Is that part of the reason why you drew up the
13 release that's now marked as number 5?

14 A. Yes. That was to formalize what that says.

15 Q. Yes, sir. And at the end of the release and these
16 letters, who did you think had the only right to the
17 hundred thousand dollars in your escrow account?

18 A. Lymon Warehouse.

19 Q. And had not you received these various lawyer
20 letters later on, would you have disbursed it in accord
21 with that?

22 A. Yes.

23 MR. PRUITT: That's all I have.

24 THE COURT: All right. May Mr. Threlkeld be
25 excused?

1 MR. PROTOPAPAS: We're fine with him being
2 released.

3 MR. THRELKELD: Sure.

4 THE COURT: I'm sorry. I thought you had a
5 couple of questions for him.

6 RECCROSS-EXAMINATION

7 BY MR. PROTOPAPAS:

8 Q. Mr. Threlkeld, briefly, we have a May 7th letter
9 saying you can release the money from -- or saying they
10 will instruct you to release the money?

11 A. Yes.

12 Q. A May 10th letter from Mr. Lowery saying don't
13 release the money?

14 A. A May 10th letter from who?

15 Q. Mr. Kelly Lowery, an attorney from Spartanburg.
16 It's just Defense Exhibit Number 8.

17 A. Well, it -- of course, he simply objected to my
18 releasing it. He didn't give me any reason why I
19 shouldn't, but he certainly objected to it.

20 Q. Well, he gave you two reasons.

21 THE COURT: I'll read the letter.

22 MR. PROTOPAPAS: Correct. I apologize, Your
23 Honor. No further questions.

24 THE COURT: All right. Any reason Mr.
25 Threlkeld can't be released now?

1 MR. PROTOPAPAS: None from our side, Your
2 Honor.

3 MR. PRUITT: No, sir, Your Honor.

4 THE COURT: All right. Thank you, sir. You
5 may be released. Any documents he needs to leave here?
6 Is he free to take his file with him?

7 MR. PROTOPAPAS: Yes, Your Honor.

8 THE COURT: All right. Thank you. Thank you,
9 Mr. Threlkeld.

10 MR. PRUITT: I need to say something to Mr.
11 Threlkeld. He and I are both supposed to be at a
12 deposition at one o'clock.

13 THE COURT: Well, let me just tell you. Here's
14 what I've got going on. I know that you've probably got
15 a problems. I have a meeting at two between the
16 Solicitor and Public Defender. We can break now and come
17 back around two-fifteen or two-thirty if that gives you
18 enough time.

19 MR. PRUITT: I was going to suggest to him that

20 ---

21 THE COURT: He do it?

22 MR. PRUITT: --- we cancel it.

23 THE COURT: Okay.

24 MR. PRUITT: And I was going to let him take
25 care of it. And we'll go as long as you want to go.

1 THE COURT: Well, who's the next witness that
2 you have up, or who's the next -- you have the first
3 witness up? Who's going to be -- is that Mr. McWhirter?

4 MR. PROTOPAPAS: Yes, Your Honor. It'll likely
5 Mr. McWhirter.

6 THE COURT: He's going to be a while?

7 MR. PROTOPAPAS: Yes, sir. He'll be a little
8 bit.

9 THE COURT: Okay. Let's go ahead and break now
10 until two-fifteen. And let me just tell you, it may be a
11 little bit more or less on either side of that, depending
12 on how long this meeting -- I understand it's not going
13 to take a long time. But is that a problem with anybody
14 doing that?

15 MR. PRUITT: No, sir.

16 MR. PROTOPAPAS: No, Your Honor.

17 THE COURT: We'll be in recess until two-
18 fifteen.

19 (WHEREUPON, court stood at recess for a lunch
20 break.)

21 THE COURT: All right. Mr. Protopapas, are you
22 ready to proceed with your case-in-chief?

23 MR. PROTOPAPAS: Yes, Your Honor. We were
24 going to call Mr. Bennett as our first witness, but he's
25 not going to be here for a minute or two. We're going to

1 call Mr. McWhirter.

2 THE COURT: Mr. McWhirter, come on around.

3 DONALD J. MCWHIRTER,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. PRACHT:

7 Q. Mr. McWhirter, how old are you?

8 A. I'm fifty-six years old.

9 Q. Where are you from?

10 A. Tuftonboro, New Hampshire.

11 Q. How long you lived in Tuftonboro, New Hampshire?

12 A. Since 1974.

13 Q. Tell the Court a little bit about your education and
14 your background.

15 A. I've got a master's degree in business.

16 Q. And where's that from?

17 A. From the University of New Hampshire.

18 Q. And what kind of business -- how do you make a
19 living?

20 A. I'm a contractor. I do -- I'm a building
21 contractor, residential and commercial. I do excavation,
22 septic systems, and I also demolish buildings.

23 Q. Tell us about your demolition experience.

24 A. Mostly residential. But we've -- Mr. Edwards and I
25 have demolished commercial buildings as recently as last

1 winter up in Portland, Maine.

2 Q. Tell me about how you were drawn to South Carolina
3 and ultimately into this transaction. Tell me about how
4 you came down here.

5 A. Mr. Edwards and Mr. Cooper were friendly. And Mr.
6 Cooper met Mr. Stanley, and he put us all together.

7 Q. And when you say put us all together, what do you
8 mean?

9 A. Well, we met down in South Carolina, and we were
10 going to view -- as partners, we were going to view three
11 or four old mills to demolish them and salvage the
12 materials.

13 Q. And did you guys look at any specific mills in South
14 Carolina together?

15 A. Yes. We looked at Lymon, Spindale, and Kernshaw
16 (phonic) that day.

17 Q. And what did you, Mr. Stanley, and Mr. Edwards and,
18 I believe, Mr. Cooper, ultimately decide you wanted to --
19 how'd y'all want to proceed?

20 A. Ultimately, we decided the most profitable building
21 was the Lymon mill.

22 Q. And to your knowledge, who was the owner of the
23 Lymon mill?

24 A. Richard Bennett was my -- was the owner.

25 Q. And who -- tell me about your negotiations with Mr.

1 Bennett and about the events leading up in February and
2 March of 2011?

3 A. Well, we came back and we viewed the building. We
4 discussed different scenarios with Mr. Bennett.
5 Specifically, we discussed purchasing the building. I
6 threw out the scenario to Mr. Bennett that the
7 possibility of paying him from the net proceeds of the
8 steel on a monthly basis. And we discussed how that
9 money would flow to him, how it would be guaranteed.
10 Ultimately, he told me that he wanted to sell the
11 building outright, didn't want to be involved in the
12 demolition business. And subsequent to that, we made him
13 an offer of -- and it was accepted of -- when I say we, I
14 mean Seth Cooper, Elliott Edwards, Peter Stanley and
15 myself. We made an offer of one point three million
16 dollars, and it was accepted.

17 Q. Okay. And did Mr. Cooper continue to participate in
18 y'all's partnership?

19 A. Well, Mr. Cooper and Mr. Stanley were in charge of
20 financing and all the book work, the permits. That was
21 their job. Mr. Edwards and myself were in charge of
22 demolition contracts and selling the product.

23 Q. And so Mr. Cooper, his involvement ---

24 A. Mr. Cooper ended up getting into an argument with
25 Mr. Stanley shortly after -- sometime in February, and he

1 withdrew from the partnership.

2 Q. Okay. Now, tell me about your trips to this Lymon
3 Warehouse. And I mean the actual physical property and
4 ---

5 THE COURT: Just one second. Let me ask a
6 question.

7 Which partnership are you referring to?

8 THE WITNESS: Well ---

9 THE COURT: I know the four individuals you
10 named, but is there a name of this partnership?

11 THE WITNESS: We hadn't formalized the
12 partnership in writing at that point in time.

13 THE COURT: You had no formal ---

14 THE WITNESS: We had a verbal ---

15 THE COURT: Okay.

16 THE WITNESS: We were all equal partners, Your
17 Honor.

18 THE COURT: All right. Go ahead. Excuse me.

19 Q. Tell me about your physical trips to this warehouse
20 property.

21 A. Starting -- or just in general?

22 Q. Well, prior to April 7th, tell me about your trips
23 to the Lymon Warehouse property.

24 A. Well, once we agreed on a price, we -- I, of course,
25 went on the property with Mr. Edwards, Mr. Stanley and

1 Mr. Bennett. He wouldn't let us on the property unless
2 either he or his property manager were there. So I -- we
3 met to evaluate the steel. We walked around the
4 building. We measured the steel. Mr. Bennett was there
5 with us. I brought back steel buyers, and Mr. Bennett
6 had his property manager walk with us. It was at that --
7 that was later in the month of April. At that point in
8 time, we bumped into Mr. Bennett. And he was actually
9 showing the property to two other people.

10 Q. Okay. Backing up. We're still before the April
11 contract. What was your role in this verbal partnership
12 or agreement you had with Stanley and Elliott Edwards?
13 What were you going to contribute?

14 A. I was going to participate in the demolition of the
15 building, and it was my job to evaluate the profitability
16 of the job. So estimating the steel, figuring out what
17 the gross amount of revenue that we were going to derive
18 from the building and ultimately the net profit.

19 Q. Do you operate your demolition business under any
20 kind of a other corporate entity?

21 A. No. I have two construction companies, McWhirter
22 Construction, Inc., and McWhirter and Crew.

23 Q. And what was the understanding of the role of
24 McWhirter and Crew and McWhirter Construction? What were
25 they going to specifically -- how were they going to

1 benefit from this contract?

2 A. Well, we would -- Elliott and I were going to
3 demolish the building, so we would naturally derive a
4 profit from that. And that would create an expense.

5 THE COURT: Use last names, if you would, so
6 ...

7 THE WITNESS: I'm sorry.

8 THE COURT: I'm not following.

9 A. Mr. Edwards and I were going to demolish the
10 building, and clearly we would make a profit from that.
11 That would create an expense, and it would be subtracted
12 from the gross amount, the revenue of the steel. That
13 would derive a net profit. And the four partners, three
14 at that point in time, would split the profit equally.

15 Q. Okay. Now, tell me about what happened in the month
16 of March after y'all had agreed on a sales price. Prior
17 to April 7th, the month of March.

18 A. Well, a contract was signed. It involved Lymon
19 Pacific which was an LLC that we were in the process of
20 forming and Greg Shoals.

21 Q. Did you ever sign any kind of operating agreement
22 for this LLC?

23 A. No.

24 Q. Lymon Pacific, I mean?

25 A. Lymon Pacific, no.

1 Q. Okay. Did you know -- what was your understanding
2 of Greg Shoals Acquisitions? Who were they?

3 A. Mr. Bennett told me that Greg Shoals was a partner
4 of his, and he was in the process of buying him out.

5 Q. Okay. Now, taking us forward to April 7th, did you
6 come to South Carolina on April 7th?

7 A. Yes.

8 Q. Okay. What was the purpose of your visit to South
9 Carolina?

10 A. Well, Mr. Cooper was supposed to come up with a
11 hundred thousand dollar -- or somewhere between Mr.
12 Cooper and Mr. Stanley was supposed to come up with a
13 hundred-thousand-dollar deposit. They couldn't come up
14 with the money. Mr. Bennett wanted to close. He wanted
15 to sign the deal. I came up with the hundred thousand
16 dollars, and I brought it to South Carolina with me in
17 the form of a check and handed it to Mr. Bennett.

18 Q. Okay.

19 A. I mean, it was -- that was at our meeting at Stax
20 Restaurant.

21 Q. Who all was present at this meeting?

22 A. Mr. Edwards, Mr. Stanley, Mr. Bennett and myself.

23 Q. And when you arrived at that meeting, what was your
24 understanding of the purpose of that meeting?

25 A. The purpose was to present Mr. Bennett with a check

1 to seal the deal.

2 Q. The contract has been previously marked as Defense
3 Exhibit 1.

4 MR. PRACHT: I'd like to hand that to you if I
5 may, Your Honor.

6 THE COURT: That's it, I think.

7 Q. Will you take a second and generally familiarize
8 yourself?

9 A. (Witness complied)

10 Q. There appears to be some writing on the contract.
11 Do you recall if that writing was written on there at
12 Stax, or was it present when you showed up with a
13 contract?

14 A. Well, this contract is a copy of the March contract.
15 And we -- it was revised. The dates were changed.
16 Everything was done in a hurry. And this -- it was my
17 understanding that this contract was to be retyped and
18 neatly done. To the best of my knowledge, I don't think
19 it ever was.

20 Q. When you gave your -- why did you give a hundred
21 thousand dollars into this deal?

22 A. I wanted to seal the deal with Mr. Bennett so that
23 we could purchase the property and make a profit.

24 Q. And specifically, how were you going to benefit from
25 this contract?

1 A. I would benefit from the tearing the building down,
2 and then I would also benefit from my share of the
3 profits.

4 Q. I'd like to call your attention to paragraph ten
5 which is on page three of the contract. And in there,
6 there's a -- the second paragraph of paragraph ten. It
7 says, to wit, and then it goes to read -- you with me?

8 A. Yes.

9 Q. Can you tell me the purpose of your understanding of
10 why that was placed in the contract?

11 A. Well, Elliott and I discussed this with Mr. Bennett
12 and his property manager. I can't recall his name. We
13 wanted to make sure that the building was ready for us to
14 demolish when the time came. And we wanted -- you know,
15 we wanted to just be clear as to what -- who had what
16 responsibilities.

17 Q. Did Mr. Bennett understand that you were going to do
18 the demolition?

19 A. Yes, he did.

20 Q. And why do you know that?

21 A. I met him on several occasions onsite, brought
22 investors and steel buyers. And I had discussions with
23 him and Mr. Edwards with regard to the sequence of
24 events. There was a building attached to the building
25 that we were going to tear down. And when I say

1 attached, I mean, it was four feet away. So Mr. Bennett
2 was concerned about how that was going to be torn down.

3 And so ...

4 Q. Now, this hundred thousand dollars, where did it
5 come from?

6 A. My personal bank account.

7 Q. And you just have a hundred thousand dollars in your
8 personal bank account?

9 A. Well, I had to move some money around. It came from
10 my retirement account.

11 Q. And did you write that check to Lymon Pacific, LLC?

12 A. No, I did not.

13 Q. Who did you write the check to?

14 A. I wrote the check to Attorney Threlkeld to be put in
15 escrow.

16 Q. Was it your intention that that hundred thousand
17 dollars was a loan to Lymon Pacific?

18 A. If it was a loan to Lymon Pacific, I would have
19 written the check out specifically to Lymon Pacific.

20 Q. All right. So I want you to take us from April 7th,
21 the day you signed the contract, and tell us in your own
22 words the events that took place between April 7th and
23 May 7th as best as you recall.

24 A. From April 7th, which was the date that I signed the
25 check and handed it to Mr. Bennett, the very next day I

1 got a belligerent phone call from Mr. Stanley. And Mr.

2 Stanley informed me that ---

3 MR. PRUITT: Objection to whatever Mr. Stanley
4 said. It would be hearsay.

5 MR. PRACHT: I'd argue he's a party opponent.

6 THE COURT: Has Stanley been named? Yes, he
7 is. Overruled.

8 Q. Go ahead, Mr. McWhirter. You can continue.

9 A. Thank you. Mr. Stanley told me on the phone that he
10 was going to cut Mr. Edwards and myself out of the deal,
11 return my hundred thousand and proceed without us.

12 Q. And what did you do in reaction to this news?

13 A. Well, I said, the hell you are. I said, you don't
14 have my hundred thousand dollars to return. And we're
15 entitled to our share of the profits.

16 Q. Any other -- any other action?

17 A. We ended the conversation, stayed in a motel that
18 night. We engaged Kelly Lowery to review the operating
19 agreement for Lymon Pacific which Mr. Stanley had drawn
20 up and proposed that he wanted us to sign it that day.

21 Q. When you say that day, what day?

22 A. April 7th.

23 Q. Before or after the meeting at Stax?

24 A. After the meeting at Stax.

25 Q. What was your reaction to the operating agreement?

1 A. Well, we had numerous discussions over the prior two
2 weeks about the operating agreement. And Elliott and I
3 didn't feel comfortable signing it, mainly because it
4 gave Mr. Stanley unilateral power to make decisions for
5 us that we weren't comfortable with.

6 Q. And what actions did Mr. Lowery, the attorney you
7 hired, take on your behalf to protect your hundred
8 thousand dollars?

9 A. He sent a letter to -- well, I had informed him that
10 I called Attorney Threlkeld on the 7th or the 8th. And
11 Mr. Threlkeld -- I called him on two separate occasions
12 and spoke with his secretary. Mr. Threlkeld chose not to
13 return my phone call. We went down to meet with Mr.
14 Lowery. He was going to review the operating document,
15 and he also put Mr. Threlkeld on notice. We also
16 discussed filing a lis pendens attachment on the property
17 to protect our interest.

18 Q. Did that ultimately happen?

19 A. It ultimately did not happen. There was a lot of
20 confusion after that by way of several letters that Mr.
21 Stanley wrote. Mr. Stanley wrote a letter on April 20th
22 reiterating the phone conversation that we had, that we
23 were out and he was in. He was pulling the rug out from
24 under us. Subsequent to that, on April 23rd, he wrote
25 another letter through his attorney, Attorney Vincent

1 (phonic), stating that he wanted to cooperate with us.

2 He apologized for any misunderstanding. He wanted to
3 follow through with us, demolish the building. So there
4 was a lot of confusion created.

5 Q. Did Mr. Lowery, your attorney, ever present you with
6 a letter he received from Mr. Threlkeld?

7 A. Yes.

8 Q. Okay. I'm sure ---

9 THE COURT: What's the date?

10 MR. PRACHT: The May 9th letter from Harold
11 Threlkeld.

12 MR. PRUITT: It'd be number 7, Your Honor.

13 Q. I'd ask that you review that letter, particularly
14 the first paragraph right there.

15 A. (Witness complied)

16 Q. After reading that, is there any doubt in your mind
17 that your attorney put Mr. Threlkeld on notice that you
18 -- that Mr. Lowery represented you in this matter?

19 MR. PRUITT: Objection. The letter speaks for
20 itself, and it's a leading question.

21 THE COURT: Sustained. Rephrase.

22 Q. After reading this letter, what does it say to you?

23 A. It tells me that Attorney Lowery put Mr. Threlkeld
24 on notice that I was a party to this contract and he --
25 that he -- Mr. Lowery represented me.

1 Q. Now, your relationship with Peter Stanley during
2 this April to May time frame, describe it.

3 A. Well, from the minute I put -- gave Mr. Bennett that
4 hundred-thousand-dollar check, it was very contentious.
5 Both he and Mr. Bennett were not cooperating ---

6 Q. How?

7 A. --- to put it politely. Well, I mean, Mr. Stanley
8 was telling me that I was out. He was cutting me out of
9 the deal. Mr. Stanley signed a contract behind my back
10 with Mr. Bennett to purchase the building out from under
11 -- out from under me. Mr. Stanley signed a letter
12 releasing my hundred thousand dollars on two separate
13 occasions, on April 30th and on April 7th. Never
14 corresponded with me to tell me that he was doing that.
15 What do you think about that? You know, I trusted Mr.
16 Stanley. He had a fiduciary responsibility to me as a
17 partner. I don't think he even ever came close to
18 fulfilling it.

19 Q. Okay. So I understand about Mr. Stanley. What
20 about Mr. Bennett?

21 A. I would say everything was friendly with Mr. Bennett
22 up until or about the 7th or 8th of April. And after
23 that, I feel that he conspired with Mr. Stanley.

24 MR. PRUITT: Objection, Your Honor.

25 THE COURT: Sustained.

1 MR. PRUITT: His feelings are not relevant
2 here.

3 THE COURT: Sustained.

4 Q. Tell us your observations on how you were treated by
5 Mr. Bennett.

6 A. Mr. Stanley had dumped the responsibility for
7 obtaining financing on myself and Mr. Edwards. I had a
8 hundred thousand dollars at stake, so I proceeded. And I
9 would try to bring investors and steel buyers down to the
10 Lymon Warehouse. The first time I tried it, I had no
11 cooperation with Mr. Bennett. The first meeting I tried
12 to set up took over a week. I'd get his answering
13 machine, his secretary. He'd refer me to his property
14 manager. He'd say he was on another job. He couldn't
15 come that day. I was being stalled.

16 Q. Okay. Did you ever get a hold of Mr. Bennett to
17 show -- be able to show these investors this property?

18 A. On one occasion only.

19 Q. Describe that.

20 A. Well, we finally had a meeting set up, and the steel
21 buyer and an investor were flying down from Boston. And
22 we met on time, and we walked through the plant. The
23 only odd thing about that day was that Mr. Bennett was
24 showing the plant to somebody else. And by fate, we met.
25 And my -- one of the investors asked the two men that

1 were with Mr. Bennett, who are you. And they wouldn't
2 answer. And Mr. Bennett and them walked in the opposite
3 direction. I think it may have been, in hindsight,
4 somebody from Hook Demolition.

5 Q. Okay. I want to jump back. I missed one thing, Mr.
6 McWhirter. At the April 7th meeting, tell me about the
7 conversations -- or tell me anything that Mr. Bennett
8 said during that con -- during that meeting.

9 A. Well, once we -- we had a -- once we talked about
10 the contract and a date, Mr. Bennett emphasized that the
11 closing date -- you know, that he really wanted to close.
12 And I handed him -- when I handed him the check, he
13 accepted the check. And he looked right at me, and he
14 said, you all just made a million dollars.

15 Q. Okay. Was there any ---

16 A. After that, it was just a lot of small talk.

17 Q. Was there any mention of a foreclosure action
18 pending?

19 A. No mention of a foreclosure whatsoever ever, ever.

20 Q. Were you ever privy or provided with any of these
21 letters prior to this lawsuit from Mr. Stanley and Mr.
22 Bennett, the ones of April 30th, May 3rd, all those?

23 A. Not prior to this lawsuit. I was -- I'm still
24 shocked when I look at the letters. I just -- I've never
25 seen anything like it in my life. I've never done

1 business with anybody like this in my life. I just --
2 from the two letters with trying to release my hundred
3 thousand dollars to, you know, being ignored by Attorney
4 Threlkeld to the backup contract with Mills Demolition.
5 I mean, right down to the -- I mean, as early as the 18th
6 of April, Hook Demolition's attorney had completed a
7 title search of the property. I'm pretty safe in
8 assuming that Mr. Bennett had already negotiated another
9 contract.

10 MR. PRUITT: Objection. He can't assume ---

11 THE COURT: Sustained. Sustained.

12 MR. PRUITT: --- what Mr. Bennett thought.

13 THE COURT: Sustained.

14 Q. Mr. McWhirter ---

15 THE COURT: Who's got a phone? Is that young
16 Mr. Pracht's?

17 MR. PRACHT: That's mine, Your Honor. I
18 apologize. It's on vibrate.

19 THE COURT: I'll see you at the end of the day,
20 Mr. Pracht.

21 Q. After you retained Kelly Lowery and the closing date
22 passed, what happened then after May 7th, 2011?

23 A. Can you be more specific?

24 Q. Sure. Did -- are you aware if Mr. Bennett ever got
25 the property sold?

- 1 A. Oh, I'm sorry. Yes, Mr. Bennett did, subsequent to
2 April 7, close on the property with Hook Demolition
3 Company out of Florida.
- 4 Q. Are you aware of what that purchase price was?
- 5 A. One point four, seven fifty.
- 6 Q. And what was -- what was the deal that you were a
7 part of? What was the purchase price?
- 8 A. One point three million.
- 9 Q. Were you ever at any time contacted by Attorney
10 Harold Threlkeld?
- 11 A. Never.
- 12 Q. I'm going to show you -- well, do you recall the
13 address that was on the check you gave Mr. Bennett, what
14 that address was?
- 15 A. Yeah. Route 109, Mirror Lake, New Hampshire.
- 16 Q. How long has that been your address?
- 17 A. Since 1974.
- 18 Q. Has it ever changed at any time between 1974 and
19 present?
- 20 A. No, it has not.
- 21 Q. How have you been harmed by the actions you've
22 described in this case, Mr. McWhirter?
- 23 A. Aside from the hundred thousand dollars?
- 24 Q. Yes.
- 25 A. As a direct beneficiary of the contract, I stood to

1 realize a profit in the demolition phase of the project
2 and my third share in the profit. So I mean, the
3 estimated -- my estimated profit was three point three
4 million dollars.

5 MR. PRACHT: One second, Your Honor.

6 Q. Mr. McWhirter, I'm going to hand you what's a letter
7 from McWhirter and Crew. I'd like you to review those
8 documents.

9 A. (Witness complied)

10 Q. Did you -- are you ready?

11 A. Yes.

12 Q. Did you prepare this letter?

13 A. I did.

14 Q. And who was it -- and is it an accurate
15 representation of what you wrote?

16 A. Yes, it is.

17 Q. And on the preceding -- or the subsequent three
18 pages, are those -- did you prepare those as well?

19 A. Yes.

20 MR. PRACHT: Your Honor, I'd ask that this be
21 admitted into evidence.

22 MR. PRUITT: Your Honor, I object. This is the
23 first time I've seen this letter. We've been through all
24 kind of discovery. Plus this is not the opinion of
25 McWhirter and Crew. He's basing this letter on a Dr.

1 Masafa Kahn, Ph.D. to estimate the steel. And so that's
2 hearsay as to us. And like I say, it's not been
3 previously presented, and I think it's trying to put in
4 an expert opinion that he hasn't had qualified to give
5 it, even if it were his ---

6 THE COURT: I will sustain the objection to the
7 extent that Mr. McWhirter's trying to use this letter to
8 establish damages.

9 MR. PRACHT: And that's not what I'm trying to
10 do, Your Honor. I'm actually trying to use it to show
11 that Mr. McWhirter was clearly the steel demolition guy
12 in this whole cabal from the beginning.

13 THE COURT: And what -- would you address why
14 this hasn't been presented to Mr. Pruitt?

15 MR. PRACHT: I would disagree with that.

16 MR. PROTOPAPAS: I would answer if I could,
17 Your Honor. I apologize for interrupting. This was
18 produced as part of the documents provided. You see the
19 Bates Number on the bottom right. It's Bates Number
20 RP53.

21 THE COURT: So you deny that it was not
22 produced?

23 MR. PROTOPAPAS: I do, Your Honor. I'm going
24 to find it. I have my cover letter and my sub-organized
25 book. I'd like to show it. And I apologize to ---

1 THE COURT: While you're looking, I'm going to
2 overrule the objection. But it's admitted for the sole
3 purpose of presenting the capacity in which Mr. McWhirter
4 supposedly was involved in this transaction, and it shall
5 not and will not be used in any way to measure damage for
6 establishing the damages that he just testified to.

7 MR. PROTOPAPAS: Very good.

8 THE COURT: Okay. What exhibit number would
9 that be?

10 MR. PRACHT: That would be McWhirter Exhibit 1.

11 MR. PRUITT: You could just -- could just
12 number them 10. I think it's going to be a real
13 confusing if we have two ---

14 MR. PRACHT: That's fine. Just Defendant's 10.

15 MR. PRUITT: --- Defendant 1 and McWhirter 1.

16 THE COURT: Let's just do it -- any objection
17 doing them straight on down the line?

18 MR. PRACHT: No, Your Honor.

19 MR. PROTOPAPAS: No, Your Honor. Just to
20 resolve the issue, I have attached Defendant McWhirter's
21 responses to requests for production from Lymon here --
22 Warehouse RP1 through RP338.

23 THE COURT: Okay. All right.

24 (WHEREUPON, Defendant McWhirter Exhibit Number 10
25 was marked and admitted into evidence.)

1 Q. Mr. McWhirter, what was the purpose of this
2 correspondence?

3 A. It was for a potential investor.

4 Q. And did you prepare this with the -- you consulted
5 with this other guy. But tell me about what this is
6 saying. I mean, explain it to us.

7 A. Well, it's an estimate of the profitability of the
8 demolition project at Lymon. And we had an engineer
9 estimate the tonnage for us. We had our own estimates,
10 but Mr. Edwards and I had estimated the tonnage on our
11 own. And we also had Mr. Kahn (phonic) estimate the
12 tonnage. So we determined the profitability of the
13 project, and we used this to ---

14 Q. And if this deal ---

15 A. --- make our offer to Mr. Bennett.

16 Q. If this deal had been consummated, who would have
17 done this work?

18 A. Mr. Edwards and myself would have done this work.
19 This -- a lot of the equipment that was in the estimate
20 for demolition was our equipment.

21 Q. And would McWhirter and Crew or Don McWhirter, would
22 they have been compensated separately for the demolition
23 work?

24 A. Yes.

25 Q. I think that's all I have.

1 MR. PRACHT: That's all we have, Your Honor.

2 THE COURT: Cross-examination?

3 CROSS-EXAMINATION

4 BY MR. PRUITT:

5 Q. Okay. Mr. McWhirter, let's start off with this
6 letter that you just got into evidence as number 10.

7 A. Sure.

8 Q. Now, that bears the date of March 23rd, 2011,
9 doesn't it?

10 A. Correct.

11 Q. Now, are you familiar with the term due diligence?

12 A. Yes.

13 Q. All right. Is this letter part of your due
14 diligence that you performed prior to signing the April
15 7th contract?

16 A. Yes.

17 Q. All right. And I believe you also testified that
18 this letter was written to Ken somebody, a potential
19 investor?

20 A. Yes.

21 Q. Is that right?

22 A. Ken Greenwood.

23 Q. Ken Greenwood? Okay. Now -- so as early as March
24 23rd, you were trying to secure investors in this
25 project; is that right?

1 A. Yes.

2 Q. Now, no matter what else happened, neither you nor
3 Seth Edwards -- Seth Cooper nor Mr. Edwards nor Stanley,
4 none of you put together -- ever got up the money to
5 close, did you?

6 A. No, we did not. By way of explanation, Mr. Stanley
7 told Mr. Edwards and myself that he had a secure investor
8 willing to put up the money. The problem at this point
9 in time was that the -- we felt that it was exorbitant.
10 He wanted sixteen percent on the money and sixty-five
11 percent of our profit.

12 Q. So you weren't satisfied with the investor that Mr.
13 Stanley presented?

14 A. Correct.

15 Q. And you were desperately trying, as well as with Mr.
16 Edwards, to get other investors; is that right?

17 A. That's correct.

18 Q. But no matter what, you weren't happy with the
19 developer -- the investor that Mr. Stanley had and you
20 couldn't find your own, and all of you together never
21 came through with the money, did you?

22 A. No. It was dumped on my lap with a very short time
23 frame. I received no cooperation from Mr. Bennett. Mr.
24 Stanley was writing me nasty letters telling me I was out
25 of the partnership. Yeah, I was under a lot of pressure

1 to find -- to -- I had to, you know, find investors.

2 Q. Isn't it true that you should have done all your due
3 diligence and lined up your investors before you ever
4 signed the April 7th contract?

5 A. Well, I don't know that that's true.

6 Q. Well, now, you've got a master's degree in business,
7 don't you?

8 A. Yes, sir.

9 Q. Okay. And let me see if I've got this right.
10 You've got a master's degree in business, and you put up
11 a hundred thousand dollars to seal the April 7th
12 contract?

13 A. Yes.

14 Q. Is that right?

15 A. That's correct.

16 Q. And you put up that money in behalf of Lymon
17 Warehouse -- Lymon Pacific, LLC, didn't you?

18 A. I put that up on behalf of myself.

19 Q. Okay. Well, the contract doesn't mention Mr.
20 McWhirter anywhere, does it?

21 A. No. But as I stated in earlier testimony, it was my
22 understanding that the -- this April 7 contract, as it
23 was marked up -- it was all admitted that it wasn't very
24 professional. I was under the assumption that it was
25 going to be retyped.

1 Q. Well, let's get back to this master's in business
2 administration that you have or business that you have.
3 You would agree with me that it would be prudent to have
4 a signed operating agreement before you entered into a
5 contract with an LLC, wouldn't you?

6 A. In hindsight, that would have been prudent.

7 Q. Now, it's true that ---

8 A. Excuse -- I'm sorry. I didn't mean to interrupt.
9 But we had discussions with Mr. Stanley. Mr. Edwards and
10 myself had discussions with Mr. Stanley. We were clearly
11 out of state. When we reviewed the operation document
12 that Mr. Stanley presented us, it wasn't what we
13 discussed. And we raised those reservations to him
14 shortly after I had given Mr. Bennett a hundred thousand.
15 We didn't do that in front of Mr. Bennett.

16 Q. All right. So the reason why the operating
17 agreement was never signed is because you and Mr. Stanley
18 never got the operating agreement to your satisfaction?

19 A. Correct.

20 Q. Okay. So by virtue of the turn of events and
21 because you didn't have those documents in place prior to
22 signing the April 7th agreement, you never became a
23 member of Lymon Pacific, did you?

24 A. No.

25 Q. All right.

1 A. But I was a partner of Stanley's.

2 Q. Okay. Well ---

3 A. And Mr. Bennett knew that.

4 Q. It's a -- you were a partner of Stanley's perhaps.

5 A.. No. I was going to gain direct benefit from that

6 April 7 contract ---

7 Q. Well, you didn't fall out with Mr. Bennett, did you?

8 A. --- by virtue -- I beg your pardon?

9 THE COURT: Just one second. Let him finish
10 before you ...

11 THE WITNESS: Thank you.

12 Q. Now, Mr. ---

13 THE COURT: You don't need to thank me. Don't
14 do it again, please, sir.

15 Q. Are you finished with your answer? I'm sorry.

16 A. Well, my point is that I was a direct beneficiary to
17 that April 7th purchase and sales agreement by virtue of
18 my partnership with Mr. Stanley ---

19 Q. But the part ---

20 A. --- and Mr. Edwards.

21 Q. Okay. Okay. Now, let's see. Let me get this
22 straight. Now, you claim to have a demolition company,
23 huh?

24 A. Yes.

25 Q. All right. Where's the contract between your

1 demolition company and Lymon Pacific, LLC, that gives you
2 the right to do the demolition?

3 A. At that point in time, it was all verbal.

4 Q. Okay. Now, isn't it also true that Mr. Stanley has
5 a demolition company known as Mills Demolition?

6 A. He has a letterhead that says Mills Demolition, but
7 he never demolished a building in his life.

8 Q. Okay. Well, now, isn't it also true that -- now,
9 what's the Edwards guy's full name?

10 A. Elliott Edwards.

11 Q. Elliott Edwards, yes. I don't know why I can't
12 remember that. It's true that Elliott Edwards also had a
13 demolition company?

14 A. Yes.

15 Q. And he had much more demolition experience than you?

16 A. No, I wouldn't agree with that statement.

17 Q. Much more demolition experience in demolishing a
18 commercial building like this?

19 A. I wouldn't agree with that statement either.

20 Q. Okay. Well, now, was this -- this contract didn't
21 mention that Edwards Demolition had any direct role in
22 it?

23 A. Which contract are you referring to?

24 Q. The contract of April 7.

25 A. Can you repeat the question?

1 Q. Okay. Is there anything in the contract of April 7
2 that says Mr. Elliott Edwards or Edwards Demolition has
3 rights in the contract?

4 A. In this purchase and sales agreement?

5 Q. Yes, sir.

6 A. It just refers to Mr. Bennett's responsibilities at
7 closing.

8 Q. And he was going -- Mr. Bennett was going to have to
9 do a lot of work to get this property ready for y'all to
10 close if you ever got the money up; is that right?

11 A. Not a lot of work, but he had responsibilities to
12 disconnect ---

13 Q. Disconnect the sprinkler system that served the
14 whole entire project; is that right?

15 A. Parts of the utilities had already been disconnected
16 due to the condition of the building.

17 Q. Okay. But let's get back to -- let's get back to my
18 question. This contract or this purchase agreement of
19 April 7 doesn't say anything in it about Elliott Edwards
20 or Edwards Demolition having any right to demolish, does
21 it?

22 A. No.

23 Q. And it doesn't say anything in it about McWhirter
24 and Crew having any right to demolish, does it?

25 A. No, it doesn't. But I don't know why you would

1 include that in a purchase and sales agreement.

2 Q. Well ---

3 A. What we did with the building subsequent to the
4 purchase, I don't know why it would be relevant.

5 Q. Well, now, isn't it true that when I took your
6 deposition you told me that Elliott, i.e., Elliott
7 Edwards, and I, meaning you, were going to be in charge
8 of estimating the steel?

9 A. Yes.

10 Q. You were going to be in charge of demolition too?

11 A. Yes.

12 Q. Okay. It doesn't say anything about estimating
13 steel or whose responsibility it is to do any particular
14 part of this demolition salvage project in the contract
15 that Mr. Bennett signed, does it?

16 A. Do you mean the April 7th ---

17 Q. Right. That's right.

18 A. No.

19 Q. That was all between Stanley, Elliott Edwards and
20 yourself as to who took various pieces?

21 A. Oh, yeah. But Mr. Bennett had knowledge of who was
22 doing what. I mean, he knew Mr. Stanley. He knew Mr.
23 Stanley had never demolished a building.

24 Q. Well, now, the truth ---

25 A. He stated it in his own deposition.

1 Q. But the truth of the matter is that one of your
2 goals in this whole contract was to flip the contract,
3 wasn't it?

4 A. At a certain point in time, Mr. Stanley had proposed
5 to both Mr. Edwards and myself the possibility of
6 flipping the contract.

7 Q. In other words, selling all of your rights to
8 somebody else, some investor that y'all might dig up?

9 A. Correct.

10 Q. Okay. So not only -- number one is you didn't have
11 your investors lined up or your money lined up before you
12 signed the contract as evidenced by your number 10; is
13 that right?

14 A. Correct.

15 Q. All right.

16 A. We -- it was my understanding that Mr. Stanley had
17 an investor locked up.

18 Q. Okay. He did have one. You testified. But y'all
19 didn't like his terms?

20 A. Right. But that doesn't ---

21 Q. All right. Well ---

22 A. --- doesn't mean that we didn't have something lined
23 up.

24 Q. Well, tell me ...

25 A. I also was in conversation with Sims Metal Managers

1 out of New York ---

2 Q. Okay.

3 A. --- when I saw that the investor side of things were
4 falling apart.

5 Q. Well, where is it ---

6 A. And I was days -- I'm sorry.

7 Q. You go ahead. I'm ...

8 A. Well, I was days -- within days of bringing Tom
9 Rocca (phonic) down from Sims Metal Management.

10 THE COURT: Let me stop you. I want you guys
11 to get on line. Number one, he's going to ask you a
12 question. Listen to the question. Answer the question.

13 THE WITNESS: Okay.

14 THE COURT: If you want to explain yourself,
15 you must answer the question before you launch into any
16 kind of explanation. If not, I'm going to cut you off
17 again. Okay?

18 THE WITNESS: Okay.

19 THE COURT: And you let him finish before he
20 gets into his next question, okay?

21 Ask your question, please.

22 Q. It's true that you never presented, in all of our
23 discovery, any written offer where anybody was going to
24 loan you or fund you or partner with you to get this deal
25 done?

1 A. No written offer was presented.

2 Q. All right. And no matter what, y'all never got the
3 money?

4 A. No, we did not get the money.

5 Q. And when you signed the contract of April 7, you
6 knew you only had thirty days?

7 A. That's correct.

8 Q. And that's a short time to come up with one point
9 two million dollars, isn't it?

10 A. Yes.

11 Q. Well, that was a pretty big mountain to climb if you
12 didn't have it lined up in advance, wasn't it?

13 A. Mr. Stanley led me to believe that he had a
14 financier.

15 Q. Have we just not gone through that? You did have
16 one but you didn't like his terms?

17 A. That's correct.

18 Q. Okay. So let's see. You signed a contract on April
19 the 11th and didn't have an operating agreement. And you
20 signed it in behalf of Lymon Pacific, LLC; is that right?

21 A. That's right.

22 Q. And you realized at that time, no matter what
23 capacity you were there in, that you only had thirty days
24 to close?

25 A. That's correct.

1 Q. And at that time, on April the 7th, you didn't have
2 anybody lined up to do financing?

3 A. We had one person lined up to do financing.

4 Q. Well, they -- but they didn't come through
5 ultimately?

6 A. Ultimately, Mr. Stanley sabotaged the April 7th --
7 Mr. Stanley and Mr. Bennett, I feel, sabotaged the April
8 7th contract to their benefit. They created almost a
9 half a million dollars in revenue that was split by both
10 of them.

11 Q. Okay. Now, I suppose that now you're trying to get
12 into what I want to call the backup contract that Mills
13 Demolition entered into?

14 A. Well, I have been referring to the backup contracts
15 by Mills.

16 Q. Let's just talk about the backup, the first backup
17 contract for a minute. Are you familiar with that?

18 A. I am now, yes.

19 Q. Okay. Now, it clearly says -- and I believe that's
20 ---

21 THE COURT: 9.

22 Q. --- number 9. This contract clearly says -- would
23 you like to look at it? Tell me when you're ready. All
24 right. Does it clearly say that it's a backup contract
25 just in case your April 7 contract doesn't close?

- 1 A. I don't see that. If you could show it to me.
- 2 Q. Right here in the second whereas there.
- 3 A. Yeah. Oh, provided the -- yeah. Okay.
- 4 Q. Okay. So -- now, that second contract that we're
- 5 talking about, it never closed either, did it?
- 6 A. No, it did not.
- 7 Q. Okay. And Mr. Stanley or Mills Demolition, they
- 8 didn't get up the money to close on the second one just
- 9 like y'all couldn't get up the money to close on the
- 10 first one?
- 11 A. That's correct.
- 12 Q. Okay. Now, you told me at the deposition that
- 13 Elliott and I were going to demolish the warehouse. So
- 14 where is -- where is Elliott and -- is his interest in
- 15 this contract as an incidental beneficiary the same as
- 16 yours?
- 17 A. I wouldn't consider either myself or Mr. Edwards
- 18 incidental beneficiaries to the April 7th contract. I
- 19 would consider both of us direct beneficiaries to the
- 20 contract.
- 21 Q. Okay. So it's your position that he's got a direct
- 22 interest in this contract also?
- 23 A. Yes, he does.
- 24 Q. But he's not here in this lawsuit?
- 25 A. No.

1 Q. Okay. Now, when you were at the meeting at Stax
2 restaurant signing the April 7 contract, did you protest
3 the authority of Mr. Stanley to execute it?

4 A. No, I did not.

5 Q. Did you protest and say, we can't sign it as Lymon
6 Ware -- Lymon Pacific because we're not set up yet?

7 A. No.

8 Q. Now, isn't it true that at some point in time during
9 the thirty days that you had to perform, that you had a
10 conversation with Mr. Stanley. And the deposit -- he
11 said the deposit was supposed to be returned to you
12 before the closing? Your money?

13 A. I'm sorry. Can you ---

14 Q. Did Mr. Stanley and/or Mr. Edwards promise to pay
15 you back their share of the money that you put up in
16 behalf of Lymon Pacific?

17 A. Mr. Stanley wrote two letters stating that he would
18 pay me -- and one phone call -- stating that he would
19 reimburse me -- reimburse me the hundred thousand
20 dollars.

21 Q. But of course, he hasn't done that?

22 A. No. He -- the letter was dated April 20th. I'm
23 sorry -- yeah -- April 20th and 23rd.

24 Q. Well, I'll show you your deposition here on page 22.
25 And I have the portion highlighted. Take a minute and

1 review that.

2 A. (Witness complied)

3 Q. Now, did you tell me at deposition that the other
4 partners were supposed to repay you your money?

5 A. Yes.

6 Q. And were each of the partners to pay their, what,
7 one-third share? Are you still counting Seth Cooper in?

8 A. No. Mr. Cooper was out at that point in time.

9 Q. So the arrangement that you had with the others was
10 for them to repay you the money that you'd put down in
11 behalf of Lymon Pacific?

12 A. I put the hundred thousand dollars down as a partner
13 of Mr. Edwards and Mr. Stanley. The money was to be
14 returned to me when the deal was consummated subject to
15 financing.

16 Q. And of course, financing was never achieved?

17 A. No. And then, of course, Mr. Stanley tried to give
18 my money away.

19 MR. PRACHT: Mr. McWhirter ---

20 MR. PRUITT: Well, I'm not quite through.

21 THE COURT: He's just getting him some water.

22 THE WITNESS: Thank you.

23 MR. PRUITT: Go ahead, Mr. Pracht.

24 REDIRECT EXAMINATION

25 BY MR. PRACHT:

1 Q. You testified that Mr. Stanley had financing that
2 you weren't happy with?

3 A. That's correct.

4 Q. Were you so upset with it that you wouldn't have
5 accepted it ultimately?

6 A. Ultimately, no, I would have accepted it.

7 Q. Versus ---

8 A. Graciously.

9 Q. Versus not doing the deal?

10 A. Correct.

11 Q. And we know you couldn't obtain financing. But what
12 obstacles were in your way? During May -- April 7th to
13 May 7th, what obstacles prevented you from getting
14 financing?

15 A. Non-cooperation from Mr. Bennett, politely put, and
16 complete obstacles from Mr. Stanley. You know, all the
17 contracts and all the letters that went behind Mr.
18 Edwards' and myself's backs, they didn't help consummate
19 the deal at all. They hindered the deal. You know, I
20 feel they conspired against the successful ---

21 MR. PRUITT: Objection.

22 A. --- completion of the deal.

23 THE COURT: I sustain the objection.

24 Q. Did Mr. Stanley refuse to put you in touch with his
25 investor after April 7th?

1 A. Yeah. He -- back when I asked him for a name and
2 an address, he -- no cooperation whatsoever.

3 MR. PRACHT: That's all, Judge.

4 THE COURT: Any reason he can't step down? Do
5 you have any other ---

6 MR. PRUITT: I don't have any other questions
7 for him.

8 THE COURT: Thank you, sir. You may step down.

9 THE WITNESS: Thank you.

10 THE COURT: Yes, sir.

11 MR. PROTOPAPAS: Your Honor, we would call Mr.
12 Bennett who just stepped out. I want to call him as our
13 final witness.

14 MR. PRUITT: Mr. Bennett is not planning on
15 coming back to be one of their witnesses. I can tell you
16 that. He's not under subpoena.

17 THE COURT: All right. Well, you can call your
18 case.

19 MR. PRUITT: Well, I'd like to make some
20 motions first.

21 THE COURT: Okay.

22 MR. PRUITT: Your Honor, there's -- there are
23 multiple causes of action in this matter here. And I
24 would direct the Court's attention to the amended answer
25 and cross-claim of the Defendant McWhirter.

1 The second defense says that the retention of the
2 hundred thousand dollars earnest money would be an
3 unenforceable penalty. I don't believe there's been any
4 mention of penalty in the testimony today. So because
5 this is a non-jury trial, I would be making a motion for
6 an involuntary non-suit under Rule 41(b) in regard to any
7 proof that the hundred thousand was a penalty. In regard
8 to the ---

9 THE COURT: As to the penalty, I'm denying your
10 motion. Okay. What is your next one?

11 MR. PRUITT: Okay. As to the breach of
12 contract cross-claim as to Lymon Warehouse, there's been
13 no proof of any damages on breach of contract nor any
14 proof of breach of contract by Lymon Warehouse.

15 THE COURT: And this is who against ---

16 MR. PRUITT: This is McWhirter cross-claiming
17 against Lymon Warehouse.

18 THE COURT: All right. Let me hear Mr.
19 Protopapas. How could Mr. McWhirter bring a breach of
20 contract claim in his individual name against Lymon?

21 MR. PROTOPAPAS: At this stage, Your Honor,
22 there's undisputed testimony from Mr. McWhirter that he
23 was a direct beneficiary of the contract. A lot of our
24 statement lapsed when somebody has a direct revenue
25 potential interest in the contract to bring a case as if

1 we were a party to the contract. There's testimony
2 today, Your Honor -- and I'm paraphrasing it -- is that I
3 was a direct beneficiary to the demolition. The contract
4 in Evans mentions demolition. His check for one hundred
5 thousand dollars is a personal check written to Mr.
6 Threlkeld as opposed to Pacific and then on to Warehouse.
7 His testimony combined with those facts, Your Honor, make
8 him at this stage certainly a direct third-party
9 beneficiary to this contract capable of bringing a case.
10 And for that reason, Your Honor, we believe at this stage
11 it should be denied.

12 THE COURT: What are the factors or the
13 elements of a third-party beneficiary contract, please,
14 sir?

15 MR. PROTOPAPAS: Your Honor, it has to be more
16 than tangential; it has to be direct. The key ---

17 THE COURT: Doesn't it have to be known?

18 MR. PROTOPAPAS: Yes, sir, Your Honor. And I
19 would say when he is sitting on the table at Stax with a
20 check in his hands and Mr. Bennett knows that his role in
21 it is the demolition of this property, that he knows that
22 this man has put his money forward, that is sufficient,
23 Your Honor. And furthermore, Your Honor, within the
24 evidence right now is a contract on April 7th which by
25 its own terms isn't even an enforceable as a contract

1 today. It requires that the contract be re-signed. And
2 it is not resigned. It is just plagiarized contract from
3 a prior deal.

4 THE COURT: Show me a provision in the contract
5 that says it will be re-signed.

6 MR. PROTOPAPAS: Your Honor, when you look at
7 exhibit number, Defendant's Exhibit Number 1 ---

8 THE COURT: I don't have it. Would y'all bring
9 it to me? May I have it?

10 MR. PRACHT: Here's a copy.

11 THE COURT: Okay.

12 All right. That's -- I have a copy. Go ahead, Mr.
13 Protopapas.

14 MR. PROTOPAPAS: Look at the bottom of page 3
15 of that contract. It states that the agreement -- at the
16 end, at the very last sentence beginning with, in the
17 event of an alteration of this agreement, the ---

18 THE COURT: I am denying you on those grounds.
19 Clearly, the parties executed this contract. They
20 changed the dates. And if you're thinking that the
21 paragraph twelve whole agreement means that the changes
22 made on the first page and page two would be an
23 alteration requiring the whole thing to be re-signed,
24 then the parties went through a useless act of signing it
25 and numbering the pages. So I'm denying your motion on

1 that that basis. Well, you don't have a motion, but I'm
2 denying it on that basis.

3 MR. PROTOPAPAS: Certainly, Your Honor. And
4 what I would also point out to the Court is there's
5 uncontradicted evidence in the testimony that the
6 property was in foreclosure at the time the April 7th was
7 signed.

8 THE COURT: We're talking about third-party
9 ---

10 MR. PROTOPAPAS: You're right, Your Honor. I
11 apologize. If there's more than an incidental
12 relationship between the parties seeking enforcement, if
13 it's direct, then it is appropriate under our law for the
14 third party to bring the case. That's the law. His
15 testimony, right now unchallenged, is sufficient to get
16 us past this stage of the proceeding.

17 THE COURT: I tend to agree with you. Just for
18 the purpose of direct or involuntary non-suit, the
19 standard I have to look at is inference. Is the evidence
20 capable of more than one inference? So ---

21 MR. PRUITT: Your Honor ---

22 THE COURT: --- I'm denying your motion on
23 that. What was your next one?

24 MR. PRUITT: Your Honor, I would think that
25 probably under Rule 41(b) the trier of fact may weigh the

1 evidence as opposed to the standard of directed verdict
2 which I might be making if this was a jury trial.

3 THE COURT: Well, I'm not -- I refuse to weigh
4 the evidence until I hear all of it.

5 MR. PRUITT: Yes, sir. Okay.

6 THE COURT: And that's probably the better
7 thing to do.

8 MR. PRUITT: Your Honor, at this time in regard
9 to -- we would further make the same motion, the fourth
10 defense, and by way of cross-claim, unjust enrichment as
11 to Lyman Warehouse, LLC. That is pled, and it's under
12 the theory of some type of quantum meruit. There's been
13 no testimony as to any type of unjust enrichment. We
14 would ask that that -- that the Court grant a non-suit in
15 regard to that.

16 THE COURT: I'll deny that motion.

17 MR. PRUITT: All right. The sixth defense and
18 by way of cross-claim, civil conspiracy ---

19 THE COURT: Okay. Let me stop you on that. Is
20 there any evidence in your -- from what you have
21 presented here on the civil conspiracy that you contend
22 is a realistic view of the evidence?

23 MR. PROTOPAPAS: Our best evidence of civil
24 conspiracy, Your Honor ---

25 THE COURT: Best evidence is a better way to

1 phrase it.

2 MR. PROTOPAPAS: --- is that on May 4th, 2011, a
3 contract was signed.

4 THE COURT: I am granting the motion on civil
5 conspiracy. Clearly that is contingent upon opening and
6 closing (phonic), so I'm going to grant that.

7 MR. PROTOPAPAS: If I could, Your Honor, add on
8 the ---

9 THE COURT: You can. And I'm sorry I cut you
10 off.

11 MR. PROTOPAPAS: It's okay. No, no, no. Your
12 Honor, I respect the fact that you're ruling on it. The
13 question as to how the release is signed on May 27th of
14 2011 and whether it was signed behind or without the
15 knowledge or input of Mr. McWhirter when it is his
16 hundred thousand dollars that's put at risk. At this
17 stage, the evidence for the Court to consider would be
18 the May 27th release itself, the check that was written on
19 April 7th, the April 7th contract, correspondence between
20 the parties, the self-serving correspondence between the
21 parties as to releasing the funds, then the further
22 correspondence between the attorneys after the closing
23 failed. We would say that that is sufficient to show
24 that Stanley and Mr. Bennett were looking for a way to
25 parse this man's money for their own benefit. And we'd

1 say for that purpose to keep it. We thank you.

2 THE COURT: I'm going to grant the motion on
3 civil conspiracy.

4 Any other motions or any other causes of actions I
5 need to consider?

6 MR. PRUITT: No, sir. The -- I mean, when I've
7 made my motions today, I made my motions in behalf of
8 Lyman Warehouse. I'm not making any motions in behalf of
9 any other defendant. And as far as I'm concerned, these
10 causes of actions as to the other defendants that aren't
11 here, they can keep those all they want to.

12 THE COURT: I got you.

13 MR. PRUITT: I do need a minute, though, to
14 retrieve Mr. Bennett.

15 THE COURT: I'm not going to let you do that.

16 MR. PRUITT: Okay.

17 THE COURT: If he's going to come here -- if
18 you're going to run him around the courtroom and hide and
19 then going to call him and bring him back in here, he's
20 not going to testify.

21 MR. PRUITT: Well, Your Honor, I'm entitled to
22 ---

23 THE COURT: No, you're not. I'm saying you're
24 not. And I'm saying that that's a -- it's a game of the
25 system, and I'm not going to have it. You can decide

1 whether to call him or not, but I saw him run out the
2 door twice during the course of this trial. They didn't
3 have him under subpoena. But for you to come back and
4 think he's going to come in at this point and testify.
5 You said he does not intend to come back and testify.
6 That's fine.

7 MR. PRUITT: Well, I mean, Your Honor ---

8 THE COURT: If he's going to come back ---

9 MR. PRUITT: I intend -- I intend to call him.

10 THE COURT: He's going -- if he's going to come
11 back, he's going to be subject to their calling him in
12 their case. I'll open it back up, and they can call him.
13 I'm going to take a ten-minute break. Y'all make a
14 decision and then I'll be back. Okay?

15 (WHEREUPON, court stood at recess for a short
16 break.)

17 THE COURT: Is Mr. Bennett going to testify?

18 MR. PRUITT: Yes, sir, he intends to testify.

19 THE COURT: Okay. Very good. I'm going to let
20 Mr. Protopapas call him in his case in chief, and I'm
21 going to let the parties renew their directed verdict
22 motions at the end of that testimony.

23 MR. PRUITT: All right.

24 MR. PROTOPAPAS: Thank you, Your Honor. I call
25 Mr. Bennett to the stand.

1 **RICHARD CHRISTOPHER BENNETT,**

2 BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. PROTOPAPAS:

5 Q. Mr. Bennett, you're a member of Lymon Warehouse; is
6 that correct?

7 A. Yes.

8 Q. Okay.

9 (WHEREUPON, Defendant McWhirter Exhibit Number 11
10 was marked for identification only.)

11 Q. Mr. Bennett, I'm going to hand you what's been
12 marked as Defendant's Exhibit 11. Do you recognize that
13 as a contract of sale for Greg Shoals Acquisition Company
14 and Lymon Pacific?

15 A. Yes.

16 Q. And it's your signature at the end of that exhibit?

17 A. Yes.

18 Q. All right. Mr. Bennett, you signed that on behalf
19 of Greg Shoals, sir?

20 A. Yes.

21 Q. And that's a true and accurate copy?

22 A. My signature is.

23 MR. PROTOPAPAS: I move to have Defendant's
24 Exhibit Number 11 admitted into evidence.

25 THE COURT: Any objection?

1 MR. PRUITT: I'm not sure that I see the
2 relevance of it, but ...

3 THE COURT: Other than relevance?

4 MR. PRUITT: Relevance. This contract was
5 never -- no deposit was ever made on it, and it was never
6 consummated.

7 THE COURT: What is the relevance?

8 MR. PROTOPAPAS: Your Honor, this is the
9 agreement that then gets marked up. I just think it
10 would be nice to have ---

11 THE COURT: I understand what it is. But
12 what's the relevance to this action?

13 MR. PROTOPAPAS: I believe it's relevant
14 because it shows that Greg Shoals Acquisitions was a
15 fraudulent company, and in turn, this defense exhibit ---

16 THE COURT: How does that show it was a
17 fraudulent company?

18 MR. PROTOPAPAS: The company never owned, never
19 had, or ever did have any interest in the property that
20 it was purporting to sell on the Defense Exhibit 11.

21 THE COURT: All right. I admit it for this.
22 Go ahead.

23 MR. PROTOPAPAS: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 (WHEREUPON, Defendant McWhirter Exhibit Number 11

1 was admitted into evidence.)

2 Q. All right. Looking at Defendant's Exhibit Number
3 11, sir, would you agree with me Greg Shoals never owned
4 the property at issue?

5 A. No.

6 Q. Okay. You would agree with me that it -- and that
7 it's never had any interest in this property?

8 A. I agree it didn't own it. I don't agree it didn't
9 have any interest in it.

10 Q. What interest did have in it?

11 A. Lymon was going to sell it to Greg Shoals to sell it
12 to them. But since they never consummated it, we never
13 went any further with it.

14 Q. So at some point, Lymon was going to sell it to Greg
15 Shoals -- Lymon Warehouse was going to sell the property
16 to Greg Shoals and then sell it Lymon Pacific?

17 A. That's correct.

18 Q. Is there another contract between Greg Shoals and
19 Lymon Warehouse that hasn't been produced to us?

20 A. No.

21 Q. Okay. So this would presuppose then at some point
22 Greg Shoals will have an interest. Is that what it is?

23 A. I signed it and sent it to them. They never sent it
24 back to me signed, so I never did anything further with
25 it.

1 Q. The copy I have is signed.

2 A. Well, they signed it after I signed it, and I don't

3 -- I don't know if there's an original with both our
4 original signatures on it. I don't think there is.

5 Q. Isn't the reason why it's Greg Shoals is you didn't
6 want to alert to the purchasers that this thing was in
7 foreclosure before you had the money in escrow?

8 A. Absolutely not.

9 Q. Do you have the exhibits in front of you there?

10 A. No, sir.

11 Q. Are you familiar with the April 7th contract that's
12 been discussed in this case?

13 A. Yes, sir.

14 Q. All right. You would agree with me, sir, that that
15 April 7th contract is between Lymon Warehouse and Lymon
16 Pacific?

17 A. Yes, sir.

18 Q. But you knew, sir, you knew that Mr. Bennett had a
19 direct interest in that contract, didn't you?

20 A. I knew that Mr. Bennett had direct contact ---

21 Q. I'm sorry. That Mr. McWhirter had a direct interest
22 in that contract?

23 A. When we signed it, I thought he was part of the LLC.

24 Q. Okay. But you also knew he had an individual direct
25 benefit into that contract, didn't you, sir?

1 A. The only thing that I knew that he was part of the
2 LLC and these three guys formed this LLC at that time to
3 do this deal together.

4 Q. But you knew he was the one that was going to do the
5 demolition, didn't you, sir?

6 A. I did not know who was going to do the demolition.
7 He discussed -- well, I can't say he discussed. Mainly,
8 I dealt with Peter. I dealt with him on a very short
9 basis. And I think they were trying to flip it, sell it,
10 any way they could make money, you know. I don't know
11 what -- I think he even said that it didn't concern me
12 what his use of the building was after he closed it. And
13 to be honest with you, I didn't care.

14 Q. Do you remember your deposition, sir?

15 A. Yes, sir.

16 Q. Do you remember being asked in your deposition that
17 Mr. McWhirter was looking to directly benefit from this
18 contract? Do you remember I asked you that question?

19 A. Whatever. I mean, whatever I said, I ...

20 Q. Do you remember answering yes?

21 A. I don't know that I don't think he had a benefit. I
22 just thought he had benefit through his partnership --
23 that he was in a partnership. So I guess I was thinking
24 he had benefit through his interest in the LLC, which is
25 what I thought he had at that time.

1 Q. Would you look at page 183 of your deposition?

2 A. Yes, sir.

3 Q. Line 15.

4 A. Line 15.

5 Q. You were asked, he was looking to directly benefit
6 from the contract. Do you see that?

7 A. Yes.

8 Q. And you answered, yes. He -- he -- it was his under
9 -- they were excited.

10 A. I don't disagree that he was looking to benefit. I
11 don't know if he was looking to benefit through
12 demolition of the building.

13 Q. You didn't know that he was the one that was going
14 to demolish it?

15 A. I did not know that his -- that was how he was going
16 to directly benefit. I thought he was a partner of Lymon
17 Pacific, LLC. They signed the contract in front of me,
18 all of them together. They were all excited as if they
19 were all doing the deal together. I don't know who has
20 what bulldozer, trains, trucks, nor did I really care.

21 All I ---

22 Q. You testified ---

23 A. Go ahead. Go ahead. Go ahead. I'm sorry.

24 Q. Do you remember testifying in your deposition you
25 knew Mr. Stanley had no experience in demolition?

1 A. I can say I have no experience in demolition. I
2 don't know what Mr. Stanley has.

3 Q. But you do -- you don't remember testifying in your
4 deposition that Mr. Stanley had no experience in his
5 deposition -- had no experience in demolition?

6 A. I don't know what experience he has in demolition.

7 Q. You don't remember testifying that way?

8 A. I'll be happy to read that one. It's not up here.

9 Q. All right. Well, let's talk about the April 7th
10 contract.

11 A. Okay. I don't have it.

12 Q. You went to Stax. You went to Stax restaurant for
13 that contract?

14 THE COURT: He said he didn't have it.

15 A. I mean, I know about it, but I don't have it.

16 Q. Where did you receive the check?

17 A. Stax Grill in Greenville.

18 Q. Who was present?

19 A. Mr. Elliott Edwards, Don McWhirter, and Peter
20 Stanley and myself.

21 Q. At that meeting Mr. McWhirter handed you a personal
22 check for one hundred thousand dollars?

23 A. He did.

24 Q. And it was meant to be put in Mr. Threlkeld's
25 account?

- 1 A. He did, yes.
- 2 Q. And it was meant to hold the property, was it not?
- 3 A. It was for the earnest money of this contract.
- 4 Q. It was for the earnest money of that contract.
- 5 Okay. The earnest money for that contract, sir, was not
- 6 meant to be any sort of a liquidated damage, was it, sir?
- 7 A. I thought we all agreed that if they defaulted that
- 8 the hundred thousand dollars would be my full remedy,
- 9 basically liquidated damages. I couldn't sue them for
- 10 any more or any less and vice versa.
- 11 Q. Look at paragraph fifteen.
- 12 A. Yes, sir. Yes, sir?
- 13 Q. Do you see the word liquidated damages in there?
- 14 A. No, sir.
- 15 Q. Do you see it's saying sole remedy?
- 16 A. It says, the earnest money up to this date will be
- 17 seller's sole remedy against the purchaser defaulting.
- 18 Is that basically what you're saying?
- 19 Q. Yeah. It says it's your sole remedy, right?
- 20 A. The earnest money is my sole remedy.
- 21 Q. So you would have to come and prove the amount of
- 22 your damages up to one hundred thousand dollars if the
- 23 closing doesn't occur?
- 24 A. That's not what I understood.
- 25 Q. Okay. You understand it to mean that this is a

1 liquidated damage you automatically get?

2 A. I -- my understanding is if they didn't close that I
3 got the earnest money paid up to the date. Whether it
4 was a hundred grand or fifty grand, whatever's paid up to
5 the date of the contract became mine. And then I could
6 not sue them for any other amount of money, more or less.

7 Q. At the time the contract was signed, exhibit number
8 1, you had a one-point-six-million-dollar foreclosure
9 against this property; is that not right?

10 A. That's not right.

11 Q. Well, how much -- how much was the foreclosure?

12 A. I think about one point eight.

13 Q. I apologize. So at the time of April 7th of 2011,
14 the signing of this contract, you had a one-point-eight-
15 million-dollar foreclosure on the property?

16 A. I had a one-point-eight-million-dollar mortgage as
17 well.

18 Q. Yeah. There was a foreclosure, though, already
19 pending against you?

20 A. Against the LLC; that's correct.

21 Q. And you did not raise that to the three gentlemen
22 sitting with you at Stax Restaurant?

23 A. I did not raise that to their attention.

24 Q. The reason why you didn't raise it to them was
25 because you were afraid that if you did raise it to them,

1 they would not purchase the property?

2 A. Absolutely not.

3 Q. And they wouldn't give you the one-hundred-thousand-
4 dollar escrow check.

5 A. Absolutely not. I had made arrangements to --
6 basically, my understanding as long as I could pay it
7 off, it didn't matter.

8 Q. Well, let's look at what you actually warranted. Go
9 to page two of exhibit 1.

10 A. Yes, sir. Page two, exhibit 1.

11 Q. That's the contract.

12 A. That's the contract?

13 Q. Yes, sir.

14 A. Page two. Yes, sir.

15 Q. All right. It says at the top you're going to
16 warranty and covenant that you're seizing the property
17 and fee and you have sufficient title to convey. Could
18 you convey a title, sir, as of April 7th of 2011?

19 A. I believe I could.

20 Q. But it would have been subject to the foreclosure?

21 A. I believe I could. If they'd have brought the
22 money, with or without them, I could give them a clean
23 title.

24 Q. So you would have satisfied the lawsuit with the
25 money they would have brought?

- 1 A. I had my own money.
- 2 Q. You had your own money?
- 3 A. I had it arranged.
- 4 Q. Lymon Warehouse had the money?
- 5 A. Lymon Warehouse made arrangements to ---
- 6 Q. Made arrangements with whom?
- 7 A. H.P. Properties.
- 8 Q. Okay. Who owns H.P. Properties?
- 9 A. My wife.
- 10 Q. So your wife ---
- 11 A. She had made arrangements through her mother to
- 12 satisfy, have satisfied, anyway I -- she needed to to be
- 13 able to satisfy this mortgage to consummate this
- 14 contract.
- 15 Q. And you shared that information with McWhirter?
- 16 A. I didn't share any information with him.
- 17 Q. You didn't share any information with him?
- 18 A. Not that information, no.
- 19 Q. You didn't feel it was important to tell them that
- 20 the warranty you were making in paragraph one was subject
- 21 to your wife's mother ---
- 22 A. I ---
- 23 Q. Wait. I've got a question.
- 24 A. Okay.
- 25 Q. ... your wife's mother bailing you out of the

1 foreclosure? You didn't have to -- you didn't think that
2 was something to tell them?

3 A. I guess I felt like in a commercial transaction
4 between two sophisticated individuals, they need to do
5 their own due diligence.

6 Q. They needed to do their own title work?

7 A. They should have.

8 Q. And that they shouldn't trust you when you say I've
9 got fee simple? They shouldn't trust you?

10 A. I think I did have fee simple.

11 Q. And they shouldn't ---

12 A. I think I could deliver the title just like I said I
13 could. I didn't write the contract, and I -- my
14 understanding is if they wanted to close, I was willing
15 and able and could and would have done it.

16 Q. Right. Subject to your wife's mother coming in to
17 bail you out?

18 A. Regardless of what happened.

19 Q. Look at the bottom, towards the bottom, right above
20 five, possession. You see there's a little separate
21 line?

22 A. Yeah. Seller shall furnish purchaser with any
23 abstract title documents in possession in position with
24 this facility to obtain a title search.

25 Q. You never did that, did you, sir?

- 1 A. I didn't have any. They never asked me for any.
- 2 Q. You had a foreclosure complaint, did you not?
- 3 A. Nope.
- 4 Q. You weren't foreclosed on by the bank on April 7th
- 5 of 2011?
- 6 A. Threw it in the trash can.
- 7 Q. You threw it in the trash can. Do you know the
- 8 foreclosure complaint has a title search attached to it?
- 9 A. I don't now. I didn't read it.
- 10 Q. You didn't read it. Just threw it in the trash can?
- 11 A. Yes, sir.
- 12 Q. And then you decided not to share what you threw in
- 13 the trash can with your partners -- with the folks ---
- 14 A. They're not my partners.
- 15 Q. The folks that were supposed to come in and buy the
- 16 property?
- 17 A. Nope.
- 18 Q. Would you agree that that hundred thousand dollars
- 19 was provided to show that they were serious? That's how
- 20 that number was selected?
- 21 A. I think they wanted to entice me, or whatever you
- 22 say, to know that they could come up with the full amount
- 23 of money. And I didn't want to be jacked around, and
- 24 they put up a hundred thousand dollars which was -- I
- 25 don't even know negotiated. I think that's what they

- 1 offered ---
- 2 Q. So there was ---
- 3 A. --- a hundred thousand dollars which -- to show they
4 were serious and to get me that if they didn't close that
5 I'd get a hundred thousand dollars.
- 6 Q. Okay. So the number was picked sort of out of the
7 air?
- 8 A. I don't know about that.
- 9 Q. There was no forethought into that number of saying
10 this hundred thousand dollars, this is the right number
11 for these reasons?
- 12 A. Well, I think my -- some of the forethought -- my
13 opinion was it's about six or seven, seven and a half
14 percent of the purchase price. They knew I had to spend
15 probably a hundred thousand dollars to honor the way they
16 wanted to cut the property up, et cetera. So they knew I
17 wasn't going to go out here and cut water lines off, turn
18 power off, subdivide the property without some real
19 money.
- 20 Q. Well, all that work you're talking about would have
21 been done within thirty days of the contract. It wasn't
22 going to be done before its closing?
- 23 A. That's absolutely wrong.
- 24 Q. All right. Did you separate all those items between
25 April 7th and May 7th of 2011?

- 1 A. I made obligations.
- 2 Q. All right. You made obligations, but you did not
3 pay anybody?
- 4 A. That's not true. Do you want me to answer or do you
5 want to answer?
- 6 Q. Sir, I'm just asking a simple question.
- 7 A. And I'm trying to answer.
- 8 Q. Look, I'm not trying to be belligerent. Okay?
- 9 THE COURT: All right. Let him ask, you listen
10 to it and then you answer. If you want to explain it,
11 you answer it first and explain it. Okay?
- 12 A. The question, I think, was did I make any
13 arrangements prior to. And I never got to answer.
- 14 Q. I'll re-ask it. I'll re-ask the question ---
- 15 A. All right. Go ahead.
- 16 Q. --- so we're on the same page. All right. The one
17 hundred thousand dollars that was selected that day was
18 not negotiated right?
- 19 A. I think it was.
- 20 Q. Okay. You said -- they said one hundred thousand
21 dollars, you said yes?
- 22 A. I guess that's a negotiation.
- 23 Q. That's fine if what you're going to call a
24 negotiation.
- 25 A. Yes, sir. Yes, sir.

1 Q. I'm not trying to get into word games.

2 A. Okay.

3 Q. So the hundred thousand dollars isn't tied to
4 anything else other than the fact that the two of you sat
5 down and said a hundred thousand dollars?

6 A. After they knew and when I explained to them what I
7 had to do to facilitate the way they wanted to purchase
8 the property. They wanted to subdivide off a piece of
9 property. That was one tract which had a fence all the
10 way around it, which had an entrance way, which had
11 buildings that were touching each other. There was no,
12 zero lot lines. I had to hire a surveyor prior to this
13 contract. This was all -- we were negotiating. We were
14 just talking. They were doing their due diligence. They
15 came to the plant every day. Okay. I had to subdivide
16 the property. I had to go to Spartanburg County and get
17 them to approve it with a little bit of variance, because
18 they usually don't approve property with a building next
19 door. Then I had to hire a waterline contractor and get
20 a ---

21 Q. It's -- it was a simple question. Okay?

22 A. Go ahead.

23 Q. I don't want to cut you off.

24 A. Go ahead.

25 Q. But let's move on to the next one ---

1 A. Yes, sir.

2 Q. --- when you're done, okay?

3 A. Yep.

4 Q. Okay. You ready for the next one?

5 A. Yes, sir.

6 Q. All right. All the work that you just described was
7 done in anticipation of closing with Hooks on June 6th of
8 2011, was it not?

9 A. No.

10 Q. And you did that same work for Hooks because they
11 took the same property?

12 A. But I wouldn't have had to cut the property up if I
13 hadn't started doing it with them.

14 Q. And when you look at the damages section ---

15 A. And Hooks did not buy the property.

16 Q. Okay. When you look at the damages section,
17 paragraph fifteen, remedies for breach ---

18 A. Yes, sir.

19 Q. --- your sole remedy in here -- so what does this
20 paragraph fifteen mean? Okay? When I look at paragraph
21 fifteen, it doesn't say liquidated damages, correct?

22 A. No, sir, it does not.

23 Q. It doesn't say this is what we predict the damages
24 to be, does it?

25 A. It says what it says.

1 Q. All right. And what it says is that you're limited
2 to applying for up to the money held in escrow, correct?

3 A. I don't believe that. But that -- if that's what
4 you interpret it ---

5 THE COURT: I'll make that interpretation.

6 THE WITNESS: That'll be fine.

7 THE COURT: Go ahead. Y'all move forward.
8 I've heard this enough.

9 Q. When we look at -- when we look at after the April
10 7th, 2011, contract is signed, okay?

11 A. Yes, sir.

12 Q. At various times, Mr. McWhirter attempted to contact
13 you, did he not?

14 A. I think I contacted -- made arrangements to made
15 sure everything he wanted was done. Because truthfully,
16 there's nothing more that I truly wanted for him to close
17 and pay me that one point three million dollars.

18 Q. Then why is it, sir, that on May 4th of 2011, you're
19 signing a contract with his partner, Mr. Stanley?

20 A. Because they -- I believe their lawyer called. I
21 talked to their lawyer, Mr. Kelly.

22 Q. Before May 4th of 2011?

23 THE COURT: Do -- he's answering the question.
24 Do not interrupt him.

25 MR. PROTOPAPAS: Okay. I apologize.

1 A. Basically, either I -- I think I called their lawyer
2 and asked him what was going on. And they said that --
3 he basically said they weren't going to be able to get up
4 the money. And then Peter -- I think I called Peter and
5 said, look, what's going on? Why are y'all not closing?
6 He said, well, we got problems. I said, you know, what
7 do you need? He said, well, they're having a hard time
8 coming up with the money. Then I think I even called Mr.
9 -- your client and asked him what the problem was. He
10 said, he needed some more time. And I said, well, how
11 much time you looking at? I said, you need five days,
12 ten days? Do you have something lined up? Do you have a
13 bank you're negotiating with? What's going on? He said
14 he really had nothing at this point of any consequence
15 that he could tell me any time frame. At that point, I
16 think it was Mills Demolition wanted to put a backup.
17 And I said, I have to honor my contract with the first
18 one, and I'm going to. If they're prepared to close, I'm
19 going to close. But if you want a backup, I'll do a
20 backup.

21 Q. All right. I'm going to move on.

22 A. Go ahead.

23 Q. Go to page 92 of your deposition.

24 A. Ninety-two, yes, sir.

25 Q. All right. You knew -- page 92 -- you don't have to

1 read it yet.

2 A. Yeah, just give me -- give me one second. Line 92,
3 yes, sir.

4 Q. All right. It was your understanding that McWhirter
5 and Edwards -- Mr. McWhirter and Mr. Edwards were the
6 ones that were going to take down the building, correct?

7 A. (No verbal response)

8 Q. Before you read the deposition, just answer the
9 question. Mr. McWhirter and Mr. Edwards were the ones
10 who were going to take down the building, correct?

11 A. No.

12 Q. Okay. Well, now, look at page 92 of your
13 deposition, lines 3 through 13. I'm going to read them
14 out loud. Make sure I read them right.

15 A. Yes, sir.

16 Q. Was it your understanding that McWhirter and Elliott
17 were the guys who were going to take down the building
18 itself, question. Answer, it was my understanding that
19 they were. My understanding they were putting up the
20 money. Peter was going to help them brokerage the deal
21 on the steel, sell it to all these contracts he had. And
22 they were -- they were going to use the construct -- they
23 were in the -- they were in that demolition more,
24 actually doing it, treating it, tearing it down,
25 equipment, sub it out, whatever. That's what they did.

1. You see that?

2 A. Yes, sir.

3 Q. All right. So at least at the time of your
4 deposition, you were under the impression McWhirter and
5 Edwards were the ones to take down the building, correct?

6 A. I think they were definitely going to be involved in
7 tearing it down if they tore it down and didn't flip it.

8 MR. PROTOPAPAS: I apologize, Your Honor.

9 Q. Do you have -- I'm going to show you Defendant's
10 Exhibit Number 5.

11 A. Yes, sir.

12 THE COURT: Here it is.

13 MR. PROTOPAPAS: Thank you.

14 THE COURT: Yes, sir.

15 Q. Let's start with Defendant's Exhibit Number 3.

16 A. Yes, sir.

17 Q. That's a letter to you from Mr. Stanley, correct?

18 A. Yes, sir.

19 Q. All right. And Mr. Stanley is saying that he will
20 release the one hundred thousand dollars out of Mr.
21 Threlkeld's escrow account if they don't close. Do you
22 see that?

23 A. Yes, sir.

24 Q. All right. You never mentioned that to Mr. Bennett,
25 did you?

- 1 A. I'm Mr. Bennett.
- 2 Q. I'm sorry. You never mentioned that to Mr.
- 3 McWhirter, did you?
- 4 A. No. That's his ---
- 5 Q. You asked for that letter to be sent, didn't you?
- 6 A. No.
- 7 Q. All right. Go to your deposition.
- 8 A. Yes, sir. What page?
- 9 Q. I'm getting to it. Go to page 91.
- 10 A. Yes, sir.
- 11 Q. At the top of the page. You see where you have your
- 12 answer? I asked you, did you ask him to send exhibit 4?
- 13 That's the letter in front of you.
- 14 A. Okay.
- 15 Q. You say, answer, well, he basically said that he
- 16 knew he -- that they owed us a hundred thousand. That
- 17 they weren't, you know, going to ask for that money back.
- 18 I said, well, I'd just as soon have something like that
- 19 in writing. So he did send that to me. So you asked him
- 20 to put that in writing and he sent it to you, didn't you?
- 21 A. Well, I don't think I did. I think it just says
- 22 what I said right there.
- 23 Q. You said you'd like to have it in writing to him.
- 24 A. I'd like to have it signed. This one's not signed.
- 25 Q. Okay. Well, the one that is signed is from May 7th,

1 isn't it?

2 A. I don't know. You want me to -- I'll look at it.

3 Q. Look at the May 7th letter. Isn't it essentially
4 the same as the one in front of you?

5 A. Yes, sir. Except the -- I mean, the address is
6 same. The date's different.

7 Q. But the words are -- the words are the exact same,
8 are they not?

9 A. Yes, sir.

10 Q. So on May 7th he's writing you a letter saying, time
11 is of the essence for my May 7th closing, isn't he?

12 A. It looks to be. Yeah, I guess that's what he wrote.

13 Q. Okay. Because you wanted him to send that to you,
14 didn't you?

15 A. I didn't think it would hurt. But, I mean, he sent
16 it.

17 Q. Because you wanted to get that one hundred thousand
18 dollars, didn't you?

19 A. I believe it -- it was entitled to me.

20 Q. Okay. So on May 7th he writes you this little self-
21 serving letter that says, time is of the essence for our
22 closing today, May 7th. And if I don't do it today, May
23 7th, I'm going to give you the hundred thousand dollars.

24 That's what he's saying?

25 A. Okay.

1 Q. Is that what you -- isn't that what you took it to
2 mean? Isn't that -- let me strike that. Isn't that what
3 you asked Mr. Stanley to write?

4 A. No.

5 Q. You asked him to provide you with this letter. You
6 told him you wanted it in writing.

7 A. Well, I told him I wouldn't mind having it in
8 writing. But I mean ...

9 Q. Okay. You told him you wouldn't mind having it in
10 writing?

11 A. Yes, sir.

12 Q. So then he gave you this self-serving letter on May
13 7th, right?

14 A. I guess so.

15 Q. On May 3rd, didn't he ask you for an extension of
16 time to close?

17 A. I don't remember. He might have.

18 Q. You don't remember if on May 3rd of 2011 you got a
19 letter from Mr. Stanley requesting that you close -- that
20 you extend the closing date?

21 A. I mean, I remember some of this stuff, but I'll be
22 happy to look at the ...

23 Q. Look at the May 3rd letter.

24 A. Thank you.

25 Q. It's Defense Exhibit 4.

1 A. Okay. I remember getting the letter.

2 Q. All right. And you said no?

3 A. Because I asked him did they have anything working

4 ---

5 Q. First, just say yes or no.

6 A. Yes or no. I said no.

7 Q. You said no?

8 A. Yes.

9 Q. All right. And then on May 4th you signed a backup
10 contract with Mr. Stanley?

11 A. Correct.

12 Q. All right. You say no on May 3rd because you knew
13 you were going to get another fifty thousand dollars in
14 deposit money on May 4th from Mr. Stanley, right?

15 A. All I really wanted to do was somebody to close.

16 Q. And you wanted -- you wanted another fifty thousand
17 dollars is what you wanted?

18 A. All I wanted was the one point three million dollars
19 I was supposed to get.

20 Q. So on May 3rd you say no to Mr. Stanley. And when
21 did you negotiate your May 4th contract with Mills
22 Demolition?

23 A. I say no to an extension because -- I have to answer
24 one at a time.

25 Q. When did you negotiate the May 4th, 2011, Mills

- 1 Demolition/Lymon Warehouse contract?
- 2 A. May 4th.
- 3 Q. You did on May 4th, on that day?
- 4 A. I think so.
- 5 Q. You all agreed to the one-point-three-million-dollar
- 6 purchase price?
- 7 A. It was pretty simple. They already knew that's what
- 8 I wanted.
- 9 Q. And you agreed to the fifty thousand dollar earnest
- 10 money?
- 11 A. Yeah. I wanted a hundred. He cried. I let him off
- 12 at fifty.
- 13 Q. Because that was the predictable damages that you'd
- 14 suffer if it didn't close?
- 15 A. I didn't want -- I wanted it to close.
- 16 Q. Right. But you only accepted fifty on that day?
- 17 A. I know. It was a weak moment.
- 18 Q. Right. And then when you went up to split up that
- 19 fifty after it didn't close, you didn't take all of it,
- 20 did you?
- 21 A. I wanted to.
- 22 Q. All right. Here today you're trying to take all one
- 23 hundred thousand dollars though. That's what you're
- 24 trying to do?
- 25 A. Well, I tried to split it with them. Then we

1 wouldn't have to waste all this time.

2 Q. On May 27th of 2011, you sign a release on behalf of
3 Lymon Warehouse, don't you?

4 A. I think so.

5 Q. Okay. You don't know?

6 A. You want to hand it to me?

7 Q. It's right in front of you.

8 A. I didn't mess with that pile. I'm sorry. Thank
9 you.

10 Q. Now, did you already have a contract -- let me back
11 up. Hooks Construction buys this on June 6th of 2011,
12 don't they?

13 A. No.

14 Q. All right. Who buys it on June 6th of 2011?

15 A. I still own the property.

16 Q. All right. Who gets into a contract with you on
17 June 6th of 2011?

18 A. Hook out of Florida.

19 Q. Hook out of Florida? And what did they pay you for
20 it?

21 A. One million four hundred and seventy-five thousand
22 dollars for the rights to the steel with a lot of other
23 agreements.

24 Q. So ---

25 A. It's not that simple just so you understand.

1 Q. I'm not asking you to get into the details. I'm
2 just asking what -- when you signed it.

3 A. I don't have the contract ---

4 Q. So one four seven five ---

5 THE COURT: Guys, I'm not asking you, either
6 one of you, again to stop talking over each other. Both
7 of you, okay? Ask a question.

8 MR. PROTOPAPAS: Yes, sir.

9 Q. When did you first begin negotiating with Hooks
10 Construction?

11 A. I'm not sure.

12 Q. And didn't Mr. Stanley introduce you to Hooks
13 Construction?

14 A. They called me.

15 Q. Did Mr. Stanley introduce you to Hooks Construction?

16 A. No.

17 Q. You're saying Mr. Stanley didn't bring a buyer to
18 the table for Hooks Construction?

19 A. I said that Stanley did not introduce me to Hooks
20 Construction.

21 Q. Okay. On May 27th, 2011, you signed a release?

22 A. Yes, sir.

23 Q. Do you see that in front of you, sir?

24 A. Yes, sir.

25 Q. Okay. You released Lymon Pacific, correct? Lymon

1 Warehouse releases Lymon Pacific, correct?

2 A. I signed this agreement right here. To whatever it
3 says, I signed it.

4 Q. Okay. Did you understand that it releases Lymon
5 Pacific?

6 A. I think so. My attorney prepared it for me. I
7 signed it under my best knowledge. I think that's what
8 it's ---

9 Q. How ---

10 A. --- supposed to do.

11 Q. I'm sorry.

12 A. Go ahead.

13 Q. How many deals did you have between Lymon Warehouse
14 and Lymon Pacific?

15 A. One.

16 Q. The April 7th, 2011, contract?

17 A. Yes, sir.

18 Q. Okay. So if you're releasing Lymon Pacific in your
19 May 27th, 2011, release, what would you be releasing
20 Lymon Pacific from?

21 A. My opinion is that they'd already released the
22 hundred thousand to me. And then I released them for any
23 other liabilities or lawsuits, period. And they also was
24 -- it was everybody that was involved. I tried -- I
25 think Harold was trying to release everybody so it

- 1 cleaned up the messes.
- 2 Q. When we look at the lawsuit we have here today,
- 3 Lymon Warehouse is in today's lawsuit, right?
- 4 A. Yes, sir.
- 5 Q. They signed this agreement?
- 6 A. Yes, sir.
- 7 Q. Okay. When I say this agreement, they signed the
- 8 release?
- 9 A. Yes, sir.
- 10 Q. Mills Demolition is in this lawsuit, correct?
- 11 A. I don't know.
- 12 Q. All right. Is Mills Demolition part of the release?
- 13 A. Yes, sir.
- 14 Q. All right. Is Lymon Pacific part of this lawsuit?
- 15 A. Yes, sir.
- 16 Q. And Lymon Pacific is part of the release, correct?
- 17 A. Yes, sir.
- 18 Q. Mr. Bennett, are you in this lawsuit?
- 19 A. No.
- 20 Q. No. But you signed the release?
- 21 A. Yes.
- 22 Q. You were the manager for Lymon Warehouse, correct?
- 23 A. I think I signed it both ways or just one way.
- 24 Q. Okay. And Peter and Susan Stanley, they're husband
- 25 and wife?

- 1 A. I guess so.
- 2 Q. Okay. Did you negotiate the Mills Demolition
3 contract with Susan Stanley?
- 4 A. No.
- 5 Q. Did you negotiate with Peter Stanley?
- 6 A. Yes.
- 7 Q. Then he showed up with a check for Susan Stanley?
- 8 A. I don't know who showed up with it. He took it --
9 they -- they must have took it to Harold's office. I
10 didn't have anything to do ---
- 11 Q. When you ---
- 12 A. --- with that.
- 13 Q. I'm sorry. When you look at the agreement and
14 recision of contract ...
- 15 A. Yes, sir.
- 16 Q. ... did Mr. McWhirter sign it?
- 17 A. No, sir.
- 18 Q. In fact, the only party in this lawsuit that didn't
19 sign is Mr. McWhirter and Mr. Threlkeld, correct?
- 20 A. It sounds like me too.
- 21 Q. You didn't sign it?
- 22 A. I did sign it, but I meant I'm not in this lawsuit.
- 23 Q. So the only party -- the only people here today as
24 part of this lawsuit that didn't sign the release is Mr.
25 Threlkeld and Mr. McWhirter, right?

1 A. Yes.

2 Q. And Mr. Threlkeld does not own this money, does he?

3 A. I don't think so.

4 Q. It's not his money?

5 A. I don't think so.

6 Q. Okay. So the only party that has not been released
7 or hasn't released their rights to the hundred thousand
8 dollars is Mr. McWhirter, correct?

9 A. He's not released whatever rights he may or may not
10 have to that money. That's correct.

11 Q. But Lymon Warehouse did release its rights on May
12 27th, did it not?

13 A. It released its right against Sue and Peter Stanley.
14 I don't think it released Mr. -- it -- Lymon Warehouse
15 signed it or I signed under the intent that it was my
16 hundred thousand dollars.

17 Q. So you intended to release Peter Stanley and Lymon
18 Pacific but not Don McWhirter?

19 A. That's correct.

20 Q. Because Don McWhirter's a third-party beneficiary to
21 the contract, and he needs to have his own line on this
22 agreement, doesn't he?

23 A. No, I never ---

24 Q. You didn't ---

25 A. --- didn't even need to release him. Basically, my

1 thought was Don McWhirter, when he signed the deal, was
2 part of it. And I later found he wasn't. So basically I
3 was like, well, I guess he loaned the money, which is
4 what I think he said, to Lymon Pacific. Lymon Pacific
5 then entered into contract with me with -- I understand
6 it's his money. Just like when I rent a house, mom and
7 dad pay their deposit for them. I didn't consider them
8 part of the contract. And I was going to honor my
9 contract with Lymon Pacific. I felt like I had to honor
10 the contract with Lymon Pacific. If Don McWhirter said
11 you need to sell me the property, I would have said, no,
12 I have to sell it to Lymon Pacific. The only person that
13 I'm obligated to sell to and I have a contract with is
14 Lymon Pacific.

15 Q. You knew on May 27th of 2011 that Don McWhirter
16 claimed an interest in this money, did you not?

17 A. I'm not sure.

18 Q. Okay. But you knew that your attorney wouldn't
19 release the money to you because Don McWhirter was
20 claiming an interest in the one hundred thousand dollars?

21 A. I don't know the dates as good as you do.

22 Q. Well, did you ever ask Mr. Threlkeld why he wouldn't
23 give you the hundred thousand dollars?

24 A. He told me -- yeah. He said there was ---

25 Q. He said, Don McWhirter, right?

- 1 A. I'm not sure of that off the top of my head.
- 2 Q. Okay. You know that you signed a contract before
- 3 that has no intended third-party beneficiaries. You know
- 4 that, right?
- 5 A. (No verbal response)
- 6 Q. You've signed that type of contract before?
- 7 A. I didn't realize that when I sign a contract with
- 8 Lymon Pacific that anybody that Lymon Pacific talks to is
- 9 a third-party beneficiary ---
- 10 Q. No. But one when that is ---
- 11 A. --- that I'm obligated to. Go ahead.
- 12 Q. You didn't get the hundred thousand dollars from Mr.
- 13 Threlkeld after you signed the May 27th release?
- 14 A. I did not.
- 15 Q. Okay. You didn't release Mr. McWhirter, did you?
- 16 A. No.
- 17 Q. The reason why you didn't release Mr. McWhirter is
- 18 because he has an independent obligation all his own,
- 19 correct?
- 20 A. I didn't even know I had a conflict with him at the
- 21 time we did the release.
- 22 Q. And your understanding, though, today is the reason
- 23 why you don't have the one hundred thousand dollars is
- 24 because Mr. McWhirter's rights have to be ascertained,
- 25 correct?

1 A. I understand that basically Mr. McWhirter is
2 claiming that he has rights to the money. And if he
3 does, then I guess we can argue about liquidated damages
4 and all that. If he doesn't, then -- then that, I guess,
5 is my money. I thought it was my money when I signed the
6 release.

7 Q. But you didn't get the money, did you?

8 A. Well, I thought I was getting it. But I did not get
9 it, no.

10 (WHEREUPON, Defendant McWhirter Exhibit Number 12
11 was marked for identification only.)

12 Q. I hand you exhibit 12.

13 A. Yes, sir.

14 MR. PRUITT: Your Honor, I object to exhibit
15 12. I don't think it's relevant. It's a contract that
16 was signed June 3, 2011, between Lymon Warehouse and Hook
17 Demo. It's not the first contract that was in evidence.
18 It's not the Mills Demolition contract. And it's just
19 not relevant to this lawsuit.

20 THE COURT: Well, he already testified that it
21 was for one point four, seven five, I believe. Other
22 than the amount that the property was sold for, what's
23 the relevance?

24 MR. PROTOPAPAS: Other than the amount the
25 property was sold, Your Honor, I have two questions for

1 him.

2 THE COURT: What's the relevance, please?

3 MR. PROTOPAPAS: It speaks to when he began to
4 enter into negotiations with Hooks Construction and when
5 this process began of a backup contract for more money
6 than the one at issue on April 7th.

7 THE COURT: All right. I overrule the
8 objection.

9 Q. Page five?

10 A. Yes, sir.

11 Q. Now, first of all, do you recognize this as the
12 agreement you had with Hooks Construction?

13 A. Yes, sir.

14 Q. That Lymon Warehouse had with Hooks Construction?

15 A. Yes, sir.

16 Q. And you signed this agreement?

17 A. Yes, sir.

18 Q. And you also had ---

19 MR. PROTOPAPAS: I move to have this admitted
20 into evidence, Your Honor, as a complete and accurate
21 copy of the agreement for purchase ---

22 THE COURT: Subject to the objections, you may.

23 (WHEREUPON, Defendant McWhirter Exhibit Number 12
24 was admitted into evidence.)

25 Q. If you could, turn to page two. There's the

- 1 purchase price of one point four seven five million
2 dollars on page two of the agreement. Page two.
- 3 A. Oh, I'm sorry.
- 4 Q. That's okay.
- 5 A. Yes, sir.
- 6 Q. That was the purchase price?
- 7 A. Correct.
- 8 Q. All right. If you could, sir, go to page five.
- 9 A. Yes, sir.
- 10 Q. Paragraph nine (e).
- 11 A. Yeah.
- 12 Q. All right. An abstracting was done on the property
13 as of April 19th of 2011; isn't that right?
- 14 A. I guess so.
- 15 Q. Okay. And you knew that Hooks Construction was
16 looking to purchase the property from you or the
17 buildings from you on April 19th of 2011, didn't you?
- 18 A. Yes, sir. No, I don't know if they -- they did the
19 title work -- I don't know when they did the title work.
- 20 Q. Okay. On page ten of that contract, paragraph 31.
- 21 A. Page ten?
- 22 Q. Yes, sir. Paragraph 31. It says no third-party
23 beneficiaries. Do you see that?
- 24 A. Yes, sir.
- 25 Q. Okay. And that's not part of your April 7th

1 contract, is it?

2 A. No, sir.

3 Q. Did you ever contact Mr. McWhirter after May 7th of
4 2011?

5 A. Yes, sir.

6 Q. All right. And did you contact him to tell him that
7 you'd give him back a portion of his money? Wasn't that
8 the purpose?

9 A. Yes, sir.

10 Q. But that's the only time you contacted him?

11 A. I believe so.

12 Q. All right. You didn't contact him to tell him, oh,
13 we're going to do releases? You didn't contact him to
14 tell him about that?

15 A. No, sir.

16 Q. You didn't call him and tell him that, hey, your
17 partner Peter Stanley came by and he's going to put
18 another contract on the property?

19 A. I didn't know until -- no -- arising from McWhirter
20 releasing the money that I had a conflict with Mr.
21 McWhirter. So that's when I called him. Before then, I
22 thought Peter had the sole power. And like I said, even
23 in Stax, they basically didn't argue his authority that
24 he had the power to make the decisions. And I'd always
25 dealt with Peter on many, many occasions where I -- they

1 were basically more in the background as far as I was
2 concerned.

3 Q. So when Mr. McWhirter was calling you to show the
4 property then, he was in the background?

5 A. I absolutely think any time he called me -- I think
6 one time I set a meeting up. And basically when they
7 went under contract in Stax, I told them the guy that
8 works for me is onsite nine to five, five days a week --
9 I'm just about done. And that he could go by anytime he
10 wanted and have full access to anything they wanted, that
11 I didn't need to be there. If they needed me there to
12 call me. I don't know of any time that I missed his
13 meeting or call. I didn't respond again. It's my
14 testimony under oath that I totally, absolutely wanted
15 him to close that property for one point three million
16 dollars. And it would have been in my best interest to
17 this day if he had.

18 Q. Unless, of course, there's another contract for one
19 point four, seven five million dollars coming behind it?

20 A. One more time. Even after all other, it was have
21 still been in my financial best interest, after seeing
22 the cards, if he had went ahead and closed.

23 Q. All right. But you were also enticed to sign into a
24 second contract with Mills Demolition on May 4th of 2011,
25 correct?

1 A. Only after they told me they weren't going to close.

2 Q. And on May 7th of 2011, you asked Mr. Stanley to
3 send you that self-serving letter so you could try to get
4 the ---

5 A. But he told me ---

6 Q. --- hundred thousand dollars. Let me finish my
7 question.

8 A. Sorry.

9 Q. --- so you could get the hundred thousand dollars?
10 Yes or no and then explain.

11 A. No.

12 Q. You didn't ask him to send that self-serving letter
13 like you testified?

14 A. You said yes and I can -- no, and I want to explain.
15 That he said he would send me -- he said he would give me
16 back my hundred grand. I said, I'd like to have that in
17 writing, and he said he would. There's my answer.

18 Q. Okay. And then after you got that April 7 -- May
19 7th, 2011, letter, you showed it to Mr. Threlkeld,
20 correct?

21 A. I believe that's correct.

22 Q. And Mr. Threlkeld later advised you that there was a
23 dispute over the money; is that correct?

24 A. After we did all the other thing -- he sent some
25 lawyer that -- Mr. Kelly, or something, had some

1 objection to it.

2 Q. I understand. I'm not talking about the letter.

3 Did Mr. Threlkeld tell you there was a dispute as to the
4 money?

5 A. Yes.

6 Q. Okay. And did he tell you, we've got to try to find
7 some way to resolve this dispute over the money?

8 A. He just said that ---

9 Q. Just yes or no and then explain.

10 A. No.

11 Q. Okay. Did he tell you I've got a May 27th release
12 that you can sign and this will solve the problem with
13 the hundred thousand dollars?

14 A. No. The only time there was a dispute over the
15 money is when -- after the release was signed and he gave
16 me the twenty-seven thousand. I wanted the other
17 hundred. And he said, well, I've got a dispute, after
18 that. That's when the dispute came up, when Mr. -- he
19 said he sent a letter or something to this lawyer in
20 Greenville to make sure he didn't have a problem with it.
21 Said he wanted to double check there was no other problem
22 out there. And then he said, when it gets back, I'll
23 dispute the money. And that guy said, hey, wait a
24 minute. We want -- we think we're entitled to the money.

25 Q. Okay. And do you think those are the May 10th,

1 2011, letters that were exchanged between Mr. Threlkeld
2 and Mr. Lowery?

3 A. I'm not sure.

4 Q. Okay. And would you agree with me the hundred
5 thousand dollars is not mentioned anywhere in the
6 release, sir?

7 A. I do.

8 Q. All right. You would agree with me that the words
9 liquidated damages are not in paragraph fifteen of the
10 April 7th contract?

11 A. I do.

12 Q. And would you agree with me that the phrase, no
13 third-party beneficiaries, does not exist in the April
14 7th, 2011, contract?

15 A. I do.

16 Q. Do you agree with me that you were aware, at least
17 aware, that Mr. McWhirter had a demolition company?

18 A. I believe that I'm aware that he had some type of
19 demolition company.

20 Q. Okay. And you were aware that Mr. McWhirter was the
21 one that handed you the check for one hundred thousand
22 dollars from his personal bank account?

23 A. Mr. McWhirter handed me the check in Stax for one
24 hundred thousand dollars.

25 Q. Okay. And so you are at some level aware that there

1 was a dispute that arose between Mr. Stanley and Mr.
2 McWhirter perhaps?

3 A. After it was all signed, they obviously had a
4 fallout, correct.

5 Q. Prior to May 7th of 2011?

6 A. They were definitely having problems.

7 Q. And that was part of the reason why you said, yes,
8 let's do a May 4th, 2011, contract to have a backup?

9 A. The dispute was ---

10 Q. To have a backup contract, right?

11 A. In my opinion, they were disputing who was --
12 couldn't come up with the money and who was supposed to
13 come up with the money. And I believe Peter said, we
14 could flip the contract. And Mr. McWhirter -- actually,
15 Mr. McWhirter was wanting to flip it. But Peter said,
16 well, I was going to make like two million dollars. I'm
17 not going to flip it for a couple hundred grand. And
18 they all got greedy and got burnt.

19 Q. And part of that burning is you want to keep the one
20 hundred thousand dollars in escrow, right?

21 A. The hundred thousand dollars that they specifically
22 told me that they would let me have, including Mr. Don
23 McWhirter, at the closing table at Stax if they didn't
24 close.

25 Q. You consider that a non-refundable deposit made by

1 them?

2 A. That's what it says.

3 Q. Then why wasn't the check written to you, sir?

4 MR. PROTOPAPAS: No more questions.

5 A. Can I answer?

6 Q. You can answer. Absolutely.

7 THE COURT: Yes, sir, you may answer.

8 Q. Yes, sir, you may answer.

9 A. Why wasn't the check written to me? Because I
10 believe that it wouldn't be right to put it in mine
11 because I might not could deliver my part with the title
12 exceptions. So they had to be clarified so that if I
13 couldn't perform, then I didn't have their hundred grand
14 and could walk away.

15 Q. So it was just in case you couldn't deliver the
16 title?

17 A. Well, most of the time when you put something in --
18 a hundred thousand dollars you put it in escrow to make
19 sure that everything is what it's supposed to be.

20 Q. The title on the property that's at a one-point-
21 eight-million-dollar foreclosure?

22 A. The title on any -- or getting it sub-divided. It
23 was a lot of issues that had to be done.

24 Q. And if you couldn't do those issues, if you couldn't
25 ---

- 1 A. I would have to give ---
- 2 Q. --- do those issues ---
- 3 A. --- them their hundred grand back ---
- 4 Q. --- you would have to give them their hundred grand
- 5 back?
- 6 A. --- if I couldn't deliver.
- 7 Q. Okay.
- 8 A. I ---
- 9 Q. I don't want to over-speak you.
- 10 A. Are you -- you said you were done with me?
- 11 Q. So, sir, at the end of the day, we know this. Okay?
- 12 The hundred thousand dollars was never in your
- 13 possession?
- 14 A. It was in my hand.
- 15 Q. It was never in your bank account, sir?
- 16 A. No.
- 17 Q. The check was never written to you?
- 18 A. Correct.
- 19 Q. You've never had possession?
- 20 A. If you say so.
- 21 Q. Well, if you had had possession of the hundred
- 22 thousand dollars, tell me did Mr. Threlkeld write you a
- 23 check for a hundred grand?
- 24 A. No, sir.
- 25 Q. Okay. And on May 27th you release your rights to

1 sue Lymon Pacific under the contract?

2 A. Yes.

3 Q. Okay. And on May 7th of 2011, you thought you were
4 entitled to that money, correct?

5 A. Yes.

6 Q. You thought you were entitled to the money based on
7 the April 7th contract, correct?

8 A. Correct.

9 Q. And the April 7th contract was with Lymon Pacific,
10 correct?

11 A. Correct.

12 Q. The same Lymon Pacific you released on May 27th,
13 correct?

14 A. Correct.

15 Q. Okay. Thank you.

16 A. Thank you.

17 THE COURT: All right. Mr. Pruitt?

18 CROSS-EXAMINATION

19 BY MR. PRUITT:

20 Q. Now, Mr. Bennett, tell me who owns the -- who was
21 the bank that had the mortgage on the property?

22 A. Palmetto Bank.

23 Q. All right. And was Palmetto Bank at that time under
24 a lot of pressure from the banking regulators?

25 A. It's my understanding they were heavy in commercial

1 loans, the speculative stuff, and they were trying to
2 reduce their balance sheet. And my property had
3 problems. And they specifically said, hey, if you can
4 sell it, we'll discount it. We'll sell you the note and
5 mortgage. We want out of this piece of property.

6 MR. PROTOPAPAS: I'm going to object to the
7 extent he's calling it lay testimony instead of third-
8 party hearsay.

9 THE COURT: What -- excuse me. What was the
10 fact you were testifying to, Mr. Pruitt?

11 MR. PRUITT: I'll rephrase, Your Honor.

12 Q. Did you make arrangements with Palmetto Bank to buy
13 at a discount this mortgage?

14 A. I made arrangements with my wife's company to buy
15 Palmetto Bank's note and mortgage on this property,
16 correct, at a discount.

17 Q. And did you ultimately do that?

18 A. I ultimately did do it.

19 Q. And did you do that prior to the time that the
20 contract with Hook was entered into?

21 A. Yes. It was ---

22 Q. Okay. Now, could you have done it at any time
23 during this whole process from April until June of 2011?

24 A. Yeah, I had already made an agreement with them for
25 a price. And basically, I could have tendered it any

1 time.

2 Q. All right. Now, under the April 7th contract, did
3 anybody ever tender you the balance of the proceeds of
4 one point two million dollars?

5 A. No.

6 Q. Now, would the one point two million dollars been,
7 by itself, enough to buy the mortgage or satisfy the
8 mortgage?

9 A. No.

10 Q. How much more would you have to come up with?

11 A. It was a million, three hundred fifty thousand
12 dollars is what my wife paid to purchase the mortgage.

13 Q. All right. So you would have only been a hundred
14 and fifty thousand dollars short if they'd -- if you'd
15 have gotten to close the deal?

16 A. Fifty, because there was a hundred in escrow. It
17 was one point three ---

18 Q. Okay.

19 A. --- plus the taxes, which were around a hundred
20 grand.

21 Q. Now, the April -- the contract that was put into
22 evidence, the earlier contract that looks the same as the
23 April 7th contract ---

24 A. Yes, sir.

25 Q. --- did anybody ever put up any money on that

1 contract?

2 A. No, sir.

3 Q. And when you ---

4 THE COURT: Which contract was that?

5 MR. PRUITT: That would be the contract, Your
6 Honor, that was ---

7 THE COURT: The Hook?

8 THE WITNESS: No.

9 MR. PRUITT: No, sir.

10 THE WITNESS: This is -- the one they're
11 talking about was never -- with Greg shoals.

12 THE COURT: Oh, Greg Shoals, okay.

13 THE WITNESS: Yes, sir.

14 THE COURT: What Exhibit number is that?

15 THE WITNESS: 11.

16 THE COURT: Okay.

17 MR. PRUITT: Yes, sir, Your Honor.

18 Q. Now, did anybody ever put up any money for the
19 number 11 contract?

20 A. No, sir.

21 Q. All right. So it was never consummated?

22 A. No, sir.

23 Q. All right. And it would have -- if it had been
24 consummated, it would have expired much earlier?

25 A. Correct.

1 Q. All right. Now, during this whole time, are Mr.
2 McWhirter and Mr. Stanley and their company of Lymon
3 Pacific -- are they supposed to be doing their own due
4 diligence?

5 A. They were. And they were at the building many, many
6 times with many different type of people. Engineers,
7 asbestos people, a bunch of times.

8 Q. When you met at Stax restaurant to do the April 7
9 contract, did everybody understand that it was a thirty-
10 day contract?

11 A. Yes.

12 Q. At that particular time, did you know that Lymon
13 Pacific, through its members, never had an operating
14 agreement?

15 A. I had no knowledge of any that. Everybody was
16 happy. Seemed like it was -- everybody was excited about
17 doing the deal at the time.

18 Q. Did anybody protest the authority of Lymon Pacific
19 to enter into that contract?

20 A. No. They signed it in front of them. And like I
21 said, they were all there. And you know, like I said, it
22 seemed like it was a group effort.

23 Q. Is there anything in the April 7 contract that gives
24 any person, Elliott Edwards, Mr. McWhirter or even Mills
25 Demolition the rights to the demolition contract?

1 A. Not that I'm aware of.

2 Q. Did anybody ever send you a contract from Mr.
3 McWhirter or Elliott Edwards or Mills Demolition saying
4 that Lymon Pacific had awarded them the demolition
5 contract?

6 A. I had no correspondence like that whatsoever.

7 Q. All right. Now, tell me why you decided not to put
8 the title in Greg Shoals Acquisition?

9 A. Greg Shoals Acquisition was a LLC that my attorney
10 formed, and at the time, was not assigned to me or my
11 wife. I was going to -- the plan was to -- my wife was
12 going to purchase the note and mortgage. And I was going
13 to sell Greg Shoals Acquisition the Lymon property.

14 Q. Okay. And did that ever go through?

15 A. No. I didn't do it.

16 Q. Well, why not?

17 A. Well, my accountant basically advised me that I
18 would lose my long-term capital gain if I put it in there
19 and sold it real quick.

20 Q. Okay. But it doesn't matter because that contract
21 was never consummated anyway?

22 A. Correct.

23 Q. Now, when you signed the April 7th contract, you
24 signed that in the name of Lymon Warehouse. And did they
25 hold legal title?

1 A. They did.

2 Q. And did you have the ability to satisfy the mortgage
3 at that time?

4 A. Yes. I had no doubt that I was prepared and could
5 satisfy the mortgage ---

6 Q. But it never really mattered ---

7 A. --- if I signed the contract.

8 Q. It never really mattered because they never came up
9 with the money?

10 A. That's correct. They never came up with the money.
11 But I was -- I was prepared to consummate it.

12 Q. Now, tell me, what was the price of steel, more or
13 less, at that time?

14 A. I thought it was around a hundred and fifty dollars
15 a ton.

16 Q. All right. And did the price of steel fluctuate a
17 lot at that time?

18 A. Yeah. It was -- that was a lot of -- they were
19 talking. And again, I learned something from these guys.
20 They were saying, you know, basically steel goes up and
21 down, and they're going to lock in their buyer at
22 whatever price it is on a day. That's one reason they
23 wanted to close so fast a lot of times because they knew
24 how much it was going to cost to tear down. They knew
25 about how much it cost to do the abatement. Now, I think

1 it only ended up being like twelve thousand tons or
2 whatever. But basically their number, let's say, was six
3 million dollars of hard costs. Well, if steel went up
4 they had a two thousand -- two-million-dollar profit; if
5 steel went down, they might not have no profit. So it
6 was important to me, I think, and them to have things on
7 a short time frame because they were trying to peak the
8 market. Plus, I didn't want to tie my property up and
9 steel drop a hundred dollars and then my property's not
10 marketable anymore.

11 Q. All right. Now, what I want you to do is, how about
12 take a look at what's been marked as exhibit number 12.
13 And that's the -- the Lymon Warehouse contract with Hook
14 Demo?

15 A. Yes, sir.

16 Q. Do you have a copy of it up there?

17 A. I do. I do. I got a copy.

18 MR. PRUITT: Does Your Honor have a copy?

19 A. 12.

20 Q. All right. Well, I want you to take a look at this
21 number 12, and I'm going to give the Court the original.

22 A. Yes, sir.

23 Q. Do you see an exhibit on the back of that contract?

24 A. Yes, sir.

25 Q. What is the -- what's the significance of that

1 exhibit?

2 A. I gave them an easement on the twenty-three point oh
3 six acres.

4 Q. All right. And can you use that exhibit to tell
5 Your Honor exactly what you were going to have to do to
6 sell this property to Lymon Pacific?

7 A. Lymon Pacific, when they entered, they wanted to
8 purchase the property, dirt and everything. So I had,
9 you know, enough power -- to give you an example, the
10 power bill's about three hundred thousand a month. This
11 plant was running some big power. I had to disconnect
12 the power because it came in through these buildings and
13 over into the building that I was keeping. So I had to
14 disconnect the power and service the power from the other
15 side. And also, the sprinkler system, which has two
16 five-hundred-thousand-gallon tanks of water, had a loop.
17 So all of it was continuous and tied together. So I had
18 to cut that and re-loop it to the piece I was keeping.
19 All right. Which I did all of that in anticipation for
20 and made arrangements to do it. And I also had to survey
21 it out.

22 Q. All right.

23 A. And ultimately, I had to -- because there was
24 currently power in all them buildings, there was
25 currently a sprinkler system in all the buildings, and

1 there was currently a fire alarm in all the buildings
2 because the insurance company made me keep the fire
3 system and the fire alarm operating. So I had to also
4 redo the fire alarm. So I did all of that. Was
5 anticipating selling the dirt. Then when Hook -- Hook
6 said, we don't want the dirt. We just think it's too
7 much liability. There might be contamination in the
8 ground. All we want's the cherry. We want the steel.
9 We don't want none of that stuff. We don't want no PCBs,
10 which I've already been -- I'm in all kind of trouble
11 right now. So all that stuff in the ground, they didn't
12 want no liability. So they just specifically wanted the
13 steel. So what they did is they purchased just the
14 steel. They made me sign an agreement. I think for
15 three years I had to give them an easement on the
16 property and pay the property taxes, and then they could
17 just walk away. Whatever they left there was my problem.
18 Q. All right. Now, even though the contract with Hooks
19 was a little more, why would the contract, the April 7th
20 contract, been better?

21 A. Well, the main reason, A, it was a little bit more,
22 but I had to agree to pay the property taxes for three
23 years. That's part of it. But the main reason ---

24 Q. How much are the property taxes?

25 A. At the time they were about seventy thousand. But

1 now since the building's come down, the next year -- they
2 come down this year. It was about seventy thousand a
3 year originally. They're less than that now, maybe --
4 just on that one piece, maybe twenty thousand. But it
5 should keep coming down. But the main reason was the
6 liability of having a hundred contractors on a piece of
7 property that you own, and the liability of dealing with
8 hazardous material that was onsite and spilling it on the
9 ground or make a mistake. And my reality, I believe,
10 came true. I think I have at least eight mechanics liens
11 filed against it now, and I got in trouble with EPA.
12 They're already in the process of -- I guess they're
13 going to fine me. They said they are. But they -- I'm
14 under EPA right now because they took PCBs out of the
15 transformers and put them in some drums and didn't label
16 them properly and store them properly. And since I own
17 the land, I'm drug into it, which I have ---

18 Q. All right. So you would have much rather sold the
19 ground and left all those problems to Lymon Pacific?

20 A. I'd much rather not be in any way attached to this,
21 which at this point is a big nightmare.

22 Q. How much do you estimate that it was going to cost
23 you to perform your obligations under the April 7th
24 contract by disconnecting the water, disconnecting the
25 power and all that?

1 A. In excess of a hundred thousand dollars. Because I
2 had to put a new power meter in. Just to do power just
3 to run the transformer was twelve thousand dollars. To
4 take the electrical from their building, which they were
5 buying, and hook it to the other side of mine because the
6 power ran through it, the electrical bill was sixty
7 thousand. I think I paid thirteen thousand for the water
8 contractor, a couple thousand dollars for the alarm
9 system. And then I think there was another five thousand
10 in surveys cost. So that -- that's -- they were all hard
11 costs. And I had started them prior to the thirty-days.
12 I knew I was under a deadline to getting them done. And
13 then I had thirty more days to finish. Because some of
14 the things -- I didn't want to turn the power off
15 completely because of my insurance. If I didn't -- if I
16 turned my power off, I would be in violation because my
17 sprinkler system wouldn't work. So I didn't want to
18 disconnect the sprinkler system until they paid and I had
19 thirty days to finish it. Because if it burnt down, I'd
20 be in big trouble.

21 Q. All right. Now, would it have -- would it have
22 suited you fine for Lymon Pacific to have closed on this
23 deal?

24 A. Again, I absolutely promise y'all that would have
25 been the best thing that could have happened to me that

1 day is they brought me a check for one point three
2 million dollars. And I hope they made a million. I hope
3 they make a hundred million dollars. I just wanted to
4 sell the property. Them numbers worked for me. And I
5 just wanted to go. And now I'm still in a mess.

6 Q. Did -- prior to learning from whatever source that
7 the Lymon Pacific people couldn't come up with money, did
8 you enter into any other contracts with anybody else to
9 buy the property?

10 A. No. And I had -- like I said, when I signed the
11 contract with them, there was a lot of people calling
12 trying to buy it in all different ways of fortune. But
13 they had been the most -- they -- a lot of people wanted
14 to do it on a split and things like that. We'll give you
15 so much on this deal on how much we make. But I really
16 wanted to sell the piece in whole.

17 Q. All right.

18 A. Because of some of the liabilities. And I needed
19 the money.

20 Q. Now, does -- did you do anything to thwart or
21 otherwise hinder Lymon Pacific from getting their money
22 up or showing it to anybody you wanted to?

23 A. Actually, I did nothing but try to help them.

24 Q. Now, did you have any responsibility to help them
25 get their financing?

1 A. No.

2 Q. Did you believe that they had their financing lined
3 up when you signed this contract of April 7?

4 A. I had no doubt when they put up a hundred thousand
5 dollars and sat there at that table, very professional
6 businessmen, that they had already had the financing of
7 some sort lined up, whether it was going to cost them
8 more or less. They had -- they were shopping it, I could
9 tell. But they were excited and they had -- it didn't
10 seem like they were worried at all about financing.

11 Q. What conversations did you have with either Mr.
12 McWhirter or Mr. Stanley about their desire to flip the
13 property? And tell His Honor what flipping means.

14 THE COURT: I understand what it means.

15 MR. PRUITT: Yes, sir.

16 A. I guess they -- they had said that there was this
17 much steel in this building, according to whatever he
18 had, like twenty thousand tons. It was going to cost
19 this much to tear it down, and they could make this much
20 money. And either they could tear it down their selves,
21 or they could just sell the contract straight to another
22 person and just take the money and go. And they didn't
23 know which one they were going to. They were just
24 obviously going to try to do both. And basically, I told
25 them I didn't care.

1 Q. All right. Did they ever share with you the figures
2 that they were using as indicated by Defendant's Number
3 10?

4 A. I don't know if I've got number 10.

5 Q. About how much money they were going to make out of
6 this deal if they'd have got their financing together?

7 A. The first time I seen this was a minute ago when he
8 handed it to you and you handed it to me, that I can
9 recall. And ---

10 Q. All right.

11 A. --- that's pretty, pretty good.

12 Q. Did you think the value was there for them to make a
13 handsome profit on this property if they did come up with
14 the financing?

15 A. Yeah. I think it was -- I don't know if it was this
16 much, but I definitely thought there was a couple of
17 million dollars on the table.

18 Q. Now, did the release, which you signed as -- that
19 released many of the parties to this lawsuit ---

20 A. Yes, sir.

21 Q. --- did you believe that that released Harold
22 Threlkeld from his duties as an escrow agent to pay over
23 to you the one hundred thousand dollars?

24 A. I believe that he is responsible to give it to me.
25 I didn't believe that he got the money, no. I believe

1 he's responsible as my escrow agent to me. And I still
2 think he is.

3 Q. All right.

4 MR. PRUITT: That's all the questions I have.

5 THE COURT: Recross only on new information.

6 No old roads.

7 MR. PROTOPAPAS: Your Honor, the new
8 information that I heard was simply some damages things
9 that were thrown out. That's all I'm going to cross on.

10 THE COURT: I'll just wait to hear it. I'm
11 just giving you forewarning.

12 REDIRECT EXAMINATION

13 BY MR. PROTOPAPAS:

14 Q. You would agree with me you went into this Hooks
15 contract with your eyes wide open, correct, sir?

16 A. Okay.

17 Q. Yes?

18 A. Yes.

19 Q. You knew the risks when you entered into it,
20 correct, sir?

21 A. Yes, sir.

22 Q. And there was no way on April 7th of 2011, you could
23 predict what ended up occurring in the Hooks contract,
24 correct?

25 A. No.

1 Q. Okay. Look at page 144 of your deposition, lines 2
2 through 4.

3 A. 144?

4 Q. Page 144, lines 2 through 4.

5 A. Yes, sir.

6 Q. Question, you agree that there's no way to have
7 predicted it, if you could? Answer, no.

8 A. Yes, sir.

9 Q. You see that?

10 A. Yes.

11 Q. You're talking about the Hooks Construction stuff,
12 correct?

13 A. Correct.

14 Q. All right. And you have not produce one check
15 written by Lymon -- by Lymon Warehouse for any of these
16 taxes or damages or anything like that in this case, have
17 you?

18 A. I got them, sitting on my desk right there.

19 Q. You haven't produced any to me, have you? If you
20 know?

21 A. No. I guess not. I don't know.

22 Q. And there's a company called Warehouses Unlimited
23 that you also own, correct?

24 A. That's correct.

25 Q. That company has maintained some money for different

1 things, right?

2 A. (No verbal response)

3 Q. On behalf of Lymon Warehouse, perhaps? You don't
4 know?

5 A. I mean, it could have, yeah. I own both companies,
6 correct. Both of them are warehouses.

7 Q. As it stands now, though, sir, okay ...

8 A. Yes, sir.

9 Q. ... Lymon Warehouse has not -- I have not seen one
10 check for any amount of money that was sent to any third
11 party as it relates to anything you just testified about,
12 changes to the property, anything like that. You tell me
13 they exist.

14 A. Underneath my sunglasses right there are checks,
15 contract, dates, invoices, on that desk right there. I
16 do not know if you have them or not. I do not know the
17 answer.

18 Q. For work conducted with Hooks Construction that was
19 beyond the predictability of the April 7, 2011, contract,
20 correct?

21 A. The checks I'm referring to are before Hook ever was
22 under contract.

23 Q. Anything related to the Hooks stuff that you've been
24 talking about?

25 A. Hooks check, I haven't wrote. I don't know how much

- 1 that's going to be yet. It's still out there. The
2 checks I was talking about were the ones ---
3 Q. My question is a little different.
4 A. Okay. I haven't wrote any checks to the EPA or any
5 mechanics lien other than some lawyer bills. At this
6 point, I don't know where the end results are going to
7 end up.
8 Q. Okay. So you haven't written -- you haven't
9 incurred any damage ---
10 A. Other than some lawyer bills. And I don't even know
11 how much they are.
12 Q. And that was in relation to mechanics liens that
13 were filed because of the Hooks contract?
14 A. That's correct.
15 Q. And that was a contract that was something you would
16 not have entered into on April 7th of 2011?
17 A. I'm saying I would have rather entered into -- I
18 would have rather closed the April 7th deal than the Hook
19 deal, but that was what I did at the time.
20 Q. It's not a foreseeable contract on April 7th of
21 2011, the type of contract that you entered into with
22 Hooks, because you wanted to sell the property?
23 A. I much rather would have sold it as a whole. That's
24 correct. That's why I got the extra money.
25 Q. Thank you.

1 RECROSS-EXAMINATION

2 BY MR. PRUITT:

3 Q. Just one question. Mr. Bennett, as a part of our
4 discovery to Mr. Protopapas and his client, did we
5 furnish them check registers for Lymon Warehouse for a
6 bunch of periods of time ---

7 A. I believe we did.

8 Q. --- that would disclose these expenses?

9 A. Yeah, I thought we did. Yes, I know -- I know I
10 sent them to you. I don't know where the -- there was
11 all kind of expenses, I know.

12 Q. And does Lymon Warehouse keep regular books through
13 QuickBooks, and that's what you furnished them?

14 A. It's through QuickBooks. My accountant's Clifford
15 Bowman. And I -- you know, just normal business
16 practice.

17 MR. PRUITT: Okay. That's all the questions I
18 have.

19 THE COURT: All right. Thank you, sir. You
20 may step down.

21 THE WITNESS: Thank you, sir. Leave this stuff
22 here, Your Honor?

23 THE COURT: Yes, sir, please, sir.

24 Any other witnesses on behalf of Mr. McWhirter?

25 MR. PROTOPAPAS: Mr. Stanley's depo

1 designations we, I believe, faxed and mailed to your
2 office yesterday. I apologize if we didn't get it to
3 you ---

4 THE COURT: I'm going to give the attorneys a
5 chance to go ahead and give those to me. You gave me
6 yours yesterday, didn't you?

7 MR. PRUITT: Yes, sir. And maybe we should
8 turn over to the Court the original deposition of Mr.
9 Stanley.

10 THE COURT: Okay. Go ahead and make the
11 depositions, all of them, a matter of the record. I'll
12 make them Court exhibits. And if you would designate
13 which portions of any and all of those you want me to
14 review as well.

15 MR. PROTOPAPAS: Thank you, Your Honor.

16 THE COURT: Fair enough?

17 MR. PROTOPAPAS: Yes, sir.

18 THE COURT: That way everybody's covered.

19 MR. PROTOPAPAS: And that would be the only
20 other evidence we have, Your Honor.

21 THE COURT: Okay. Now, Mr. Pruitt, do you want
22 to ---

23 MR. PROTOPAPAS: Yes, sir.

24 THE COURT: --- do you want -- give it to her
25 and let her make it a Court's exhibit. I think I had Mr.

1 Bennett's up here. Do y'all want to make that a Court's
2 exhibit or no?

3 MR. PRUITT: No, not me.

4 MR. PROTOPAPAS: No.

5 THE COURT: No? Okay. How about the other
6 witnesses? Do y'all want -- which other depositions do
7 you want to make -- be Court exhibits?

8 MR. PROTOPAPAS: We'll make Stanley a Court
9 exhibit, Your Honor. However, we will provide the Court
10 our depo designations which will pare it down.

11 THE COURT: Would you give the court reporter
12 that deposition, please, sir, just to make ---

13 MR. PRUITT: Your Honor, I just did.

14 THE COURT: Oh, you did.

15 MR. PRUITT: I just gave the Stanley deposition
16 to the ---

17 THE COURT: Never mind. I'm blind as a bat
18 over here, aren't I, guys? I'm sorry.

19 (WHEREUPON, Court's Exhibit Number 1 was marked for
20 identification only.)

21 THE COURT: I'm sorry. My bad.

22 All right. Now, Mr. Pruitt, you want to renew
23 basically the same grounds as your prior motion for
24 directed verdict and any other new grounds?

25 MR. PRUITT: Yes, sir. I'd like to ---

1 THE COURT: For involuntary non-suit? Excuse
2 me.

3 MR. PRUITT: Yes, sir. Well, now that the --
4 the Defendant Bennett rests, I can't put up anything more
5 than what I've put up through direct and cross.

6 THE COURT: Well, let me just tell you, at this
7 point, the way it's procedurally been done, that was part
8 of McWhirter's case-in-chief.

9 MR. PRUITT: Right.

10 THE COURT: So, I was going to let you ---

11 MR. PRUITT: Okay.

12 THE COURT: --- renew your motion.

13 MR. PRUITT: All right. I'm going to renew my
14 motions. Your Honor, I do have -- I do have one case
15 that I'd like to pass up. And I think it's pretty
16 directly on point in regard to the third-party
17 beneficiary rule. Your Honor, this -- this case that
18 I've passed up, I was surprised to find it. The
19 subcontractor brings a breach of contract action against
20 the state highway department and the general contractor
21 for failing to transfer ownership of a building. And the
22 case was very much like this one. The highway department
23 signed a contract with a general contractor that included
24 demolishing ...

25 THE COURT: I'm listening to you.

1 MR. PRUITT: ... that included demolishing the
2 building. Well, the general contractor hired a sub. And
3 part of his deal was demolishing the building because
4 both of them were expecting a benefit from demolishing
5 the building.

6 Now, the highway department didn't enter into a
7 contract with the sub. And so later on, the highway
8 department struck the demolition of the building as part
9 of the main contract. And the subcontractor sues the
10 highway department saying that they knew that he was
11 going to get the benefit of the demolition.

12 Well, our Supreme Court said that that case, which
13 is pretty much right on point, that the contract with the
14 subcontractor did not provide a direct benefit to make
15 the state highway department eligible for suit by the
16 subcontractor.

17 So I think it's a case that's just right on point.
18 And in that regard, we would say that Mr. McWhirter, not
19 being a party to the main contract, lacks any privity and
20 that, according to this case, the level of interest he
21 had in performing the demolition wouldn't arise to
22 anything more than an incidental benefit and that,
23 therefore, Mr. McWhirter's claims all fail as to this
24 matter as to Lymon Warehouse because he's not privity, he
25 doesn't have a dog in the fight legally. And the fact

1 that he fell out with his partners, as he calls them, in
2 the LLC and they didn't pay him their share of the money
3 back that he put up for the benefit of Lymon Pacific is
4 his case against Stanley and his case against Elliott
5 Edwards for their share of the money that he put up in
6 behalf of Lymon Pacific. So you know, that's kind of a
7 different motion than the ones I made earlier.

8 Now, Your Honor, we still believe that there's no
9 evidence of breach of contract by Lymon Warehouse versus
10 McWhirter. We don't believe that there's been a breach
11 of contract. We don't believe there's any evidence of a
12 breach of contract. We don't believe that there's any
13 evidence of quantum meruit unjust enrichment that runs
14 from Lymon Warehouse to Mr. McWhirter. We don't believe
15 that the -- if Your Honor's -- that the civil conspiracy
16 -- which I know Your Honor ruled it out last time. But I
17 don't know whether you -- whether it's still ruled out or
18 not since you've reopened the case.

19 THE COURT: I -- it's out. It should be more
20 technically, but I would renew my ruling on that because
21 I see no evidence ---

22 MR. PRUITT: So ---

23 THE COURT: --- viewed in the light -- so it's
24 out.

25 MR. PRUITT: So for all of those reasons, we

1 believe that the Court should, at this time, grant a
2 voluntary non-suit against the Defendant McWhirter in
3 favor of the Defendant, Lymon Warehouse. And we don't
4 care what the Court does with the claims against the
5 people that aren't here.

6 THE COURT: Okay. Tell me specific causes of
7 action that Mr. McWhirter has asserted against Lymon
8 Warehouse.

9 MR. PROTOPAPAS: Your Honor, against Lymon
10 Warehouse, we asserted a cause of action for breach of
11 contract. We feel there's two parts to that. One is
12 whether Lymon Warehouse performed at the level that they
13 needed to. But second, if it's not a -- I understand
14 it's a legal issue on liquidated damages clause, a
15 damages clause for liquidated damages. I know the Court
16 doesn't like the theory I'm about to give. I understand.
17 Briefly, briefly, briefly.

18 THE COURT: Go ahead. I want you to feel like
19 you argued entirely.

20 MR. PROTOPAPAS: The theory is that if it's not
21 liquidated damages clause, that these gentlemen would
22 have to prove their damages to the Court. And as a
23 result, okay, the May 27th release would have to be --
24 they would -- they have released their ability to claim a
25 damage, so that money would go back to Mr. McWhirter more

1 as a failure on their part to show that they're entitled
2 to it.

3 THE COURT: Okay. Let me ask you this.

4 MR. PROTOPAPAS: Yes, sir.

5 THE COURT: And I understand that you are
6 pursuing a third-party beneficiary claim. How does this
7 gentleman have any standing to assert a breach of
8 contract claim that is unequivocally between two LLCs
9 regardless if he's a member or not?

10 MR. PRACHT: Your Honor, I would say that
11 because it was very clear to everyone sitting at that
12 table at Stax that Don McWhirter was going to directly
13 benefit from this contract. In the case Mr. Pruitt
14 cited, this Bob Hammond Construction Case, it's
15 distinguishable from this instance in the fact that, A,
16 Don McWhirter provided directly a hundred thousand
17 dollars of his money to consummate the contract. This
18 contract never would have been consummated without that
19 hundred grand.

20 Second, it is undisputed -- and when you read back
21 to Mr. Bennett's deposition testimony, that he admitted
22 was what he said, that he knew that Mr. McWhirter was
23 going to be doing all the demolition. And you've got Mr.
24 McWhirter's testimony that he was going to -- not only
25 was he personally going to profit from the LLC agreement,

1 but his McWhirter and Crew was going to profit from the
2 -- from doing the demolition work as well.

3 THE COURT: Show me in exhibit 1 where the part
4 -- do you agree there's a merger clause, actually two
5 merger clauses, in exhibit 1 that was executed between
6 Lymon and Lymon?

7 MR. PRACHT: Yes, Your Honor. There -- I
8 believe at the end of exhibit 1 there's a ---

9 THE COURT: So that would embody the entire
10 parties' contract with regard to this contract -- this
11 transaction. Agreed?

12 MR. PRACHT: I would, Your Honor. And I would
13 also point out ---

14 THE COURT: Let me finish, if I may. Where in
15 exhibit 1 is there anything that indicates some direct
16 benefit that supposedly accrues to Mr. McWhirter
17 individually anywhere?

18 MR. PRACHT: It doesn't specifically say Don
19 McWhirter. I admit that freely, Your Honor.

20 THE COURT: So if that embodies the entire
21 contract, how could -- regardless of his conversation,
22 regardless of the conversation, how could he ever be a
23 third-party beneficiary if it's not more directly
24 indicated as him being so in that written contract?

25 MR. PRACHT: Because, Your Honor, you don't

1 have to be mentioned -- under South Carolina Law, you
2 don't have to be mentioned in the contract to be a third-
3 party beneficiary. That's the whole basic idea of it.
4 And I've got -- if I can hand this up here, I've got
5 South Carolina Juris Prudence on the issue. And that's
6 -- actually, the opening line of it is that a party does
7 not have to be named. And I'll find it. Give me one
8 second, Judge. Right here. This is citing South
9 Carolina Juris Prudence, a contract between two persons
10 for the benefit of a third person can be enforced by the
11 third person even if he or she is not named in the
12 contract.

13 THE COURT: Well, I understand privity. And
14 that's what you're saying. But what I'm saying to you --
15 and I may not have been very clear the way I articulated
16 it -- is that it's saying obviously Mr. McWhirter
17 individually is not in privity to this contract. Is that
18 agreed?

19 MR. PRACHT: Okay. Yes, Your Honor.

20 THE COURT: So wouldn't there have to be, since
21 there is a merger clause in this particular transaction,
22 some written indication of a direct benefit that is
23 accruing to Mr. McWhirter rather than some kind of
24 incidental or consequential effect regardless of any
25 conversation at Stax or anywhere else for that matter?

1 MR. PRACHT: Your Honor, I would say that the
2 paragraph ten -- in paragraph ten of the contract, the
3 second part where it references demolition, I think
4 clearly contemplates what the parties intended which was
5 for this property to be demolished. And I think all the
6 evidence that we've seen here today supports that fact.
7 So I think that there's certain ambiguity in the
8 contract, particularly given the surrounding facts and
9 the nature of this contract that allow us to take a look
10 at extraneous factors beyond the four corners of the
11 document despite the integration clause in the contract.
12 And so I think that it would be proper and particularly
13 in trying to prove a third-party beneficiary case.

14 Your Honor, I think that it's oftentimes expressly
15 necessary to look beyond the four corners of the document
16 because that's exactly what the case of -- this is cited
17 in South Carolina Juris Prudence in the cases of Sevins
18 and McKnight (phonic) that it cites to. And it says, if
19 a person's not named in the contract, obviously you're
20 going to have to look beyond the four corners of the
21 document. Otherwise, the third-party beneficiary rule
22 would be a blanket black line rule that you have to be in
23 the contract.

24 THE COURT: Well, I mean, don't you have to
25 maybe look beyond the four corners? I'm asking. I don't

1 know. The four corners. But doesn't there have to be in
2 a contract which contains integration clause, merger
3 clause, or some clause saying this is our entire
4 understanding -- doesn't there have to be an indication
5 inside the written contract itself that this contract is
6 going to benefit some other third person?

7 MR. PRACHT: I believe if the intent of the
8 parties is that it will be a direct benefit to a third-
9 party, no, is my answer to your question, Your Honor. I
10 think that the reason you see no third-party beneficiary
11 clauses in other contracts, as in the other one that was
12 introduced into evidence in this case, is for that exact
13 reason.

14 THE COURT: All right. All right. Any -- Mr.
15 -- anything else?

16 MR. PRACHT: No, Your Honor.

17 THE COURT: Okay.

18 MR. PRUITT: Just one thing, Your Honor. The
19 case he cited, Sevings versus Knight (phonic), which
20 supposedly stands for that proposition, 286 S.C. 299, is
21 a termite inspection case where the seller of a house
22 promised to get a termite inspection to show the house
23 was clear of termites.

24 THE COURT: That benefits the lender.

25 MR. PRUITT: To benefit the purchaser.

1 THE COURT: Or the lender.

2 MR. PRUITT: Or the lender, yeah. This was a
3 purchaser case, I believe. And so the Court said, yeah,
4 you can say third-party beneficiary in that case even
5 though you're not mentioned in the contract. So I think
6 that case is farfetched.

7 THE COURT: All right. Do you intend to put up
8 any witnesses at this point?

9 MR. PRUITT: Your Honor, no, sir. We've
10 exhausted everything we can say for Mr. Bennett and have
11 no other witnesses.

12 THE COURT: So Lymon Warehouse rests?

13 MR. PRUITT: Lymon Warehouse rests.

14 THE COURT: All right. Let me go over what I
15 think in this case. I've been making notes. You know,
16 going through, I made copious notes. And I haven't
17 finished, but my initial impression on this case is this.

18 Number one, you have this contract between Lymon
19 Warehouse and Lymon Pacific dated April 7, 2011. The
20 prior contract that was introduced into evidence, maybe
21 number 12 or no -- the other one, the Hook contract or
22 the third-party, the other group -- I forget their name
23 -- is of no consequence to me in my determination. I'm
24 not -- I don't think they're really relevant to the
25 determination in this case.

1 Clearly, the contract, exhibit number 1, the parties
2 marked it out. They signed it and they numbered the
3 pages. They intended that to be a contract.

4 Unfortunately, at the time that that was done ...

5 Let me point out, there's a lot of things in here
6 that should have been done by both sides and all parties
7 to anticipate this deal or before the things were done in
8 this case.

9 First, Mr. McWhirter and his alleged partners should
10 have been organized. I mean, at the time this contract
11 was entered -- they call it a contract between Lymon
12 Pacific, but that corporation had not even been
13 organized. There was no members. There was no
14 designation of a managing member or otherwise and who's
15 supposed to work or act on behalf of this L.L.C.

16 At the same time, Mr. McWhirter clearly paid a
17 hundred thousand dollars undisputedly towards this
18 earnest money. Also, all the evidence in this case -- I
19 look at it -- and Lymon Pacific was not able to close by
20 the transaction date. And I know that Mr. Protopapas
21 brings up this idea about the title notes, but that --
22 there's no evidence that there was ever even title
23 applied for, title insurance applied for, nor was there a
24 request for the notes.

25 So there's certainly no indication that Warehouse

1 had any obligation to provide them. If they did request
2 them, they certainly would have had to.

3 The 5/4/11 contract between Lymon Warehouse and
4 Mills by it's terms is a bactable (phonic) contingent
5 contract. Interestingly, it only calls for fifty
6 thousand earnest deposit, but it calls for a high
7 purchase price and it's at a time where McWhirter and
8 Stanley, by all testimony in this case, were at odds. I
9 think the evidence belies that fact.

10 Either Mr. Stanley or his wife owns this Mills Demo.
11 They entered into the 5/4/11 contract, again, for less
12 earnest money but a higher sales price. And consequently
13 -- and that contract does not include or anticipate Mr.
14 McWhirter being a member of the Mills Demo by any
15 evidence presented in this case.

16 Immediately after that, on around May 7th, Mr.
17 Stanley conveniently signs a letter saying, you can keep
18 that hundred thousand dollars if we don't close on
19 today's date, which is, time is of the essence which is
20 the date that letter was sent. As such, that would
21 potentially breach his fiduciary duty if there was, in
22 fact, an organizational contract by the name of Lymon
23 Pacific, LLC. Mr. McWhirter was not notified of this
24 communication.

25 Thereafter, there was a release that was drafted by

1 Lymon Warehouse's attorney, Mr. Threlkeld.

2 May I have a copy of that exhibit? And may I have
3 exhibit number 1? Is that release down there too? This
4 is the exhibit number 1. And I need also the release.
5 In looking at my notes, it indicates number 5. Thank
6 you.

7 Thereafter, there is a release that by all reports
8 was prepared by Lymon Warehouse's attorney. So
9 therefore, if it's ambiguous it's going to be construed
10 by me against Lymon Warehouse. But the release was
11 between Lymon Warehouse, LLC, Mills Demolition, LLC,
12 Lymon Pacific, LLC, Richard K. Bennett, Peter M. Stanley,
13 Susan M. Stanley.

14 Again, there's no indication that Mr. Stanley,
15 although he anticipated he was going to be part of Lymon
16 Pacific, had authority to act and bind that corporation.
17 There's been certainly no evidence presented in this
18 case. And the evidence is that he was acting in a self-
19 serving manner and contradictory to the best interest of
20 an alleged member of the L.L.C. with him, Mr. McWhirter.

21 But the release specifically provides that the
22 Plaintiff is -- excuse me -- that Lymon Warehouse is
23 receiving twenty-seven five. So regardless, regardless
24 of any testimony about this allegedly being a penalty or
25 you would have had to earn the amount, by its terms that

1 is what the parties agreed to.

2 I pointed out at the beginning of this case, and I
3 think it's very relevant to this, that on page five and
4 page six of the release drafted by Mr. Threlkeld, it
5 says, it being the specific intent of the releasing
6 parties to fully release the parties herein, released of
7 and from any claims or right of the releasing party to
8 claim or to make any of the claims against the parties
9 herein released for any losses or damages the releasing
10 party may have sustained or may hereinafter sustain,
11 known or unknown, arising out of the circumstances or
12 arising out of any other transactional relationship
13 between or among the releasing party. And the parties
14 are herein released in all the incidents and consequences
15 hereof.

16 I emphasize circumstances because circumstances is
17 defined at page one hundred and one point three of the
18 contract to mean the background circumstances set forth
19 described and defined in paragraph two of this agreement.
20 Paragraph two at page two caption, circumstances says
21 this agreement is made to address the claims arising out
22 of the following circumstances. Lymon Warehouse owns the
23 property. Bennett is the principle member of Lymon
24 Warehouse. Mills Demolition entered into the contract to
25 purchase the property. Susan is the sole member of Mills

1 Demolition. Peter is the manager of Mills Demolition.
2 Mills Demolition paid fifty thousand dollars to Harold
3 Threlkeld, Attorney at Law, as escrow agent. Mills
4 Demolition is unable to perform its obligations under
5 this contract. It is in default.

6 The parties have reached agreement to fully resolve
7 all issues of default including rescission of the contract,
8 distribution of the earnest money and full and final
9 release of all parties. This agreement is made to
10 articulate the terms and conditions of their resolution.

11 So going back to what I just read, those would
12 constitute the circumstances. Thereafter, you have the
13 language arising out of any other transactional
14 relationship between or among the releasing party or the
15 parties herein.

16 The testimony in this case is clearly that the only
17 other contract in this matter involving Lymon Pacific was
18 the 4/7/11 contract. Therefore, this release includes
19 that contract as between the parties to that release.
20 Point being, regardless of whether or not Lymon Warehouse
21 could have obtained a hundred thousand dollars either as
22 a penalty -- I mean -- not a penalty -- as liquidated
23 damages or proof up to that amount, it chose to accept
24 twenty-seven thousand dollars and release the parties to
25 the contract. So therefore, it chose its remedy with

1 regard to that.

2 Again, Mr. McWhirter was not a part of that release.

3 And I haven't seen any authority -- and Mr. Stanley had

4 authority -- I haven't seen the evidence that Mr. Stanley

5 had any authority to act on behalf of the corporation.

6 But even so, the acts, his acts, certainly appeared to be

7 in his personal best interest and didn't appear to

8 include any consideration of any fellow member or of Mr.

9 McWhirter being a member of the LLC or individually since

10 clearly Mr. McWhirter paid this release money.

11 Also, there is some evidence by oral testimony from

12 Mr. Bennett as to any costs incurred as far as

13 anticipation of this contract. But his testimony more

14 than once, interestingly enough, was that it was before

15 the fact as far as these different areas that he was

16 talking about in anticipation of this contract with Lymon

17 Pacific.

18 But more so, there is no evidence put into evidence,

19 no evidence as far as checks or amounts to show any

20 payments made with regard to the survey, changing power,

21 subdividing the property, water changes, alarm changes.

22 And it appeared that was made, if it was made at all, in

23 anticipation of the contract. Even if it were -- and I'm

24 not saying it wasn't incurred -- there was a release in

25 exhibit number 5 in the face of those expenses being

1 made.

2 Based on what I've seen of the facts in this case,
3 that that provision to require the loss of a hundred
4 thousand dollars would be a penalty and would work unjust
5 enrichment on behalf of Pacific Warehouse in this matter.
6 And I find that the money has to be returned to Mr.
7 McWhirter. And that will be my finding as to any claims
8 by McWhirter.

9 As to Stanley, there's been no evidence presented
10 whatsoever. And I'm going to deny any claim as to that.

11 Now, were there claims of attorneys' fees? And if
12 so, on what basis do you claim the fees by anybody? I
13 don't see any provision in the contract. There's not a
14 statute for it. There will be no fees allowed in this
15 matter.

16 MR. PRUITT: Your Honor, there's no provision
17 for attorney's fees anywhere.

18 THE COURT: Okay. All right. I thought I --
19 no. Harold asked for -- Harold Threlkeld asked for fees
20 is what it was. It was in his petition. Okay. Go
21 ahead.

22 MR. PRUITT: Your Honor, you haven't had a
23 chance to read the deposition of Peter Stanley yet. But
24 in that deposition, it clearly states that he is the sole
25 owner of Lymon Pacific and that the other two never

1 became members of it, largely because they never agreed
2 on the operating agreement. He formed it. He was the
3 sole owner. He never admitted them as members.

4 So I think if you read that deposition, he
5 undisputedly had the authority to enter into agreements
6 relative to Lymon Pacific.

7 THE COURT: Okay. Now, let me tell you. I
8 just told you -- and I prefaced my remarks based on what
9 I have not ruled, but what I anticipate that I very well
10 may rule. I am going to read everything, including the
11 briefs, depositions. But if that's the case, even more
12 of a case for unjust enrichment, that this gentleman
13 would put up a hundred thousand dollars. Is there any
14 evidence, Mr. Pruitt, that this was, in fact, a loan to
15 Lymon Pacific in any deposition or anything that's in
16 evidence at this time?

17 MR. PRUITT: Sure. He testified on the stand
18 today that Mr. Stanley told him that he and the others
19 were going to pay him back, I mean, for his money that he
20 put up.

21 THE COURT: Well, that doesn't necessarily mean
22 that's a loan, does it?

23 MR. PRUITT: Well, he didn't put it up in his
24 own right because he was not a party to the contract. He
25 clearly testified that he put it up in behalf of Lymon

1 Pacific. So you know, it just gets back to the --
2 whether he's got, you know, standing in the suit. But he
3 clearly testified today that he'd put it up for them. So
4 it's either got to be a loan or a capital contribution if
5 he didn't put it up for his own right.

6 THE COURT: All right. Let me just say this.
7 To the extent Mr. McWhirter has no standing to bring a
8 breach of contract action, I do not find that this -- I
9 find this is not a third-party contract either. It is
10 not anywhere close to one as far as I can see. However,
11 that doesn't prevent there being a right to an unjust
12 enrichment claim based on what was presented in this
13 case. Those are my thoughts. And I'm going to ask the
14 lawyers if you want to give me anything else. This is
15 not an insignificant amount of money. I would be glad to
16 look at any briefs.

17 And how long do you think you need to give me any
18 additional information for me to look at, Mr. Pruitt?

19 MR. PRUITT: I'd like at least a couple of
20 weeks, Your Honor.

21 THE COURT: Thirty days?

22 MR. PRUITT: Yes, sir.

23 THE COURT: Thirty days?

24 MR. PROTOPAPAS: That's perfect.

25 THE COURT: Now, let me tell both of you. I'm

1 not going to have any reply briefs. Tell me what you
2 want to say. Tell me what you want to say and let's not
3 do back and forth a thousand times because then it gets
4 bogged down and I never get it done. Fair enough? Okay.
5 All right.

6 Gentlemen, thank you. That's again -- clear for the
7 record, that is not the ruling. That's my preliminary
8 thoughts. That's probably, unless you convince me
9 otherwise, the way I'm going to rule. Unless what I read
10 convinces me otherwise, okay?

11 Thank you.

12 MR. PROTOPAPAS: Thank you, Your Honor.

13 MR. PRACHT: Thank you, Your Honor.

14 (WHEREUPON, court stood at recess in this case at
15 approximately 5:20 p.m.)

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

Certificate of Reporter

I, the undersigned Renee H. Tollison, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 6th day of March 2013.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

October 28, 2013

Renee Tollison

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) AGREEMENT TO SELL AND
PURCHASE REAL ESTATE
CONTRACT

THIS AGREEMENT TO SELL AND PURCHASE REAL ESTATE is made and entered into this the 7th day of April ^{(RP) & [initials]} Lyman Warehouse LLC ^{RP}
21st day of March, 2011, by and between Greg Shoals Acquisitions

LLC (SC), Party of the First part and hereinafter referred to as "Seller", and Lyman Pacific LLC (SC), AND OR ASSIGNS, Party of the Second part and hereinafter referred to as "Purchaser" (hereinafter the "Agreement").

WITNESSETH

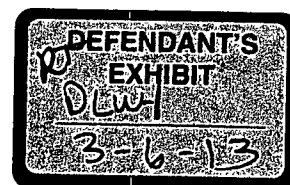
THAT WHEREAS, the Seller has warranted to the Purchaser that it is the owner of the property described hereinafter; and

WHEREAS, the Seller has offered to sell and the Purchaser has agreed to purchase the Contract described hereinafter subject to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the sufficiency of which consideration is acknowledged by all parties hereto,

IT IS HEREBY AGREED AS FOLLOWS:

DESCRIPTION: 14 Pacific Street
Lyman, SC
22.86+or- acres- part of a 47.1 acre parcel
Exhibit A attached
9.31 +or- acre parcel (The Parking Lot Area)
Exhibit B attached
Both parts of TMS# 5-15-00-006



RP 61

(1) SELLER'S WARRANTIES OF TITLE: Seller warrants and covenants that it is seized of the Property in fee and has sufficient title to convey the same in fee simple; that the Property is free of encumbrances and is subject only to matters of record.

The Seller agrees that it will convey the Property to the Purchaser by general warranty deed.

(2) TIME AND PERFORMANCE: Seller shall convey the subject Contract to the Purchaser on or before April 22, 2011, ("The Closing"), it being understood that time is of the essence in all regards in connection with this Agreement.

(3) PURCHASE PRICE: The purchase price for the Contract shall be for the total consideration of: \$1,300,000.00

CONSIDERATION: \$100,000.00 at the signing of this contract held in trust by Attorney, Harold Threlkeld (864) 226-1305.
\$1,200,000.00 at closing

Closing will be on or before April 22, 2011.

May 7 2011

(4) TITLE: The Purchaser shall be under no obligation to purchase the Property (Contract) from the Seller unless the Purchaser can obtain from a nationally recognized title insurance company, at its regular rates, satisfactory title insurance for the subject Property, insuring that the title is marketable. Purchaser shall have 30 days from the date hereof to notify the Seller of any reasonable objections to the state of the title to the Property. If no objections are made by such date, it shall be conclusively presumed that the title to the Property is acceptable to Purchaser. If the Purchaser makes any objections to title, Seller shall have the option to take the necessary steps to correct such objection and, if necessary, to extend the Closing date hereunder for up to 60 days. If Seller elects not to correct such objection(s), and so notifies purchaser, Purchaser shall have fifteen (15) days from date of notice to Seller to Purchaser to elect to continue the terms of this contract with the title "as is" or to terminate all terms and conditions of this agreement and receive a full refund of all monies paid hereunder, and neither party shall have any further ability hereunder.

The Seller shall furnish to the Purchaser any abstracts of title or other documents in its possession that will facilitate obtaining of title insurance.

(5) POSSESSION: Purchaser shall be given sole and exclusive possession of the property as such times as a general warranty deed is delivered by the Seller to the Purchaser conveying the Property in fee simple to the Purchaser and Purchaser pays the remaining balance price as described in Paragraph Four (4) of this Agreement.

2-10-6

RP 62

(6) **CLOSING COSTS:** The Seller is to pay for the preparation of the deed conveying the subject Property to the Purchaser and deed stamps affixed thereto. All other costs and expenses incurred in connection with this transaction, including, but not limited to title insurance, and recording fees shall be paid by the Purchaser.

(7) **HOWEVER,** it is further agreed that all ad valorem taxes made in connection with this property shall be prorated as of date of closing with Purchaser having the option to subtract such pro rations at closing from the Seller's net proceeds.

(8) **SUCCESSORS and ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns;

(9) During the term of this contract, Purchaser and its agents shall have the right to enter property and perform surveys and studies deemed necessary to explore this property. In the event of default by the Purchaser, then Seller shall be entitled to copies of all reports or studies completed by Purchaser.

(10) It is understood and agreed amongst the Parties hereto that the 22.86 acre Property and the 9.31 acres parking areal are to be conveyed hereunder and is a part of a larger 47.1 acre parcel. It is further understood and agreed that the Property contains certain improvements and buildings the water, sprinkler, and electrical systems of which is/are potentially connected to that portion of the larger parcel that is not being conveyed and the improvements thereon.

To wit: Seller at Seller's expense shall, within thirty (30) days after Closing, take any and all necessary steps to cut off, cap, disconnect, sever, and/or close the existing electrical, water, sprinkler, sewer, public fire water, gas, and the like as applicable so to permit the demolition of the improvements on the Property.

(11) **EMINENT DOMAIN:** Prior to the closing of this transaction the Seller will be solely responsible for any and all damages sustained by the Property as a result of eminent domain proceedings. In the event that damage is sustained by reason of eminent domain, the Seller shall notify the Purchaser of the damage and the Purchaser will then have the option of canceling or terminating this Agreement with the return of any earnest monies paid by the Purchaser to Seller. If the Purchaser elects not to terminate this Agreement, then the Purchaser may proceed with his purchaser of the Property, with the Seller being obligated to pay to the purchaser all consideration it has received by virtue of eminent domain proceedings, provided that the only consideration payable to the Purchaser shall be that consideration received by the Seller for the taking of the Property which is the subject of this Agreement.

(12) **WHOLE AGREEMENT:** This Agreement shall constitute the entire agreement between the parties and no prior verbal or written agreement shall survive the execution of this Agreement. In the event of an alteration of this Agreement, the alteration shall be in writing and shall be signed by all the parties or their agents in order for the same to be binding upon the parties.

- (13) This contract shall be governed by the laws of the State of South Carolina. Any disputes shall be settled by the appropriate courts of competent jurisdiction for the State of South Carolina.
- (14) INDEMNIFICATION: Purchaser herein agrees to indemnify and hold harmless Seller herein from any and all liability and or damage sustained by Seller due to any acts or Purchaser, purchaser's employees or agents.
- (15) REMEDIES FOR BREACH: In the event of default or breach of this Agreement on behalf of Purchaser, Seller's remedy against Purchaser shall be limited to receipt of all monies paid by Purchaser. In other words, if Purchaser does not pay any or all of subsequent payments mentioned in paragraph four (4) then Seller's sole remedy for breach against Purchaser shall be limited to all monies paid by the Purchaser thru the date of default.
- (16) Seller is not aware of any environmental contamination currently on the property. Seller and buyer both acknowledge the fact that there is lead based paint and asbestos in the buildings the purchaser is buying.
- (17) Seller will retain and remove at seller's expense all electrical panels and fire alarm panels and parts that seller feels necessary to rework seller's remaining buildings. Seller also will retain all mechanical loading dock plates.
- (18) AMENDMENT. This Agreement represents the entire agreement between the parties. It may not be amended, altered or modified unless the party against whom enforcement of any waiver, modification or discharge is sought does so in writing.
- (19) NO PRIOR AGREEMENT. The parties acknowledge that no prior agreements between them relating to the subject matter of this Agreement shall have any force or effect whatsoever, except as and to the extent that such agreements and representations have been incorporated into this Agreement. There are no unwritten oral agreements between the parties. This Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.
- (20) GOVERNING LAW. This Agreement will be interpreted and construed under the internal laws of the State of South Carolina, regardless of the domicile of any party, and will be deemed for those purposes to have been made, executed, and performed in South Carolina.
- (21) ENTIRE AGREEMENT. This instrument (including any exhibits attached as a part hereof) constitutes the entire and final agreement among the parties and there are no agreements, understandings, warranties, or representations among the parties except as set forth in this Agreement.

4 - inf - C

RP 64

AL

(22) **INVALIDITY.** If any clause or provision of this Agreement is determined to be illegal, invalid, or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision as similar in terms to that provision as is possible and be legal, valid, and enforceable.

(23) **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which will be deemed an original document, but all of which will constitute a single document. This document will not be binding on or constitute evidence of a contract between the parties until such time as a counterpart of this document has been executed by each party and a copy thereof delivered to each other party to this Agreement

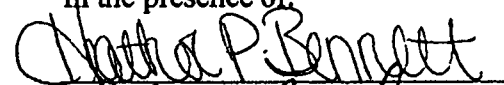
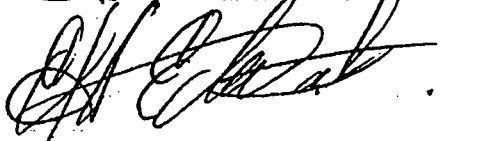
(24) **EASEMENTS RESERVED; GRANTED.**

- a) At the closing, seller shall reserve unto itself and it assigns an easement or over, through, under and along the property conveyed to the purchaser for the purposes of installing, using and maintaining utility lines for the benefit of the property retained by seller, which easement shall be located as hereinafter stated;
- b) At closing, seller shall grant unto the Purchaser and its successors and assigns as easement or easements over, through, under and along the property retained by the seller for the purpose of installing, using and maintaining utility lines for the benefit of the property purchased by the purchaser which easement shall be located as hereinafter stated;
- c) The costs and expense of installing utility lines shall be borne by the party installing the same;
- d) Easements for utility lines to be granted pursuant hereto shall be located by the installing party so as not to unreasonably interfere with the use of the property that is subject to easement and to minimize the area included within the easement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal this

21st day of March, 2011.

Signed, Sealed and Delivered
In the presence of:

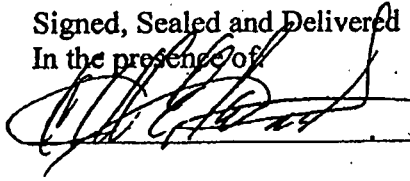
SELLER:



5 - of - 6

RP 65

Signed, Sealed and Delivered
In the presence of



PURCHASER:



Lyman Pacific LLC.

C - of - 6

RP 66

Bennett Lyman

D3

Rich Bennett

008

DONALD J McWHIRTER 0796
DBA DON McWHIRTER &
PH. 603-544-2058
PH. 603-340-0341
RTE 109
MIRROR LAKE, NH 03853

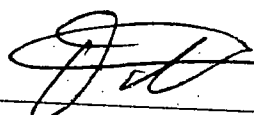
54-7027/2117 1399

DATE 4/7/11

PAY TO THE ORDER OF Attorney Harold Threlkeld \$ 100,000
One Hundred Thousand 00/100 DOLLARS

 **Laconia Savings Bank**

MEMO Lyman Deposit



⑆ 211770271⑆ 82409977 4 1399



277

FILED-CLERK'S OFFICE
ANDERSON SC
2013 MAR -7 P 3:00
COMMON PLEAS AND
GENERAL SESSIONS



Lyman Pacific LLC

155 RiverPlace
Suite 204
Greenville, S.C. 29601

Telephone: (843) 343-5554

D4

April 30th 2011

Lyman Warehouse LLC
14 Pacific Street
Lyman, South Carolina

Dear Mr. Richard Bennett:

Pursuant to the revised contract I signed on April 7th 2011 by and between Lyman Pacific LLC and Lyman Warehouse LLC, I recognize that a time of the essence closing is scheduled for May 7th. A \$100,000 deposit is held in trust with your attorney Harold Threlkeld Esq. until that date.

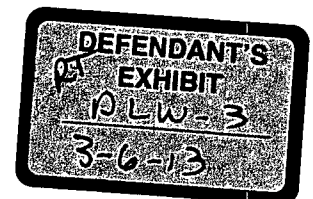
In the event that Lyman Pacific LLC does not close on or before this date, I agree to release this deposit to Lyman Warehouse LLC pursuant to Item #15 on the contract Remedies For Breach as liquidated damages.

Thank you.

Sincerely,

Peter M. Stanley
Manager

FILED-CLERK'S OFFICE
ANDERSON SC
2013 MAR - 1 P 3: 00
COMMON AREAS AND
GENERAL SESSIONS



Demolition

Construction

Investments



Lyman Pacific LLC

155 RiverPlace
Suite 204
Greenville, S.C. 29601

Telephone: (864) 360 1055

DS

May 3rd, 2011

Richard Bennett
Lyman Warehouse LLC
4022 Clemson Blvd.
Anderson, SC 29621

Re: April 7th Agreement to Sell & Purchase Real Estate

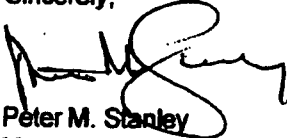
Dear Mr. Bennett,

Pursuant to the captioned agreement to sell and purchase real estate signed on behalf of Lyman Warehouse LLC and Lyman Pacific LLC dated 7th day of April 2011, I fully understand that a "Time of the Essence" closing is on or before May 7th 2011.

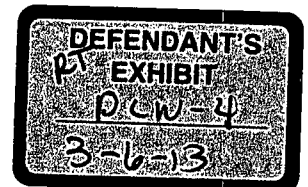
I am requesting a 7 (seven) day extension from May 7th to a May 14th closing date by yourself and Lyman Warehouse LLC. I hope this will not cause you any inconvenience. Everything else in the contract will remain the same.

Due to the time constraints, I would ask you to reply at your earliest convenience.
Thank you.

Sincerely,


Peter M. Stanley
Manager

FILED-CLERK'S OFFICE
ANDERSON SC
2013 MAR -7 P 3:00
COMMON PLEAS AND
GENERAL SESSIONS



009

Demolition

Construction

Investments

D7

**AGREEMENT FOR RESCISSION OF CONTRACT
AND FULL AND FINAL RELEASE**

This Agreement for Rescission of Contract and Full and Final Release is entered into, between and among Lyman Warehouse, LLC, Mills Demolition LLC, Lyman Pacific, LLC, Richard K. Bennett, Peter M. Stanley and Susan C. Stanley.

I. DEFINITIONS AND MEANINGS

In addition to other terms whose definitions are fixed and defined by this Agreement for Rescission of Contract and Full and Final Release, each of the following defined terms, when used in this Agreement for Rescission of Contract and Full and Final Release with an initial capital letter shall have the meaning ascribed thereto by this paragraph I.

1.1 "Agreement" means this Agreement for Rescission of Contract and Full and Final Release, together with all exhibits attached hereto.

1.2 "Bennett" means Richard K. Bennett of the County of Anderson, State of South Carolina having as his address P.O. Box 399, Sandy Springs, South Carolina, 29677.

1.3 "Circumstances" means the background circumstances set forth, described and defined in paragraph II of this Agreement.

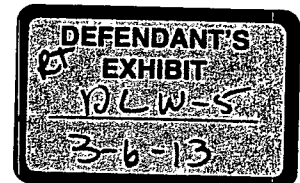
1.4 "Claims" means the claims which have been or could have been asserted or may be asserted by a Party or Parties against another Party or Parties to this Agreement as set forth and defined in paragraph III of this Agreement.

1.5 "Consideration" means the consideration paid or made by one or more Parties to one or more Parties as described in paragraph V of this Agreement.

1.6 "Contract" means that certain "Agreement to Sell and Purchase Real Estate" contract between Lyman Warehouse and Mills Demolition dated May 4, 2011, pertaining to certain real estate located at 14 Pacific Street, Lyman, South Carolina containing 22.86 acres and 9.31 acres, the terms and provisions of which are made part hereof by reference thereto.

1.7 "Covenants" means the covenants made by one or more Parties in favor of one or more Parties as contained and stated in paragraph VI of this Agreement.

1.8 "Lyman Pacific" means Lyman Pacific, LLC, a South Carolina limited liability company having as its mailing address 155 RiverPlace, Suite 204, Greenville, South Carolina, 29601.



1.9 "Lyman Warehouse" means Lyman Warehouse, LLC, a South Carolina limited liability company having as its mailing address P.O. Box 399, Sandy Springs, South Carolina, 29677.

1.10 "Mills Demolition" means Mills Demolition LLC, a South Carolina limited liability company having as its mailing address 155 RiverPlace, Suite 204, Greenville, South Carolina, 29601.

1.11 "Party; Parties" means individually a party or collectively the parties to this Agreement.

1.12 "Peter" means Peter M. Stanley, a resident and citizen of the County of Greenville, State of South Carolina, and having as his mailing address 155 RiverPlace, Suite 204, Greenville, South Carolina, 29601.

1.13 "Property" means the property described in the Contract.

1.14 "Susan" means Susan C. Stanley, a resident and citizen of the County of Greenville, State of Carolina and having as her mailing address 155 RiverPlace, Suite 204, Greenville, South Carolina, 29601.

II. CIRCUMSTANCES

This Agreement is made to address the Claims arising out of the following Circumstances:

- 2.1 Lyman Warehouse owns the Property;
- 2.2 Bennett is a principal member of Lyman Warehouse;
- 2.3 Mills Demolition entered into the Contract to purchase the Property;
- 2.4 Susan is the sole member of Mills Demolition;
- 2.5 Peter is the manager of Mills Demolition;
- 2.6 Mills Demolition paid \$50,000.00 to Harold P. Threlkeld, Attorney at Law, as escrow agent;
- 2.7 Mills Demolition is unable to perform its obligations under the Contract and is in default;

2.8 The Parties have reached an agreement to fully resolve all issues of default, including rescission of the Contract, distribution of the earnest money and full and final release of all Parties; and,

2.9 This Agreement is made to articulate the terms and conditions of their resolution.

III. CLAIMS

Each Party to this Agreement may have or claim to have Claims, demands, actions, causes of action or right to redress against one or more of the Parties to this Agreement because of some loss, damage, injury, liability, obligation, property damage, cost, penalty or expense and all consequences or incidents thereof which has been or which may be hereafter sustained or incurred by each and every party, caused by or resulting from the Circumstances, including but not limited to every kind and nature, now existing or which may hereafter arise or accrue, known or unknown, foreseen or unforeseen, caused by or resulting from the Circumstances, including but not limited to, actions ex contractu, including but not limited to, breach of contract, breach of contract accompanied by fraudulent act, implied contract, contractual indemnity or subrogation or some other action based in contract; actions ex delicto, including but not limited to actions in fraud, conversion, trespass, outrageous conduct, defamation, negligence, negligent misrepresentation, civil conspiracy and other tort based actions; actions for breach of fiduciary duty, including business mismanagement, misappropriation of business assets, failure to maintain appropriate records and failure to discharge some other fiduciary duty or responsibility owed by any one party hereto to any one or more parties hereto; actions for breach of statutory laws of the State of South Carolina; actions for violation of the common laws of the State of South Carolina or any other jurisdiction; actions for violation or breach of any duty owed by a party to any one or more Parties to this Agreement, except as expressly excluded herein; and other actions that exist or may exist in favor of any one Party against any one or more Parties to this Agreement under the laws of the State of South Carolina or any other jurisdiction of the United States of America relating to the Circumstances, except as expressly excluded herein.

IV. RECEIPT OF CONSIDERATION

We, the undersigned, on behalf of ourselves and our heirs, personal representatives, successors and assigns, do hereby acknowledge receipt of the sum of \$5.00 and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged to each of the undersigned in hand paid by each other Party to this Agreement at or before the sealing of these presents and do further acknowledge full Consideration in hand paid for the execution and deliver of these presents and for the release of all claims as hereinafter stated.

V. RESCISSION; DISTRIBUTION; RELEASE

5.1 Each and every Party to this Agreement agrees and stipulates that the Contract and each and every term and provision thereof is hereby rescinded, forever ended and is null and void; and,

5.2 Each and every Party to this Agreement authorizes and directs Harold P. Threlkeld, as escrow agent, to distribute \$27,500.00 of the earnest money to Lyman Warehouse in full satisfaction of its Claims and \$22,500.00 of the earnest money to Mills Demolition in full satisfaction of its Claims; and,

5.3 Each and every Party to this Agreement agrees to release and does forever hereby release and discharge each other Party according to the releases hereinafter contained.

VI. COVENANTS

For the Consideration, each of the following named Parties stipulate(s) and covenant(s) with each other Party as follows:

6.1 Hold in strict confidence and not divulge the terms, nature and conditions of this Agreement unless there is a reliable source indicating the same has been previously disclosed to any person to whom the disclosure is made; and,

6.2 Promptly indemnify each Party against any loss or damages that may result from failure of each Party to discharge his, her or its obligations hereunder.

VII. COMPLETE RELEASE OF ALL CLAIMS AGAINST BENNETT AND LYMAN WAREHOUSE BY LYMAN PACIFIC, MILLS, PETER AND SUSAN

In exchange for the Consideration and the Covenants hereinbefore stated, the undersigned, Lyman Pacific, Mills, Peter and Susan, together with their respective spouses, personal representatives, successors, assigns, attorneys and every other person or entity who has or may claim to have any right, title or interest in and to the Claims, do(es) hereby release and forever discharge Bennett and Lyman Warehouse and his, its and their heirs, personal representatives, successors and assigns, from all of the Claims, both past and present, including, but not limited to all claims, demands, actions, and causes of action, including without restricting the foregoing generality, any and all claims for damages, liquidated damages, exemplary damages, punitive damages, incidental, special, indirect or consequential damages, damage and all losses of money and economic opportunity and for all liabilities and obligations for mental anguish or emotional distress, damages for loss of reputation, damages for breach of contract, damages arising in tort, including intentional acts, conversion, fraud, constructive fraud, conspiracy, breach of any and every fiduciary duty, interference with contractual relations and/or prospective economic advantage, interference with any corporate governance, breach of corporate duty, every act in equity, including equitable indemnity and subrogation, costs of every kind, including attorney's

fees, breach of any duty owed by any statutory law of the United States of America, any statutory common law of the State of South Carolina, any rule or regulation published or promulgated by any federal or state agency and any other statutory or common law of any other jurisdiction of the United States of America, whether known or unknown and whether or not heretofore asserted or not asserted.

It being the specific intent of the releasing Parties to fully release Bennett and Lyman Warehouse of and from any and all Claims or rights of the releasing Parties to claim or to make any of the Claims against Bennett and/or Lyman Warehouse for any losses or damages the releasing Parties may have sustained or may hereafter sustain, known or unknown, arising out of the Circumstances and any other transactions or relationships between or among the Parties and every incident or consequence thereof, except as may be specifically excluded herein.

VIII. COMPLETE RELEASE OF ALL CLAIMS AGAINST LYMAN PACIFIC, MILLS,
PETER AND SUSAN BY BENNETT AND LYMAN WAREHOUSE

In exchange for the Consideration and the Covenants hereinbefore stated, the undersigned, Bennett and Lyman Warehouse together with his spouse, personal representatives, successors and heirs, attorneys and assigns, do(es) hereby release and forever discharge Lyman Pacific, Mills, Peter and Susan from all of the Claims, both past and present, including, but not limited to all claims, demands, actions, and causes of action, including without restricting the foregoing generality, any and all claims for damages, liquidated damages, exemplary damages, punitive damages, incidental, special, indirect or consequential damages, damages and all losses of money and economic opportunity and for mental anguish or emotional distress, damages for loss of reputation, damages for breach of contract, damages arising from tort, including intentional acts, fraud, constructive fraud, civil conspiracy, interference with contractual relations and/or prospective economic advantage, interference with corporate governance, breach of corporate or limited liability company duty, costs of every kind, including attorney's fees and breach of every fiduciary duty owed by any one or more of the parties herein released to the party herein released, including but not limited to mismanagement, breach of each and every law governing management of corporate affairs, misappropriation of funds, improper maintenance of records; breach of any duty owed to the parties herein released imposed by any statutory law of the United States of America, any statutory common law of the State of South Carolina, any rule or regulation published or promulgated by any federal or state agency and any other statutory or common law of any other jurisdiction of the United States of America, whether known or unknown and whether asserted or not asserted.

It being the specific intent of the releasing Parties to fully release the Parties herein released of and from any Claims or right of the releasing Party to claim or to make any of the Claims against the Parties herein released for any losses or damages the releasing Party may have sustained or may hereafter sustain, known or unknown, arising out of the

Circumstances or arising out of any other transaction or relationship between or among the releasing Party and the Parties herein released and all incidents and consequences thereof.

IX. MISCELLANEOUS

The Parties further acknowledge, represent, declare, agree and understand fully the terms of this Agreement and voluntarily accepts the Consideration for the purpose of making a full and final compromise adjustment in settlement of all of the Claims.

The Parties hereto represent and warrant to the other than each of them have read this Agreement and after seeking advice of counsel on its meaning, fully understand the terms and provisions thereof.

This Agreement shall be and is governed by the laws of the State of South Carolina, without regard to choice of law rules.

All prior negotiations, discussions or agreements are merged into and become a part of this Agreement which shall survive as a binding contractual agreement between the Parties.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seal this
22 day of MAY A.D., 2011.

In the presence of:

[Signature]

[Signature]

Richard K. Bennett

Virginia H. Caspell

LYMAN WAREHOUSE, LLC

By: [Signature]

Richard K. Bennett

Its: Member

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

ACKNOWLEDGMENT

PERSONALLY appeared before me Richard K. Bennett individually and as member of Lyman Warehouse, LLC who on oath states that he signed the within Agreement for Rescission of Contract and Full and Final Release.

Virginia H. Caspell
Notary Public for South Carolina
My Commission Expires: 8/8/11

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seal this
2nd day of May A.D., 2011.

In the presence of:

[Signature]
Virginia A. Caspell

[Signature]
Peter Stanley

[Signature]
Susan C. Stanley

Mills Demolition LLC

By: Mills Demolition LLC
Its: Susan C. Stanley

Lyman Pacific, LLC

By: [Signature]
Its: Member

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

ACKNOWLEDGMENT

PERSONALLY appeared before me Peter Stanley, Susan C. Stanley,
Susan C. Stanley as member of Mills Demolition LLC and Peter Stanley as member
of Lyman Pacific, LLC who on oath states that they signed the within Agreement for
Rescission of Contract and Full and Final Release.

[Signature]
Notary Public for South Carolina
My Commission Expires: 8/8/11



Lyman Pacific LLC

155 RiverPlace
Suite 204
Greenville, S.C. 29601

Telephone: (843) 343-5554

May 7th 2011

Lyman Warehouse LLC
14 Pacific Street
Lyman, South Carolina

D13

Dear Mr. Richard Bennett:

Pursuant to the revised contract I signed on April 7th 2011 by and between Lyman Pacific LLC and Lyman Warehouse LLC, I recognize that a time of the essence closing is scheduled for May 7th. A \$100,000 deposit is held in trust with your attorney Harold Threlkeld Esq. until that date.

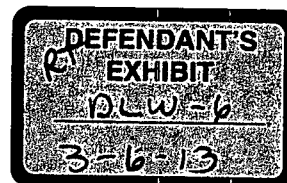
In the event that Lyman Pacific LLC does not close on or before this date, I agree to direct Attorney Harold Threlkeld to release the deposit to Lyman Warehouse LLC pursuant to Item #15 on the contract Remedies For Breach as liquidated damages.

Thank you.

Sincerely,

Peter M. Stanley
Manager

FILED-CLERK'S OFFICE
ANDERSON SC
2013 MAR -7 P 3:00
COMMON PLEAS AND
GENERAL SESSIONS



Demolition

Construction

Investments

Law Offices
HAROLD P. THRELKELD

213 East Calhoun Street
Anderson, SC 29621

Mailing Address:
P.O. Box 1385
Anderson, SC 29622-1385

Telep
Fac
E-mail

D6

May 9, 2011

VIA EMAIL AND REGULAR MAIL: klowry@ishwlaw.com

Kelly D. Lowry, Esquire
Johnson, Smith & Wildman, LLP
P.O. Drawer 5587
Spartanburg, SC 29304-5577

Re: My client: Lyman Warehouse, LLC
Your client: Lyman Pacific, LLC (SC) and/or Donald J. McWhirter

Dear Kelly:

Reference is made to our telephone conversations in this matter. As you know, I represent Lyman Warehouse and/or Richard K. Bennett. I understand that you represent one or more parties who have an interest in purchasing property from my client, including Donald J. McWhirter. I received check #1899 from Donald J. McWhirter dated April 7th, 2011 payable to me in the amount of \$100,000.00 which was deposited as earnest money to bind a contract between Lyman Warehouse, LLC and Lyman Pacific, LLC (SC) dated April 7th, 2011 with a closing date of May 7th, 2011.

I understand that the members of Lyman Pacific LLC (SC) are involved in conflict that apparently makes it impossible for them to close on this transaction, the parties have not offered to perform and are in breach of the contract.

The remedy under the contract for breach is liquidated damages in the amount of the earnest money.

It appears to be in order for me, as escrow agent, to distribute the escrow money to Lyman Warehouse. Unless I am notified by or on behalf of your clients of any reason why I should not distribute the earnest money, I will do so.

Please be advised that unless I am informed of any reason why the earnest money should not be disbursed on or before 5:00 p.m. on May 10th, 2011, I will conclude and assume that all parties consent to the disbursement of the earnest money and, accordingly, I will disburse the same.

With kindest personal regards, I am

Very truly yours,

Harold P. Threlkeld
Harold P. Threlkeld
HPT/jc

cc: Mr. Richard K. Bennett (via email)

FILED
CLERK'S OFFICE
ANDERSON SC
2011 MAY 7 P 3:00
COMPLAINTS AND
GENERAL SESSIONS



RP 350 (Lyman)

Johnson, Smith, Hibbard & Wildman

D8

LAW FIRM, L.L.P.

MILTON A. SMITH
Of Counsel

DONALD B. WILDMAN
DOUG SMITH
DONNA FAYE SHETLEY
RANSOME A. COLEMAN
STEVEN M. QUERIN
KELLY D.H. LOWRY*
* also admitted in Vermont

KRISTIN BURNETT BARBER
SHANE W. ROGERS
HOWARD R. KINARD

220 NORTH CHURCH STREET (ZIP CODE 29306)
MAILING ADDRESS: P.O. DRAWER 5587
SPARTANBURG, SOUTH CAROLINA 29304-5587
TELEPHONE: 864-582-8121
TELECOPIER: 864-585-5328

EDWIN W. JOHNSON (1904-1979)
PAUL R. HIBBARD (1941-2004)

Sender's E-Mail Address:
klowry@jshwlaw.com

May 10, 2011

VIA E-MAIL, FACSIMILE, AND REGULAR MAIL

Harold P. Threlkeld
213 E. Calhoun Street
Anderson, SC 29621

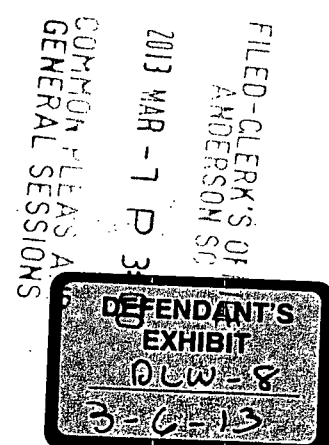
Telephone: (864) 226-1305
Facsimile: (864) 226-1685

In re: Agreement to Sell and Purchase Real Estate by and between Lyman Warehouse, LLC,
("Seller") and Lyman Pacific, LLC, ("Purchaser") dated April 7, 2011 (the "Agreement")

Dear Harold:

Thank you for your kind letter of May 9, 2011, regarding disbursement of escrow funds related to the Agreement. As you know, I represent Lyman Pacific, LLC, along with Matt Thiesing of Thiesing Law Firm in Isle of Palms, S.C. The purpose of this letter is to notify you of Purchaser's understanding of the Agreement and the provisions regarding the escrow money.

First, I would note that no disagreement or conflict between the members of Lyman Pacific forbade the transaction from closing. The availability of funding for the transaction was the reason for not closing on May 7th as the Agreement contemplated. Second, I would note that the remedies for breach are not specified in the Agreement as liquidated damages, as you have described it. Rather, Section 15 of the Agreement specifies that Seller's remedy shall be "limited to receipt of all monies paid by Purchaser." This language suggests that the remedy for breach can be no more than the amount paid, but does not equal the amount paid. Thus, the damages, if any, would have to be proven to be at least \$100,000.00 in order to distribute the entire amount to Seller. In other words, damages are limited to actual damages, but may not exceed the

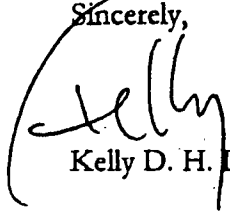


escrow amount.

Second, it is my understanding that Seller did not provide Purchaser with a title abstract as required under Section 4 of the Agreement. If I am erroneous in this, please let me know straightaway. If I am correct, then Seller is also in breach of the Agreement, in which case it is entitled to no damages (a breaching party cannot seek to take advantage of the remedies provided in the contract).

As a result, it appears to me that disbursement of the escrow deposit is in contest. You are hereby put on official notice NOT to distribute the escrow money until these conflicts can be resolved. Please contact me at your earliest convenience to discuss.

Sincerely,



Kelly D. H. Lowry

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) AGREEMENT TO SELL AND
) PURCHASE REAL ESTATE
) CONTRACT

THIS AGREEMENT TO SELL AND PURCHASE REAL ESTATE is made and entered into this 4th day of May, 2011, by and between Lyman Warehouse, LLC Party of the First part and hereinafter referred to as "Seller", and Mills Demolition LLC (SC), AND OR ASSIGNS, Party of the Second part and hereinafter referred to as "Purchaser" (hereinafter the "Agreement").

WITNESSETH

THAT WHEREAS, the Seller has warranted to the Purchaser that it is the owner of the property described hereinafter; and

WHEREAS, the Seller has offered to sell the property described below provided the existing contract the seller has expires on May 7th 2010 which has a time of the essence closing where no extensions will be granted by the seller and the Purchaser has agreed to purchase the Contract described hereinafter subject to the terms of this Agreement.

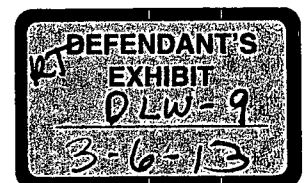
NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the sufficiency of which consideration is acknowledged by all parties hereto,

IT IS HEREBY AGREED AS FOLLOWS:

DESCRIPTION:

14 Pacific Street
Lyman, SC
22.86+or- acres- part of a 47.1 acre parcel.
Exhibit A attached
9.31 +or- acre parcel
Exhibit B attached
Both part of TMS# 5-15-00-006

FILED-CLERK'S OFFICE
ANDERSON, SC
2013 MAR - 7 P 3:00
COMMON PLEAS AND
GENERAL SESSIONS



RP
RP 352 (Lyman)

- (1) **SELLER'S WARRANTIES OF TITLE:** Seller warrants and covenants that it is seized of the Property in fee and has sufficient title to convey the same in fee simple; that the Property is free of encumbrances and is subject only to matters of record.

The Seller agrees that it will convey the Property to the Purchaser by general warranty deed.

- (2) **TIME AND PERFORMANCE:** Seller shall convey the subject Contract to the Purchaser on or before May 14, 2011, ("The Closing"), it being understood that time is of the essence in all regards in connection with this Agreement.

- (3) **PURCHASE PRICE:** The purchase price for the Contract shall be for the total consideration of: \$1,300,000.00

CONSIDERATION: \$50,000.00 due on May 5th held in trust by Attorney, Harold Threlkeld (864) 226-1305.

\$1,250,000.00 at closing. Closing will be on or before May 14, 2011.

- (4) **TITLE:** The Purchaser shall be under no obligation to purchase the Property (Contract) from the Seller unless the Purchaser can obtain from a nationally recognized title insurance company, at its regular rates, satisfactory title insurance for the subject Property, insuring that the title is marketable. Purchaser shall have 30 days from the date hereof to notify the Seller of any reasonable objections to the state of the title to the Property. If no objections are made by such date, it shall be conclusively presumed that the title to the Property is acceptable to Purchaser. If the Purchaser makes any objections to title, Seller shall have the option to take the necessary steps to correct such objection and, if necessary, to extend the Closing date hereunder for up to 60 days. If Seller elects not to correct such objection(s), and so notifies purchaser, Purchaser shall have fifteen (15) days from date of notice to Seller to Purchaser to elect to continue the terms of this contract with the title "as is" or to terminate all terms and conditions of this agreement and receive a full refund of all monies paid hereunder, and neither party shall have any further ability hereunder.

The Seller shall furnish to the Purchaser any abstracts of title or other documents in its possession that will facilitate obtaining of title insurance.

- (5) **POSSESSION:** Purchaser shall be given sole and exclusive possession of the property as such times as a general warranty deed is delivered by the Seller to the Purchaser conveying the Property in fee simple to the Purchaser

RP 353 (Lymen)

and Purchaser pays the remaining balance price as described in Paragraph Four (4) of this Agreement.

- (6) **CLOSING COSTS:** The Seller is to pay for the preparation of the deed conveying the subject Property to the Purchaser and deed stamps affixed thereto. All other costs and expenses incurred in connection with this transaction, including, but not limited to title insurance, and recording fees shall be paid by the Purchaser.
- (7) **HOWEVER,** it is further agreed that all ad valorem taxes made in connection with this property shall be prorated as of date of closing with Purchaser having the option to subtract such pro rations at closing from the Seller's net proceeds.
- (8) All references herein to Purchaser shall include his or her heirs or assigns.
- (9) During the term of this contract, Purchaser and its agents shall have the right to enter property and perform surveys and studies deemed necessary to explore this property. In the event of default by the Purchaser, then Seller shall be entitled to copies of all reports or studies completed by Purchaser
- (10) **EMINENT DOMAIN:** Prior to the closing of this transaction the Seller will be solely responsible for any and all damages sustained by the Property as a result of eminent domain proceedings. In the event that damage is sustained by reason of eminent domain, the Seller shall notify the Purchaser of the damage and the Purchaser will then have the option of canceling or terminating this Agreement with the return of any earnest monies paid by the Purchaser to Seller. If the Purchaser elects not to terminate this Agreement, then the Purchaser may proceed with his purchase of the Property, with the Seller being obligated to pay to the purchaser all consideration it has received by virtue of eminent domain proceedings, provided that the only consideration payable to the Purchaser shall be that consideration received by the Seller for the taking of the Property which is the subject of this Agreement.
- (11) **WHOLE AGREEMENT:** This Agreement shall constitute the entire agreement between the parties and no prior verbal or written agreement shall survive the execution of this Agreement. In the event of an alteration of this Agreement, the alteration shall be in writing and shall be signed by all the parties or their agents in order for the same to be binding upon the parties.
- (12) This contract shall be governed by the laws of the State of South Carolina. Any disputes shall be settled by the appropriate courts of competent jurisdiction for the State of South Carolina.


RP 354 (Lyman)

(13) INDEMNIFICATION: Purchaser herein agrees to indemnify and hold harmless Seller herein from any and all liability and or damage sustained by Seller due to any acts or Purchaser, purchaser's employees or agents.

(14) REMEDIES FOR BREACH: In the event of default or breach of this Agreement on behalf of Purchaser, Seller's remedy against Purchaser shall be limited to receipt of all monies paid by Purchaser. In other words, if Purchaser does not pay any or all of subsequent payments mentioned in paragraph four (4) then Seller's sole remedy for breach against Purchaser shall be limited to all monies paid by the Purchaser thru the date of default.

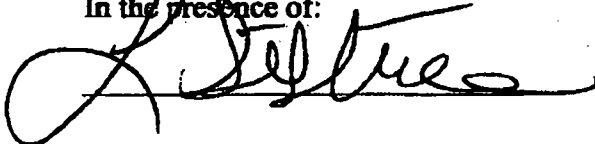
(15) Seller is not aware of any environmental contamination currently on the property. Seller and buyer both acknowledge the fact that there is lead based paint and asbestos in the buildings the purchaser is buying.

(16) Seller will retain and remove at seller's expense all electrical panels and fire alarm panels and parts that seller feels necessary to rework seller's remaining buildings. Seller also will retain all mechanical loading dock plates.

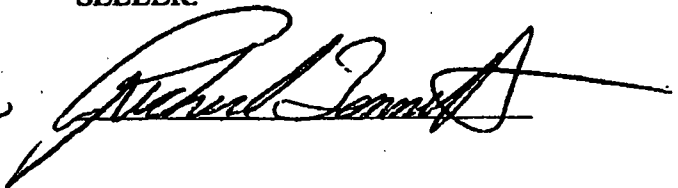
IN WITNESS WHEREOF, the parties hereto have set their hands and seals this

4th day of May 2011.

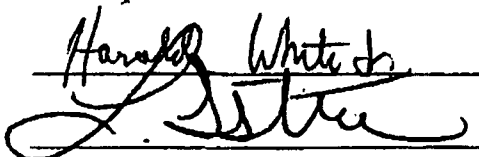
Signed, Sealed and Delivered
In the presence of:



SELLER:



Signed, Sealed and Delivered
In the presence of:



PURCHASER:



Susan C. Stanley Member

RP 355 (Lyman)

Existing Utilities on this property serving the remainder of tax map 8-15-00-008 are to be maintained and all power must be granted for use and repair of said utilities.

Remainder of Tax Map 8-15-00-008 Lyman Warehouse, LLC DB 87-E Pg. 801 Plat by Frestad & Associates Inc dated October 12, 2008

Remainder of Tax Map 8-15-00-008 Lyman Warehouse, LLC DB 87-E Pg. 801 Plat by Frestad & Associates Inc dated October 12, 2008

Remainder of Tax Map 8-15-00-008 Lyman Warehouse, LLC DB 87-E Pg. 801 Plat by Frestad & Associates Inc dated October 12, 2008

Remainder of Tax Map 8-15-00-008 Lyman Warehouse, LLC DB 87-E Pg. 801 Plat by Frestad & Associates Inc dated October 12, 2008

23.06 Ac.

The existing buildings on this parcel are to be torn down and recycled. Any new construction on this parcel must adhere to the Spartanburg County ULMO.

Exhibit A

Agreed: Susan C. Hawley
Rick L. Smith



I hereby state that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of the Uniform Standards Board for a Practice of Land Surveying in South Carolina, and that I am a duly licensed Professional Land Surveyor in the State of South Carolina. I am not aware of any other persons or entities who have been or are to be surveyed by this survey.

- NOTES
- 1) Remainder of Tax Map 8-15-00-008
 - 2) Reference to DB 87-E Pg. 801
 - 3) Reference Plat by Frestad & Associates Inc. dated October 12, 2008
 - 4) General: No portion of this survey shall be used to establish any boundary or other interest in the subject property, other than the boundary shown on this survey, and any other facts that an accurate and current site search may disclose.

Map #	Surveyed By	Drawn By	Checked By
8722 Warehouse	WJ AD	ESD WH	ESD

Legend	
(Oil)	(Mail)
●	○ 1/2" Rod
■	□ Mog Nail
△	Computed PL

Survey and Certification for

Lyman Warehouse, LLC

Non-Transferable

South R
Surveying Inc.

Spartanburg County, South Carolina
Scale 1"=100' Date: March 11, 2011



Route 109
Mirror Lake, NH 03853
544-2058
Fax 544-2225

March 23, 2011

Ken,

I have some new numbers for the Pacific Mill Project in Lyman, South Carolina.

On the revenue side, we hired Dr. Muzaffer Kanh, PhD PE to estimate the amount of steel this project will produce. His numbers are as follows:

Floor steel: 21,770 tons
Boilers: 42 tons
Supporting frames: 50 tons
Railroad bridge: 30 tons
Storage tanks: 153 tons

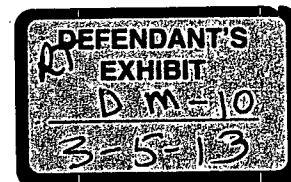
The total amount of steel generated by this project will be 22,045 tons, which is 7,045 tons higher than my original estimate. The tonnage amount that I am using for revenue is 19,135. I would also like to point out that there is between \$100 and \$200 thousand worth of copper, brass, and stainless steel that is not factored into the equation.

On the expense side, we have an estimate of \$646,000 to remove the asbestos from the site. There is a steel mill 5 miles away from the site, which will lower our trucking expenses.

After consulting with John L. Divineeno of Jands Development Corporation, an experienced demolition expert, some of my expenses have been increased. I would also like you to note that he has made himself available to me as a consultant, in the event that this project comes to fruition. This should alleviate some of the concerns with regards to experience.

This project should take 5 to 6 months to complete. The project will be producing \$75,000 per day by the end of the third week. Principal and interest payments could begin at this point. I expect repayment to occur by the third or fourth month.

FILED-CLERK'S OFFICE
ANDERSON, SC
2013 MAR -7 P 3:00
COMMON PLEAS AND
GENERAL SESSIONS



RP 53



Route 109
Mirror Lake, NH 03853
544-2058
Fax 544-2225

At the end of the day, the Net Profit will be \$3,354,198 with a \$307,500 contingency fund. The revenue stream has been certified by an engineer and the expenses have been reviewed by a demolition expert.

Let me know if you need any more information.

Thank you very much. I look forward to hearing from you.

Sincerely,

Donald J. McWhirter

RP 54

AGREEMENT TO SELL AND PURCHASE REAL ESTATE CONTRACT

299

(1) SELLER'S WARRANTIES OF TITLE: Seller warrants and covenants that it is seized of the Property in fee and has sufficient title to convey the same in fee simple; that the Property is free of encumbrances and is subject only to matters of record.

The Seller agrees that it will convey the Property to the Purchaser by general warranty deed.

(2) TIME AND PERFORMANCE: Seller shall convey the subject Contract to the Purchaser on or before April 22, 2011, ("The Closing"), it being understood that time is of the essence in all regards in connection with this Agreement.

(3) PURCHASE PRICE: The purchase price for the Contract shall be for the total consideration of: \$1,300,000.00

CONSIDERATION: \$100,000.00 at the signing of this contract held in trust by Attorney, Harold Threlkeld (864) 226-1305.
\$1,200,000.00 at closing

Closing will be on or before April 22, 2011.

(4) TITLE: The Purchaser shall be under no obligation to purchase the Property (Contract) from the Seller unless the Purchaser can obtain from a nationally recognized title insurance company, at its regular rates, satisfactory title insurance for the subject Property, insuring that the title is marketable. Purchaser shall have 30 days from the date hereof to notify the Seller of any reasonable objections to the state of the title to the Property. If no objections are made by such date, it shall be conclusively presumed that the title to the Property is acceptable to Purchaser. If the Purchaser makes any objections to title, Seller shall have the option to take the necessary steps to correct such objection and, if necessary, to extend the Closing date hereunder for up to 60 days. If Seller elects not to correct such objection(s), and so notifies purchaser, Purchaser shall have fifteen (15) days from date of notice to Seller to Purchaser to elect to continue the terms of this contract with the title "as is" or to terminate all terms and conditions of this agreement and receive a full refund of all monies paid hereunder, and neither party shall have any further ability hereunder.

The Seller shall furnish to the Purchaser any abstracts of title or other documents in its possession that will facilitate obtaining of title insurance.

(5) POSSESSION: Purchaser shall be given sole and exclusive possession of the property as such times as a general warranty deed is delivered by the Seller to the Purchaser conveying the Property in fee simple to the Purchaser and Purchaser pays the remaining balance price as described in Paragraph Four (4) of this Agreement.



RP 36

(6) CLOSING COSTS: The Seller is to pay for the preparation of the deed conveying the subject Property to the Purchaser and deed stamps affixed thereto. All other costs and expenses incurred in connection with this transaction, including, but not limited to title insurance, and recording fees shall be paid by the Purchaser.

(7) HOWEVER, it is further agreed that all ad valorem taxes made in connection with this property shall be prorated as of date of closing with Purchaser having the option to subtract such pro rations at closing from the Seller's net proceeds.

(8) SUCCESSORS and ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns;

(9) During the term of this contract, Purchaser and its agents shall have the right to enter property and perform surveys and studies deemed necessary to explore this property. In the event of default by the Purchaser, then Seller shall be entitled to copies of all reports or studies completed by Purchaser.

(10) It is understood and agreed amongst the Parties hereto that the 22.86 acre Property and the 9.31 acres parking areal are to be conveyed hereunder and is a part of a larger 47.1 acre parcel. It is further understood and agreed that the Property contains certain improvements and buildings the water, sprinkler, and electrical systems of which is/are potentially connected to that portion of the larger parcel that is not being conveyed and the improvements thereon.

To wit: Seller at Seller's expense shall, within thirty (30) days after Closing, take any and all necessary steps to cut off, cap, disconnect, sever, and/or close the existing electrical, water, sprinkler, sewer, public fire water, gas, and the like as applicable so to permit the demolition of the improvements on the Property.

(11) EMINENT DOMAIN: Prior to the closing of this transaction the Seller will be solely responsible for any and all damages sustained by the Property as a result of eminent domain proceedings. In the event that damage is sustained by reason of eminent domain, the Seller shall notify the Purchaser of the damage and the Purchaser will then have the option of canceling or terminating this Agreement with the return of any earnest monies paid by the Purchaser to Seller. If the Purchaser elects not to terminate this Agreement, then the Purchaser may proceed with his purchaser of the Property, with the Seller being obligated to pay to the purchaser all consideration it has received by virtue of eminent domain proceedings, provided that the only consideration payable to the Purchaser shall be that consideration received by the Seller for the taking of the Property which is the subject of this Agreement.

(12) WHOLE AGREEMENT: This Agreement shall constitute the entire agreement between the parties and no prior verbal or written agreement shall survive the execution of this Agreement. In the event of an alteration of this Agreement, the alteration shall be in writing and shall be signed by all the parties or their agents in order for the same to be binding upon the parties.

RP 37

- (13) This contract shall be governed by the laws of the State of South Carolina. Any disputes shall be settled by the appropriate courts of competent jurisdiction for the State of South Carolina.
- (14) INDEMNIFICATION: Purchaser herein agrees to indemnify and hold harmless Seller herein from any and all liability and or damage sustained by Seller due to any acts or Purchaser, purchaser's employees or agents.
- (15) REMEDIES FOR BREACH: In the event of default or breach of this Agreement on behalf of Purchaser, Seller's remedy against Purchaser shall be limited to receipt of all monies paid by Purchaser. In other words, if Purchaser does not pay any or all of subsequent payments mentioned in paragraph four (4) then Seller's sole remedy for breach against Purchaser shall be limited to all monies paid by the Purchaser thru the date of default.
- (16) Seller is not aware of any environmental contamination currently on the property. Seller and buyer both acknowledge the fact that there is lead based paint and asbestos in the buildings the purchaser is buying.
- (17) Seller will retain and remove at seller's expense all electrical panels and fire alarm panels and parts that seller feels necessary to rework seller's remaining buildings. Seller also will retain all mechanical loading dock plates.
- (18) AMENDMENT. This Agreement represents the entire agreement between the parties. It may not be amended, altered or modified unless the party against whom enforcement of any waiver, modification or discharge is sought does so in writing.
- (19) NO PRIOR AGREEMENT. The parties acknowledge that no prior agreements between them relating to the subject matter of this Agreement shall have any force or effect whatsoever, except as and to the extent that such agreements and representations have been incorporated into this Agreement. There are no unwritten oral agreements between the parties. This Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.
- (20) GOVERNING LAW. This Agreement will be interpreted and construed under the internal laws of the State of South Carolina, regardless of the domicile of any party, and will be deemed for those purposes to have been made, executed, and performed in South Carolina.
- (21) ENTIRE AGREEMENT. This instrument (including any exhibits attached as a part hereof) constitutes the entire and final agreement among the parties and there are no agreements, understandings, warranties, or representations among the parties except as set forth in this Agreement.

PKW
RP 38

(22) **INVALIDITY.** If any clause or provision of this Agreement is determined to be illegal, invalid, or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision as similar in terms to that provision as is possible and be legal, valid, and enforceable.

(23) **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which will be deemed an original document, but all of which will constitute a single document. This document will not be binding on or constitute evidence of a contract between the parties until such time as a counterpart of this document has been executed by each party and a copy thereof delivered to each other party to this Agreement

(24) **EASEMENTS RESERVED; GRANTED.**

- a) At the closing , seller shall reserve unto itself and it assigns an easement or over, through, under and along the property conveyed to the purchaser for the purposes of installing , using and maintaining utility lines for the benefit of the property retained by seller, which easement shall be located as hereinafter stated;
- b) At closing, seller shall grant unto the Purchaser and its successors and assigns as easement or easements over, through, under and along the property retained by the seller for the purpose of installing, using and maintaining utility lines for the benefit of the property purchased by the purchaser which easement shall be located as hereinafter stated;
- c) The costs and expense of installing utility lines shall be borne by the party installing the same;
- d) Easements for utility lines to be granted pursuant hereto shall be located by the installing party so as not to unreasonably interfere with the use of the property that is subject to easement and to minimize the area included within the easement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal this

21st day of March, 2011.

Signed, Sealed and Delivered
In the presence of:



SELLER:




RP 39

Signed, Sealed and Delivered
In the presence of:

Jason C. Stanley

PURCHASER:

David M. Stanley
Manager Pacific Lyman LLC

RP 40

AGREEMENT FOR PURCHASE AND SALE OF PROPERTY

2013 MAR -7 P 3:01
THIS AGREEMENT (hereinafter referred to as "Agreement") made this 3 day of June, 2011, by and between LYMAN WAREHOUSE, LLC, a South Carolina limited liability company (hereinafter referred to as the "Seller"), and HOOK DEMO SC, LLC, a Florida limited liability company (hereinafter referred to as the "Purchaser").

WHEREAS, Seller owns that certain parcel of real property ("Land") and improvements thereon, lying, being and situate in the County of Spartanburg, State of South Carolina, which Project is more particularly described in Exhibit "A" attached hereto and made a part of this Agreement (the "Project").

WHEREAS, the Project is encumbered by a mortgage and other loan documents ("Loan Documents") originally made by Seller in favor of Palmetto Bank to secure certain loans in the original principal amount of \$200,000 and \$1,600,000 (collectively, the "Loan") which Loan is currently owned by HP Properties of SC, LLC, a South Carolina limited liability company ("Lender").

WHEREAS, Purchaser desires to purchase and the Seller agrees to convey absolute title free and clear of any liens in favor of any third party including, but not limited to Lender, to the following fixtures, personalty and improvements located on that certain portion of the Project more particularly described in Exhibit "B" (the "Tract A") upon the terms and conditions set forth in this Agreement:

(a) all real property fixtures and improvements located on Tract A, including but not limited to all buildings, structures, tanks, loading docks, etc. (collectively, the "Improvements");

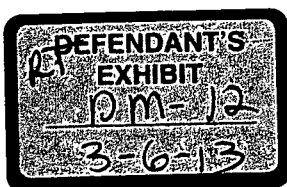
(b) all equipment, furnishings and items of personal property situated on Tract A (the "Personalty"); and

(c) all licenses, permits, authorizations, approvals and contract rights, in Seller's possession or control, necessary for Purchaser to demolish, dismantle and/or remove all or any portion of the Improvements and/or Personalty, other than the Excluded Property (as defined below).

All of the foregoing are collectively referred to herein as the "Property."

NOW THEREFORE, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars in hand paid by Purchaser to Seller, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Seller, it is hereby agreed as follows:

1. Purchases and Sale of Property. Seller agrees to sell the Property to Purchaser and Purchaser agrees to purchase the Property from Seller upon the terms and conditions of this



Agreement. Seller shall make such conveyance via Absolute Bill of Sale in the form attached as Exhibit "C", and to the extent required by applicable law, a deed. The Property shall be severed from the Land by Seller in accordance with all applicable South Carolina laws and regulations. Notwithstanding the foregoing, within thirty (30) days after the Closing, Seller shall have the right, at its sole cost and expense, to remove from Tract A all electrical panels, fire alarm panels and parts, five (5) electrical transformers, the tender frame and mechanical loading dock plates (collectively, the "Excluded Property"). If Seller fails to remove any of the Excluded Property from Tract A within thirty (30) days after Closing, Seller shall have forfeited any right in and to the Excluded Property and the Excluded Property shall be deemed part of the Property without further act of Seller or Purchaser. The provisions of this Section shall survive Closing.

2. Purchase Price. The purchase price for the Property is \$1,475,000.00 ("Purchase Price") and Purchaser agrees to pay Seller the Purchase Price in immediately available funds on the "Closing Date," as hereinafter defined.

3. Removal and Demolition of Property. Immediately following the Closing, Purchaser shall have the absolute right (but not the obligation) to demolish, dismantle and/or remove all or any portion of the Property from Tract A for a period of three (3) years following the Closing Date (the "Property Removal Period"). Purchaser shall have the right to remove as much or as little Property during the Property Removal Period as Purchaser deems prudent and shall have no obligation to restore, repair or replace any Property or any portion of the Project at the expiration of the Property Removal Period. At the expiration of the Property Removal Period, Purchaser shall surrender of all of its right, title or interest in any Property then located on Tract A to the Seller. The parties agree that Purchaser's right to remove and/or demolish the Property shall not be disturbed by Seller, its tenants or any adjoining landowners and Purchaser's actions in connection with the same shall not be considered a disturbance to Seller and adjoining landowners (i.e., noise, dust).

4. Easement Agreement. At Closing, Seller shall deliver to Purchaser an easement agreement in form reasonably acceptable to Purchaser (the "Easement Agreement") which grants Purchaser, its successors and assigns, guests and invitees a non-exclusive easement to use the existing roads at the Project for pedestrian and vehicular ingress and egress over the Project (including commercial vehicles) as necessary for Purchaser and its agents to demolish and remove the Property. Such easement shall also permit Purchaser to use any portion of Tract A for construction of a staging area for the temporary storage of the Property, loading of commercial vehicles and any uses incidental to the demolition and removal of the Property. The Easement Agreement shall be recorded in the public records and the easement rights granted in the Easement Agreement shall constitute a covenant running with the land intended to benefit the Purchaser, its successors or assigns for the Property Removal Period.

5. "AS IS" Purchase. Purchaser hereby acknowledges and agrees that Purchaser has elected to enter into this Agreement and close hereunder (subject to any specific termination provisions of this Agreement), upon Purchaser's own due diligence, without reliance upon any representations or warranties of Seller or any other party of any kind or nature whatsoever (except as specifically set forth in this Agreement), whether express or implied, and to consummate this transaction with Seller on a AS IS/WHERE IS basis.

6. Seller's Agreement, Representations and Warranties. Seller hereby represents and warrants to Purchaser, which representations and warranties shall be true in all material respects on the date hereof and on the Closing Date:

(a) Ownership. Seller is the owner of all the Property and no person or entity has any right in or claim thereto. There are no liens against the Property or the Project except for the Loan Documents and liens related thereto, which Seller shall cause to be released from the Property at or prior to Closing.

(b) Seller Authority. All necessary company action has been taken to authorize the execution and delivery of this Agreement by Seller, and this Agreement is binding upon Seller and enforceable against Seller in accordance with its terms. No other valid agreement exists in favor of any third party to sell the Property, Tract A or any interest therein.

(c) No Violations. Seller has full right, power and authority to consummate the transactions contemplated by this Agreement and in so doing will not violate any provision of any agreement or contract to which Seller is or may become a party or by which Seller is bound.

(d) No Condemnation Pending or Threatened. There is no pending or threatened condemnation or similar proceeding affecting the Property or any portion thereof, and Seller has no knowledge that any such action is presently contemplated.

(e) FIRPTA. Seller is not a "foreign person" as defined by Section 1445 of the Internal Revenue Code, and shall comply with all requirements imposed by the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), as amended, and, if applicable, Seller shall execute an affidavit attesting to such fact, or shall evidence compliance with any withholding of sales proceeds required pursuant to FIRPTA.

(f) Leases/Agreements. There are no leases, license, use, sale or similar agreements (written or oral) impacting Seller's use or ownership of the Property or Tract A, and Seller has exclusive possession and control of the Property and Tract A. Any agreements to sell the Property, the Project or any portion thereof have been duly terminated in accordance with the terms thereof and all applicable legal requirements.

(g) Taxes. All city, state, county and school district ad valorem taxes and any and all other taxes and assessments (collectively, the "Taxes") for the Project and the Property have been paid and there are no Taxes outstanding, except for 2010 ad valorem taxes which will be paid by Seller on or before the Closing Date, and written evidence of such payment delivered to Purchaser.

(h) Hazardous Materials. With the exception of asbestos and lead based paint located throughout the Property and the Project, Seller has no notice or knowledge of: (i) any Hazardous Substance (as hereinafter defined) present in, on or around the Project, (ii) any present or past generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance in, on or around the Project, or (iii) any failure to comply with any applicable local, state or federal environmental laws, regulations, ordinances or administrative

or judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance. With the exception of asbestos and lead based paint located throughout the Project, Seller has not received any notice from any governmental authority regarding the presence of any Hazardous Substance, any present or past generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance or any failure to comply with any applicable local, state or federal environmental laws, regulations, ordinances or administrative or judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance. As used herein, the term "Hazardous Substance" means any substance or material defined or designated as a hazardous or toxic waste material or substance, or other similar term by any federal, state or local environmental statute, regulation or ordinance presently or hereinafter in effect, as such statute, regulation or ordinance may be amended from time to time.

7. Purchaser's Agreement, Representations and Warranties. Purchaser hereby represents and warrants to Seller, which representations and warranties shall be true in all material respects on the date hereof and on the Closing Date, that:

(a) Purchaser Authority. All necessary company action, if any, has been taken to authorize the execution and delivery of this Agreement by Purchaser, and this Agreement is binding upon Purchaser and enforceable against Purchaser in accordance with its terms.

(b) No Violations. Purchaser has full right, power and authority to consummate the transaction contemplated by this Agreement and in so doing will not violate any provision of any agreement or contract to which Purchaser is or may become a party or by which Purchaser is bound.

(c) Purchaser's Ability To Close. Purchaser has the means and ability to close this transaction and shall at all times be able transfer the funds necessary to close this transaction when required.

(d) Compliance with Laws. In connection with Purchaser's demolition and/or removal of the Property from Tract A, Purchaser shall comply with all applicable laws, including but not limited to those dealing with Hazardous Substances.

8. Seller's Actions. Commencing as of the Effective Date and continuing throughout the Property Removal Period unless this Agreement is terminated by the parties:

(a) Seller and Seller's affiliates, agents and representatives shall not take any action or fail to take any action which would cause any of the representations or warranties made by Seller under this Agreement to be in any way not materially true, complete and accurate.

(b) Seller and Seller's affiliates, agents and representatives shall reasonably cooperate with Purchaser to obtain any licenses, additional easements, permits or agreements necessary for Purchaser to demolish and/ or remove the Property from Tract A.

[Handwritten initials]

(c) Seller shall comply with all federal, state and municipal laws, statutes, ordinances, regulations and orders relating to the Project and shall pay all applicable utilities for Tract A until such time as Seller, at its sole cost and expense, separates the main utility transmission lines from Tract A and the rest of the Project and caps off the utility lines on Tract A (collectively, the "Utility Work"). Seller shall complete the Utility Work within thirty (30) days after Closing.

(d) Seller shall take no action, which would adversely impact the Property or Tract A or Purchaser's rights under this Agreement during the Property Removal Period. The Seller shall likewise maintain the Property, in its present condition through the date of Closing to assure compliance with these terms.

(e) Seller shall timely pay when due: (i) for all contractors subcontractors and materialmen contracted by or on behalf of Seller and (ii) all Taxes with respect to Tract A.

(f) Seller shall cause Lender to release the lien of the Loan Documents from the Property and consent to the Easement Agreement.

The provisions of this Section 8 shall survive the Closing.

9. Closing Prerequisites. Closing of title the Property shall not occur until the following requirements have been met:

(a) All outstanding Taxes on the Property and Project have been paid in full.

(b) The parties have finalized and are prepared to execute and record the Easement Agreement.

(c) All contractors, subcontractors, mechanics, materialmen that have performed work at the Project and the like shall have been paid in full and all liens related to such work released

(d) Lender shall have released the lien of its Loan Documents from the Property.

(e) The Property shall be free and clear of all liens and other encumbrances as confirmed by Ahern Abstracting, LLC ("Ahern") or such other abstractor acceptable to Purchaser and no new matter or encumbrances shall affect Tract A from and after Closing except as set forth on the current Title Abstract prepared by Ahern dated as of April 19, 2011 attached hereto as Exhibit "D" ("Title Abstract").

10. Non-Disturbance. During the Property Removal Period, Purchaser shall, and may peacefully have, hold, and enjoy Tract A, subject to the other terms hereof; provided, that Seller shall have the right to enter Tract A (upon reasonable prior notice and during normal business hours) to inspect or maintain Tract A as necessary. In connection with such entry, Seller and its representatives shall comply with any safety procedures implemented by Purchaser. Any mortgagee of Seller shall not disturb Tenant's interest in the Property or Tract A during the

Property Removal Period and Seller shall obtain a non-disturbance agreement, in form and content reasonably acceptable to Purchaser, from any future mortgagee of Seller. The provisions of this Section 10 shall survive Closing.

11. Time for Acceptance and Effective Date. If this Agreement is not executed and delivered by both parties hereto on or before June 3, 2011 at 5:00 P.M., this Agreement, at the option of the Purchaser, shall be null and void. The "Effective Date" of this Agreement shall be the date on which the last one of the Seller and Purchaser has executed this Agreement.

12. Closing Date. This transaction shall close on or before June 6, 2011 (hereinafter referred to as the "Closing" or "Closing Date"). Purchaser shall have the right to extend the Closing Date upon written notice to Seller in order for Seller to complete the conditions precedent to Closing set forth in Section 9.

13. Delivery by Seller. At or before the Closing, Seller shall deliver the following, which, if a document, shall be duly executed and in recordable form (if intended to be recorded):

(a) A Bill of Sale from Seller conveying all of the Property's tangible personal property, if any, to Purchaser, free and clear of all liens and encumbrances and with warranty of title;

(b) Easement Agreement in the form attached as Exhibit "E";

(c) At Purchaser's election, a memorandum or copy of this Agreement in the form attached as Exhibit "F" shall be recorded in the Public Records immediately upon closing and Seller shall execute any and all documents in connection therewith;

(d) A certificate from Seller in the form attached as Exhibit "G" dated the date of Closing certifying that all of the representations and warranties of Seller set forth in this Agreement are true, correct, and complete in all respects at and as of the Closing;

(e) An affidavit in favor of Purchaser in the form attached as Exhibit "H", dated as of the Closing Date attesting to the absence, unless otherwise provided for herein, of any encumbrances, financing statements, claims of lien or potential lienors on the Property unless they are to be satisfied at Closing and including a non-foreign certificate, if applicable sufficient to comply with the requirements of Section 1445 of the Internal Revenue Code (FIRPTA);

(f) The Affidavit of Consideration in the form attached as Exhibit "I".

(g) The Tax Compliance Affidavit in the form attached as Exhibit "J".

(h) Such additional documents as are customarily required of Sellers in transactions of this type in Spartanburg County, South Carolina, or as reasonably may be necessary to consummate the purchase and sale of the Property, together with any other documents, instruments, or agreements called for under this Agreement that have not been delivered previously; and

(i) Actual physical possession of the Property; provided that Seller has the right to enter Tract A for the purpose of inspection as provided in Section 10 and to remove the Excluded Property.

14. Delivery by Purchaser. At the Closing, Purchaser shall deliver to Seller the following:

(a) The Purchase Price as provided in this Agreement subject to prorations provided for in this Agreement;

(b) A certificate of Purchaser dated the date of Closing certifying that all of the representations and warranties of Purchaser set forth in this Agreement are true, correct, and complete in all respects at and as of the Closing;

(c) a counterpart to the Easement Agreement; and

(d) Such additional documents as are customarily required of purchasers in transactions of this type in Spartanburg County, South Carolina, or as may be reasonably necessary to consummate the purchase and sale of the Property, together with any other documents, instruments, or agreements called for under this Agreement that have not been delivered previously.

15. Condemnations/Eminent Domain/Risk of Loss. In the event of any condemnation or eminent domain proceedings for any public or quasi-public purposes at any time prior to Closing resulting in a taking of any part or all of the Property or Tract A which will cause it to be impossible for Purchaser to remove or demolition the Property as intended, Purchaser shall have the right to cancel this Agreement, and this Agreement will be terminated and neither Purchaser nor Seller will have any further rights or obligations hereunder. Purchaser shall provide notice of its election to terminate at any time prior to Closing. Purchaser shall bear the risk of all loss or damage to, or destruction of, the Property or any portion of the Property from any and all causes whatsoever (collectively, "Damage") up to and including the date and time of the Closing, and Purchaser shall have all right and interest in and to any insurance proceeds payable to Seller as a result of such damage or destruction.

16. Expenses. Any surtax or other taxes, which are required to be affixed to the closing documents, the cost of recording any instruments and all real estate brokerage commissions shall be paid by Seller. Otherwise, each party shall bear its own costs. The provisions of this Section shall survive closing.

17. Brokerage. Seller and Purchaser each represent to the other that neither has had any dealings with any real estate broker, finder, agent, or similar party in connection with the negotiation of this Agreement and the consummation of the purchase and sale contemplated hereby. Seller and Purchaser do hereby indemnify and hold the other free and harmless from and against any and all costs, expenses, service fee, compensation, commission or charge claimed by any brokers, finder, agent or other similar party, and shall be entitled to reasonable attorneys fees in connection with defending same at trial and appellate levels, by reason of any action of the indemnifying party.

18. Notices. Any notices required to be given by the terms of this Agreement or under any applicable law by either party shall be in writing and shall be (i) hand delivered, (ii) sent by certified or registered mail, postage prepaid, return receipt requested, (iii) sent by Federal Express or similar overnight courier service, or (iv) sent by facsimile and shall be effective upon receipt. Notice given by or to the attorney representing either party shall be effective as if given by or to said party. Such written notice shall be addressed as follows:

If given to Purchaser, any such notice shall be addressed to:

HOOK DEMO SC, LLC
300 Alton Road, Suite 303
Miami Beach Florida 33139
Attn: Robert W. Christoph, Jr.
Fax: (305) 673-5995

With a copy to:

Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131-3456
Attention: Suzanne Amaducci-Adams, Esq.
Fax No. (305) 351-2207

If given to Seller, any such notice shall be addressed to:

Lyman Warehouse, LLC
6004 Highway 24
Townville, South Carolina 29689
Attention: Richard Bennett
Fax No. 864-287-4900

With copies to:

Harold P. Threlkeld, Esq.
For FedEx:
213 East Calhoun Street
Anderson, South Carolina 29621
For U.S. Mail:
P.O. Box 1385
Anderson, South Carolina 29622-1385
Fax No. (864) 226-1685

19. Default. If the transaction contemplated by this Agreement is not consummated through or because of the default of Seller, or in the event any warranties or representations of Seller are incorrect, Purchaser may elect to (i) terminate this Agreement, and all obligations and liabilities of Purchaser shall end, or (ii) seek to compel Seller to convey the Property by a suit for

specific performance. If such transaction is not consummated through or because of the default of Purchaser, then, as Seller's sole remedy, this Agreement shall terminate.

20. Assignability. The Purchaser may assign this Agreement without the written consent of Seller, to an entity owned and controlled by Robert Christoph, Jr., provided that Purchaser shall not be released from the obligations under the Agreement. Otherwise, Purchaser shall not have the right to assign this Agreement to any person or entity without the written consent of the Seller. Purchaser acknowledges the Seller has been induced to enter into this Agreement by the Purchaser's own credit standing, experience and expertise unique or particular to Purchaser. Seller shall have no right to assign this Agreement in whole or in part. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assignees.

21. Choice of Law and Venue. This Agreement shall be construed and interpreted under the laws of the State of South Carolina. Seller and Purchaser agree that the proper venue with respect to any state or federal litigation in connection with this Agreement shall be Spartanburg County, South Carolina.

22. Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

23. Amendments. No prior agreement or representations shall be binding upon any of the parties hereto unless specifically incorporated into this Agreement. Any amendment to this Agreement shall not bind any of the parties hereto unless such amendment is in writing and executed by all of the parties to this Agreement. Any amendment to this Agreement shall be binding upon Purchaser and Seller as soon as both have executed it.

24. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Agreement; provided, however, that the parties shall have executed each of the counterparts hereto.

25. Headings. The captions used in connection with the paragraph of this Agreement are for convenience and reference and no reference shall effect or define, describe, extend, or limit the scope or intent of any provision hereof.

26. Litigation. In connection with any litigation, including appellate proceedings, arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys fees and costs from the non-prevailing party, whether prior to litigation, during the pendency of any litigation, including any appeal or bankruptcy action.

27. Entire Agreement. This Agreement contains the entire understanding between Seller and Purchaser concerning the Property. There are no promises, agreements, conditions, undertakings, inducements or waivers, oral or written, express or implied, between Seller and Purchaser, other than as set forth in this Agreement.

28. Severability. If any provision contained in this Agreement is declared or held to be invalid or unenforceable, such declaration or holding shall be limited to its most narrow

application and shall not affect the remaining provisions of this Agreement, all of which shall remain in full force and effect.

29. Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing signed by the party against whom it is asserted, and any waiver of any provision of this Agreement shall be applicable only to the specific instance to which it is related and shall not be deemed to be a continuing or future waiver as to such provision or waiver as to any other provision.

30. Time Periods. Time is of the essence with respect to every provision of this Agreement. The calculation of the number of days that have passed during any time period shall commence on the day immediately following the action or event-giving rise to the commencement of the period and shall expire at 5:00 p.m., Spartanburg County, South Carolina time, on the last day of the time period. Furthermore, any time period provided for herein which shall end on a Saturday, Sunday, or legal holiday, shall extend to 5:00 p.m., Spartanburg County, South Carolina time, of the next full business day.

31. No Partnership; No Third Party Beneficiaries. Under no circumstances whatsoever shall this Agreement be construed as creating either a partnership or employment relationship between the parties hereto. Each agreement herein by one party is solely for the benefit of the other party and its successors and permitted assigns, and is not intended for the benefit of or to be enforced by any third party.

32. Submission. This Agreement becomes effective only upon execution and delivery by all parties.

33. No Construction of this Agreement Against the Drafter. This Agreement has been entered into between equally competent and experienced persons and/or entities, each of whom has contributed or has had the opportunity to contribute to the language contained herein. Accordingly, there shall be no requirement that the terms of this Agreement should be necessarily construed in favor of or against either party.

34. Further Assurances. Each of the parties hereto, without further consideration, agrees to execute and deliver such other documents, and to take such other action, prior to the Closing, as may be reasonably necessary to more effectively consummate the purpose or subject matter hereof. The provisions of this Section shall survive closing.

[Remainder of Page Intentionally Left Blank]

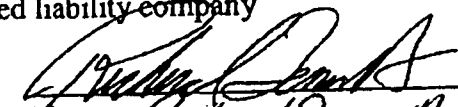
IN WITNESS WHEREOF, each of the parties hereto has duly executed this Agreement as of the day and year first above written.

Witnesses:

Virginia H. Caspell
Ronald F. Milled

SELLER:

LYMAN WAREHOUSE, LLC, a South Carolina
limited liability company

By: 

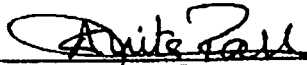
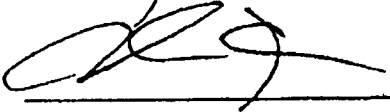
Name: Richard Jernett

Title: Manager

RP 445 (Lyman)

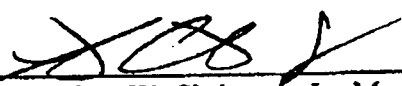


Witnesses:

PURCHASER:

HOOK DEMO SC, LLC, a Florida limited liability
company

By: 

Robert W. Christoph, Jr., Member

JOINDER

The undersigned is the current owner and holder of the Loan described in the Recitals of the Agreement to which this Joinder is attached ("Lender"). Lender agrees that in the event of default under the loan documents, or if Lender commences any foreclosure or similar action against Seller, Lender shall honor the terms of the Agreement and recognize Buyer's rights under the Agreement. Signed as the MANAGER of Lender is duly authorized to execute this Joinder on behalf of and to duly bind Lender.

HP PROPERTIES OF SC, LLC,
a South Carolina limited liability company

By: Heather P. Bennett
Name: Heather P. Bennett
Title: member

RP 447 (Lyman)

[Handwritten initials]

EXHIBIT "A"

LEGAL DESCRIPTION OF PROJECT

TRACT A - 0.77 ACRE TRACT

Beginning at an iron pin located on the southern right-of-way of Little Road (45' right-of-way) and being the common corner of Micah C. Lee (Deed Book 80D, page 363); thence along the common line of Micah C. Lee, S 03-52-56 E for 280.04 feet to an iron pin located on the northern right-of-way of CSX Railroad (115' right-of-way); thence along said right-of-way, S 86-50-24 W for 120.48 feet to an iron pin; thence along the common line of Gillespie (Deed Book 54N, page 871), N 03-52-56 W for 277.96 feet to an iron pin located on the southern right-of-way of Little Road; thence along said right-of-way, N 84-07-42 E for 12.98 feet to a mag nail set; thence N 86-03-23 E for 107.50 feet to the Point of Beginning. Said tract contains 0.77 acres, more or less.

TRACT B - 1.37 ACRE TRACT

Beginning at iron pin located on the western right-of-way of Groce Road (S42-242) and being the common corner of the Town of Lyman (Deed Book 26G, page 418); thence along the common line of the Town of Lyman, N 88-14-07 W for 198.09 feet to an iron pin; thence S 04-27-49 E for 191.15 feet to an iron pin located on the northwestern right-of-way of Church Road; thence along said right-of-way, S 44-23-22 W for 51.91 feet to an iron pin; thence leaving said right-of-way along the common line of Tax Parcel 5-15-11 Portion Parcel 84 (Deed Book 21Y, page 343), N 51-33-44 W for 224.67 feet to an iron pin; thence N 05-40-52 E for 153.92 feet to an iron pin; Thence along the Town of Lyman (Deed Book 46H, page 145), S 88-54-50 E for 131.27 feet to an iron pin; thence S 01-45-15 W for 2.96 feet to an iron pin; thence S 87-50-13 E for 59.50 feet to an iron pin; thence N 07-52-37 E for 12.67 feet to a point; thence N 89-25-07 E for 182.73 feet to an iron pin located on the western right-of-way of Groce Road; thence along said right-of-way, S 03-44-48 E for 78.15 feet to the Point of Beginning. Said tract contains 1.37 acres, more or less.

TMS#5-15-11-084.00

TRACT D - 47.01 ACRE TRACT

Beginning at an iron pin located on the western right-of-way of Groce Road (66' right-of-way) and the northern right-of-way of Little Road (45' right-of-way); thence along the northern right-of-way of Little Road, S 86-05-53 W for 797.61 feet to an iron pin; thence along a curve to the right having a radius of 515.06 feet, an arc length of 259.75 feet and a chord bearing and distance of N 79-27-18 W for 257.00 feet to an iron pin; thence N 63-28-58 W for 272.18 feet to an iron pin; thence along a curve to the right having a radius of 380.76 feet, an arc length of 165.23 feet and a chord bearing and distance of N 51-03-04 W for 163.93 feet to an iron pin; thence N 36-22-30 W for 333.43 feet to an iron pin; thence along the eastern right-of-way of Pacific Street

RP 448
14

(45' right-of-way), N 26-32-20 E for 180.64 feet to an iron pin; thence N 19-37-18 E for 65.88 feet to an iron pin; thence along the eastern right-of-way of Pacific Street (50' right-of-way), N 21-35-44 E for 81.72 feet to an iron pin; thence along a curve to the right having a radius of 8054.67 feet, an arc length of 555.37 feet and a chord bearing and distance of N 25-25-34 E for 555.26 feet to an iron pin; thence N 26-25-07 E for 237.60 feet to an iron pin; thence N 26-34-42 E for 406.88 feet to an iron pin; thence along the southern right-of-way of Community Street, S 63-19-01 E for 290.11 feet to an iron pin; thence along a curve to the right having a radius of 178.91 feet, an arc length of 92.55 feet and a chord bearing and distance of S 52-05-33 E for 91.52 feet to an iron pin; thence along the southern right-of-way of Church Road, S 40-52-05 E for 82.01 feet to an iron pin; thence along a curve to the left having a radius of 195.31 feet, an arc length of 174.37 feet and a chord bearing and distance of S 67-09-21 E for 168.64 feet to an iron pin; thence N 86-09-33 E for 95.66 feet to an iron pin; thence along the western right-of-way of Croce Road (variable width right-of-way), S 04-05-19 E for 143.70 feet to an iron pin; thence along a curve to the left having a radius of 1209.30 feet, an arc length of 376.46 feet and a chord bearing and distance of S 13-00-24 E for 374.94 feet to an iron pin; thence S 21-43-40 E for 181.05 feet to an iron pin; thence along a curve to the right having a radius of 1240.24 feet, an arc length of 300.54 feet and a chord bearing and distance of S 14-58-01 E for 299.80 feet to an iron pin; thence S 08-01-30 E for 595.34 feet to the Point of Beginning. Said tract contains 47.01 acres, more or less.

TRACT B - 9.31 ACRE TRACT

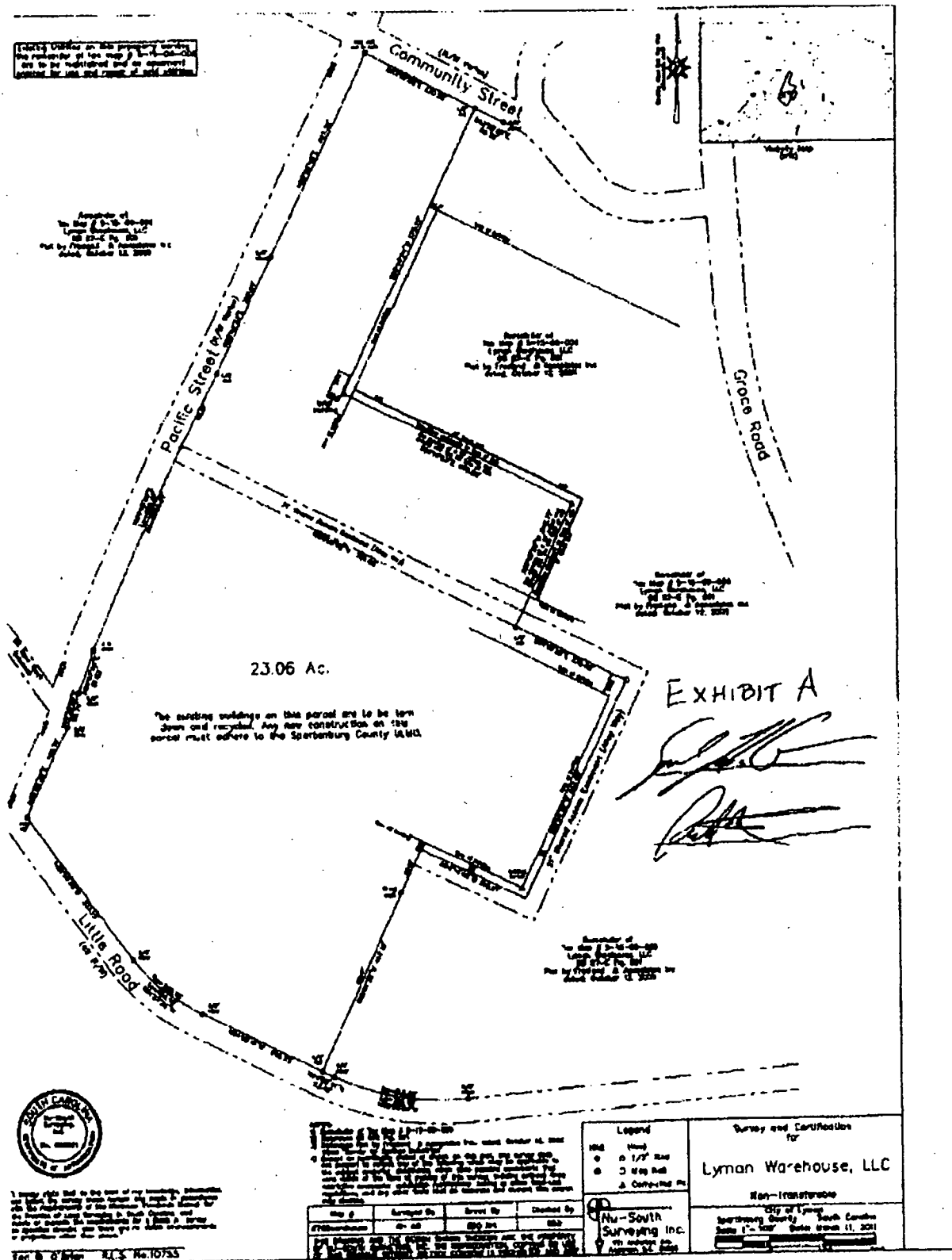
Beginning at an iron pin located at intersection of the southern right-of-way of Community Street and the western right-of-way of Pacific Street; thence along the western right-of-way of Pacific Street, S 26-34-42 W for 395.90 feet to an iron pin; thence S 26-25-07 W for 237.24 feet to an iron pin; thence along a curve to the left having a radius of 8104.67 feet, an arc length of 559.20 feet and a chord bearing and distance of S 25-25-18 W for 559.09 feet to an iron pin; thence S 21-35-44 W for 83.36 feet to an iron pin; thence along the eastern side of a 15' railroad right-of-way as shown on Plat Book 31, page 1-9, N 36-45-16 W for 171.31 feet to an iron pin; thence along a curve to the right having a radius of 469.94 feet, an arc length of 660.85 feet and a chord bearing and distance of N 00-13-11 E for 607.73 feet to an iron pin; thence N 41-22-23 E for 624.05 feet to an iron pin located on the eastern right-of-way of Spartanburg Road; thence along said right-of-way, N 60-50-12 E for 45.49 feet to an iron pin; thence along the southern right-of-way of Community Street, S 68-00-35 E for 218.89 feet to the Point of Beginning. Said tract contains 9.31 acres, more or less.

TMS#5-15-00-006.00

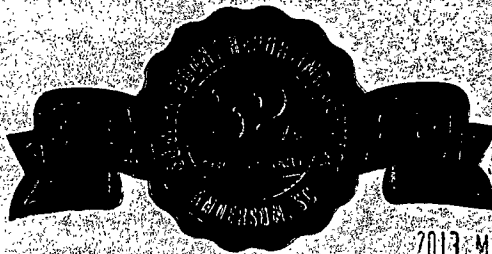
This being a portion of the same property conveyed unto Lyman Warehouse, LLC herein by Deed of Springs Industries, Inc., dated May 25, 2006 recorded North, 2006 of record in the Office of the Clerk of Court for Spartanburg County, South Carolina in Book 97-E at Page 901.

Handwritten signature/initials

LEGAL DESCRIPTION OF TRACT A



RP 450 (Lyman)



CLERK'S OFFICE
ANDERSON SC

2013 MAR -7 P 3:01

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

COMMON PLEAS AND
GENERAL SESSIONS
IN THE COURT OF COMMON PLEAS

ORIGINAL

HAROLD P. THRELKELD, D/B/A)
HAROLD P. THRELKELD,)
ATTORNEY AT LAW,)

C.A. NO.: 2012-CP-04-00041

PLAINTIFF,)

VS.)

LYMAN WAREHOUSE, LLC,)
LYMAN PACIFIC, LLC, MILLS)
DEMOLITION, LLC, SUSAN C.)
STANLEY, PETER M. STANLEY,)
AND DONALD J. MCWHIRTER,)

DEPOSITION

OF

PETER M. STANLEY

DEFENDANTS.)

PHOTO NOT



AVAILABLE

TESTIMONY OF PETER M. STANLEY, A DEFENDANT
IN THE ABOVE-CAPTIONED ACTION, TAKEN BEFORE MELODY
JANINE WILLIAMS, VERBATIM COURT REPORTER AND NOTARY
PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, ON THE
7TH DAY OF NOVEMBER, 2012, BEGINNING AT 10:12 A.M. IN
THE LAW OFFICES OF PRUITT & PRUITT, 101 NORTH MURRAY
AVENUE, ANDERSON, SOUTH CAROLINA.

Bowen Court Reporting Service, LLC

P.O. BOX 2422

ANDERSON, SOUTH CAROLINA 29622

TELEPHONE NO. (864) 226-2644

bowenreporting@bellsouth.net

FENGAD 800-431-5989	COURT'S	1
	EXHIBIT NO.	
	IDENTIFICATION/EVIDENCE	
	DKT.#	2012-41
DATE:		



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<u>EXAMINATION</u>	<u>PAGE NO.</u>
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EXAMINATION BY MR. PROTOPAPAS	32
REDIRECT EXAMINATION BY MR. PRUITT.	92
CERTIFICATE OF REPORTER	94

DEFENDANT MCWHIRTER'S EXHIBITS:

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
"10" -	"PARTNERSHIP AGREEMENT" BETWEEN PETER M. STANLEY, ELLIOT EDWARDS, SETH COOPER, DATED FEBRUARY 9, 2011.	37
"11" -	AGREEMENT TO SELL AND PURCHASE REAL ESTATE CONTRACT BETWEEN GREG SHOALS ACQUISITIONS, LLC (SC), AND LYMAN PACIFIC, LLC (SC), DATED MARCH 21, 2011.	46
"12" -	LETTER FROM HAROLD P. THRELKELD, ESQUIRE, TO KELLY D. LOWRY, ESQUIRE, DATED MAY 9, 2011	88
"13" -	LETTER FROM PETER M. STANLEY TO LYMAN WAREHOUSE, LLC/RICHARD BENNETT, DATED MAY 7, 2011	89

DONALD J. MCWHIRTER'S DEPOSITION - EXHIBITS "D1"
THROUGH "D5", "D7" AND "D9" ARE HEREBY INCORPORATED
HEREIN AND MADE A PART HEREOF BY REFERENCE

APPEARANCES:

J. CALHOUN PRUITT, JR., ESQUIRE
PRUITT & PRUITT
101 NORTH MURRAY AVENUE
ANDERSON, SOUTH CAROLINA 29625

REPRESENTING DEFENDANT
LYMAN WAREHOUSE, LLC

PETER D. PROTOPAPAS, ESQUIRE
RIKARD & PROTOPAPAS, LLC
POST OFFICE BOX 5640
COLUMBIA, SOUTH CAROLINA 29250

J. CHRISTOPHER PRACHT, ESQUIRE
CHRISTOPHER PRACHT, LAWYER, LLC
POST OFFICE BOX 4193
ANDERSON, SOUTH CAROLINA 29622

REPRESENTING DEFENDANT
DONALD J. MCWHIRTER

S. LINDSAY CARRINGTON, ESQUIRE
BELL CARRINGTON, LLC
870 CLEVELAND STREET, SUITE 1B
GREENVILLE, SOUTH CAROLINA 29601

REPRESENTING DEFENDANTS
PETER M. STANLEY, SUSAN C.
STANLEY, MILLS DEMOLITION, LLC
LYMAN PACIFIC, LLC

ALSO IN ATTENDANCE: HAROLD P. THRELKELD
RICHARD K. BENNETT

STIPULATIONS:

IT IS MUTUALLY UNDERSTOOD AND AGREED THAT
THE TESTIMONY OF PETER M. STANLEY SHALL BE TAKEN PURSUANT
TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE BEFORE
MELODY JANINE WILLIAMS, VERBATIM COURT REPORTER AND NOTARY
PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, AND HER
NOTES, WHEN TRANSCRIBED, SHALL BE DEEMED THE TESTIMONY
HEREIN, WITH THE SIGNATURE OF THE WITNESS BEING WAIVED.

PETER M. STANLEY, BEING FIRST DULY SWORN
AND CAUTIONED TO TELL THE TRUTH, THE WHOLE TRUTH,
AND NOTHING BUT THE TRUTH, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION BY MR. PRUITT:

2 Q. MR. STANLEY, WE'VE PREVIOUSLY MET. I'M THE ONE
3 THAT SUMMONED YOU TO THIS DEPOSITION. ARE YOU
4 FAMILIAR WITH THE DEPOSITION PROCESS?

5 A. YES.

6 Q. HAVE YOU HAD YOUR DEPOSITION TAKEN BEFORE?

7 A. YES.

8 Q. ALL RIGHT. YOU UNDERSTAND THAT I'LL BE ASKING
9 QUESTIONS AS WELL AS SOME OF THESE OTHER LAWYERS
10 AND THAT IF YOU DON'T UNDERSTAND THE QUESTION, YOU
11 SHOULD DIRECT YOUR INQUIRY NOT TO YOUR LAWYER BUT
12 TO WHOEVER IS ASKING THE QUESTION IF YOU DON'T
13 UNDERSTAND. AND SO I'D LIKE TO HAVE YOUR
14 AGREEMENT TO THE FACT THAT IF YOU DON'T OBJECT TO
15 A QUESTION OR DON'T OBJECT TO THE WAY IT WAS
16 PHRASED OR DON'T INDICATE THAT YOU DON'T
17 UNDERSTAND IT THAT YOU DO UNDERSTAND IT; ---

18 A. RIGHT.

19 Q. --- IS THAT FAIR ENOUGH?

20 A. YEP.

21 Q. AND ANY TIME YOU NEED A BREAK, YOU JUST LET US
22 KNOW AND WE'LL STOP AND, AND LET YOU TAKE BREAK.
23 YOU -- DURING THE DEPOSITION YOU CAN'T CONSULT
24 WITH YOUR ATTORNEY. YOU CAN TALK TO HIM ALL YOU
25 WANT TO AFTERWARDS, BUT RIGHT NOW IT'S AS IF YOU

1 WERE ON THE WITNESS STAND IN COURT.

2 A. RIGHT.

3 Q. ALL RIGHT. LET ME HAVE YOUR FULL NAME, PLEASE?

4 A. PETER STANLEY.

5 Q. AND WHERE DO YOU LIVE?

6 A. 4682 WILSON ROAD IN MEGGETT, SOUTH CAROLINA.

7 Q. ALL RIGHT. AND HOW LONG HAVE YOU LIVED THERE?

8 A. I'VE LIVED THERE FOR ABOUT -- WELL, ON AND OFF--I

9 HAVE PROPERTY THERE--PROBABLY ABOUT EIGHT (8)

10 YEARS.

11 Q. WOULD YOU GIVE ME A BRIEF RESUME OF YOUR
12 EDUCATIONAL AND OCCUPATIONAL HISTORY, KIND OF
13 STARTING FROM HIGH SCHOOL AND GOING FORWARD.

14 A. WORK FOR MYSELF, IN REAL ESTATE BUSINESS SINCE
15 HIGH SCHOOL, IN SALVAGE AND LIQUIDATION BUSINESS,
16 BUILT HOMES.

17 Q. WHAT TYPE OF, OF DEGREES OR LICENSES OR THINGS OF
18 THAT NATURE DO YOU HAVE RELATIVE TO THESE VARIOUS
19 BUSINESSES?

20 A. I'VE GOT THREE AND A HALF (3 1/2) YEARS OF
21 COLLEGE, NO LICENSES.

22 Q. NO, NO CONSTRUCTION LICENSES?

23 A. I HAD A CONSTRUCTION LICENSE, YES.

24 Q. BACK WHEN YOU WERE DOING THAT TYPE OF WORK?

25 A. RIGHT.

- 1 Q. IN YOUR LIQUIDATION BUSINESS, ARE YOU NOT REQUIRED
2 TO HAVE SOME TYPE OF CONSTRUCTION LICENSE?
- 3 A. NO.
- 4 Q. OR DO YOU USE OTHER SUBCONTRACTORS TO DO IT AND
5 AVOID THAT IN THAT REGARD, OR YOU JUST DON'T HAVE
6 TO HAVE THAT FOR DEM- ---
- 7 A. WE DON'T HAVE TO HAVE A LICENSE.
- 8 Q. WELL, I KNOW THAT IN, IN SOUTH CAROLINA YOU'VE GOT
9 TO GET A DEMOLITION PERMIT IF YOU'RE GOING TO ---
- 10 A. YOU WERE ASKING ABOUT THE LIQUIDATION BUSINESS;
11 RIGHT?
- 12 Q. OKAY. WELL, HOW ABOUT THE SALVAGE BUSINESS?
- 13 A. YOU DON'T NEED A LICENSE.
- 14 Q. OKAY. SO WHEN YOU'VE BEEN DOING THESE SALVAGE AND
15 -- WELL, WHAT IS LIQUIDATION BUSINESS?
- 16 A. BUYING AND SELLING LARGE LOTS OF RECLAIMED
17 MERCHANDISE, WORKING FOR INSURANCE COMPANIES ON A
18 COMMISSION BASIS. IF THERE'S A FIRE, LET'S SAY IN
19 THIS PLACE, MY COMPANY WILL COME IN FOR THE
20 ACCOUNTING INSURANCE COMPANY AND WE TAKE THE
21 FURNITURE OUT, WE BRING IT TO OUR WAREHOUSES AND
22 SELL IT.
- 23 Q. ALL RIGHT. WELL, THAT SOUNDS MORE LIKE THE
24 SALVAGE BUSINESS; BUT WHAT'S THE SALVAGE BUSINESS?
- 25 A. BUYING AND SELLING BASICALLY IS THE SALVAGE

1 BUSINESS.

2 Q. BUYING AND SELLING WHAT?

3 A. ANYTHING.

4 Q. ANYTHING, OKAY.

5 A. RIGHT.

6 Q. WELL, SPECIFICALLY IN REGARD TO BUYING AND SELLING
7 OLD MILL PROPERTY FOR THE MATERIALS THAT, THAT ARE
8 THERE, WHAT IS YOUR HISTORY OR WHAT IS YOUR
9 EXPERIENCE IN THAT REGARD?

10 A. I HAVE NO EXPERIENCE IN THAT, OTHER THAN THE
11 TRANSACTIONS THAT I DID IN THE LAST COUPLE OF
12 YEARS.

13 Q. OKAY. AND WHAT ARE SOME OF THOSE OTHER
14 TRANSACTIONS THAT YOU DID IN THE LAST COUPLE OF
15 YEARS?

16 A. THE ONE WITH LYMAN.

17 Q. OKAY.

18 A. WE HAD A PLANT IN SPARTAN- -- SPINDALE, SOUTH
19 CAROLINA -- NORTH CAROLINA, WHICH WE BOUGHT WITH A
20 PARTNER AND KERSHAW, NORTH -- SOUTH CAROLINA.

21 Q. SO YOU ARE, YOU ARE RELATIVELY NEW ---

22 A. IT WAS A REAL ESTATE DEAL WE BOUGHT -- WE
23 PURCHASED TO RECOVER THE STEEL AND THE WOOD FROM
24 THOSE PLANTS.

25 Q. OKAY. NOW, LET'S DRAW YOUR ATTENTION TO THE DEAL

1 THAT'S IN THIS LAWSUIT WHERE LYMAN PACIFIC, LLC
2 MADE AN AGREEMENT WITH LYMAN WAREHOUSE, LLC.

3 A. RIGHT.

4 Q. FIRST OF ALL, TELL ME WHO IS LYMAN PACIFIC?

5 A. THAT'S A CORPORATION IN THE STATE OF SOUTH
6 CAROLINA.

7 Q. IS IT A CORPORATION OR A LLC?

8 A. IT'S AN LLC.

9 Q. ALL RIGHT. AND WHO ARE THE -- WHO IS THE PRESENT
10 OWNER OF THAT LLC?

11 A. I AM. I'M THE MANAGER.

12 Q. ARE THERE ANY OTHER MEMBERS OF THAT?

13 A. NO.

14 Q. SO ARE YOU THE SOLE MANAGER AND SOLE MEMBER?

15 A. CORRECT.

16 Q. HAVE YOU ALWAYS BEEN THAT?

17 A. YES.

18 Q. HOW IS IT THAT -- WAS IT EVER A PLAN FOR YOU TO
19 ADMIT OTHER MEMBERS TO THIS LLC?

20 A. YES.

21 Q. WHAT PLAN WAS THAT?

22 A. THEY WERE GOING TO COME ON AS A MEMBER ---

23 Q. OKAY. NOW, TELL ---

24 A. DON MCWHIRTER AND -- I FORGET THE OTHER GUY'S NAME
25 NOW. MCWHIRTER AND -- WHO WAS THE OTHER GUY?

1 (ADDRESSING MR. CARRINGTON)

2 BY MR. CARRINGTON: (SHAKING HEAD NEGATIVELY)

3 Q. IF YOU CAN'T REMEMBER, YOU JUST ---

4 A. I CAN'T REMEMBER.

5 Q. OKAY.

6 A. THEY WERE GOING TO COME ON AS MEMBERS OF THE LLC
7 IF THEY WERE -- TO PROVIDE CERTAIN FINANCING FOR
8 THAT.

9 Q. ALL RIGHT. AND DID YOU EVER HAVE ANY WRITTEN
10 AGREEMENT WITH MCWHIRTER AND THE OTHER ONE?

11 A. WE PREPARED A ORGANIZATIONAL -- I THINK A -- WE
12 PREPARED SOME DOCUMENTS, BUT THEY WERE NEVER
13 SIGNED. IT WAS A -- I FORGET WHAT IT'S CALLED ---

14 Q. IS AN OPERATING AGREEMENT?

15 A. OPERATING AGREEMENT, YEAH. WE PREPARED AN
16 OPERATING AGREEMENT.

17 Q. WHA- ---

18 A. I DID THAT ACTUALLY. I PREPARED THE OPERATING
19 AGREEMENT AND THEY DIDN'T WANT TO SIGN IT. THEY
20 NEVER SIGNED IT.

21 Q. ALL RIGHT. NOW, WHY DID THEY NEVER SIGN IT?

22 A. I GUESS THEY COULDN'T GET THE FINANCING.

23 Q. WELL, WHAT, WHAT WERE -- WHAT WAS -- WHAT WERE
24 THEIR ROLES IN THIS PROPOSED AGREEMENT?

25 A. THEY WERE GOING TO GET ALL THE FINANCING TO

1 PURCHASE LYMAN FROM RICHARD BENNETT.

2 Q. ALL RIGHT. WAS THE THIRD GUY ELLIOTT EDWARDS?

3 A. YES, ELLIOTT EDWARDS. RIGHT.

4 Q. OKAY. NOW, WHEN IS IT THAT YOU AND ELLIOTT

5 EDWARDS AND DON MCWHIRTER FIRST EMBARKED UPON THIS

6 PROJECT?

7 A. I DON'T KNOW THE TIMING ON THAT.

8 Q. WELL, NOW -- THE -- DO YOU RECALL SIGNING AN

9 AGREEMENT TO PURCHASE THE PROPERTY?

10 A. I REMEMBER SIGNING AN AGREEMENT OF SOME SORT WITH

11 THEM -- A TWO (2) PAGE AGREEMENT. I REMEMBER

12 SIGNING SOMETHING.

13 Q. ALL RIGHT.

14 A. YEAH.

15 Q. WELL, LET'S JUST TAKE A LOOK AT ---

16 A. TO PURCHASE THAT PROPERTY? I DON'T THINK I

17 REMEMBER TO PURCHASE THAT PROPERTY THOUGH.

18 Q. I'LL ASK IF YOU WILL TAKE A LOOK AT--I THINK

19 LINDSAY'S GOT A COPY FOR YOU THERE ---

20 BY MR. CARRINGTON: (EXHIBIT BOOK SHARED WITH

21 THE WITNESS)

22 A. UH-HUH. (AFFIRMATIVE)

23 Q. --- A DOCUMENT THAT HAS BEEN PREVIOUSLY MARKED AS

24 DEFENDANT'S NUMBER ONE (1). WILL YOU TAKE A

25 MINUTE TO LOOK AT THAT?

- 1 A. YEAH. (UPON REVIEW) OKAY. RIGHT. I'M FAMILIAR
2 WITH THIS DOCUMENT.
- 3 Q. OKAY. DIRECTING YOUR ATTENTION TO THE LAST PAGE
4 OF THE EXHIBIT MARKED "D1," IS -- NO, YOU'VE
5 GOTTEN TOO FAR THERE (INDICATING).
- 6 A. OH, DID I? OKAY.
- 7 Q. IS THAT YOUR SIGNATURE IN BEHALF OF LYMAN PACIFIC?
- 8 A. YES.
- 9 Q. ALL RIGHT. THERE'S SEVERAL OTHER INITIALS DOWN
10 THERE AT THE BOTTOM. DO YOU RECOGNIZE THOSE?
- 11 A. YES.
- 12 Q. AND WHO, WHO IS -- WHO ARE THOSE?
- 13 A. ONE'S MINE, AND ONE IS RICHARD BENNETT'S.
- 14 Q. OKAY. NOW, THIS CONTRACT THAT'S SHOWN ON
15 DEFENDANT'S EXHIBIT NUMBER ONE (1) IS DATED APRIL
16 7TH, 2011. DOES THAT SOUND RIGHT TO YOU?
- 17 A. YEP, THAT SOUNDS ABOUT RIGHT.
- 18 Q. ALL RIGHT. DO YOU RECALL WHERE THIS DOCUMENT WAS
19 SIGNED?
- 20 A. YEP, IT WAS SIGNED AT A RESTAURANT.
- 21 Q. WOULD THAT BE STAX RESTAURANT IN GREENVILLE?
- 22 A. YEP. YEP, THAT'S WHERE IT WAS SIGNED.
- 23 Q. AND WHO WAS PRESENT AT THAT MEETING?
- 24 A. MYSELF, RICHARD AND ELLIOTT AND DON, ---
- 25 Q. ALL RIGHT.

1 A. --- THE FOUR (4) OF US.

2 Q. OKAY. WHEN YOU SIGNED THAT DOCUMENT IN BEHALF OF
3 LYMAN WAREHOUSE, DID ANYBODY OBJECT TO YOUR
4 AUTHORITY?

5 A. NO.

6 Q. ALL RIGHT. HOW LONG BEFORE APRIL THE 7TH OF 2011
7 DID YOU AND MR. MCWHIRTER AND MR. EDWARDS -- HOW
8 LONG BEFORE THAT DID YOU COMMENCE YOUR DISCUSSIONS
9 RELATIVE TO THIS?

10 A. BETWEEN US OR BETWEEN EVERYBODY?

11 Q. BETWEEN THE THREE (3) OF YOU?

12 A. MONTHS. THREE (3) OR FOUR (4) MONTHS PROBABLY.

13 Q. OKAY. WHAT, WHAT ROLES DID -- ROLE DID YOU HAVE
14 IN THIS PROPOSED ARRANGEMENT?

15 A. I PREPARED THE CONTRACT TO PURCHASE IT. I FOUND
16 THE PROPERTY. THEY WERE SUPPOSED TO COME UP WITH
17 THE FINANCING.

18 Q. ALL RIGHT.

19 A. ANY DEPOSIT MONIES.

20 Q. OKAY. NOW, DID THEY, DID THEY FAIL IN THEIR
21 DUTIES?

22 A. THEY ---

23 BY MR. PROTOPAPAS: OBJECT TO THE FORM.

24 A. THEY, THEY ---

25 Q. YOU CAN GO AHEAD AND ANSWER.

1 A. WELL, THEY CAME UP WITH THE DEPOSIT. THEN THEY
2 FAILED IN THEIR DUTIES TO COME UP WITH THE
3 REMAINING AMOUNT PURSUANT TO THE CONTRACT ---
4 Q. ALL RIGHT. NOW ---
5 A. --- TO PURCHASE THE PROPERTY.
6 Q. NOW, TELL ME WHAT DISCUSSIONS YOU'VE HAD WITH
7 EDWARDS OR MCWHIRTER RELATIVE TO COMING UP WITH
8 THE BALANCE OF THE MONEY FOR THE PURCHASE PRICE?
9 A. WELL, THEY HAD AN INVESTOR DOWN IN FLORIDA BY THE
10 NAME OF SETH--I FORGET HIS LAST NAME. WE WERE IN
11 CONSTANT COMMUNICATION WITH HIM, AND HE WAS ALSO
12 TALKING TO RICHARD FOR PROBABLY ABOUT A MONTH OR A
13 MONTH AND A HALF; AND HE HAD AN INVESTOR WHO WAS
14 GOING TO COME UP WITH THE MONEY AND ---
15 Q. WHO IS "HE" THAT YOU REFERRED TO, "HE" HAD AN
16 INVESTOR?
17 A. SETH. SETH HAD AN INVESTOR DOWN IN FLORIDA THAT
18 HE WAS TALKING TO AND ASSURED US -- ASSURED ALL OF
19 US THAT HE HAD CAPITAL TO PURCHASE THE PROPERTY,
20 AND I DON'T KNOW IF THAT -- I DON'T KNOW IF HE WAS
21 STILL IN THE DEAL AT THIS POINT; BUT REGARDLESS OF
22 THAT, DON MCWHIRTER HAD TWO (2) OR THREE (3)
23 PEOPLE UP IN NEW HAMPSHIRE THAT WERE GOING TO PUT
24 UP THE MONEY FOR THIS ---
25 Q. OKAY.

- 1 A. --- PROPERTY, AND THEY'RE IN THE SALVAGE --
2 THEY'RE IN THE STEEL AND SALVAGE BUSINESS UP
3 THERE.
- 4 Q. ALL RIGHT. AND SO WHILE, WHILE FINANCING WAS
5 BEING ATTEMPTED, WHAT HAPPENED NEXT?
- 6 A. THEY RENEGED. THEY, THEY DIDN'T PUT UP THE
7 BALANCE OF THE MONEY WHICH WAS OWED LYMAN,
8 ACCORDING TO THE TERMS OF THE CONTRACT, ---
- 9 Q. OKAY.
- 10 A. --- AND THE CONTRACT WAS BREACHED.
- 11 Q. ALL RIGHT. NOW, WERE THERE ANY -- WHO PUT UP THE
12 HUNDRED THOUSAND DOLLARS (\$100,000)?
- 13 A. DON MCWHIRTER.
- 14 Q. ALL RIGHT.
- 15 A. I THINK HE WROTE A CHECK.
- 16 Q. ALL RIGHT. DID HE -- WHO DID HE WRITE THAT IN
17 BEHALF OF?
- 18 A. I DON'T UNDERSTAND YOUR QUESTION.
- 19 Q. OKAY.
- 20 A. "BEHALF OF" WHAT? WHEN HE WROTE A CHECK?
- 21 Q. WELL, WITH REFERENCE ---
- 22 A. WELL, BE- -- ON BEHALF OF LYMAN PACIFIC, IF THAT'S
23 WHAT YOU MEAN.
- 24 Q. OKAY. NOW, I'LL ASK THAT YOU TAKE A LOOK AT THE
25 DOCUMENT THAT'S IN THAT BOOK AS DEFENDANT'S NUMBER

1 TWO (2) AND SEE IF YOU CAN IDENTIFY THAT?

2 A. (UPON REVIEW) RIGHT.

3 Q. ALL RIGHT. WHAT, WHAT IS THAT?

4 A. THAT'S A CONTRACT TO PURCHASE THE SAME PROPERTY ON

5 MAY 4TH BY MILLS DEMOLITION.

6 Q. ALL RIGHT. AND ON, ON THE LAST PAGE OF TYPING, IT

7 APPEARS TO BE EXECUTED BY SUSAN C. STANLEY; WHO IS

8 THAT?

9 A. THAT'S MY WIFE.

10 Q. ALL RIGHT. MILLS DEMOLITION, LLC, WHO ARE THE

11 OWNERS OR MEMBER OF THAT?

12 A. MY WIFE IS -- SHE'S A MEMBER. I MAY BE THE

13 MANAGER, BUT SHE'S A MEMBER.

14 Q. ALL RIGHT. WELL, IS SHE THE SOLE MEMBER?

15 A. I REALLY DON'T KNOW. I'D HAVE TO LOOK ON THE

16 DOCUMENTS.

17 Q. WAS THERE ANY- -- WAS THERE -- IS THERE ANYBODY

18 ELSE IN MILLS DEMOLITION, LLC ---

19 A. NO.

20 Q. --- OTHER THAN YOU AND/OR YOUR WIFE?

21 A. NO. NO.

22 Q. OKAY. NOW, WAS THIS -- WHY DID YOU PRESENT THIS,

23 THIS CONTRACT TO LYMAN WAREHOUSE?

24 A. BECAUSE LYMAN PACIFIC BREACHED THEIR CONTRACT.

25 THEY -- THESE PEOPLE COME U- -- COULDN'T COME UP

1 WITH THE REST OF THE MONEY, MCWHIRTER AND ELLIOTT.
2 Q. ALL RIGHT. WELL, ---
3 A. SO THIS WOULD'VE BEEN A BACK-UP CONTRACT.
4 Q. OKAY. WELL, WERE YOU ABLE TO COME UP WITH THE
5 MONEY ON YOUR OWN, YOU AND/OR YOUR WIFE?
6 A. AS FAR AS WHAT; THE DEPOSIT?
7 Q. WELL, THE DEPOSIT AND THE FULL PURCHASE PRICE.
8 A. WELL, THE DEPOSIT, YES. BUT THEN TO THE PURCHASE
9 PRICE, IT WASN'T CLOSED THAT WAY. IT WAS, IT WAS
10 PURCHASED BY SOMEBODY ELSE.
11 Q. A, A THIRD CONTRACT OR A -- OR DID YOU ASSIGN YOUR
12 RIGHTS IN THIS CONTRACT OR, OR WHAT?
13 A. I DON'T KNOW IF WE ASSIGNED OUR RIGHTS. THERE WAS
14 SOME DOCUMENTATION BACK -- I'M SURE WE SIGNED
15 SOMETHING.
16 Q. ALL RIGHT, WELL ---
17 A. YEAH.
18 Q. --- I JUST -- WAS THIS CONTRACT THAT'S SHOWN IN
19 EXHIBIT NUMBER TWO (2) CLOSED?
20 A. NO.
21 Q. OKAY.
22 A. THIS WAS NOT CLOSED.
23 Q. WHY WAS IT NOT CLOSED?
24 A. YOU MEAN, DID I PUT UP THE MILLION TWO
25 (\$1,200,000); DID MILLS DEMOLITION PUT UP THE

1 MILLION TWO (\$1,200,000) TO CLOSE THIS CONTRACT;
2 IS THAT WHAT YOU'RE ASKING ME? IS THAT YOUR
3 QUESTION?

4 Q. YES.

5 A. NO, THEY DIDN'T.

6 Q. OKAY. WELL, WAS IT CLOSED BY SOMEBODY AS ASSIGNEE
7 OF MILLS DEMOLITION?

8 A. NO.

9 Q. OKAY. WELL, WHAT HAPPENED TO THIS CONTRACT?

10 A. THIS CONTRACT WAS EVENTUALLY -- IT WAS EVENTUALLY
11 CLOSED BY ROBERT CHRISTOPH AND HIS COMPANIES.

12 Q. ALL RIGHT. AND WHO IS ROBERT CHRISTOPH?

13 A. HE IS -- I FORGET THE NAME OF HIS COMPANY NOW,
14 CHRISTOPH. I THINK IT'S CALLED CHRISTOPH.

15 Q. ALL RIGHT. AND WHAT, WHAT RELATIONSHIP DO YOU
16 AND/OR MILLS DEMOLITION HAVE WITH THAT COMPANY?

17 A. WELL, HE WAS BROUGHT TO ME, HE WAS BROUGHT TO ME
18 AS A POTENTIAL INVESTOR/BUYER FROM AN OUTFIT OUT
19 OF CHICAGO. IN THE INTERIM WHEN I FELT THAT
20 ELLIOTT AND MCWHIRTER WERE GOING TO HAVE PROBLEMS
21 FINDING THE MONEY, I FELT THAT IT WOULD BE BEST TO
22 SEE IF I CAN DO THE DEAL SO I WENT OUT THERE AND
23 LOOKED FOR OTHER PEOPLE.

24 Q. NOW, WHEN DID YOU START LOOKING FOR OTHER PEOPLE
25 TO DO THE DEAL?

1 A. AFTER I FELT THEY COULDN'T COME UP WITH THE MONEY.

2 Q. WAS THAT ---

3 A. THEY BROUGHT A COUPLE OF PEOPLE DOWN TO LYMAN, ---

4 Q. WAS THAT ---

5 A. --- A COUPLE OF THEIR INVESTORS.

6 Q. WAS THAT BEFORE OR AFTER THE, THE TERMINATION DATE
7 OF THE CONTRACT THAT WAS SHOWN IN EXHIBIT "D1"?

8 A. BEFORE THE TERMINATION DATE IN "D1"?

9 Q. RIGHT.

10 A. I DON'T REMEMBER. (REVIEWING DOCUMENTS) I REALLY
11 DON'T.

12 Q. WELL, WHILE YOU HAVE THAT BOOK OPEN, TAKE A LOOK
13 AT THE CHECK THAT'S SHOWN ON "D3."

14 BY THE WITNESS: WHOA. (TURNED COFFEE OVER)

15 BY MR. PROTOPAPAS: I'VE GOT A COUPLE OF
16 NAPKINS IF YOU NEED THEM.

17 BY THE WITNESS: THAT'S ALL RIGHT. THANKS,
18 THOUGH.

19 A. "D3." (UPON REVIEW) RIGHT.

20 Q. WHAT IS THAT?

21 A. THAT'S THE DEPOSIT CHECK THAT DON WHIRT- --
22 WHIRTER [SIC] PUT OUT AT THE, AT THE RESTAURANT.

23 Q. OKAY. MOVING ON TO EXHIBIT "D4," ---

24 BY THE WITNESS: I'M GOING TO GET RID OF THIS
25 BEFORE I SPILL IT. (THROWING COFFEE CUP AWAY)

1 A. PAGE FOUR (4)? OH, I'M SORRY ---

2 BY MR. CARRINGTON: (POINTING TO CORRECT
3 PAGE, EXHIBIT "D4")

4 Q. WOULD YOU TAKE A LOOK AT THAT?

5 A. YEAH.

6 Q. IS THAT, IS THAT YOUR LETTER?

7 A. (UPON REVIEW) THAT'S MY LETTER.

8 Q. AND THERE'S NO SIGNATURE ON IT. WAS THE ORIGINAL
9 SIGNED?

10 A. I DON'T KNOW.

11 Q. OKAY. HOW -- TELL ME HOW THIS LETTER CAME ABOUT
12 AND HOW IT WAS DELIVERED, IF YOU RECALL?

13 A. I DON'T REMEMBER HOW IT WAS DELIVERED.

14 Q. OKAY. WELL, DO YOU KNOW WHETHER IT WAS EVER
15 DELIVERED?

16 A. YEAH, I THINK IT WAS.

17 Q. OKAY. AND WHAT WAS THE PURPOSE OF THIS LETTER?

18 A. AS IT STATED.

19 Q. NOW, AT THE TIME THAT -- DID YOU AUTHOR THIS
20 LETTER?

21 A. HUH?

22 Q. DID YOU AUTHOR THIS LETTER?

23 A. DID I SIGN IT?

24 Q. I ASKED YOU DID ---

25 A. DID I AUTHOR IT? YES, I DID. I DID.

1 Q. AT THE TIME YOU AUTHORED THIS LETTER ON APRIL
2 30TH, 2011, WHO AT THAT TIME WERE THE OWNERS OF
3 LYMAN WAREHOUSE -- I MEAN OF LYMAN PACIFIC, LLC?
4 A. I WAS THE MANAGER AND THE OWNER.
5 Q. OKAY. WERE THE OTHER TWO (2), EDWARDS AND
6 MCWHIRTER, HAD THEY BEEN ADMITTED AT THAT TIME?
7 A. NO.
8 Q. WAS THERE ANYBODY ELSE THAT HAD ANY AUTHORITY AT
9 THAT TIME OVER LYMAN PACIFIC, LLC?
10 A. NO.
11 Q. NOW, TAKE A LOOK AT EXHIBIT "D5".
12 A. ALL RIGHT.
13 Q. DID YOU AUTHOR THAT LETTER?
14 A. (UPON REVIEW) YES, I DID.
15 Q. AND THE, THE EXTENSION THAT YOU REQUESTED, WAS IT
16 GRANTED?
17 A. I DON'T REMEMBER.
18 Q. WELL, WHAT, WHAT ROLE IF ANY DID MR. MCWHIRTER OR
19 MR. EDWARDS HAVE IN, IN THIS LETTER?
20 A. WHAT ROLE DID THEY HAVE?
21 Q. I MEAN DID --
22 A. THEY DIDN'T HAVE ANY ROLE.
23 Q. ALL RIGHT. WELL, THEY WERE -- THEY HAD -- ON MAY
24 THE 3RD, 2011, WERE THEY STILL TRYING TO FIND
25 FINANCING, OR HAD THEY ALREADY QUIT?

- 1 A. I REALLY DON'T REMEMBER TO TELL YOU THE TRUTH.
- 2 Q. OKAY. NOW, THE CONTRACT THAT YOU SIGNED IN BEHALF
- 3 OF MILLS DEMOLITION, WHICH WAS ULTIMATELY PASSED
- 4 ALONG IN SOME FORM OR FASHION TO THIS OTHER
- 5 FELLOW--WHAT WAS HIS NAME?
- 6 A. I DON'T KNOW WHO YOU'RE TALKING ABOUT.
- 7 Q. NOT, NOT -- THE ONE THAT ACTUALLY CLOSED IT,
- 8 ACTUALLY CLOSED THE SALE?
- 9 A. OH, CHRISTOPH.
- 10 Q. CHRISTOPH, YEAH. ALL RIGHT. DID YOU RECEIVE ANY
- 11 COMPENSATION FOR YOUR WORK IN THIS PROJECT FROM
- 12 CHRISTOPH?
- 13 A. YES.
- 14 Q. AND WHAT DID YOU RECEIVE?
- 15 A. WELL, WE RECEIVED THE DEPOSIT, A HUNDRED THOUSAND
- 16 (\$100,000), AND THEN I THINK WE GOT ANOTHER
- 17 HUNDRED THOUSAND (\$100,000). BUT THEN WE GIVE
- 18 BENNETT FIFTY THOUSAND (\$50,000). DID WE GET
- 19 ANOTHER FIFTY (\$50,000) OR HUNDRED THOUSAND
- 20 (\$100,000)? I'M NOT SURE. BUT THEN WE GAVE
- 21 BENNETT FIFTY THOUSAND (\$50,000). I MIGHT HAVE
- 22 THE FIGURES WRONG. BUT WE GOT A HUNDRED THOUSAND
- 23 (\$100,000) INITIALLY AS A DEPOSIT, THEN MORE ---
- 24 Q. YOU ---
- 25 A. --- OR LESS A SETTLEMENT OF AN ADDITIONAL HUNDRED

1 THOUSAND (\$100,000) I THINK IT WAS. YEAH.

2 Q. OKAY. NOW, TELL ME ABOUT THIS CHRISTOPH FELLOW.
3 YOU SAID YOU DON'T KNOW WHETHER HE HAS A
4 PARTICULAR COMPANY NAME OTHER THAN ONE BEARING HIS
5 NAME. WHERE IS HE FROM?

6 A. HE'S FROM MIAMI.

7 Q. AND HAD YOU DONE DEALS WITH HIM BEFORE?

8 A. NO.

9 Q. DOES, DOES THE COMPANY HOOK COMPANY RING A BELL?

10 A. NO.

11 Q. HOW IS IT THAT YOU CAME TO GET IN CONTACT WITH
12 CHRISTOPH?

13 A. I TOLD YOU THE GENTLEMAN -- SOME GENTLEMAN IN
14 CHICAGO BROUGHT HIM IN AS A--I'M TRYING TO THINK
15 OF THE TIME NOW--AS AN INVESTOR OR BUYER, I
16 FORGET. HE CAME AND LOOKED AT THE PROPERTY, AND
17 THEN THAT'S IT.

18 Q. WELL, AND THEN AFTER CHRISTOPH LOOKED AT THE
19 PROPERTY ---

20 A. HE SHOWED SOME INTEREST IN THE PROPERTY OBVIOUSLY.

21 Q. ALL RIGHT. AND DID YOU FLIP YOUR CONTRACT TO HIM,
22 MORE OR LESS?

23 BY MR. CARRINGTON: OBJECT TO FORM.

24 Q. HOW IS IT THAT HE GOT THE RIGHTS IN YOUR CONTRACT,
25 IN THE CONTRACT OF MILLS DEMOLITION, IF HE DID?

1 A. I DON'T KNOW IF HE GOT THE RIGHTS. THAT'S WHY I'M
2 HESITANT ABOUT THAT. I DON'T KNOW IF HE GOT THE
3 RIGHTS TO THE CONTRACT OR HE ENDED UP DOING THE
4 DEAL WITH, WITH LYMAN AND BENNETT ---

5 Q. OKAY.

6 A. --- AND THEN -- AND WE JUST HAD A SETTLEMENT
7 BECAUSE HE WAS AFRAID OF A LAWSUIT FROM ME. I
8 MEAN, I REALLY DON'T -- I REALLY DON'T KNOW HOW IT
9 WAS HANDLED, I MEAN, IF THERE'S SOME DOCUMENTS I
10 COULD LOOK AT THEM. I DON'T KNOW.

11 Q. WELL, DO YOU HAVE ANY DOCUMENTS THAT, THAT
12 INDICATE, INDICATE SUCH A THING?

13 A. INDICATE WHAT?

14 Q. INDICATE YOUR SETTLEMENT OR FINANCIAL ARRANGEMENTS
15 WITH CHRISTOPH?

16 A. UH, I THINK THERE'S SOME DOCUMENTS, YEAH.

17 Q. ALL RIGHT. HAVE YOU GIVEN THOSE TO YOUR ATTORNEY
18 IN RESPONSE TO VARIOUS ---

19 A. HE, HE WOULD HAVE WHATEVER I HAD.

20 BY MR. CARRINGTON: WE'LL PRODUCE ANYTHING
21 THAT WE HAVE.

22 A. WELL, WHATEVER WE HAVE WE'VE ALREADY GIVEN TO HIM.

23 BY MR. CARRINGTON: WE'LL PRODUCE ALL WE'VE
24 GOT, YEAH, ABSOLUTELY.

25 Q. OKAY. ALL RIGHT. WELL, HOW ABOUT TURNING YOUR

1 ATTENTION TO EXHIBIT NUMBER "D7" AND TAKE A LOOK
2 AT THAT FOR ME.

3 A. YEP. (UPON REVIEW) I'M FAMILIAR WITH THIS
4 DOCUMENT.

5 Q. ALL RIGHT. IT APPEARS TO BE -- ON PAGE EIGHT (8)
6 OF THAT DOCUMENT, IT APPEARS TO BE EXECUTED BY
7 YOU, YOUR WIFE IN YOUR INDIVIDUAL CAPACITIES AND
8 ALSO BY MILLS DEMOLITION AND LYMAN PACIFIC?

9 A. RIGHT.

10 Q. DID YOU EXECUTE IT IN BEHALF OF LYMAN PACIFIC?

11 A. YES.

12 Q. AT THAT TIME, ON MAY 27TH, 2011, WERE YOU STILL
13 THE SOLE MEMBER AND SOLE MANAGER OF THAT LLC,
14 LYMAN PACIFIC?

15 A. AS FAR AS I'M CONCERNED, YES.

16 Q. AND WAS YOUR WIFE, SUSAN STANLEY, STILL THE SOLE
17 OWNER OR MEMBER OF MILLS DEMOLITION, LLC?

18 A. YEP.

19 Q. AND WHAT WAS THE, WHAT WAS THE PURPOSE OF THIS
20 AGREEMENT?

21 A. TO GET MY FIFTY THOUSAND DOLLARS (\$50,000) BACK.

22 Q. AND WHAT WAS THE FIFTY THOUSAND DOLLARS (\$50,000)
23 FOR THE -- FOR WHICH CONTRACT?

24 A. THE DEPOSIT THAT I THINK MILLS DEMOLITION HAD ON
25 THE PROPERTY.

1 Q. IS THAT THE DEPOSIT THAT THEY HAD ON THE
2 PROPERTY ---
3 A. NO.
4 Q. --- AS INDICATED BY AGREEMENT "D2"?
5 A. I'M SORRY.
6 Q. TAKE YOUR TIME.
7 A. (UPON REVIEW) YES, YES, IT IS. THAT'S THE
8 DEPOSIT.
9 Q. (PAUSE - REVIEWING DOCUMENTS) ALL RIGHT. TAKE A
10 LOOK AT WHAT'S BEEN MARKED AS DEFENDANT'S NUMBER
11 NINE (9) IN THE EXHIBIT BOOK. TELL ME IF YOU
12 RECOGNIZE THAT LETTER?
13 A. (UPON REVIEW) I DON'T RECOGNIZE THIS LETTER.
14 Q. WELL, IS THAT YOUR SIGNATURE AT THE, AT THE BOTTOM
15 OF IT?
16 A. IT LOOKS LIKE MY SIGNATURE. LET ME READ IT.
17 Q. OKAY. TAKE YOUR TIME.
18 A. I MEAN, IT'S ODD THAT I WOULD PUT SOMETHING LIKE
19 THAT. I WOULD NEVER PUT SOMETHING LIKE THAT
20 THERE. I MEAN SOMEBODY'S NAME LIKE THAT.
21 Q. IS IT POSSIBLE YOU HAD SOME OTHER ATTORNEY DRAW
22 THIS LETTER UP FOR YOU?
23 A. NO. (PAUSE - FURTHER REVIEW OF DOCUMENT) I DON'T
24 REMEMBER DOING THIS. I DON'T THINK I DID THIS
25 LETTER. I DON'T THINK I DID THIS LETTER.

1 Q. ALL RIGHT. DESPITE THE FACT THAT YOU -- IT
2 APPEARS TO BE YOUR SIGNATURE?

3 A. WELL, YOU CAN DO ANYTHING NOWADAYS ON A COMPUTER,
4 YOU KNOW THAT.

5 Q. OKAY.

6 A. YEAH.

7 Q. WELL, ON PAGE TWO (2) THIS LETTER INDICATES THAT
8 LYMAN PACIFIC WAS ---

9 A. DO YOU HAVE THE ORIGINAL COPY OF THIS LETTER?

10 Q. I DON'T HAVE IT.

11 A. OKAY. PAGE TWO (2) WHAT?

12 Q. PAGE TWO (2) IT INDICATES THAT LYMAN PACIFIC
13 INTENDS TO REPAY MR. MCWHIRTER'S LOAN OF A HUNDRED
14 THOUSAND DOLLARS (\$100,000). WAS THAT EVER DONE?

15 A. NO, THAT WAS NEVER DONE 'CAUSE I DON'T THINK I DID
16 THIS, SO.

17 Q. WELL, I -- IT -- WHETHER, WHETHER YOU DID IT AS A
18 RESULT OF THIS LETTER OR NOT ---

19 A. NO.

20 Q. --- WAS, WAS MR. MCWHIRTER'S LOAN EVER REPAID TO
21 HIM BY LYMAN PACIFIC ---

22 A. NO.

23 Q. --- IN ANY FASHION?

24 A. NO, LYMAN PACIFIC NEVER PAID IT.

25 Q. OKAY. ARE YOU IN ANY OTHER LITIGATION WITH DON

1 MCWHIRTER OR EDWARDS OR CHRISTOPH OR ANYONE IN
2 CONNECTION WITH THIS PROJECT?

3 A. NOT THAT I KNOW OF.

4 Q. WELL, YOU ---

5 A. I HAVEN'T BEEN SERVED YET. (INDICATING TO MR.
6 CARRINGTON)

7 BY MR. CARRINGTON: (SHRUGGING SHOULDERS)

8 Q. OKAY. IN OTHER WORDS, MR. MCWHIRTER HASN'T SUED
9 LYMAN PACIFIC OR YOU FOR HIS, HIS MONEY?

10 A. NO, I DON'T THINK SO.

11 Q. WELL, I MEAN, YOU WOULD KNOW IF YOU'D BEEN SUED,
12 WOULDN'T YOU?

13 A. GOT A LOT OF LAWSUITS NOWADAYS. (CHUCKLE)

14 Q. THIS, THIS LETTER ---

15 A. NO, I DON'T THINK HE'S SUING ME.

16 Q. THIS, THIS LETTER THAT WE'VE BEEN RECENTLY
17 DISCUSSING, THE ONE THAT'S SHOWN THERE AS EXHIBIT
18 "D9," IS IT POSSIBLE THAT THAT CAME FROM YOUR E-
19 MAIL?

20 A. I JUST CAN'T SEE MYSELF DOING SOMETHING LIKE THIS.
21 I MEAN, THAT'S WHY I DON'T -- IT'S, IT'S JUST
22 VERY ODD.

23 Q. OKAY.

24 A. AND I JUST -- IT'S NOT SOMETHING I WOULD DO.

25 Q. WELL, ---

- 1 A. I WOULD JUST TYPE IT OUT AND I WOULDN'T BOX IT OR
2 ANYTHING. I WOULDN'T EVEN KNOW HOW TO BOX IT TO
3 BE HONEST WITH YOU, ON THE COMPUTER, SO.
- 4 Q. WELL, DO YOU HAVE ANY SECRETARIAL HELP THAT'S MORE
5 FAMILIAR WITH COMMUTER -- I MEAN, ---
- 6 A. NO, NO. (SHAKING HEAD NEGATIVELY)
- 7 Q. --- CORRESPONDENCE ON, ON AN E-MAIL AND THINGS OF
8 THAT NATURE?
- 9 A. I'M THE SECRETARY, BOTTLE WASHER.
- 10 Q. NOW, WAS THERE A, A DIFFERENCE IN -- TAKE A LOOK
11 AT DEFENDANT'S "D1" FOR ME AGAIN.
- 12 A. OKAY. (COMPLIES)
- 13 Q. WAS THAT -- IN THAT CONTRACT, WAS IT LYMAN
14 PACIFIC'S INTENT TO TAKE LEGAL TITLE TO THE ENTIRE
15 MILL PROPERTY?
- 16 A. YES.
- 17 Q. ULTIMATELY WHEN CHRISTOPH OBTAINED THE PROPERTY,
18 DO YOU KNOW WHAT KIND OF ARRANGEMENTS CHRISTOPH
19 HAD IN REGARD TO TITLE OR OTHERWISE?
- 20 A. THEY DEALT DIRECTLY WITH BENNETT AND HIS ATTORNEY.
- 21 Q. OKAY.
- 22 A. I HAVE NO IDEA.
- 23 Q. DO YOU KNOW WHETHER OR NOT THEY JUST BOUGHT THE
24 MATERIAL THAT WAS ON SITE AS OPPOSED TO TAKING
25 TITLE?

1 A. I HAVE NO IDEA WHAT THEY DID.

2 Q. OKAY.

3 A. I DON'T KNOW OF ANY CONTRACTS OR ANYTHING.

4 BY MR. PRUITT: I THINK I'M ABOUT DONE. LET
5 MET TALK TO YOU OUTSIDE JUST AT MINUTE, RICH.

6 (OFF RECORD @ 10:52 A.M. - 10:57 A.M.)

7 DIRECT EXAMINATION BY MR. PRUITT RESUMES:

8 Q. JUST A COUPLE OF MORE QUESTIONS. DO YOU -- YOU
9 INDICATED THAT WHEN YOU SETTLED WITH CHRISTOPH
10 THAT YOU HAD A BIG BUNCH OF DOCUMENTS OR
11 SOMETHING, SOME SETTLEMENT AGREEMENT?

12 A. THERE WAS A SETTLEMENT AGREEMENT WITH HIM THAT ---

13 Q. AND ---

14 A. --- I HAD TO SIGN.

15 Q. OKAY. AND WHO WAS IT AUTHORED THAT AGREEMENT?

16 A. HIS ATTORNEY.

17 Q. AND WHERE WAS -- WAS HIS ATTORNEY DOWN IN FLORIDA
18 SOMEWHERE?

19 A. YEAH.

20 Q. OKAY.

21 A. I HAVE A COPY OF THAT. I WOULD BE HAPPY TO GIVE
22 IT TO YOU IF YOU'D LIKE.

23 Q. OKAY. AND DO YOU LIKEWISE HAVE E-MAILS AND
24 CORRESPONDENCE BETWEEN YOU AND MCWHIRTER AND
25 EDWARDS?

1 A. NO.

2 Q. DON'T HAVE THAT?

3 A. NO.

4 Q. OKAY. WELL, HAVE YOU EVER HAD THAT?

5 A. YEAH.

6 Q. WELL, WHAT HAVE YOU DONE WITH THAT?

7 A. I ERASED IT ALL.

8 Q. AND WHEN DID YOU DO THAT?

9 A. MONTHS AGO. I JUST WANTED TO GET IT OUT OF MY

10 LIFE, THESE KNUCKLEHEAD PEOPLE.

11 Q. OKAY.

12 A. I HAD ENOUGH OF THEM.

13 Q. ALL RIGHT. WELL, DID YOU ALSO DISPOSE OF ANY

14 WRITTEN CORRESPONDENCE YOU HAD WITH THEM?

15 A. I DON'T THINK I HAD ANY WRITTEN CORRESPONDENCE

16 OTHER THAN WHAT, WHAT -- THE ONLY THING I THINK WE

17 HAD WAS THAT THING I PREPARED, THAT

18 ORGANIZATIONAL--I KEEP SAYING "ORGANIZATIONAL"--

19 BUT IT'S A ---

20 Q. OPERATING AGREEMENT?

21 A. --- OPERATING AGREEMENT. THAT'S THE ONLY THING I

22 THINK I EVER HAD.

23 Q. OKAY.

24 A. THERE MIGHT HAVE BEEN SOME COMMUNICATION GOING

25 BACK AND FORTH WITH SETH. THAT WAS THEIR FRIEND

1 DOWN IN FLORIDA. I JUST DELETED THE WHOLE
2 FREAKING FILE. I JUST HAD ENOUGH OF IT. IT
3 WASN'T A, IT WASN'T A GOOD EXPERIENCE FOR ME.

4 BY MR. PRUITT: OKAY. I BELIEVE THAT'S ALL
5 THE QUESTIONS I'VE GOT.

6 BY MR. PROTOPAPAS: I'VE GOT A PILE OF
7 DOCUMENTS.

8 BY MR. PRUITT: DO YOU WANT TO SIT HERE?

9 BY MR. PROTOPAPAS: YES. IS IT ALL RIGHT IF
10 I MOVE ON DOWN?

11 BY MR. PRUITT: I'LL LET YOU HAVE THIS SEAT,
12 AND YOU CAN SIT STRAIGHT ACROSS. WE CAN ALL JUST
13 SLIDE.

14 EXAMINATION BY MR. PROTOPAPAS:

15 Q. MR. STANLEY, MY NAME IS PETER PROTOPAPAS, AND I'M
16 A LAWYER FROM COLUMBIA, SOUTH CAROLINA. I
17 REPRESENT DON MCWHIRTER. I WANT TO TOUCH UP ON A
18 COUPLE OF THINGS THAT WERE AT THE FIRST PART OF
19 YOUR DEPOSITION. IS TODAY THE FIRST DAY THAT YOU
20 MET MR. PRUITT?

21 A. YES.

22 Q. HAD YOU SPOKE TO HIM ON THE PHONE PRIOR TO TODAY?

23 A. YES.

24 Q. AND HOW MANY HAD YOU DONE THAT, SIR?

25 A. ONCE.

1 Q. AND WHEN WAS THAT, SIR?

2 A. TWO (2) DAYS AGO.

3 Q. TWO (2) DAYS AGO. AND WHAT DID YOU ALL DISCUSS?

4 A. I ASKED HIM IF HE COULD DO THIS OVER THE PHONE

5 'CAUSE I WASN'T FEELING TOO GOOD.

6 Q. AND HIS RESPONSE WAS UNFORTUNATELY YOU HAD TO BE

7 HERE IN PERSON?

8 A. THAT'S RIGHT.

9 Q. OKAY. ANY OTHER CONVERSATIONS, SIR?

10 A. THAT'S IT.

11 Q. ALL RIGHT. DO YOU RECALL WHEN YOU FIRST MET MR.

12 EDWARDS?

13 A. WHEN I FIRST TALKED TO HIM OR WHEN I FIRST MET

14 HIM?

15 Q. WHEN YOU FIRST TALKED TO HIM, SIR?

16 A. I DON'T REMEMBER THE TIME AND DATE.

17 Q. DO YOU REMEMBER WHEN YOU FIRST MET HIM?

18 A. YEAH. HE CAME, HE CAME TO MY HOUSE IN GREENVILLE.

19 Q. YOUR HOUSE IN GREENVILLE. DOES YOU- -- DOES YOUR

20 HOUSE OPERATE AS YOUR OFFICE AS WELL, SIR?

21 A. YES.

22 Q. I SEE IT'S SUITE 240 ON SOME OF YOUR

23 CORRESPONDENCE; IS THAT HOME AS WELL?

24 A. THAT'S CORRECT.

25 Q. OKAY. AND DO YOU RECALL WHAT MONTH THAT WAS THAT

1 HE CAME TO SEE YOU?

2 A. IT WOULD HAVE TO BE -- WELL, IT WOULD HAVE TO BE
3 WHEN HE GAVE THE CHECK, WHATEVER THE CHECK DATE
4 WAS, THE DAY BEFORE THAT.

5 Q. THE FIRST TIME YOU MET THE GENTLEMAN WAS IN APRIL
6 2011 WHEN THE CHECK WAS WRITTEN?

7 A. YEAH, I BELIEVE SO.

8 Q. OKAY. IS THAT THE FIRST TIME YOU MET MR.
9 MCWHIRTER?

10 A. RIGHT.

11 Q. DO YOU RECALL ENTERING INTO A PARTNERSHIP
12 AGREEMENT WITH MR. EDWARDS?

13 A. THERE WAS A PAGE AND A HALF AGREEMENT WE PUT
14 TOGETHER, YES.

15 Q. OKAY. AND DO YOU RECALL WHAT THE TERMS OF YOUR
16 PARTNERSHIP AGREEMENT WERE?

17 A. I'D HAVE TO LOOK AT IT.

18 Q. SITTING HERE TODAY, YOU DON'T RECALL THAT?

19 A. I BELIEVE THAT THEY WERE SUPPOSED TO PUT UP THE
20 MONEY.

21 Q. PUT UP THE MONEY FOR WHAT, SIR?

22 A. WELL, I MEAN I HAVE TO LOOK AT IT.

23 Q. SO SITTING HERE TODAY, YOU CANNOT RECALL THE TERMS
24 OF YOUR PARTNERSHIP AGREEMENT WITH MR. EDWARDS?

25 A. IF YOU'LL SHOW ME THE DOCUMENT, I'LL BE HAPPY

1 TO ---

2 Q. ABSENT THE DOCUMENT, SIR, CAN YOU REMEMBER YOUR
3 OBLIGATIONS UNDER THE PARTNERSHIP AGREEMENT?

4 A. IF YOU'RE GOING TO GET BELLIGERENT WITH ME, I'M
5 GOING TO WALK OUT OF THIS ROOM HERE.

6 Q. SIR, YOU CAN DO WHATEVER YOU WANT. I WANT AN
7 ANSWER TO MY QUESTION. I'VE ASKED IT THREE (3)
8 TIMES. I'LL ASK IT FOUR (4). SITTING HERE TODAY,
9 DO YOU REMEMBER THE OBLIGATIONS YOU HAD UNDER THE
10 PARTNERSHIP AGREEMENT YOU SIGNED WITH ELLIOTT
11 EDWARDS?

12 A. SPECIFICALLY, NO.

13 Q. WHAT WAS THE PURPOSE OF THE PARTNERSHIP AGREEMENT,
14 SIR, RATHER THAN THE SPECIFICS?

15 A. THE PURPOSE WAS TO GET INTO A PARTNERSHIP.

16 Q. FOR WHAT?

17 A. TO DO SOME DEMOLITION TOGETHER.

18 Q. DEMOLITION OF WHAT TYPE OF BUILDINGS?

19 A. TEXTILE BUILDINGS.

20 Q. OKAY. AND THAT WAS A BUSINESS VENTURE THAT YOU
21 HAD NOT HAD PRIOR EXPERIENCE WITH, WAS IT?

22 A. THAT'S CORRECT.

23 Q. AND YOU WERE RELYING UPON THE EXPERTISE OF MR.
24 EDWARDS AND MR. MCWHIRTER FOR THE DEMOLITION OF
25 POTENTIAL TEXTILE MILLS?

- 1 A. UMM, POSSIBLY. I HAD OTHER PEOPLE INTERESTED IN
2 DOING THAT WITH ME.
- 3 Q. OKAY. BUT THOSE PEOPLE WERE THE ONES THAT HAD THE
4 KNOWLEDGE AND PRIOR EXPERIENCE WITH DEMOLISHING
5 BUILDINGS FOR SALVAGE?
- 6 A. I WOULD SAY SO.
- 7 Q. AND YOU ALL DISCUSSED SEVERAL BUILDINGS, DIDN'T
8 YOU SIR?
- 9 A. YES.
- 10 Q. ONE OF THEM BEING THE LYMAN WAREHOUSE BUILDING?
- 11 A. CORRECT.
- 12 Q. ONE OF THEM BEING THE PAVILOCK BUILDING IN
13 SPINDALE, NORTH CAROLINA?
- 14 A. CORRECT.
- 15 Q. THERE WAS A THIRD BUILDING THAT WAS DISCUSSED AS
16 WELL; WAS THERE NOT, SIR?
- 17 A. PROBABLY KERSHAW.
- 18 Q. KERSHAW. NOW, YOU CLOSED ON SPINDALE; DIDN'T YOU,
19 SIR?
- 20 A. YEAH.
- 21 Q. AND WAS MR. EDWARDS PART OF THAT CLOSING?
- 22 A. WAS MR. EDWARDS PART OF THAT CLOSING? NO, HE
23 WASN'T.
- 24 Q. NO. DID YOU TERMINATE YOUR PARTNERSHIP AGREEMENT
25 WITH MR. EDWARDS?

1 A. I DIDN'T HAVE A PARTNERSHIP AGREEMENT.

2 Q. YOU DIDN'T HAVE A SIGNED PARTNERSHIP AGREEMENT
3 WITH MR. EDWARDS? (RETRIEVING DOCUMENT) DID YOU
4 HAVE A SIGNED PARTNERSHIP ---

5 A. WE HAD, WE HAD A ---

6 Q. --- AGREEMENT?

7 A. --- IF YOU WANT TO CALL IT A PARTNERSHIP. WE HAD
8 AN AGREEMENT OF SOME SORT. IT WAS A PARTNERSHIP
9 AGREEMENT.

10 Q. WHAT'S MASTER STEEL, LLC?

11 A. THAT'S A COMPANY OUT OF NEVIS, ST. KITTS.

12 Q. AND WHO IS A MEMBER -- WHO IS THE OWNER OR MEMBER
13 OR WHATEVER?

14 A. I CONTROL THE COMPANY.

15 Q. IT'S YOUR COMPANY?

16 A. YEAH.

17 Q. IT'S A WEST INDIES COMPANY?

18 A. RIGHT.

19 BY MR. PROTOPAPAS: I APOLOGIZE, GENTLEMAN.

20 (DOCUMENTS DISTRIBUTED) I DIDN'T MAKE TONS OF
21 COPIES, BUT YOU CAN LOOK AT IT. (DOCUMENT
22 TENDERED TO REPORTER)

23 (DEFENDANT MCWHIRTER'S EXHIBIT "D10"

24 MARKED AND ENTERED)

25 Q. DO YOU SEE THE TITLE OF THE AGREEMENT, SIR?

1 (DOCUMENT HANDED TO WITNESS)

2 A. (UPON REVIEW) I DO.

3 Q. WHAT'S THE TITLE?

4 A. WHAT'S THE TITLE OR THE TOP?

5 Q. WHAT'S THE TOP; WHAT DOES IT SAY?

6 A. OH, "PARTNERSHIP AGREEMENT."

7 Q. "PARTNERSHIP AGREEMENT." AND THIS IS YOUR

8 LETTERHEAD; IS IT NOT, SIR?

9 A. IT IS.

10 Q. IT'S YOUR SIGNATURE ON PAGE TWO (2); IS IT NOT,

11 SIR?

12 A. IT IS.

13 Q. OKAY. SO YOU ENTERED INTO A PARTNERSHIP AGREEMENT

14 WITH ELLIOTT EDWARDS; DID YOU NOT, SIR?

15 A. YES, I DID.

16 Q. ALL RIGHT. AND IN THAT PARTNERSHIP AGREEMENT,

17 Y'ALL IDENTIFIED OPPORTUNITIES TO DEMOLISH TEXTILE

18 MILLS; DID YOU NOT, SIR?

19 A. YEAH.

20 Q. AND YOU DID NOT INCLUDE MR. EDWARDS, DID YOU SIR,

21 IN THE DEMOLITION OR PURCHASE A DEMOLITION OF

22 KERSHAW MILLS, DID YOU?

23 A. SAY THAT AGAIN?

24 Q. YOU DID NOT INCLUDE MR. EDWARDS IN THE PURCHASE

25 AND DEMOLITION OF KERSHAW MILLS; DID YOU, SIR?

1 A. LET ME READ THIS FIRST; OKAY?

2 Q. ABSOLUTELY.

3 A. (PAUSE - READING TO SELF FROM DEFENDANT
4 MCWHIRTER'S EXHIBIT "D10") ALL RIGHT. I'VE GOT
5 IT.

6 Q. OKAY. A MOMENT AGO YOU SAID THE FIRST TIME YOU
7 MET WITH MR. EDWARDS WAS IN APRIL OF 2011, BUT
8 APPARENTLY YOU DID HAVE CONVERSATIONS PRIOR TO
9 THEN WITH MR. EDWARDS; DID YOU NOT?

10 A. YEAH, I TOLD THE OTHER ATTORNEY THAT.

11 Q. OKAY. SO IN FEBRUARY -- AT LEAST AS OF FEBRUARY
12 9TH OF 2001, YOU HAD SUFFICIENT NUMBER OF
13 CONVERSATIONS TO ENTER INTO A PARTNERSHIP
14 AGREEMENT WITH HIM?

15 BY MR. CARRINGTON: OBJECT TO FORM.

16 Q. IS THAT FAIR?

17 A. I'D SAY THAT'S FAIR.

18 Q. OKAY. AND THE PURPOSE OF THE PARTNERSHIP
19 AGREEMENT WAS TO MEMORIALIZE THAT YOU AND MR.
20 EDWARDS AND SETH COOPER WERE GOING TO TRY TO MOVE
21 FORWARD DEMOLISHING MILLS IN AND AROUND SOUTH AND
22 NORTH CAROLINA; RIGHT?

23 A. SUBJECT TO CONDITIONS.

24 Q. SUBJECT TO CONDITIONS; WHICH CONDITIONS ARE WE
25 POINTING TO?

1 A. WE'RE POINTING TO THE CONDITION THAT, THAT W- --
2 EDWARDS WOULD TENDER AN OFFER DIRECTLY TO MR.
3 THOMAS COOPER [SIC], THE ASSOCIATE TRUSTEE, NUMBER
4 ONE (1); AND CONDITION TWO (2), THAT EDWARDS IS
5 AWARDED THE DEMOLITION CONTRACT FROM THE TRUSTEE.

6 Q. AND SO MR. EDWARDS WAS TO PROVIDE THE KNOW-HOW ON
7 DEMOLITION OF THE MILL ITSELF?

8 BY MR. CARRINGTON: OBJECT TO FORM.

9 A. MR. EDWARDS WAS SUPPOSED TO PUT UP THE MONEY TO
10 TENDER THE OFFER TO MR. THOMAS HARPER.

11 Q. AND ALSO TO BE IN CHARGE OF THE DEMOLITION JOB;
12 CORRECT?

13 A. CORRECT.

14 Q. AND THAT'S BECAUSE THAT'S WHERE HIS EXPERTISE LAY?

15 A. YEAH.

16 Q. OKAY. AND WHAT ENDED UP HAPPENING TO THE SPINDALE
17 MILL PROPERTY AND MR. EDWARDS; WHY WASN'T HE
18 INVOLVED WITH THAT?

19 A. BECAUSE HE NEVER GOT THE MONEY TOGETHER TO TENDER
20 AN OFFER TO THE TRUSTEE.

21 Q. NEVER GOT THE MONEY TOGETHER. AND IF HE HAD DONE
22 THAT, THEN THAT WOULD'VE TRIGGERED SOME
23 PARTNERSHIP OBLIGATION?

24 A. HE WAS WORKING WITH SETH COOPER, YEAH, AND SETH
25 COOPER WAS -- HE AND SETH COOPER WOULD GET THE

1 MONEY TOGETHER, YEAH. THAT WAS THE CONDITION OF
2 THE PARTNERSHIP AGREEMENT.

3 Q. YOU'RE SAYING -- SO YOU'RE SAYING IF HE HAD
4 TENDERED THE MONEY, IT WOULD HAVE THEN TRIGGERED
5 THE PARTNERSHIP AGREEMENT?

6 A. THAT'S WHAT IT SAYS HERE. (INDICATING DEFENDANT
7 MCWHIRTER'S EXHIBIT "D10")

8 Q. ALL RIGHT. THAT'S WHAT YOUR BELIEF IS, TOO?

9 A. THAT'S MY INTERPRETATION OF THIS DOCUMENT, YEAH.

10 Q. OKAY. AND YOU'RE SAYING BECAUSE HE DIDN'T TENDER
11 IT, THEN HE DIDN'T HAVE A ROLE TO PLAY IN
12 SPINDALE?

13 A. ABSOLUTELY.

14 Q. THAT'S WHAT YOU'RE SAYING?

15 A. I JUST SAID IT.

16 Q. OKAY. WELL, LET ME ASK YOU SIR, HE DID TENDER
17 MONEY IN ONE (1) DEAL, DIDN'T HE?

18 A. NO, HE DIDN'T.

19 Q. HE DIDN'T?

20 A. NO.

21 Q. HOW ABOUT WITH MR. MCWHIRTER AND MR. EDWARDS, DID
22 THEY NOT TENDER MONEY FOR THE LYMAN PACIFIC
23 PROPERTY AND LYMAN WAREHOUSE PROPERTY?

24 A. MCWHIRTER DID BUT, BUT ELLIOTT DIDN'T.

25 Q. WASN'T ELLIOTT ALSO SITTING AT THE TABLE THAT DAY?

- 1 A. YEAH.
- 2 Q. AND WASN'T HE SUPPOSED TO BE THE ONE TO DO THE
3 DEMOLITION WITH MR. MCWHIRTER OF THE LYMAN
4 WAREHOUSE PROPERTY?
- 5 A. RIGHT. BUT YOUR QUESTION WAS "DID HE PUT UP THE
6 MONEY?"; NO, MCWHIRTER DID. I'M AN- -- JUST
7 ANSWERING YOUR QUESTION.
- 8 Q. AND SO MR. MCWHIRTER ENDED UP TAKING OVER FOR SETH
9 COOPER, DIDN'T HE?
- 10 A. I DON'T KNOW WHAT THE RELATIONSHIP WAS.
- 11 Q. WELL, Y'ALL WENT FORWARD, THE THREE (3) OF YOU;
12 DIDN'T YOU? YOU, MR. MCWHIRTER AND MR. EDWARDS
13 WENT FORWARD, DID YOU NOT?
- 14 A. YES, WE DID, SURE.
- 15 Q. AND YOU WENT FORWARD ON THE LYMAN WAREHOUSE
16 PROPERTY, DID YOU NOT?
- 17 A. THAT'S CORRECT.
- 18 Q. AND MR. MCWHIRTER TENDERED THE ONE HUNDRED
19 THOUSAND DOLLARS (\$100,000) OF HIS MONEY, DID HE
20 NOT?
- 21 A. NO, IT WASN'T HIS MONEY.
- 22 Q. THE ONE HUNDRED THOUSAND DOLLAR (\$100,000) CHECK
23 WASN'T HIS MONEY?
- 24 A. THAT'S NOT WHAT HE SAID. HE S- ---
- 25 Q. WHAT DID HE SAY?

1 A. HE SAID HE, HE SAID HE BORROWED IT FROM ONE OF HIS
2 FRIENDS.
3 Q. HE SAID HE BORROWED IT FROM ONE OF HIS FRIENDS?
4 A. YES.
5 Q. ALL RIGHT. BUT WE KNOW THIS ---
6 A. IN FACT, -- NO, WE DON'T KNOW THAT. BECAUSE ---
7 Q. WELL, I'M GOING TO TELL YOU WHAT WE DO KNOW, SIR.
8 A. HE ASKED, HE ASKED -- LET ME ANSWER THE QUESTION.
9 IF YOU HAVE A QUESTION, ASK THE QUESTION.
10 Q. I HAVE A QUESTION.
11 A. HE ASKED MR., HE ASKED MR. BENNETT TO HOLD THE
12 CHECK FOR ABOUT A WEEK AND A HALF SO HE COULD PUT
13 THE MONEY SO HIS CHECK WOULD CLEAR.
14 Q. AND THE CHECK CAME OUT OF HIS CHECKING ACCOUNT,
15 RIGHT?
16 A. YEAH, THE CHECK CAME OUT OF HIS CHECKING ACCOUNT,
17 BUT HE NEEDED THE MONEY FROM HIS FRIEND IN ORDER
18 FOR HIS CHECK TO CLEAR.
19 Q. SO?
20 A. I'M JUST ANSWERING YOUR QUESTION. IF YOU WANT ME
21 TO -- DON'T -- NOT TECHNICAL -- BUT HE DIDN'T HAVE
22 -- IT WASN'T HIS MONEY. IT EVENTUALLY WAS HIS
23 MONEY, BUT IT WASN'T HIS MONEY THAT DAY. WHEN HE
24 WROTE THE CHECK, THERE WEREN'T CLEAR FUNDS.
25 Q. AND YOU'RE BASING THAT STATEMENT UPON A

1 CONVERSATION YOU HAD WITH MR. MCWHIRTER; RIGHT?
2 A. ON THE CONVERSATION MR. MCWHIRTER HAD WITH ALL OF
3 US AT THE TABLE AS I UNDERSTAND IT.
4 Q. BUT YOUR UNDERSTANDING IS FROM THAT CONVERSATION,
5 IS IT NOT?
6 A. RIGHT.
7 Q. YOUR UNDERSTANDING WAS THE MONEY DID CLEAR OUT OF
8 HIS CHECKING ACCOUNT, DID IT NOT?
9 A. I SUPPOSE SO.
10 Q. AND YOU HAVE NO FIRST-HAND KNOWLEDGE OF HOW THE
11 MONEY GOT INTO HIS CHECKING ACCOUNT; DO YOU?
12 A. OTHER THAN WHAT THEY SAID.
13 Q. OTHER THAN WHAT THEY SAID. SO IT'S NOT YOUR
14 MONEY, THOUGH; WE KNOW THAT, RIGHT? IT'S NOT YOUR
15 HUNDRED THOUSAND DOLLARS (\$100,000), IS IT; ---
16 A. RIGHT. RIGHT.
17 Q. --- IT'S NOT LYMAN PACIFIC'S HUNDRED THOUSAND
18 DOLLARS (\$100,000), IS IT?
19 A. UH-HUH. [SIC] (AFFIRMATIVE)
20 Q. IT'S NOT, IS IT?
21 A. NO.
22 Q. IN FACT, THE ONLY PERSON WHO HAD THE HUNDRED
23 THOUSAND DOLLARS (\$100,000) TO PUT FORWARD THAT
24 DAY -- THE ONLY PERSON WHO PUT THAT MONEY FORWARD
25 WAS MR. MCWHIRTER?

1 A. CORRECT.

2 Q. OKAY. AND YOU'D AGREE WITH ME THAT MR. MCWHIRTER
3 UPON CLOSING OF THE PROPERTY WITH LYMAN WAREHOUSE
4 WOULD BE THE ONE INTENDED TO DEMOLISH THIS -- THE
5 LYMAN WAREHOUSE PROPERTY?

6 A. CORRECT.

7 Q. AND THAT WAS WORK THAT HE WAS GOING TO DO TO
8 GENERATE REVENUE THAT WOULD THEN BE SPLIT AMONGST
9 THE THREE (3) OF YOU?

10 A. CORRECT.

11 Q. AND SO HE HAD A DIRECT ROLE TO PLAY IN THE
12 DEMOLITION OF THE PROPERTY?

13 A. YES.

14 Q. AND EVERYONE SITTING AT THE TABLE ON APRIL 7TH
15 WHEN THE CONTRACT WITH MR. BENNETT WAS RE-SIGNED
16 KNEW IT?

17 A. YEAH. CORRECT.

18 Q. THE CONTRACT WAS ORIGINALLY SIGNED IN MARCH OF
19 2011; DO YOU RECALL THAT?

20 A. I DO.

21 Q. AND IT WAS WITH SOMETHING CALLED GREG SHOALS
22 ACQUISITION; DOES THAT RING A BELL?

23 A. I DO REMEMBER THAT NAME, YEAH.

24 BY MR. PRUITT: EXCUSE ME, PETER. IS THAT
25 GOING TO BE CONSECUTIVELY NUMBERED TEN (10) AND

1 ELEVEN (11)?

2 BY MR. PROTOPAPAS: I HAVE NOT ASKED THE
3 YOUNG LADY.

4 BY THE COURT REPORTER: YES, SIR; PART OF THE
5 EXHIBIT BOOK.

6 BY MR. PROTOPAPAS: IS THAT OKAY?

7 BY MR. PRUITT: YEAH, THAT'S GREAT.

8 BY MR. PROTOPAPAS: DO YOU WANT TO TAKE TWO
9 (2) MINUTES? (DOCUMENT TENDERED TO REPORTER)

10 (DEFENDANT MCWHIRTER'S EXHIBIT "D11"

11 MARKED AND ENTERED)

12 (OFF RECORD @ 11:14 A.M. - 11:16 A.M.)

13 EXAMINATION BY MR. PROTOPAPAS RESUMES:

14 Q. I'LL HAND YOU "D11." (DOCUMENT HANDED TO WITNESS)

15 A. UH-HUH. (AFFIRMATIVE) (UPON REVIEW) RIGHT.

16 Q. OKAY. THIS IS A CONTRACT SIGNED WITH GREG SHOALS
17 ACQUISITIONS.

18 A. UH-HUH. (AFFIRMATIVE)

19 Q. WAS THERE A GENTLEMAN NAMED GREG SHOALS?

20 A. WELL (PAUSE) ---

21 Q. WHO -- DO YOU REMEMBER WHO YOU INTERACTED WITH FOR
22 THE "D11" CONTRACT?

23 A. YEAH, I -- RICHARD BENNETT.

24 Q. OKAY. DID HE EVER TELL YOU WHY IT CHANGED FROM
25 GREG SHOALS ACQUISITIONS TO LYMAN WAREHOUSE?

1 A. NO.

2 Q. DID YOU EVER ASK HIM?

3 A. NO. I HAD NOTH- -- DON'T KNOW ANYTHING ABOUT IT.

4 Q. YOU JUST KNOW THAT THERE WAS AN ORIGINAL CONTRACT

5 "D11" THAT LATER BECAME "D1"?

6 A. RIGHT, UH-HUH. (AFFIRMATIVE)

7 Q. HOW -- TELL ME TO THE BEST OF YOUR RECOLLECTION,

8 HOW DID IT GO FROM MARCH 21ST OF 2011 A GREG

9 SHOALS ACQUISITION TO APRIL 7TH OF 2011 LYMAN

10 WAREHOUSE, TO THE BEST OF YOUR RECOLLECTION?

11 A. I THINK WE'RE LOOKING FOR THE DEPOSIT MONEY

12 REALLY.

13 Q. THE DEPOSIT MONEY?

14 A. TO GIVE, TO GIVE ---

15 Q. GREG SHOALS?

16 A. NO, I DON'T -- TO GIVE ---

17 Q. LYMAN WAREHOUSE?

18 A. YEAH.

19 Q. I DON'T SEE LYMAN WAREHOUSE'S NAME ON "D11,"

20 THOUGH.

21 A. I DON'T EITHER.

22 Q. SO I'M ASKING YOU, TO THE BEST OF YOUR

23 RECOLLECTION, HOW DID IT GET FROM "D11" TO "D1"?

24 A. I HAVE NO IDEA. I GUESS IT WAS JUST LIKE ANY

25 OTHER REAL ESTATE DEAL. PEOPLE OWN DIFFERENT

1 NAMES. IT DIDN'T, IT DIDN'T MEAN ANYTHING TO ME
2 AT THE TIME TO BE HONEST WITH YOU.

3 Q. DO YOU RECALL IF ANYBODY APPROACHED YOU TO CHANGE
4 THE NAMES, OR DID YOU APPROACH MR. BENNETT TO
5 CHANGE THE NAMES?

6 A. NOBODY APPROACHED ANYBODY.

7 Q. IT JUST MAGICALLY WENT FROM GREG SHOALS
8 ACQUISITIONS TO LYMAN WAREHOUSE?

9 A. IT WENT FROM GREG SHOALS TO LYMAN WAREHOUSE
10 SOMEHOW.

11 Q. AND I'M JUST ASKING YOU IF YOU REMEMBER HOW?

12 A. I DON'T KNOW.

13 Q. YOU DON'T REMEMBER?

14 A. NO, I DON'T REMEMBER.

15 Q. OKAY.

16 A. I JUST KNEW IT WAS -- I JUST KNEW THERE WAS A --
17 YOU KNOW, THERE WAS A NAME CHANGE.

18 Q. DO YOU RECALL IF THERE WERE ANY CHANGES BETWEEN
19 "D11" AND ---

20 A. WELL, HERE YOU GO -- HERE YOU GO RIGHT HERE.
21 (INDICATING DEFENDANT LYMAN WAREHOUSE, LLC'S
22 EXHIBIT "D1") OKAY, IT'S COMING BACK TO ME.

23 Q. OKAY.

24 A. IT'S A YEAR, YOU KNOW, A YEAR AND A HALF AGO. IT
25 WAS, IT WAS PENCILED IN AT THE MEETING ---

1 Q. ON APRIL 7TH?

2 A. BUT -- YEAH, AT THE RESTAURANT.

3 Q. OKAY. AND SO ON MARCH 21ST THOUGH ---

4 A. AND I DIDN'T ASK WHY IT WAS DONE.

5 Q. OKAY. SO WHEN YOU ALL MET ON APRIL 7TH, DID YOU
6 KNOW BEFORE GETTING THERE THAT GREG SHOALS
7 ACQUISITIONS WAS CHANGED TO LYMAN WAREHOUSE?

8 A. NO.

9 Q. OKAY. THAT, THAT WAS -- THE FIRST TIME YOU KNEW
10 THAT WAS APRIL 7TH?

11 A. RIGHT.

12 Q. AND YOU CAN'T RECALL ANY EXPLANATION BEING GIVEN
13 TO YOU AS TO WHY THE CHANGE HAD TO BE MADE?

14 A. NO.

15 Q. ANY CHANGES -- OTHER THAN THE PARTIES TO THE
16 CONTRACT, ANY CHANGES BETWEEN "D1" AND "D11" THAT
17 YOU RECALL?

18 A. NO.

19 Q. ALL RIGHT. THE CLOSING DATE WAS MOVED?

20 A. RIGHT.

21 Q. OKAY. DO YOU RECALL THAT DISCUSSION?

22 A. I KNOW THERE WAS SOME TIME NEEDED, AND BENNETT WAS
23 -- HE WAS OKAY WITH THE EXTENDED PERIOD OF TIME.
24 HE WAS VERY NICE ABOUT THE WHOLE THING.

25 Q. OKAY. SO THERE WAS ADDITIONAL TIME NEEDED, AND

1 THAT WAS BROUGHT UP BY WHICH SIDE?

2 A. WELL, IT WOULD PROBABLY BE FROM OUR SIDE BECAUSE
3 THEY HAD TO LINE UP THE INVESTORS TO COME IN TO,
4 TO PAY THE BALANCE, YOU KNOW.

5 Q. DO YOU RECALL THERE BEING ANY OTHER CONTRACT OTHER
6 THAN THE GREG SHOALS ACQUISITION CONTRACT AS "D11"
7 OR THE LYMAN WAREHOUSE CONTRACT AS "D1" THAT
8 INVOLVED MCWHIRTER OR EDWARDS?

9 A. NO. (SHAKING HEAD NEGATIVELY)

10 Q. OKAY. ON -- DO YOU RECALL WHO -- WHO WAS
11 REPRESENT MR. BENNETT, IF YOU KNOW; WHAT LAWYER
12 WAS REPRESENTING MR. BENNETT?

13 A. I THINK IT WAS ---

14 Q. MR. THRELKELD?

15 A. YEAH, I THINK SO.

16 Q. OKAY. WAS THERE A LAWYER REPRESENTING YOU?

17 A. I DON'T THINK SO AT THAT TIME.

18 Q. OKAY.

19 A. I DON'T REMEMBER THE EXACT DATE.

20 Q. IF YOU LOOK AT "D1" IN THE BINDER THERE, ---

21 A. ALL RIGHT.

22 Q. --- PARAGRAPH FOUR (4).

23 A. "D1" PARAGRAPH FOUR (4)?

24 Q. YES, SIR. IT'S ON THE SECOND PAGE.

25 A. ALL RIGHT.

1 Q. YOU SEE WHERE IT SAYS "THE SELLER SHALL FURNISH,"
2 THE LAST TWO (2) SENTENCES OF PARAGRAPH FOUR (4)?

3 A. OH -- (READING FROM DOCUMENT) "THE SELLER SHALL
4 FURNISH TO THE PURCHASER ANY ABSTRACTS OF TITLE OR
5 OTHER DOCUMENTS IN ITS POSSESSION THAT WILL
6 FACILITATE OBTAINING OF TITLE INSURANCE."

7 Q. OKAY. DID MR. BENNETT EVER PROVIDE THAT?

8 A. GEEZ, I DON'T REMEMBER.

9 Q. OKAY. DID MR. BENNETT EVER ADVISE YOU THAT THE
10 PROPERTY WAS IN FORECLOSURE?

11 A. UH, (PAUSE) ---

12 Q. PRIOR TO SIGNING "D1"?

13 A. I DON'T REMEMBER.

14 Q. THAT'S FINE. LOOK, "I DON'T REMEMBER" IS A FINE
15 ANSWER. I, I UNDERSTAND IT AND I'M NOT MAD AT YOU
16 FOR NOT REMEMBERING.

17 A. ALL RIGHT.

18 Q. I'M JUST -- IF I DON'T ASK THE QUESTION ---

19 A. WELL, YOU GOT PRETTY EXCITED BEFORE; ---

20 Q. --- I WON'T KNOW.

21 A. --- I JUST WANTED TO MAKE SURE YOU CALMED DOWN A
22 LITTLE BIT.

23 Q. I'M ALWAYS EXCITED. THE -- DO YOU REMEMBER IF IT
24 WAS IMPORTANT TO YOU THAT LYMAN WAREHOUSE BE ABLE
25 TO GIVE A CLEAN, FEE SIMPLE TITLE TO THE PROPERTY

- 1 AT ISSUE AS SET FORTH AT THE TOP OF PAGE TWO (2)?
- 2 A. IT'S ALWAYS IMPORTANT, YOU KNOW.
- 3 Q. OKAY.
- 4 A. BUT THAT WAS ONLY A POR- -- PORTION OF THE
- 5 PROPERTY ---
- 6 Q. RIGHT.
- 7 A. --- THAT WE WERE BUYING, YOU KNOW.
- 8 Q. RIGHT. AND YOU WANTED CLEAN TITLE TO THAT
- 9 PROPERTY?
- 10 A. RIGHT.
- 11 Q. HAVE YOU EVER HAD ANY EXPERIENCE WITH
- 12 FORECLOSURES?
- 13 A. A LOT.
- 14 Q. IS THERE CLEAN TITLE WHEN A PROPERTY IS IN
- 15 FORECLOSURE; IF YOU KNOW?
- 16 A. THERE'S A "YES" OR "NO" ANSWER TO THAT.
- 17 Q. THE, THE FORECLOSING PARTY HAS TO BE DEALT WITH?
- 18 A. RIGHT.
- 19 Q. ABSENT THAT, THERE'S NO CLEAN PROPER- -- THERE'S
- 20 NO CLEAN TITLE; CORRECT?
- 21 A. CORRECT.
- 22 Q. OKAY. LOOK AT, LOOK AT PARAGRAPH FIFTEEN (15) FOR
- 23 ME, IF YOU DON'T MIND, OF "D1."
- 24 A. (COMPLIES)
- 25 Q. DO YOU KNOW IF MR. BENNETT BROUGHT THE CONTRACT

1 AND YOU ALL WENT THROUGH IT, OR DID YOU WRITE THE
2 CONTRACT AND THEN HE WENT THROUGH IT?

3 A. WHICH CONTRACT ARE YOU TALKING ABOUT?

4 Q. I'M SORRY, "D1."

5 A. THIS ONE HERE? (INDICATING)

6 Q. THE DEFENSE EXHIBIT ONE (1).

7 A. OH. (UPON REVIEW) DID HE -- OH HE, HE PREPARED
8 THIS CONTRACT, I THINK.

9 Q. OKAY. WILL YOU LOOK AT PARAGRAPH FIFTEEN (15)
10 THEN PLEASE?

11 A. YEAH.

12 Q. THERE'S A PARAGRAPH THAT'S CALLED "REMEDIES FOR
13 BREACH," IT'S THE HEART OF WHY WE'RE HERE TODAY;
14 OKAY?

15 A. OKAY.

16 Q. TAKE A SECOND AND READ IT.

17 A. (PAUSE - READING TO SELF) YEAH, OKAY.

18 Q. OKAY. AND THE SELLER IN THAT PARAGRAPH IS LYMAN
19 WAREHOUSE?

20 A. NO, THE PURCHASER IS -- OH YES, THE PUR- -- RIGHT.
21 THE SELLER IS LYMAN WAREHOUSE.

22 Q. PURCHASER LYMAN PACIFIC?

23 A. RIGHT.

24 Q. OKAY. AND WAS THE INTENT OF THAT PARAGRAPH TO
25 LIMIT THE EXPOSURE OF LYMAN PACIFIC TO WHATEVER

1 WAS PAID OR ON DEPOSIT THAT WOULD BE THE MOST
2 MONEY LYMAN PACIFIC WOULD EVER HAVE TO PAY MR.
3 BENNETT?

4 A. YES.

5 Q. AND THAT HE WOULD HAVE TO PROVE UP TO THAT ONE
6 HUNDRED THOUSAND DOLLAR (\$100,000) DAMAGE?

7 A. CORRECT.

8 Q. OKAY. PARAGRAPH FIFTEEN (15) ---

9 A. IN OTHER WORDS, THAT WAS THE LIQUIDATED DAMAGES
10 FOR IT.

11 Q. SO -- AND YOU SEE IT AS A LIQUIDATED DAMAGES
12 CLAUSE?

13 A. I'M -- WHAT I'M SAYING IS THAT IF WE DIDN'T CLOSE
14 -- WHEN I SAY, "WE" -- IF LYMAN, IF LYMAN PACIFIC
15 DID NOT CLOSE, BENNETT KEEPS THE MONEY. THAT'S
16 WHAT I'M SAYING.

17 Q. UP TO THE AMOUNT OF HIS DAMAGES; RIGHT?

18 A. UP TO THE AMOUNT OF HIS DAMAGES -- I MEAN, THAT'S
19 UP TO HIM WHAT HE THINKS HIS DAMAGES ARE. I'M
20 JUST SAYING THAT MY INTERPRETATION OF THAT IS WE
21 PUT UP A HUNDRED THOUSAND DOLLARS (\$100,000) AND
22 WE DON'T CLOSE, THEY GET THE MONEY.

23 Q. HOW DID YOU COME UP WITH THE HUNDRED THOUSAND
24 DOLLAR (\$100,000) FIGURE PRIOR TO SIGNING THE
25 CONTRACT?

- 1 A. HE ASKED FOR A HUNDRED THOUSAND (\$100,000).
- 2 Q. ALL RIGHT. THERE WAS NO DISCUSSION AS TO HOW HE'D
- 3 BE INJURED IF IT DIDN'T CLOSE IN THIRTY (30) DAYS,
- 4 WAS, ---
- 5 A. NO.
- 6 Q. --- WAS THERE?
- 7 A. NO.
- 8 Q. THERE WAS NO PREDICTION AS TO WHAT IMPACT IT WOULD
- 9 HAVE ON LYMAN WAREHOUSE, WAS THERE?
- 10 A. NO.
- 11 Q. OKAY. IT WAS JUST A NUMBER KIND OF PULLED OUT OF
- 12 THE AIR?
- 13 A. I THINK HE JUST WANTED TO SEE IF WE'RE REAL; IF WE
- 14 DON'T HAVE A HUNDRED THOUSAND DOLLARS (\$100,000),
- 15 WE DON'T HAVE A MILLION TWO (\$1,200,000). IT'S
- 16 JUST A NUMBER HE CAME UP ---
- 17 Q. OKAY.
- 18 A. --- PUT A HUNDRED GRAND (\$100,000) DOWN.
- 19 Q. DO YOU, SITTING HERE TODAY, KNOW WHETHER OR NOT
- 20 MR. BENNETT SUFFERED ONE HUNDRED THOUSAND DOLLARS
- 21 (\$100,000) OF DAMAGES FROM THE BREACH OF THIS
- 22 CONTRACT?
- 23 A. I DON'T KNOW WHAT HIS DAMAGES ARE.
- 24 Q. OKAY.
- 25 A. IT'S UP TO HIM WHAT HE THINKS IT IS.

1 Q. AND SO YOU WERE USING PARAGRAPH FIFTEEN (15) TO
2 LIMIT LYMAN PACIFIC'S EXPOSURE?

3 A. I'M -- WHAT I'M SAYING IS MY INTER- -- MY
4 INTERPRETATION OF, OF FIFTEEN (15) IS THAT -- I
5 MEAN ALL THE DEALS THAT I'VE, I'VE BEEN -- I'VE
6 BEEN IN THE REAL ESTATE BUSINESS FOR A LONG TIME.
7 I MEAN, I'VE HAD A LOT OF CONTRACTS. IF I PUT UP
8 THE DEPOSIT AND I DON'T CLOSE, THE GUY KEEPS THE
9 MONEY.

10 Q. THAT'S THE WAY IT WORKS?

11 A. IT'S ALWAYS WORKED FOR ME THAT WAY.

12 Q. OKAY. AND YOU DIDN'T WANT TO BE ON THE HOOK FOR
13 ANYTHING MORE THAN THAT HUNDRED THOUSAND DOLLARS
14 (\$100,000); THAT'S WHY YOU'VE LIMITED IT WITH
15 PARAGRAPH THIR- -- FIFTEEN (15)?

16 A. I DIDN'T REALLY THINK ABOUT IT THAT WAY BECAUSE
17 YOU, YOU HAD A COMPANY THAT DOESN'T HAVE ANY
18 ASSETS TO US, FOR ME -- TO ME THE LIMITED
19 LIABILITY OF THAT COMPANY WOULD HAVE BEEN THE
20 HUNDRED THOUSAND DOLLARS (\$100,000) WE PUT UP.

21 Q. BECAUSE ---

22 A. BECAUSE ---

23 Q. --- LYMAN PACIFIC ---

24 A. --- LYMAN PACIFIC DIDN'T -- BECAUSE ELLIOTT AND
25 THE OTHER FELLOW DIDN'T COME UP WITH THE OTHER

1 MILLION TWO (\$1,200,000).

2 Q. IS, IS IT YOUR UNDERSTANDING, THOUGH, THAT'S THE
3 WAY IT WORKS IS THE HUNDRED THOUSAND DOLLARS
4 (\$100,000) GETS FORFEITED, FORFEITED WITHOUT ANY
5 PROOF BY MR. BENNETT AS TO WHAT HIS DAMAGES WERE?

6 A. MY INTERPRETATION -- THE WAY I'VE ALWAYS DONE IT,
7 YOU PUT UP A DEPOSIT YOU LOSE YOUR DEPOSIT. I
8 MEAN I DON'T HAVE ANY DOG IN THIS HUNT HERE. I
9 REALLY DON'T CARE. BUT THAT'S WHAT USUALLY --
10 THAT'S, THAT'S USUALLY IN ALL THE REAL ESTATE
11 DEALINGS THAT I HAVE, UNLESS THERE'S SOME SORT OF
12 SET-OFF IF SOMEBODY DIDN'T DO ANYTHING PURSUANT TO
13 THE CONTRACT OR SOMETHING LIKE THAT, THEN THAT'S
14 WHAT A DEPOSIT'S FOR.

15 Q. I WANT YOU TO TAKE A LOOK AT DEFENSE EXHIBIT
16 NUMBER SEVEN (7). (DOCUMENT HANDED TO WITNESS)

17 A. OKAY. "D7," HUH?

18 Q. YEAH.

19 A. ALL RIGHT.

20 Q. NOW, IT'S MY UNDERSTANDING THAT MILLS PUT UP FIFTY
21 THOUSAND DOLLARS (\$50,000)?

22 A. CORRECT.

23 Q. IT'S MY UNDERSTANDING THAT YOU TOOK BACK TWENTY-
24 TWO THOUSAND DOLLARS (\$22,000)?

25 A. THEY GAVE ME A CHECK FOR TWENTY-TWO THOUSAND

- 1 (\$22,000) AND SOME CHANGE, YEAH.
- 2 Q. OKAY. SO YOU DIDN'T FORFEIT YOUR WHOLE DEPOSIT ON
- 3 THAT; DID YOU?
- 4 A. NO, I DIDN'T.
- 5 Q. NOW, IN THE CONTRACT YOU SIGNED, WHICH IS "D2"--
- 6 LOOK AT "D2" FOR A SECOND, SIR.
- 7 A. (UPON REVIEW) OKAY.
- 8 Q. AND GO TO PARAGRAPH ---
- 9 A. I THOUGHT I WAS GOING TO LOSE MY DEPOSIT.
- 10 Q. BUT YOU DIDN'T?
- 11 A. BUT I THOUGHT I WAS.
- 12 Q. BUT YOU DIDN'T, DID YOU?
- 13 A. NO, I THINK HE WAS AFRAID OF GETTING A LAWSUIT ---
- 14 Q. AND, AND ---
- 15 A. --- AND TYING UP THE MONEY, SO HE WAS KIND ENOUGH
- 16 TO SETTLE IT.
- 17 Q. AND YOU FOUGHT FOR IT; YOU WANTED THAT MONEY?
- 18 A. DAMN RIGHT I DID.
- 19 Q. LOOK AT PARAGRAPH FOURTEEN (14).
- 20 A. BUT I DIDN'T FEEL I WAS ENTITLED TO IT. I FELT
- 21 I'D PUT IT TO THE DEPOSIT AND I THOUGHT I WAS
- 22 GOING TO LOSE THE WHOLE FIFTY (\$50,000).
- 23 Q. SO YOU JUST TOOK MONEY YOU WEREN'T ENTITLED TO?
- 24 A. YOU GUYS DO EVERY DAY.
- 25 Q. I EARN EVERY DOLLAR I MAKE.

- 1 A. YEAH, ME TOO.
- 2 Q. LOOK AT PARAGRAPH FOURTEEN (14)?
- 3 A. "D2," PARAGRAPH FOURTEEN (14). (UPON REVIEW)
- 4 IT'S THE SAME PARAGRAPH, ISN'T IT?
- 5 Q. IT'S THE SAME PARAGRAPH, ISN'T IT? THAT'S MY
- 6 QUESTION; YOU READ MY MIND. IT'S THE SAME
- 7 PARAGRAPH AND YOU WERE ABLE TO GET TWENTY-TWO
- 8 THOUSAND (\$22,000) AND CHANGE ON PARAGRAPH
- 9 FOURTEEN (14); RIGHT?
- 10 A. WELL, I'M GOOD.
- 11 Q. BUT YOU WEREN'T GOOD ---
- 12 A. BUT HE'S A GOOD GUY.
- 13 Q. --- ON MAY 7TH, WERE YOU?
- 14 A. HE WAS A GOOD GUY.
- 15 Q. BUT YOU WEREN'T GOOD FOR DON MCWHIRTER FOR A
- 16 HUNDRED THOUSAND DOLLARS (\$100,000), WERE YOU?
- 17 YOU DIDN'T PUT UP THAT SAME FIGHT, DID YOU?
- 18 A. WELL, FROM WHAT I HEARD IS HE MADE HIM AN OFFER.
- 19 Q. WHO MADE WHO AN OFFER?
- 20 A. BENNETT.
- 21 Q. OF HOW MUCH MONEY?
- 22 A. THEY WANTED TO SETTLE IT.
- 23 Q. FOR WHAT?
- 24 A. YOU KNOW. THEY MADE YOU THE SAME OFFER.
- 25 Q. I HAVE NO IDEA WHAT YOU'RE TALKING ABOUT.

1 A. ON THE HUNDRED THOUSAND DOLLAR (\$100,000) DEPOSIT.
2 Q. I HAVE NO IDEA WHAT YOU'RE TALKING ABOUT.
3 A. WELL, ACCORDING TO, ACCORDING TO THE, THE
4 KNOWLEDGE THAT I HAVE IS THAT THEY WANTED THIS
5 HUNDRED THOUSAND DOLLARS (\$100,000) OFFER WANTED
6 TO BE NEGOTIATED, AND I THINK THAT IT -- AND I
7 REMEMBER ACTUALLY BENNETT TALKING TO ME AT SOME --
8 ONE POINT SAYING THAT HE WOULD LOVE TO SETTLE THIS
9 THING AND GET -- BE DONE WITH THIS THING.
10 Q. AND WHEN WAS THIS?
11 A. A YEAR AGO MAYBE, A HALF A YEAR. I DON'T KNOW THE
12 EXACT DATE.
13 Q. OKAY. WELL, WE'RE SITTING IN NOVEMBER OF 2012, SO
14 PRIOR TO A LAWSUIT BEING FILED IN JANUARY OF 2012,
15 THERE WAS A DISCUSSION TO RESOLVE THE HUNDRED
16 THOUSAND DOLLARS (\$100,000) SITTING IN MR.
17 THRELKELD'S BANK ACCOUNT?
18 A. ALL RIGHT.
19 Q. IS THAT, IS THAT YOUR RECOLLECTION; IS THAT FAIR?
20 A. LISTEN, I HAD THE -- YEAH, THAT'S FAIR.
21 Q. I'M TRYING -- I'M JUST TRYING TO PUT IT IN A
22 TIMELINE.
23 A. ALL RIGHT.
24 Q. JANUARY I HAVE A LAWSUIT.
25 A. ALL RIGHT.

1 Q. MAY I HAVE A CLOSING THAT DIDN'T TAKE PLACE, SO IT
2 HAD TO BE BETWEEN MAY AND JANUARY THEN?
3 A. I GUESS SO, ---
4 Q. OKAY.
5 A. --- YEAH.
6 Q. AND THERE WAS -- AND TELL ME AGAIN THE DISCUSSION
7 WAS HOW TO RESOLVE THE ONE HUNDRED THOUSAND
8 DOLLARS (\$100,000) SITTING IN MR. THRELKELD'S BANK
9 ACCOUNT?
10 A. I THINK RICHARD SAID HE'D, HE'D GIVE THEM PROBABLY
11 A LITTLE BIT MORE THAN HALF, HALF OF THE MONEY
12 BACK. NO, SIXTY (\$60,000). I THINK IT WAS SIXTY
13 THOUSAND DOLLARS (\$60,000) HE WANTED TO KEEP AND
14 GIVE THEM THE FORTY THOUSAND DOLLARS (\$40,000).
15 Q. FORTY THOUSAND (\$40,000) TO WHICH PARTY AGAIN?
16 I'M, I'M -- I DON'T THINK I FOLLOW YOU. FORTY
17 (\$40,000) GOES TO WHO?
18 A. FORTY (\$40,000) GOES BACK TO LYMAN PACIFIC.
19 Q. WELL, WHICH ESSENTIALLY IS MR. MCWHIRTER?
20 A. YEAH, BASICALLY.
21 Q. OKAY. AND THE SIXTY (\$60,000) GOES TO MR. BENNETT
22 AND LYMAN WAREHOUSE?
23 A. WHOMEVER IT IS, YEAH.
24 Q. THAT WAS THE OFFER THAT WAS MADE?
25 A. THAT WAS THE OFFER THAT, THAT I HEARD, YEAH. I

1 FIND HIM A PRETTY REASONABLE GUY MYSELF. I MEAN,
2 HE'S A DEAL GUY. HE'S A REAL ESTATE GUY. HE'S,
3 HE'S -- HE DOESN'T WANT TO BE IN THIS ROOM JUST
4 LIKE I DON'T WANT TO BE IN THIS ROOM. HE'S ALWAYS
5 BEEN FAIR WITH, FAIR WITH ME AND FAIR WITH US AND
6 ANY TIME WE NEEDED AN EXTENSION ON THIS THING HE
7 GAVE IT TO US. HE DIDN'T HAVE TO DO IT.
8 Q. HE GAVE YOU EVERY EXTENSION YOU REQUESTED?
9 A. I DON'T KNOW IF HE HAD GIVEN US EVERY EXTENSION,
10 BUT HE CERTAINLY GAVE US ---
11 Q. ONE (1).
12 A. UH, ---
13 Q. OKAY. WELL, LET'S LOOK AT THE CONTRACT.
14 A. I THINK HE WAS VERY REASONABLE.
15 Q. LOOK AT EXHIBIT ONE (1).
16 A. THERE WAS NEVER ANY PRESSURE PUT ON BY, BY BENNETT
17 TO -- ALL HE WANTED TO DO IS A DEAL.
18 Q. LET'S GO WITH THIS IDEA OF AN EXTENSION. IN
19 EXHIBIT ONE (1), IT IS SUPPOSED TO HAVE A CLOSING
20 DATE OF WHEN? IT'S EXHIBIT ONE (1). WHAT'S THE
21 CLOSING DATE?
22 A. (UPON REVIEW) MARCH. THAT'S AN EXTENSION.
23 Q. I'M SORRY. I SAID THE CLOSING DATE.
24 A. PARDON ME?
25 Q. I SAID THE CLOSING DATE. LOOK AT PAGE TWO (2) ---

1 A. OKAY.

2 Q. --- AND PARAGRAPH THREE (3). LOOK AT "CLOSING

3 WILL BE ON OR BEFORE" WHAT DAY?

4 A. PARAGRAPH THREE (3). WHERE IS IT, RIGHT HERE?

5 (INDICATING)

6 Q. YEAH, LOOK, IT SAYS MAY 7, 2011.

7 A. OKAY, RIGHT HERE. RIGHT.

8 Q. ALL RIGHT. SO THE CLOSING DATE WAS MAY 7, 2011.

9 THE ---

10 A. IT WAS ORIGINALLY, IT WAS ORIGINALLY FOR -- PRIOR

11 TO THIS HE WAS TALKING TO SETH COOPER, BUT ---

12 Q. I'M NOT SURE WHERE YOU'RE GOING, BUT I JUST WANT

13 TO ASK A QUESTION.

14 A. WELL, YOU ASKED ME ---

15 Q. MY QUESTION IS A VERY SIMPLE ONE. ON APRIL 7TH OF

16 2011 THE CLOSING DATE WAS SET FOR MAY 7TH OF 2011;

17 IS THAT RIGHT?

18 A. (UPON REVIEW) THAT'S CORRECT.

19 Q. ALL RIGHT. AND WAS IT EVER MOVED FROM MAY 7TH OF

20 2011?

21 A. NO.

22 Q. OKAY. SO WE KNOW THERE WAS NO EXTENSIONS AFTER

23 APRIL 7TH OF 2011; CORRECT?

24 A. RIGHT.

25 Q. AND WE KNOW THAT ONE WAS REQUESTED, DON'T WE?

1 A. RIGHT.

2 Q. AND IT WASN'T GIVEN, WAS IT?

3 A. RIGHT.

4 Q. OKAY. LET'S GO TO "D7" AGAIN, PLEASE.

5 A. "D7," OKAY.

6 Q. LYMAN PACIFIC IS A SIGNATORY TO "D7," IS IT NOT?

7 A. (UPON REVIEW) YES.

8 Q. OKAY. AND PART OF IT WAS YOU WANTED TO MAKE SURE

9 LYMAN PACIFIC COULDN'T GET SUED BY MR. BENNETT;

10 ISN'T THAT RIGHT?

11 A. YES.

12 Q. ALL RIGHT. AND SO YOU HAD MR. BENNETT RELEASE

13 LYMAN PACIFIC FROM ALL EXPOSURE AND LIABILITY;

14 CORRECT?

15 A. RIGHT.

16 Q. OKAY. AND AS OF THE SIGNING OF "D7," WHICH IS MAY

17 27TH, ---

18 A. TO BE HONEST WITH YOU I REALLY DIDN'T CARE IF

19 LYMAN PACIFIC GOT SUED. AS LONG AS WE WERE ON

20 TRACK, I REALLY DIDN'T CARE.

21 Q. YOU DIDN'T CARE, BUT YOU, YOU DID INCLUDE THEM IN

22 THE "AGREEMENT FOR RESCISSION OF CONTRACT AND FULL

23 AND FINAL RELEASE"?

24 A. I DIDN'T. THEY DID.

25 Q. THEY DID. ALL RIGHT. SO MR. BENNETT SAID, "I

1 WANT TO MAKE SURE I RELEASE LYMAN PACIFIC"?

2 A. YEAH.

3 Q. AND YOU WANTED TO MAKE SURE THAT THAT HAPPENED AS

4 WELL? AND THE MONEY AS OF MAY 27 OF 2011 WAS

5 SITTING -- THE HUNDRED THOUSAND DOLLARS (\$100,000)

6 OF DON MCWHIRTER'S MONEY WAS SITTING IN MR.

7 THRELKELD'S BANK ACCOUNT AT THAT TIME; WAS IT NOT?

8 A. I GUESS IT WAS, YEAH.

9 Q. ALL RIGHT. AND WHAT WAS AGREED TO ON MAY 27TH OF

10 2011 WAS THAT LYMAN PACIFIC AND LYMAN WAREHOUSE

11 WOULD RESOLVE ANY DISPUTE BETWEEN EACH OTHER AND

12 RESOLVE THEM AS OF THAT DAY; CORRECT?

13 A. I GUESS SO.

14 Q. DID YOU EVER TALK TO MR. MCWHIRTER ABOUT "D7"?

15 A. NO.

16 Q. OKAY. AND MR. MCWHIRTER DIDN'T SIGN "D7," DID HE?

17 A. NO.

18 Q. OKAY. AND LET ME ASK YOU. DO YOU KNOW WHO THE

19 PARTIES ARE TO THIS LAWSUIT? THE LAWSUIT YOU'RE

20 HERE FOR TODAY?

21 A. (NO RESPONSE)

22 Q. I MEAN I'M NOT TRYING TO BE TRICKY. I CAN SHOW IT

23 TO YOU. (DOCUMENT HANDED TO WITNESS)

24 A. OKAY. (UPON REVIEW) "LYMAN PACIFIC, LY-" ---

25 Q. OKAY. YOU KNOW -- I'VE HANDED YOU WHAT IS KNOWN

1 AS YOUR NOTICE OF DEPOSITION, ---

2 A. OKAY.

3 Q. --- OKAY? DO YOU SEE AT THE TOP THERE'S A
4 CAPTION? ---

5 A. "LYMAN WAREHOUSE," -- RIGHT.

6 Q. IS LYMAN WAREHOUSE, LLC, A PARTY TO THIS LAWSUIT
7 TO THE BEST OF YOUR KNOWLEDGE?

8 A. YES.

9 Q. AND ARE THEY A SIGNATORY TO DEFENDANT'S EXHIBIT
10 SEVEN (7)?

11 A. RIGHT.

12 Q. IS LYMAN PACIFIC, LLC, A PARTY TO THIS LAWSUIT?

13 A. YEAH.

14 Q. ARE THEY A SIGNATORY TO DEFENDANT'S EXHIBIT SEVEN
15 (7)?

16 A. RIGHT.

17 Q. IS MILLS DEMOLITION, LLC, A PARTY TO THIS LAWSUIT?

18 A. YEAH.

19 Q. ARE THEY A SIGNATORY TO DEFENDANT'S EXHIBIT SEVEN
20 (7)?

21 A. UH-HUH. (AFFIRMATIVE)

22 Q. IS SUSAN STANLEY A PARTY TO THIS LAWSUIT?

23 A. UH-HUH. (AFFIRMATIVE)

24 Q. IS SHE A SIGNATORY TO DEFENDANT'S EXHIBIT SEVEN
25 (7)?

1 A. UMM, I DON'T KNOW IF SHE SIGNED IT -- I GUESS SHE
2 IS PROBABLY, (UPON FURTHER REVIEW) "MILLS," YEAH.

3 Q. MR. -- I HAVE YOU ARE A PARTY TO THIS LAWSUIT,
4 PETER STANLEY. AND ARE YOU A SIGNATORY TO ---

5 A. YEAH.

6 Q. --- EXHIBIT SEVEN (7)? IS DONALD MCWHIRTER A
7 PARTY TO THIS LAWSUIT?

8 A. YEP.

9 Q. IS HE A SIGNATORY TO DEFENDANT'S EXHIBIT SEVEN
10 (7)?

11 A. NO.

12 Q. SO DEFENSE EXHIBIT SEVEN (7) IS EVERYBODY IN THIS
13 LAWSUIT EXCEPT FOR MR. THRELKELD AND DON
14 MCWHIRTER?

15 A. RIGHT.

16 Q. TELL ME WHERE IN DEFENDANT'S EXHIBIT SEVEN (7) IT
17 MENTIONS THE ONE HUNDRED THOUSAND DOLLARS
18 (\$100,000) THAT DON MCWHIRTER PUT UP FOR THE
19 CLOSING ON MAY 27TH THAT DIDN'T OCCUR; WHERE IS IT
20 MENTIONED?

21 A. IT'S NOT PROBABLY.

22 Q. IT'S NOT, IS IT? OKAY.

23 A. I DON'T KNOW WHY HE WOULD BE ON HERE.

24 Q. LYMAN PACIFIC, LLC, HAS NO COGNIZABLE RIGHT TO THE
25 ONE HUNDRED THOUSAND DOLLARS (\$100,000) SITTING IN

1 MR. THRELKELD'S ESCROW ACCOUNT, VIS-A-VIS MR.
2 MCWHIRTER; DOES IT?
3 A. SAY THAT AGAIN?
4 Q. THERE'S A HUNDRED THOUSAND DOLLARS (\$100,000)
5 SITTING IN MR. THREKLELD'S ---
6 A. RIGHT.
7 Q. --- TRUST ACCOUNT.
8 A. RIGHT. IT'S DON MCWHIRTER'S MONEY.
9 Q. THANK YOU. I COULD'VE ASKED A BETTER QUESTION,
10 BUT I UNDERSTAND.
11 A. OKAY.
12 Q. IN THE MONTH OF APRIL 2011, DID YOU SHOW THE
13 PROPERTY TO MR. CHRISTOPH?
14 A. I DON'T KNOW WHAT DAY IT WAS, BUT THE FELLOW FROM
15 CHICAGO CAME DOWN TO SHOW THE PROPERTY TO
16 CHRISTOPH.
17 Q. OKAY.
18 A. HE BROUGHT THE GUY IN; HE BROUGHT CHRISTOPH.
19 Q. WELL NOW, LOOKING AT "D2," DEFENSE EXHIBIT TWO
20 (2), THERE'S A DATE OF MAY 4TH OF 2011 IS WHEN
21 IT'S SIGNED; AND "D2" IS THE FRONT OF THE BOOK.
22 A. (UPON REVIEW) YEAH.
23 Q. AND I'M TRYING TO ORIENT YOU IN TIME TO HELP YOU
24 TO THE BEST OF YOUR ABILITY TO REMEMBER IF THE
25 PROPERTY WAS SHOWN PRIOR TO MAY 4TH OF 2011 WHEN

1 THE CONTRACT WAS SIGNED? I'M JUST TRYING TO HELP
2 YOU WITH DATES BECAUSE IT ---

3 A. I DON'T KNOW.

4 Q. --- WAS EIGHTEEN (18) MONTHS AGO. WOULD YOU HAVE
5 ENTERED INTO "D2" PRIOR TO TALKING WITH MR.
6 CHRISTOPH?

7 A. PROBABLY NOT.

8 Q. WELL, AND ULTIMATELY ---

9 A. --- I DON'T KNOW.

10 Q. --- THE FIFTY THOUSAND DOLLARS (\$50,000) THAT'S
11 THE DOWN PAYMENT FOR "D2" IS MONEY THAT MR.
12 CHRISTOPH THROUGH ONE ENTITY OR ANOTHER
13 TRANSFERRED TO YOU?

14 A. THAT'S CORRECT. I WOULD USE HIS FIFTY (\$50,000)
15 TO PUT FOR (POINTING TO DEFENDANT LYMAN WAREHOUSE,
16 LLC'S EXHIBIT "2") -- YOU'RE RIGHT.

17 Q. AND SO, I MEAN, IN ORDER TO PUT THE FIFTY THOUSAND
18 DOLLARS (\$50,000) DOWN, I WOULD ASSUME THAT THERE
19 WOULD HAVE TO HAVE BEEN SOME MEASURE OF
20 CONVERSATION WITH ---

21 A. YEAH.

22 Q. --- MR. CHRISTOPH PRIOR TO THE ---

23 A. YEAH. YEAH; WE DID.

24 Q. AND SINCE THIS IS MAY 4TH OF 2011, WOULD IT --
25 DOES THAT HELP AT ALL WITH YOUR MEMORY THAT

1 WHETHER OR NOT APRIL OF 2011 IS WHEN YOU SHOWED
2 THE PROPERTY TO MR. CHRISTOPH OR ---
3 A. YEAH, ---
4 Q. --- THE GENTLEMAN FROM CHICAGO?
5 A. --- THERE'S A TIMELINE THERE THAT HE WOULD'VE, HE
6 WOULD'VE SEEN THE PROPERTY. YEAH.
7 Q. AND THE AMOUNT THAT WAS PUT DOWN WAS FIFTY
8 THOUSAND DOLLARS (\$50,000) AS OPPOSED TO A HUNDRED
9 THOUSAND DOLLARS (\$100,000)?
10 A. CORRECT.
11 Q. FOR WHICH THE ORIGINAL CONTRACT HAD A HUNDRED
12 THOUSAND DOLLAR (\$100,000) DEPOSIT?
13 A. RIGHT.
14 Q. WELL, HOW DID YOU ALL NEGOTIATE THE FIFTY THOUSAND
15 DOLLAR (\$50,000) NUMBER?
16 A. I JUST SAID FIFTY THOUSAND (\$50,000), I'LL PUT UP
17 FIFTY THOUSAND (\$50,000).
18 Q. AND MR. BENNETT SAID, "NO PROBLEM"?
19 A. YEP.
20 Q. DID YOU EVER TALK TO MR. MCWHIRTER OR MR. EDWARDS
21 ABOUT DEFENDANT'S EXHIBIT TWO (2)?
22 A. NO.
23 Q. OKAY. DID YOU NOT FEEL IT WAS IMPORTANT TO SHARE
24 WITH THEM THAT YOU WERE GOING TO MOVE ON WITH A
25 DIFFERENT PARTNER ON THE PROPERTY?

1 A. WELL, I FELT THAT THEY DEFAULTED. THEY COULDN'T
2 COME UP WITH AN INVESTOR, SO I'D ENOUGH OF THOSE
3 GUYS. THEY WERE -- THEY, THEY FLEW -- I MEAN THEY
4 FLEW PEOPLE DOWN HERE, AND IT WASN'T A GOOD
5 RELATIONSHIP AT THAT POINT. YOU KNOW, THEY FLEW
6 A COUPLE OF INVESTORS DOWN AND THEY DIDN'T CALL ME
7 UP ON FIFTEEN (15) MINUTES ON THE PROPERTY, SO WE
8 DIDN'T HAVE A PRETTY GOOD WORKING RELATIONSHIP AT
9 THAT POINT BECAUSE I FELT I HAD THE OPPORTUNITY,
10 AND I WAS DEPENDING ON THESE GUYS TO COME UP WITH
11 THE INVESTOR. AND THEY SAID, "NO PROBLEM, NO
12 PROBLEM, NO PROBLEM" AND THEY NEVER CAME UP WITH
13 THE INVESTOR.

14 (MR. THRELKELD LEAVES THE DEPOSITION)

15 Q. WEREN'T YOU THE ONE WHO WAS SUPPOSED TO GET THE
16 INVESTOR FOR THE PROPERTY?

17 A. NO.

18 Q. SO YOU WERE SUPPOSED TO GET ONE-THIRD (1/3) OF
19 THIS TRANSACTION IF IT WERE TO HAVE CLOSED ---

20 A. RIGHT.

21 Q. --- FOR IDENTIFYING THE OPPORTUNITY?

22 A. RIGHT.

23 Q. NOTHING ELSE?

24 A. RIGHT.

25 Q. OKAY. SO ON MAY ---

1 A. AND ASSISTING, AND ASSISTING THE DEMOLITION.
2 Q. HOW MANY PEOPLE WORK FOR YOU?
3 A. NOBODY.
4 Q. OKAY. AND SO WERE YOU GOING TO SWING A SLEDGE
5 HAMMER AT THE PROPERTY?
6 A. THAT'S NOT THAT DEMOLITION -- THERE'S PART OF
7 DEMOLITION THAT'S, THAT'S SOURCING, SOURCING
8 SALVAGE COMPANIES, COPPER BUYERS, ASBESTOS PEOPLE;
9 SO THERE'S A LOT MORE THAN THAT.
10 Q. OKAY. THE RESELL OF THE PRODUCT?
11 A. YEAH.
12 Q. OKAY.
13 A. JUST THE LOCAL PEOPLE THAT I KNOW AROUND HERE, YOU
14 KNOW.
15 Q. AND YOU SIGNED THE CON- -- AGREEMENT, DEFENSE
16 EXHIBIT TWO (2) ON MAY 4TH OF 2011?
17 A. THIS ONE HERE? I -- PROBABLY (UPON FURTHER
18 REVIEW) ---
19 Q. AND THE ---
20 A. --- YEP.
21 Q. AND THE CLOSING DATE FOR THE ORIGINAL CONTRACT WAS
22 MAY 7TH OF 2011; IS THAT RIGHT?
23 A. RIGHT.
24 Q. AND SO THREE (3) DAYS PRIOR TO THE CLOSING, THE
25 SCHEDULED CLOSING WITH YOUR PARTNERS ELLIOTT

1 EDWARDS AND DON MCWHIRTER, YOU ENTERED INTO
2 ANOTHER CONTRACT ---
3 A. WELL, THEY WEREN'T MY PARTNERS.
4 Q. WELL, WHAT WERE THEY?
5 A. THEY, THEY LOST THE DEAL.
6 Q. SO THESE GUYS -- WHAT RELATIONSHIP -- YOU'RE
7 SAYING YOU DIDN'T HAVE ANY RELATIONSHIP WITH THESE
8 PEOPLE ON APRIL 7TH OF 2011?
9 A. YEAH, THAT'S WHAT I'M SAYING.
10 Q. SO, SO SOMEBODY YOU HAVE NO RELATIONSHIP WITH ---
11 A. OH, ON APRIL 7TH? NO, NO. ON APRIL 7TH I DID,
12 YEAH.
13 Q. AND THAT RELATIONSHIP WAS AS A PARTNERSHIP, WAS IT
14 NOT?
15 A. YEAH.
16 Q. OKAY. AND THAT -- YOU'RE SAYING IT TERMINATED
17 SOME TIME PRIOR TO MAY 4TH OF 2011?
18 A. YEAH, YOU BET IT DID.
19 Q. AND WHAT WAS THE TERMINATION TRIGGER?
20 A. THEY CAN'T COME UP WITH THE MONEY.
21 Q. FOR MAY 7TH, RIGHT?
22 A. YEAH.
23 Q. OKAY. SO YOU COULD COME UP WITH THE MONEY,
24 THOUGH, APPARENTLY THROUGH ANOTHER PARTNER?
25 A. NOT NECESSARILY.

1 Q. HOW WAS ---

2 A. I WAS STRUGGLING TO FIND SOMEBODY TO, TO SAVE THIS
3 DEAL.

4 Q. OKAY.

5 A. BECAUSE THEY PUT ME AT HARM BECAUSE I, I HAD FOUND
6 THIS DEAL MONTHS AND MONTHS BEFORE, AND I HAD ALL
7 KINDS OF PEOPLE THAT WANTED TO JV THE DEAL WITH
8 ME, ---

9 Q. SO IT'S Y- ---

10 A. --- ON A FIFTY/FIFTY (50/50) BASIS FOR FINDING THE
11 DEAL, NEVER MIND THIRTY PERCENT (30%).

12 Q. DID YOU EVER ASK MR. BENNETT FOR AN EXTENSION IN
13 MAY OF 2011 TO THE CONTRACT THAT'S MARKED AS
14 DEFENDANT'S EXHIBIT ONE (1)?

15 A. FOR WHAT REASON?

16 Q. I'M JUST ASKING IF YOU EVER DID; I MEAN I CAN TELL
17 YOU WHY I THINK YOU WOULD'VE.

18 A. I DON'T, I DON'T -- I DON'T KNOW.

19 Q. YOUR ---

20 A. I CAN'T IMAGINE WHY I WOULD.

21 Q. YOU CAN'T IMAGINE WHY YOU WOULD ASK FOR AN
22 EXTENSION ON THE CONTRACT THAT'S MARKED AS DEFENSE
23 EXHIBIT ONE (1)?

24 A. I THINK I DID ASK FOR AN EXTENSION BECAUSE THESE
25 -- THEY WAN- ---

1 Q. I GUESS THERE IS A REASON.
2 A. THEY WANTED AN EXTENSION.
3 Q. THEY WANTED AN EXTENSION?
4 A. WELL, I MEAN, YOU'RE TALKING ABOUT A YEAR AGO.
5 Q. WELL, I'M JUST ASKING. I'M NOT ---
6 A. I THINK I REMEMBER, ---
7 Q. --- YOU KEEP CHANGING YOUR STORY. THAT'S FINE.
8 A. I'M REMEMBERING MY STORY. I'M NOT CHANGING IT.
9 Q. OKAY. WELL, LET'S REMEMBER THE STORY. THE -- DID
10 YOU ASK FOR AN EXTENSION PRIOR TO MAY 7TH OF 2011?
11 A. THERE IS A POSSIBILITY I DID IN ORDER TO -- YEAH,
12 I DID. I THINK I DID.
13 Q. AND DO YOU RECALL WHAT MR. BENNETT SAID TO THAT
14 REQUEST?
15 A. HE SAID "NO."
16 Q. OKAY. AND SO WOULD YOU -- DID YOU THEN ENTER INTO
17 THIS MAY 4TH CONTRACT AFTER GETTING THE DENIAL
18 FROM MR. BENNETT OR BEFORE GETTING THE DENIAL FROM
19 MR. BENNETT?
20 A. AFTER, PROBABLY.
21 Q. AFTERWARD. BUT YOU SHOWED THE PROPERTY PRIOR TO
22 MAY 4TH OF 2011 TO ANOTHER INVESTOR?
23 A. OF COURSE.
24 Q. AND YOU DIDN'T TELL THAT TO DON MCWHIRTER OR
25 ELLIOTT EDWARDS, DID YOU?

1 A. THEY KNEW I WAS -- THEY KNEW I WAS SHOWING IT TO
2 OTHER PEOPLE. ABSOLUTELY THEY DID.

3 Q. THEY KNEW THAT YOU WERE SHOPPING ---

4 A. THEY KNEW I, ---

5 Q. --- THAT PROPERTY?

6 BY MR. CARRINGTON: OBJECT TO FORM.

7 A. THEY KNEW THAT I WAS SHOWING IT TO OTHER PEOPLE.

8 Q. HOW DID THEY KNOW THAT?

9 A. BECAUSE I TOLD THEM. I GOT NERVOUS. I SAID I
10 ALREADY HAD A, I ALREADY HAD AN EXPERIENCE WITH
11 YOU GUYS, WITH SETH COOPER -- OR COMING UP WITH
12 THE MONEY; YOU DIDN'T COME UP WITH THE MONEY. AND
13 YOU, AND YOU GUYS ARE TELLING ME NOW THAT YOU'RE
14 GOING TO COME UP WITH MONEY.

15 Q. WHEN DID YOU TELL THEM; DO YOU REMEMBER?

16 A. I DON'T KNOW SPECIFICALLY WHAT DATE, BUT IT WAS BY
17 PHONE I'M SURE.

18 Q. IT WAS ON THE PHONE?

19 A. YEAH.

20 Q. WAS IT PRIOR TO MAY 4TH OF 2011 OR AFTER MAY 4TH
21 OF 2011?

22 A. IT WAS PRIOR.

23 Q. AND YOU NEVER PUT IT IN WRITING, DID YOU?

24 A. YOU DON'T PUT THOSE THINGS IN WRITING.

25 Q. YOU DON'T PUT THINGS IN WRITING LIKE "I'M GOING TO

1 CHEAT MY PARTNER OUT OF A CONTRACT THAT'S SUPPOSED
2 TO CLOSE ON MAY 7TH OF 2011."

3 BY MR. CARRINGTON: OBJECT TO FORM.

4 A. HOW DID I CHEAT MY PARTNER?

5 Q. YOU SIGNED ANOTHER CONTRACT WHILE YOU HAD A
6 CONTRACT PENDING, DIDN'T YOU?

7 A. I DON'T HAVE A PARTNER.

8 Q. YOU SIGNED A CONTRACT TO CLOSE ON BEHALF OF MILLS
9 DEMOLITION WHEN YOU ALREADY HAD ONE SET TO CLOSE
10 WITH, WITH LYMAN PACIFIC; RIGHT?

11 A. I SIGNED A CONTRACT WITH MILLS DEMOLITION -- YEAH,
12 I RAN ANOTHER CORPORATION, RIGHT.

13 Q. RIGHT. I KNOW IT'S RIGHT BECAUSE I'VE GOT THE
14 DATE, MAY 4TH.

15 A. RIGHT.

16 Q. AND YOU STILL HAD A CONTRACT PENDING THAT WAS
17 VALID WITH LYMAN PACIFIC?

18 A. THAT CONTRACT WASN'T -- THAT CONTRACT WASN'T
19 ACTIVE UNTIL THE OTHER CONTRACT EXPIRED.

20 Q. WILL YOU GO BACK TO THAT, AND WHY DON'T YOU GO
21 AHEAD AND POINT TO ME WHAT YOU'RE POINTING TO,
22 WHAT MAKES IT ACTIVE?

23 A. I'M JUST -- (READING FROM DEFENDANT LYMAN
24 WAREHOUSE, LLC'S EXHIBIT "D2") "EXISTING CONTRACT
25 EXPIRES ON MAY 7TH."

- 1 Q. OF WHAT DAY?
- 2 A. 2011.
- 3 Q. 2- -- DOES IT SAY "2011"?
- 4 A. 2010.
- 5 Q. 2010. SO IN YOUR HASTE TO GET THIS CONTRACT
- 6 SIGNED, YOU DECIDED TO DROP IN THAT MAY 7TH DATE,
- 7 BUT YOU COULDN'T GET THE YEAR RIGHT; RIGHT?
- 8 BY MR. CARRINGTON: OBJECT TO FORM.
- 9 A. COME ON.
- 10 Q. COME ON YOURSELF. YOU'RE THE ONE WHO DID THIS.
- 11 A. GIVE ME A BREAK.
- 12 Q. YOU'RE THE ONE WHO DID THIS.
- 13 A. GIVE ME A BREAK.
- 14 BY MR. CARRINGTON: OBJECT TO FORM.
- 15 Q. YOU'RE THE ONE WHO DID IT, WEREN'T YOU? YOU'RE
- 16 THE ONE WHO DID IT?
- 17 BY MR. CARRINGTON: OBJECT TO FORM.
- 18 Q. YOU'RE THE ONE WHO SIGNED ON BEHALF OF MILLS
- 19 DEMOLITION, WEREN'T YOU?
- 20 A. WHAT'S YOUR POINT?
- 21 Q. I'M ASKING YOU A QUESTION.
- 22 A. LIKE IT'S A TYPO?
- 23 Q. I'M ASKING YOU, SIR, ---
- 24 A. I OBJECT TO THE FORM.
- 25 Q. --- YOU ORCHESTRATED A SECOND CONTRACT ON THE SAME

1 PROPERTY WHILE YOU HAD ANOTHER CONTRACT PENDING
2 WITH OTHER PEOPLE?

3 BY MR. CARRINGTON: OBJECT TO FORM.

4 A. I OBJECT TO THE FORM.

5 Q. YOU CAN OBJECT TO WHATEVER YOU WANT. YOU CAN
6 ANSWER MY QUESTION NOW. ---

7 BY MR. CARRINGTON: ANSWER THE QUESTION.

8 Q. --- THAT'S THE WAY THE RULES WORK, SIR.

9 A. WELL, WHAT'S YOUR QUESTION?

10 Q. SO YOU SIGNED A CONTRACT ON MAY 4TH OF 2011 ON
11 BEHALF OF MILLS DEMOLITION WHILE AT THE SAME TIME
12 YOU HAD OBLIGATIONS TO DON MCWHIRTER AND ELLIOTT
13 EDWARDS UNDER DEFENDANT'S EXHIBIT NUMBER ONE (1),
14 DIDN'T YOU?

15 BY MR. CARRINGTON: OBJECT TO FORM.

16 A. OBJECT TO FORM.

17 Q. WHAT'S YOUR ANSWER?

18 BY MR. CARRINGTON: I OBJECT; YOU ANSWER.

19 A. OH. (COUGHING) I'M JUST FEELING SHITTY.

20 Q. I UNDERSTAND. I KNOW YOU'VE GOT A ---

21 A. I DON'T EVEN KNOW WHAT YOU'RE ASKING IN THE
22 QUESTION, TO BE HONEST WITH YOU. YOU'LL HAVE TO
23 REPEAT THE QUESTION. I JUST FEEL TERRIBLE.

24 Q. DID YOU EVER CALL MR. BENNETT AND TRY TO FIGHT TO
25 GET MR. MCWHIRTER'S MONEY BACK IN MAY OF 2011?

1 A. I THINK HE WAS HAPPY TO GIVE THE MONEY BACK.

2 Q. MR. MCWHIRTER WOULD HAVE BEEN HAPPY TO GET HIS
3 HUNDRED THOUSAND DOLLARS (\$100,000) BACK?

4 A. NO, I SAID I THINK, I THINK THAT -- I THINK THAT
5 IF MCWHIRTER WOULD HAVE CONTACTED BENNETT DIRECTLY
6 AND SAID, "LISTEN, I'M IN A BAD DEAL HERE AND I
7 CAN'T RAISE THE MONEY. WOULD YOU, WOULD YOU
8 SETTLE ON THIS THING; CAN I HAVE HALF OF IT BACK?"
9 I THINK BENNETT'S THE KIND OF GUY WHO WOULD HAVE
10 DONE THAT.

11 Q. ALL RIGHT. HAD -- DID YOU EVER CALL MR. BENNETT
12 AND ASK HIM TO RETURN DON MCWHIRTER'S ONE HUNDRED
13 THOUSAND DOLLARS (\$100,000)?

14 A. NO.

15 Q. BUT YOU DID IT ON BEHALF OF MILLS DEMOLITION NOT
16 THREE (3) WEEKS LATER, DIDN'T YOU?

17 A. YEAH.

18 Q. AND YOU COULDN'T TAKE THAT EXTRA EFFORT FOR MR.
19 MCWHIRTER ON MAY 7TH OF 2011?

20 A. MR. MCWHIRTER WAS IN COMMUNICATION WITH BENNETT TO
21 GET HIS MONEY BACK. WHY DID WE -- WHY, WHY DID HE
22 NEED ME TO DO THAT? AND SO WAS ELLIOTT EDWARDS.

23 Q. I WANT YOU TO LOOK AT DEFENSE EXHIBIT NUMBER SEVEN
24 (7).

25 A. OKAY.

1 Q. PAGE FIVE (5) ..

2 A. (REVIEW OF DOCUMENT)

3 Q. AND THEN YOU DON'T HAVE TO READ OUT LOUD, YOU CAN
4 READ TO YOURSELF, THE PARAGRAPH -- THE LAST
5 PARAGRAPH OF PAGE FIVE (5) BEGINNING WITH "IT
6 BEING" AND ENDING ON THE NEXT PAGE.

7 A. OKAY. THIS PARAGRAPH RIGHT HERE? (INDICATING)

8 Q. YES, SIR. AND IT GOES ON TO THE TOP OF THE NEXT
9 PAGE.

10 A. (UPON REVIEW) ALL RIGHT.

11 Q. I'M GOING TO FOCUS YOU IN ON THE TOP OF PAGE SIX
12 (6) "OR ARISING OUT OF ANY OTHER TRANSACTION OR
13 RELATIONSHIP BETWEEN OR AMONG THE RELEASING PARTY
14 AND THE PARTIES."

15 A. ALL RIGHT.

16 Q. OKAY. THE ONLY "OTHER TRANSACTION" THAT LYMAN
17 PACIFIC, MILLS DEMOLITION, LYMAN WAREHOUSE HAD
18 WITH EACH OTHER WAS THE CONTRACT THAT'S MARKED AS
19 DEFENDANT'S EXHIBIT NUMBER ONE (1); ISN'T THAT
20 RIGHT?

21 A. I DIDN'T READ THIS STUFF, I MEAN YOU KNOW.

22 Q. I UNDERSTAND ---

23 A. YOU LOOK AT THIS STUFF HERE. THEY THREW THIS IN
24 FRONT OF ME. I WANTED MY TWENTY-FIVE THOUSAND
25 DOLLARS (\$25,000) BACK. I DIDN'T READ THIS STUFF.

- 1 Q. OKAY. WELL, LET ME ASK -- WELL, WHY DON'T YOU
2 LISTEN TO MY QUESTION, ---
- 3 A. YEAH.
- 4 Q. --- OKAY? MY QUESTION WAS NOT WHAT IT IS YOU'VE
5 ANSWERED. LET ME TRY IT AGAIN, AND I'M GOING TO
6 TRY TO BE CLEARER.
- 7 A. OKAY.
- 8 Q. NAME ME ALL THE DEALS THAT LYMAN PACIFIC HAD WITH
9 LYMAN WAREHOUSE?
- 10 A. ONE (1) DEAL.
- 11 Q. OKAY. NAME ME ALL THE DEALS THAT LYMA- -- THAT
12 MILLS HAD WITH LYMAN WAREHOUSE?
- 13 A. ONE (1) DEAL.
- 14 Q. NAME ME ALL THE DEALS THAT PETER STANLEY AND SUSAN
15 STANLEY HAD WITH LYMAN WAREHOUSE; NONE, RIGHT?
- 16 A. NONE, YOU'RE RIGHT.
- 17 Q. I MEAN, IT'S JUST THE TWO (2) ENTITIES HAD DEALS?
- 18 A. RIGHT. RIGHT.
- 19 Q. OKAY. SO WHEN WE'RE LOOKING AT THE PARTIES TO
20 DEFENDANT'S EXHIBIT NUMBER SEVEN (7), THERE ARE
21 ONLY TWO (2) DEALS IT COULD APPLY TO?
- 22 A. YEAH.
- 23 Q. ALL RIGHT. THAT WAS MY QUESTION.
- 24 A. OKAY.
- 25 Q. ON PAGE SIX (6) AGAIN, THE LAST SENTENCE.

1 A. (PAUSE - READING TO SELF) OKAY.

2 Q. OKAY. PRIOR TO THE AGREEMENT BEING SIGNED ---

3 A. THIS AGREEMENT, RIGHT?

4 Q. YES, SIR. PRIOR TO DEFENDANT'S EXHIBIT NUMBER

5 SEVEN (7) ---

6 A. RIGHT.

7 Q. BEING SIGNED, ---

8 A. ALL RIGHT.

9 Q. --- OKAY? NO FINAL RESOLUTION OF DON MCWHIRTER'S

10 RIGHTS TO THE ONE HUNDRED THOUSAND DOLLARS

11 (\$100,000) ---

12 A. UH-HUH. (AFFIRMATIVE)

13 Q. --- HAD BEEN OBTAINED?

14 A. RIGHT. I THOUGHT HE LOST IT.

15 Q. OKAY. BUT YOU DIDN'T KNOW?

16 A. YEAH, I DID.

17 Q. IT WAS SITTING IN HIS LAWYER'S ---

18 A. HE HAD IT IN HIS ACCOUNT. (REFERRING TO MR.

19 BENNETT)

20 Q. --- ESCROW ACCOUNT. IT WAS SITTING IN HIS

21 LAWYER'S ESCROW ACCOUNT, WASN'T IT, SITTING IN THE

22 LAWYER'S ESCROW ACCOUNT FOR THE CLOSING, WASN'T

23 IT?

24 A. WELL, IT WAS, BUT I KNOW THAT THEY WERE GOING

25 AFTER IT, SO I FIGURED IT WAS GONE.

- 1 Q. THEY WERE STILL TRYING TO GET IT?
- 2 A. YEAH.
- 3 Q. SO MR. BENNETT WAS TRYING TO GET TO THAT ONE
- 4 HUNDRED THOUSAND DOLLARS (\$100,000), RIGHT?
- 5 A. I BELIEVE SO, YES.
- 6 Q. AND MR. MCWHIRTER WAS TRYING TO GET TO THAT ONE
- 7 HUNDRED THOUSAND DOLLARS (\$100,000); RIGHT?
- 8 A. RIGHT.
- 9 Q. IF YOU KNOW?
- 10 A. RIGHT.
- 11 Q. OKAY. AND MR. BENNETT WAS TRYING TO GET TO THAT
- 12 ONE HUNDRED THOUSAND DOLLARS (\$100,000) BASED ON
- 13 DEFENDANT'S EXHIBIT NUMBER ONE (1), WHICH IS THE
- 14 VERY FIRST DOCUMENT IN THAT BOOK; OKAY? ISN'T
- 15 THAT WHY HE WAS TRYING TO GET IT?
- 16 A. HE WAS -- HE WAS TRYING TO GET HIS DEPOSIT BACK,
- 17 RIGHT.
- 18 Q. RIGHT. WHICH IS -- AROSE OUT OF DEFENDANT'S
- 19 EXHIBIT NUMBER ONE (1)?
- 20 A. RIGHT.
- 21 Q. AND DEFENDANT'S EXHIBIT NUMBER ONE (1), THE SELLER
- 22 IS LYMAN WAREHOUSE; IS IT NOT?
- 23 A. RIGHT.
- 24 Q. AND THE PURCHASER WAS LYMAN PACIFIC, WAS IT NOT?
- 25 A. RIGHT.

1 Q. AND SO MR. BENNETT FELT THAT HE WAS ENTITLED TO
2 THE ONE HUNDRED THOUSAND DOLLARS (\$100,000) PUT ON
3 DEPOSIT WITH MR. THRELKELD BECAUSE LYMAN PACIFIC
4 DIDN'T PERFORM ---

5 A. CORRECT.

6 Q. --- ON MAY 7TH, SO WHEN DEFENSE EXHIBIT NUMBER
7 SEVEN (7) WAS SIGNED, HE RELEASED HIS RIGHTS
8 AGAINST LYMAN PACIFIC, DIDN'T HE, IF YOU KNOW?

9 A. HE RELEASED HIS RIGHTS AGAINST LYMAN PACIFIC?

10 Q. IF YOU KNOW?

11 A. I DON'T KNOW IF HE DID OR NOT.

12 Q. OKAY.

13 A. I DIDN'T TAKE THE ---

14 Q. WHATEVER THE DOCUMENT SAYS IT SAYS?

15 A. YEAH.

16 Q. FAIR ENOUGH.

17 A. I MEAN, I'M NOT A LAWYER.

18 Q. AND THE ONLY RIGHTS THAT MR. BENNETT HAD TO THE
19 ONE HUNDRED THOUSAND DOLLARS (\$100,000) WAS
20 THROUGH LYMAN WAREHOUSE'S CONTRACT SET FORTH IN
21 DEFENDANT'S EXHIBIT NUMBER ONE (1)? THERE'S NO
22 SEPARATE RIGHT THAT HE HAD?

23 A. NOT THAT I'M AWARE OF.

24 Q. OKAY. AND YOUR UNDERSTANDING IS WHEN DEFENSE
25 EXHIBIT NUMBER SEVEN (7) WAS SIGNED THAT ONE

1 HUNDRED THOUSAND DOLLARS (\$100,000) WAS STILL
2 SITTING IN MR. THRELKELD'S ESCROW ACCOUNT AND
3 THERE WAS A FIGHT OVER IT?

4 A. YES.

5 Q. OKAY. YOU WOULD AGREE WITH ME THAT ON APRIL 6TH
6 OF 2011 BEFORE DEFENSE EXHIBIT NUMBER ONE (1) WAS
7 SIGNED ---

8 A. APRIL 5TH.

9 Q. APRIL 5TH, 6TH -- I SAID 6TH, BUT I'M EASY. I CAN
10 DO 5TH.

11 A. ALL RIGHT.

12 Q. AND I'M LOOKING AT DEFENDANT'S EXHIBIT NUMBER ONE
13 (1), PRIOR TO THIS EXHIBIT BEING SIGNED; ---

14 A. UH-HUH. (AFFIRMATIVE)

15 Q. --- OKAY, AND IT WAS SIGNED ON APRIL 7TH, PRIOR
16 YOU AGREE WITH ME THAT LYMAN WAREHOUSE DID NOT
17 HAVE A RIGHT TO ONE HUNDRED THOUSAND DOLLARS
18 (\$100,000) FROM DON MCWHIRTER?

19 A. I DON'T EVEN KNOW YOUR QUEST- -- NONE OF YOUR
20 QUESTION'S MAKING SENSE TO SENSE TO ME. PRIOR TO
21 THE AGREEMENT?

22 Q. PRIOR TO THIS AGREEMENT, YEAH, DID LYMAN WAREHOUSE
23 HAVE ANY RIGHT TO GET A HUNDRED THOUSAND DOLLARS
24 FROM DON MCWHIRTER, A DAY BEFORE THE SIGNING OF
25 DEFENDANT'S EXHIBIT NUMBER ONE (1), IF YOU KNOW?

1 A. I DON'T KNOW.

2 Q. OKAY.

3 A. I DON'T EVEN KNOW WHAT YOU'RE TALKING ABOUT.

4 Q. WELL, DON MCWHIRTER PUT A HUNDRED THOUSAND DOLLARS
5 (\$100,000) UP ON APRIL 7TH; RIGHT?

6 A. RIGHT.

7 Q. ALL RIGHT. AND HE DID THAT PURSUANT TO THE
8 CONTRACT AS SET FORTH IN DEFENDANT'S EXHIBIT
9 NUMBER ONE (1)?

10 A. RIGHT. HE PUT UP AS A DEPOSIT.

11 Q. RIGHT. AND SO THERE WAS NO OBLIGATION ON APRIL
12 6TH FOR HIM TO PUT UP A HUNDRED THOUSAND DOLLARS
13 (\$100,000), WAS THERE?

14 A. OTHER THAN HE SAID HE WAS GOING TO DO IT.

15 Q. OTHER THAN THAT, THERE WAS NO WRITTEN CONTRACT
16 THAT REQUIRED HIM TO DO IT?

17 A. NOT THAT I'M AWARE OF.

18 Q. OKAY. I WANT TO TRY TO UNDERSTAND A LITTLE BIT
19 BETTER MR. CHRISTOPH. SO MR. CHRISTOPH AT SOME
20 POINT WROTE A CHECK FOR ONE HUNDRED THOUSAND
21 DOLLARS (\$100,000) TO MILLS?

22 (MR. PRACHT LEAVES THE DEPOSITION)

23 BY MR. PROTOPAPAS: ACTUALLY, CAN WE TAKE --
24 LET'S TAKE A TWO (2) MINUTE BREAK. I WITHDRAW THE
25 QUESTION.

1 (OFF RECORD/BRIEF RECESS @ 11:55 A.M. - 12:00 P.M.)

2 EXAMINATION BY MR. PROTOPAPAS RESUMES:

3 Q. I WANT YOU TO TAKE A SECOND AND LOOK AT EXHIBIT
4 NUMBER THREE (3), "D3" IF YOU COULD?

5 A. ALL RIGHT.

6 Q. OKAY?

7 A. UH-HUH. (AFFIRMATIVE)

8 Q. I JUST WANT TO MAKE SURE, MR. MCWHIRTER DIDN'T
9 AUTHORIZE YOU TO WRITE THE MAY 7TH LETTER, DID HE?

10 A. (UPON REVIEW) "D3"?

11 BY MR. CARRINGTON: "D3"?

12 Q. I'M SORRY. IT'S MY "D3." I'M SORRY. LOOK AT
13 "D5."

14 A. "D5."

15 Q. THERE WAS A REQUEST ON MAY 3RD OF 2011, ---

16 A. MAY 3RD?

17 Q. YES, SIR.

18 A. UH-HUH. (AFFIRMATIVE)

19 Q. FOR AN EXTENSION OF TIME?

20 A. UH-HUH. (AFFIRMATIVE)

21 Q. AND IT'S YOUR UNDERSTANDING THAT WAS DENIED?

22 A. YES.

23 BY MR. PROTOPAPAS: (DOCUMENT TENDERED TO
24 REPORTER)

25 (DEFENDANT MCWHIRTER'S EXHIBIT "D12")

1 MARKED AND ENTERED)

2 Q. OKAY. WILL YOU TAKE A SECOND AND LOOK AT NUMBER
3 TWELVE (12) FOR ME? (DOCUMENT HANDED TO WITNESS)

4 A. ALL RIGHT.

5 Q. ALL RIGHT. NUMBER TWELVE (12), THAT WASN'T
6 WRITTEN WITH MR. MCWHIRTER'S PERMISSION, WAS IT?

7 A. (UPON REVIEW) I'VE NEVER SEEN THIS BEFORE.

8 Q. OH, OKAY. YOU'VE NEVER SEEN THIS?

9 A. NO. IT'S NOT ADDRESSED TO ME.

10 Q. AND Y- -- BUT YOU -- AND YOU NEVER GOT A COPY OF
11 IT?

12 A. UH-UH. (NEGATIVE)

13 Q. DO YOU KNOW WHO A MR. THIESING IS?

14 A. MR. THIESING'S MY ATTORNEY DOWN IN ISLE OF PALMS.

15 Q. DO YOU KNOW IF HE GOT A COPY OF IT?

16 A. NO, I DON'T KNOW.

17 Q. OKAY. (DOCUMENT TENDERED TO REPORTER)

18 (DEFENDANT MCWHIRTER'S EXHIBIT "D13")

19 MARKED AND ENTERED)

20 Q. OKAY. MR. MCWHIRTER DIDN'T AUTHORIZE YOU TO WRITE
21 DEFENDANT'S EXHIBIT THIRTEEN (13), DID HE?

22 (DOCUMENT HANDED TO WITNESS)

23 A. (UPON REVIEW) NO.

24 Q. SO MILLS CONSTRUCTION GOT A CHECK FOR ONE HUNDRED
25 THOUSAND DOLLARS (\$100,000) FROM AN ENTITY OR FROM

1 CHRISTOPH?

2 A. RIGHT.

3 Q. PROBABLY SOME TIME PRIOR TO THE MAY 4TH OF 2011
4 CONTRACT?

5 BY MR. CARRINGTON: OBJECT TO FORM.

6 A. I DON'T KNOW.

7 Q. OKAY. MAY 4TH BEING THE MILLS CONTRACT?

8 A. I DON'T THINK SO.

9 Q. SO WHEN YOU SIGNED THE MILLS CONTRACT, WHICH IS
10 EXHIBIT TWO (2) IF I'M NOT MISTAKEN, ---

11 A. UMM, (PAUSE) ---

12 Q. --- YOU DIDN'T HAVE THE ONE HUN- -- THE FIFTY
13 THOUSAND (\$50,000) AT ALL, DID ---

14 A. NO, I DIDN'T. I DON'T, I DON'T THINK I DID. I'M
15 ALMOST POSITIVE ABOUT THAT, YEP. YEAH.

16 Q. DO YOU REMEMBER WHEN THE FIFTY THOUSAND DOLLARS
17 (\$50,000) WAS TENDERED TO THE LYMAN WAREHOUSE
18 PURSUANT TO DEFENSE EXHIBIT TWO (2)?

19 A. PROBABLY THE, PROBABLY THE WEEK AFTER.

20 Q. THE WEEK AFTER, OKAY.

21 A. LIKE AROUND THE--I DON'T KNOW--13- -- 12TH OR
22 13TH.

23 Q. SO A HUNDRED THOUSAND DOLLARS (\$100,000) WAS
24 TRANSFERRED TO MILLS DEMOLITION ---

25 A. RIGHT.

1 Q. --- BY CHRISTOPH OR AN ENTITY HE CONTROLS?

2 A. RIGHT.

3 Q. OKAY. FIFTY THOUSAND DOLLARS (\$50,000) OF THAT

4 MONEY WENT TO MR. THRELKELD'S TRUST ACCOUNT?

5 A. CORRECT.

6 Q. AND THEN, IS IT YOUR RECOLLECTION THERE WAS

7 ANOTHER HUNDRED THOUSAND DOLLARS (\$100,000) PAID

8 FROM A CHRISTOPH ENTITY TO RELEASE CLAIMS YOU

9 MIGHT HAVE AGAINST HIM?

10 A. RIGHT, DOWN THE ROAD, LIKE ABOUT SIX (6) MONTHS OR

11 SO DOWN THE ROAD.

12 Q. BUT HE WAS -- AND THE PURPOSE OF THAT WAS, WAS

13 WHAT?

14 A. BASICALLY SO I DON'T SUE HIM.

15 Q. AND WHAT WOULD YOU SUE HIM FOR?

16 A. I JUST THOUGHT, THOUGHT THAT THERE WAS TREACHEROUS

17 INTERFERENCE IN, IN DEALING WITH BENNETT.

18 Q. THAT HE WENT AROUND YOU TO GO TO BENNETT AND AS A

19 RESULT HE SECURED THE LYMAN WAREHOUSE PROPERTY

20 THAT YOU ORIGINALLY PUT UNDER CONTRACT ON "D2"?

21 A. YEAH.

22 Q. IS THAT KIND OF LIKE YOU GOING AROUND ELLIOTT

23 EDWARDS AND DON MCWHIRTER TO SIGN A CONTRACT ON

24 MAY 4TH WITHOUT THEIR PERMISSION AND THEN

25 RECEIVING A HUNDRED AND FIFTY THOUSAND DOLLARS

1 (\$150,000)?

2 BY MR. CARRINGTON: OBJECT TO FORM.

3 A. NO.

4 BY MR. PROTOPAPAS: I HAVE NO MORE QUESTIONS.

5 (ADDRESSING MR. PRUITT) DO YOU WANT TO SWITCH?

6 BY MR. PRUITT: I THINK I'M GOOD RIGHT HERE.

7 I DON'T HAVE MUCH.

8 REDIRECT EXAMINATION BY MR. PRUITT:

9 Q. NOW, MR. STANLEY, WHEN YOU WROTE EXHIBIT NUMBER
10 THIRTEEN (13) TO LYMAN WAREHOUSE--I BELIEVE YOU
11 HAVE ONE THERE--WAS IT CLEAR TO YOU AT THAT TIME
12 THAT LYMAN PACIFIC WOULD NOT HAVE THE FUNDS
13 AVAILABLE TO CLOSE UNDER, UNDER THE CONTRACT
14 DESCRIBED IN "D1"?

15 A. YES.

16 Q. HAD MR. MCWHIRTER OR MR. EDWARDS INDICATED TO YOU
17 THAT AT THAT TIME THAT THERE WAS ANY CHANCE THAT
18 THEY WERE GOING TO GET THE MONEY UP?

19 A. NO.

20 Q. HAD THEY INDICATED TO YOU AT THAT TIME THAT THEY
21 WOULDN'T BE ABLE TO GET IT UP?

22 A. YEP.

23 Q. NOW, BACK IN APRIL WHEN YOU SIGNED DEFENDANT'S
24 EXHIBIT NUMBER ONE (1) AND MR. MCWHIRTER GAVE HIS
25 CHECK, IN WHOSE BEHALF DID HE GIVE THAT CHECK?

1 A. ON "WHOSE BEHALF", YOU MEAN?

2 Q. WHO DID HE GIVE THE CHECK FOR?

3 A. IT WAS A DEPOSIT FOR LYMAN PACIFIC.

4 Q. ALL RIGHT. WAS THERE EVER ANY ACCOUNTING RECORDS
5 MADE FOR LYMAN PACIFIC?

6 A. NO.

7 Q. DOES LYMAN PACIFIC HAVE ANY BOOKS OR RECORDS THAT,
8 THAT WOULD INDICATE THAT CHECK?

9 A. NO.

10 Q. HAS LYMAN PACIFIC FILED ANY TAX RETURNS?

11 A. NO.

12 Q. HAS LYMAN PACIFIC EVER MADE ANY MONEY?

13 A. NO.

14 Q. HAS MR. MCWHIRTER EVER DEMANDED THAT LYMAN PACIFIC
15 REPAY THE HUNDRED THOUSAND DOLLAR (\$100,000) LOAN
16 THAT HE MADE TO IT?

17 A. NO.

18 BY MR. PRUITT: THAT'S ALL I HAVE.

19 BY MR. PROTOPAPAS: I HAVE NO FURTHER
20 QUESTIONS.

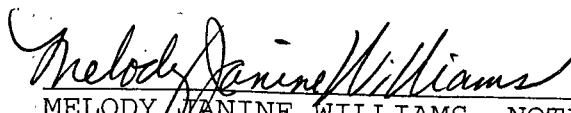
21 BY MR. CARRINGTON: NOTHING.

22 END OF DEPOSITION - 12:09 P.M.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON) CERTIFICATE OF REPORTER

THIS IS TO CERTIFY THAT THE FOREGOING
NINETY-THREE (93) PAGES REPRESENT A TRUE AND ACCURATE
TRANSCRIPTION OF THE TESTIMONY OF PETER M. STANLEY,
WHICH WAS TAKEN BEFORE ME, MELODY JANINE WILLIAMS,
VERBATIM COURT REPORTER AND NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, ON THE 7TH DAY OF
NOVEMBER, 2012.

THIS WILL FURTHER CERTIFY THAT I AM NOT
INTERESTED IN, NOR AM I COUNSEL OR ATTORNEY TO EITHER
OF THE PARTIES INTERESTED IN THE EVENT OF THE CAUSE.

 (L.S.)
MELODY JANINE WILLIAMS, NOTARY
PUBLIC IN AND FOR THE STATE OF
SOUTH CAROLINA.

MY COMMISSION EXPIRES: 10/16/2022

NOVEMBER 16, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Harold P. Threlkeld d/b/a Harold P.
Threlkeld, Attorney at Law,
Plaintiff,

-vs-

Lyman Warehouse, LLC, Lyman Pacific,
LLC, Mills Demolition, LLC, Susan C.
Stanley, Peter M. Stanley and Donald J.
McWhirter,
Defendants.

NOTICE TO USE
DEPOSITION EXCERPTS

2012-CP-04-00041

TO: LYMAN PACIFIC, LLC, MILLS DEMOLITION, LLC, SUSAN C. STANLEY, PETER M. STANDLEY AND DONALD J. McWHIRTER:

YOU WILL PLEASE TAKE notice that the Defendant, Lyman Warehouse, LLC intends to use the following excerpts from the Deposition of Peter M. Stanley, as well as the indicated Deposition Exhibits:

Page 9, lines 4 - 17;
Page 10, lines 9 - 18;
Page 15, lines 16 - 23;
Page 21, lines 1 - 10;
Page 24, lines 25 - Page 26, line 8;
Page 53, line 24 - Page 57, line 5;
Page 92, line 23 - Page 93, line 17;
Exhibits D4, D5 and D7.

PRUITT & PRUITT

J. Calhoun Pruitt, Jr.
Attorney for Lyman Warehouse, LLC
101 N. Murray Avenue
Anderson, SC 29625

Anderson, South Carolina
March 5, 2013

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

) IN THE COURT OF COMMON PLEAS

) TENTH JUDICIAL CIRCUIT

) Civil Action No.: 2012-CP-04-00041

) Harold P. Threlkeld d/b/a Harold P.
) Threlkeld, Attorney at Law

) Plaintiff,

) Vs.

) LymanWarehouse, LLC, Lyman
) Pacific, LLC, Mills Demolition, LLC,
) Susan C. Stanley, Peter M. Stanley
) and Donald J. McWhirter.

) Defendants.

**DEFENDANT MCWHIRTER
DEPOSITION DESIGNATIONS**

The Defendant, Donald McWhirter, hereby offers the following deposition designations to be presented at trial:

Peter Stanley

Page 6, lines 3-4

Page 8, lines 6-16

Page 9, lines 4-17

Page 11, line 23 – Page 12 line 2 – Exhibit 1

Page 12, lines 7-13

Page 15, line 24 – Page 16, line 21 – Exhibit 2

Page 17, line 18 – Page 18, line 23

Page 21, line 11 – Page 22, Line 1 – Exhibit 5

Page 22, line 10 – Page 23, line 1

Page 24, line 25 – Page 25, line 25 – Exhibit 7

Page 41, lines 21 – Page 42, line 7

Page 44, lines 13-21

Page 45, lines 2-17

Page 46, line 14 – Page 47, line 3 – Exhibit 11

Page 51, line 23 – Page 52, line 2

Page 53, line 6 – Page 55, line 18

Page 64, line 6 – Page 65, line 2

Page 67, lines 16 – 21

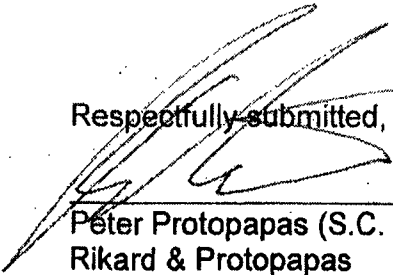
Page 68, lines 4-8; lines 11-17

Page 70, lines 20-22

Page 80, lines 11-22

Page 91, lines 6-17

Respectfully submitted,



Peter Protopapas (S.C. Bar #68304)

Rikard & Protopapas

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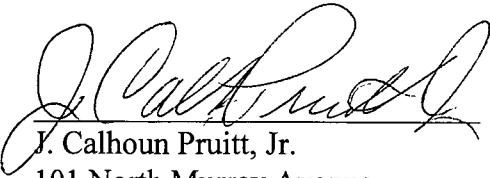
Fax: (864) 965-9661

**ATTORNEYS FOR DEFENDANT
MCWHIRTER**

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

PRUITT & PRUITT



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101 North Murray Avenue
Anderson, South Carolina 29625
(864) 224-3121
Attorney for Appellant,
Lyman Warehouse, LLC

June 3, 2014.